



## **HOMEOWNER'S DOCUMENTS**

# **DECLARATION OF COVENANTS, CONDITIONS, and RESTRICTIONS**

200500007385  
Filed for Record in  
ATHENS COUNTY, OHIO  
JULIA MICHAEL SCOTT  
10-19-2005 At 07:48 am.  
DECLARATION      476.00  
DR Book 388 Page 2155 - 2212

200500007385  
RICK DREHUS

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A golf club community and much more!

Instrument Book Page  
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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
UNIVERSITY ESTATES**

**THIS DECLARATION**, made as of the 14<sup>th</sup> day of October, 2005, by UNIVERSITY ESTATES, INC., (hereinafter referred to as "Developer").

**RECITALS:**

**WHEREAS**, Developer is the owner of the real property in Athens, Ohio, more particularly described in Article II hereof; and

**WHEREAS**, Developer desires that the property be developed into a planned mixed-use Planned Unit Development residential community to be known as "University Estates" (the "Neighborhood"); and

**WHEREAS**, in order to develop and maintain the Neighborhood as a mixed-use residential community and to preserve, protect and enhance the values and amenities thereof, it is necessary to declare, commit and subject the real property described in Article II and such additions as may hereafter be made pursuant to Article II and the improvements now and hereafter constructed thereon to certain covenants, conditions, restrictions and regulations, and to delegate and assign to a non-profit corporation certain powers and duties of administration, management, operation, maintenance and enforcement; and

**WHEREAS**, Developer has caused University Estates Homeowners Association, Inc. to be incorporated under the laws of the State of Ohio as a non-profit corporation for such purposes,

**WHEREAS**, it is anticipated The Ohio Club, Inc., an Ohio Corporation, will be building a quality 18-hole golf course but does not guarantee or represent that such event shall occur.

**NOW THEREFORE**, for and in consideration of the premises and for other good and valuable considerations, the Developer, for themselves and their respective legal representatives, successors and assigns, hereby declares that the real property described in Article II and such additions as may hereafter be made pursuant to Article II shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and regulations which shall run with the title to the property, and the grantee of any deed conveying any portion of the property shall be deemed by the acceptance of such deed to have agreed to all such covenants, conditions, restrictions and regulations and to have covenanted to observe, comply with and be bound by all such covenants, conditions, restrictions and regulations.

**ARTICLE I  
DEFINITIONS**

As used in this Declaration, the terms below shall have the following meanings:

1.01      “**ARC**” or “**Architectural Review Committee**” means the Board of the Association which will review and approve architectural plans for improvements on the Lots and as herein provided.

1.02      “**Articles**” means the Articles of Incorporation of the Association.

1.03      “**Assessment**” means and refers to a charge against an owner and his Lot, made by the Association in accordance with the Declaration and secured by a lien against such Lot as hereinafter provided.

1.04      “**Association**” means the entity known as University Place Neighborhood Association, Inc., an Ohio non-profit corporation. Unless otherwise specified herein, any actions required of the Association herein may be taken by its Board of Directors.

1.05      “**Board**” means the Board of Directors of the Association, which has been duly elected and qualified in accordance with the Articles of Incorporation and Bylaws of the Association.

1.06      “**Bylaws**” means the Bylaws of the Association.

1.07      “**Common Property**” means and refers to all real property or interest therein, including easements, licenses and servitudes, owned by or leased to the Association, or the use of which has been granted to the Association, together with all improvements thereon. The term “Common Property” shall also include any personal property acquired by the Association if said property is designated *Common Property*. All *Common Property* is to be devoted to and intended for the common use and enjoyment of the Owners and residents of the Neighborhood and their guests, subject to the provisions of this Declaration.

1.08      “**Declaration**” means this Declaration of Covenants, Conditions and Restrictions and all exhibits attached hereto, as the same may be amended from time to time.

1.09      “**Developer**” means the University Estates, Inc., and its successors and assigns, upon a specific designation to such successors or assignees of the rights of Developer under the Declaration in an instrument recorded in the public records of Athens, Ohio.

1.10      “**Development Agreement**” means the Development Agreement contained in Athens, Ohio Ordinance No. 0-81-00. All property within the Neighborhood is subject to the terms of the Development Agreement and may be amended from time to time by the Developer.

1.11      “**District**” means that governmental agency having jurisdictional controls such as, but is not limited to, the Ohio Environmental Agency, Army Corps of Engineers and the Ohio Historical Protection Agency.

1.12      “**Lot**” means a single-family Lot as shown and numbered on the Plat, or any other plat recorded in connection with the addition of other real property as described in Article II, below. “Lot” shall not include any platted land that is multifamily, commercial or Common Property.

1.13      “**Lot Type**” means the following different size and style Lots which may be included within the Neighborhood, and/or such other Lot Types as Developer may elect to include within the Neighborhood and designate as a separate Lot Type:

<u>Lot Type</u>	<u>Minimum Lot Size</u>
"Executive"	100' x 125'
"Family Lot"	80' x 120'
"Single Family"	70' x 120'
"Single Family"	60' x 120'
"Patio Home"	50' x 100'
"Golf Villa"	45' x 100'

1.14 "Owner" means the record title holder of a Lot. "Owner" shall not include Developer, its successors and assigns as Developer until such time as Developer memberships terminate.

"Plat" means the plat(s) of the Neighborhood, recorded in the Public Records of Athens, Ohio, as set forth in Article II, below, and any additional Plats recorded as part of the addition of other real property as described in Article II below.

"WHPP" means the well head protection plan and any area/Lot located therein shall comply with the ordinance in effect by the City of Athens, Ohio.

## ARTICLE II LAND PLAN

2.01 **Existing Property.** The existing real property which is subject to this Declaration is all property within University Estates, Phase I, a Neighborhood, as per the Plat thereof recorded in Plat Book ENV, Pages 532 A&B, 533 A&B through 536 A, of the public records of Athens, Ohio (herein referred to as the "Plat"). The Neighborhood will be developed in three (3) or more separate phases. An initial List of Holdings of the Neighborhood is attached hereto as Exhibit "A" and incorporated herein.

2.02 **Additions to Existing Property.** Additional lands may become subject to this Declaration in the following manner:

(a) Additions. Developer shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration any property, which is contiguous or nearly contiguous to the Neighborhood. Such additional property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. Any additions under this Article shall be made by filing an Amended or Supplementary Declaration with respect to the additional property, which shall extend the operation and effect of the Covenants and this Declaration to such additional property. The Amended or Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants contained in this Declaration as may be determined by Developer provided that such additions and/or modifications are not materially and substantially inconsistent with this Declaration; and provided further, however, that any such additions and/or modifications shall have not materially adversely effect the property described in Section 2.01, above.

(b) Other Additions. Upon written approval of the Association, pursuant to an affirmative vote of the Owners of two-thirds of all of the Lots then subject to the Declaration, the Owner (other than Developer) of other property contiguous or nearly contiguous to the Neighborhood who desires to add it to the plan of this Declaration and to subject it to the jurisdiction of the Association, may record an Amended or Supplementary Declaration with respect to the additional property, which shall extend the operation and effect of this Declaration to such additional property.

2.03 **The Property.** Each of the Lots shall be developed and used solely for single-family residential use in accordance with this Declaration. No business, commercial, religious, charitable or other enterprise of any kind shall be maintained upon or in connection with the use of any Lot. No business or trade, garage sale, moving sale, rummage sale,

or similar activity shall be conducted in or from any Dwelling Unit, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. No residence or part thereof on any Lot shall be rented separately from the rental of the entire Lot and no lease shall be for less than six (6) months. However, the Developer shall have the right to maintain facilities on the Lots owned by the Developer for sales and promotional purposes, and for maintenance purposes.

**2.04 Entrances, Gates, Boulevard Landscaping, Paver Bricks.** With respect to the entrance and boulevard, median and/or cul-de-sac circle features, Developer does hereby reserve to Developer and hereby grants to the Association the right to plant trees, hedges, grass and landscape, provide signs identifying the Property and to provide for irrigation and illumination of same, within all landscape easements areas, boulevard circles and median strips dividing roadways, in any manner the Association, in its sole discretion, with the approval of the Architectural Review Committee, deems necessary and proper in order to identify and beautify such areas. A portion of the roads and streets within the Property may be surfaced with paver brick. Developer does hereby reserve to Developer and hereby grants to the Association the right to maintain and repair any portion of such roads and streets which are surfaced with paver bricks for so long as the Association desires to have such portion of such roads and streets continue to be surfaced with paver bricks. In such case, the maintenance of such portion of such roads and streets will be governed by a Maintenance Agreement for Paver Brick between the Association and Developer or any appropriate governmental entity. Said agreement(s) will require the Association to meet certain minimum maintenance standards.

**2.05 Description of Common Property.** Except to the extent legally described in any Lot as designated on the Plat, and except for any property of the Community Development District or other entity of government, the Common Property shall consist of the following, subject however to the rights of governments having jurisdiction:

(a) Certain landscaping, entrance signs, guard houses and/or entry control gates and other structures or installations located within or along the rights-of-ways within the Neighborhood or within the areas designated as landscape easements on the Plat or within any additional landscape easements granted to the Association over property outside of the Plat, including but not limited to sidewalks, decorative pavers, landscaping, landscaping berms and mounds, decorative walls, fences and screening, irrigation and illumination lines and systems, reclaimed or effluent water systems or potable water systems, and signage located in a median or center of a cul-de-sac or street, which shall be deemed Common Property for purposes of maintenance and replacement.

(b) Easements in drainage swale areas and other storm water management and drainage systems facilities, areas and installations, and irrigation and utility easements located other than on Common Property and designated on the Plat of the Neighborhood.

(c) The various areas shown on the Plat and not designated as Lots, which areas contain wetlands; drainage/landscape and buffer areas; lakes and storm water retention areas, and related drainage features; conservation easements and mitigation areas; recreation areas and facilities; nature areas and nature walks.

(d) Individual mailboxes or clustered mailboxes attached to free-standing posts, which serve two or more Lots (the "Mailboxes"). Such Mailboxes may be located at such places throughout the Neighborhood as may be designated by Developer prior to the Turnover Date, and thereafter by the Board.

(e) Any and all signage, including, but not limited to, stop signs, warning signs, and speed limit signs, located within any portion of the Common Property.

(f) Any and all sod, landscaping material, lights and electrical connections, irrigation systems, structures, facilities, and other improvements, together with any associated utility lines or installations, located within landscape buffers, open spaces, recreation areas, or other portions of the Common Property.

(g) A community irrigation system, supplying water for irrigation of each Lot within the Neighborhood (the "Central Irrigation System"), but not including the separate Lot Irrigation Systems of the Lot Owners on their respective Lots. Developer reserves the right and option, but not the obligation, to provide the Central Irrigation System and irrigation water for the Neighborhood Common Property and Lots pursuant to a Storm water Easement, License and Reimbursement Agreement executed by and between the Developer, its affiliates and/or assigns and the Association. Any and all expenses of the Association pursuant to such agreement, including without limitation charges for water usage, shall constitute Common Expenses.

(h) Such additional Common Property as Developer may elect to add. Developer reserves the right to amend or alter the development plan of the Common Property. It shall be the responsibility of the Association to maintain any additional Common Property as Developer may elect to add.

(i) Other Common Property may be acquired by the Association as hereafter provided.

The surface water management facilities of the Neighborhood shall include, but are not limited to items (b) and (c) as described above.

The initial improvements described in 2.05(a) and (b) above for each phase, as applicable and if development takes place in phases, within the Neighborhood shall be completed by Developer prior to the conveyance of the first Lot in each Phase, as applicable, of the Neighborhood to an Owner (not including any conveyance to builders, contractors, or others who purchase a Lot for the purpose of constructing improvements thereon for resale); provided, however, that if for any reason Developer has not completed construction of such facilities and improvements by such date, no cause of action may be maintained against Developer by the Owner of any Lot or by Association until Developer has first been given a written notice, and failed for a period of ninety (90) days after receipt of same to complete such improvements. Each of the identified areas of Common Property may also include associated lighting, electrical connections, signage, irrigation and other appropriate facilities, utilities and installations, all of which shall be deemed a part of the Common Property.

**2.06 Members' Easement of Enjoyment.** Every member shall have a non-exclusive easement for the use and enjoyment of the Common Property, in common with the other members, which shall be appurtenant to and to pass with the member's title to a Lot. Such rights shall, however, be subject to the provisions of this Declaration, the Articles and the Bylaws, and subject to the following provisions:

(a) The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of Association members.

(b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. After the Turnover Date no such dedication or transfer shall be effective unless an instrument signed by the Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication or transfer.

(d) The right of Developer to grant additional non-exclusive easements in, on, under, through or over Common Property to owners of property not part of the Neighborhood for the purposes of access, ingress, egress, utilities or drainage.

(e) The right of the Association through the Board, with the written consent of Developer prior to the Turnover Date, and without such consent thereafter, to grant such drainage, utility and access easements over the Common Property or any part thereof, to governments having jurisdiction, providers of utilities or Developer, provided such easement, in the judgment of the Board, will not unreasonably interfere with the use of the Common Property for its intended purpose.

(f) The terms of this Declaration, and the terms of all governmental approvals affecting the development of the Neighborhood, including, without limitation the Development Order, and the rights of Athens to govern and regulate the same.

(g) All easements herein described are easements appurtenant, running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

(h) Each Member's easement with respect to the Mailboxes is restricted to the Mailbox specifically assigned to the Lot owned by such Member.

(i) The Board may impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(j) The Board may permit use of any Common Area by non-Owners upon payment of use fees established by the Board;

(k) The Association may rent, lease, or make available without charge, for any purpose, any portion of any clubhouse and other recreational facilities within the Common Area on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's family and guests;

**DEVELOPER AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL FOR ANY LAKE, RECREATION AREA, NATURE AREA OR ANY OTHER COMPONENT OF THE COMMON PROPERTY. ANY OWNER OR INDIVIDUAL USING SUCH AREAS SHALL DO SO AT HIS/HER OWN RISK AND HEREBY FOR HIMSELF/HERSELF AND HIS/HER FAMILY MEMBERS, TENANTS, AND GUESTS, AGREES TO INDEMNIFY AND HOLD DEVELOPER AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS OR LOSSES ARISING FROM SUCH USE.**

2.07 **Title to Common Property.** Developer shall convey to the Association legal title to the Common Property, subject to the Members' right of enjoyment. Developer, for itself, its successors and assigns, hereby covenants that it shall convey by quit claim deed the Common Property to the Association once the final Lot has been conveyed to an Owner, which conveyance shall be free and clear of all liens and encumbrances except ad valorem taxes for the year in which the conveyance takes place, the provisions of this Declaration and easements and other rights and reservations of record, none of which shall, however, unreasonably interfere with the use of the Common Property for its intended purpose. Notwithstanding the foregoing, Developer may, in its sole discretion, elect to convey any portion or portions, or all of the Common Property to the Association at any time prior to the conveyance of the final Lot as provided above. The Association shall be responsible for maintenance of the Common Property from and after the first conveyance of a Lot by Developer to an Owner. Additionally, from and after the first conveyance of a Lot by Developer to an Owner, the Association shall pay all real and personal property taxes and other charges assessed against the Common Property unless same are separately assessed to the Owners. Subsequent to the conveyance by Developer to the Association there shall be no further disposition of Common Property that is real property, by sale or otherwise, except to an organization conceived and organized to own and maintain such Common Property, without first offering to dedicate the same to Athens or other appropriate governmental agency. In the event of the dissolution of the Association, the property consisting of the surface water management system shall be conveyed to an appropriate agency of local government, and if not accepted, the surface water management system shall be dedicated to a similar non-profit corporation.



2.08      **Delegation of Use.** Any Owner may delegate his right of enjoyment in the Common Property to the members of his family, tenants, contract purchasers, or social guests, subject to the provisions of the Bylaws and any rules and regulations adopted by the Association.

2.09      **Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges thereof by waiver of the use and enjoyment of the Common Property or non-use thereof, or the abandonment of his Lot.

2.10      **Disturbance of Common Property.** No portion of the Common Property shall be denuded, defaced or otherwise disturbed in any manner at any time, except for maintenance, repair and improvement, without the prior written approval of the Association, as applicable, and the Director of the Athens Code Enforcement Department, or such successor agency as may assume the duties of that department.

2.11      **Destruction of Improvements.** In the event of partial or total destruction of improvements to the Common Property that the Association is required to maintain, the Association shall utilize its best efforts and resources reasonably available within existing or future budgets to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained by the Association pursuant hereto shall be used for such purpose.

2.12      **Right of Emergency and Other Governmental Personnel and Vehicles.** Notwithstanding that the Common Property shall be privately owned, all emergency vehicles, including without limitation, fire, police, ambulance, rescue and similar vehicles, as well as vehicles belonging to Athens Health and Pollution Control personnel and governmental or private suppliers of utilities, shall be privileged to cross and to re-cross the Common Property for all legitimate, proper and reasonable purposes while in the pursuit of their duties. Athens law enforcement officers, health and pollution control personnel, emergency medical service personnel and fire personnel are further hereby granted authority to enforce cleared emergency vehicle access in the performance of their duties; to the extent same may be necessary with respect to the Common Property.

2.13      **Easements Within the Neighborhood.** Easements for installation and maintenance of utilities, storm water retention/detention ponds, and/or a conservation area or wetland mitigation area are reserved as may be shown on the recorded Neighborhood Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. All Lots shall be subject to an easement of ingress and egress for the benefit of the Developer, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for site access, inspections, invasive testing, and the construction, servicing and completion and correction of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement shall terminate forty-eight (48) months after the date such Lot is conveyed to the Owner by the Developer.

2.14      **Member's Use of Lakes, Nature Walks and Other Common Areas.** No Owner may use the waters within the Neighborhood lakes or storm water retention areas, nature walks or other Common Areas for any purpose whatsoever except recreational purposes in accordance with the terms of this Declaration and the rules and regulations promulgated hereunder. No Owner may pump or otherwise remove any water from any lake or storm water retention area at any time for any purpose. Every Member's use of the lakes, nature walks and other Common Areas of the Neighborhood shall be subject to the reasonable rules and regulations established by the Board, which rules and regulations may be modified from time to time in the Board's reasonable discretion. Such rules and regulations will include, among other things, the following items:

- (a) All fishing within the Neighborhood will be done on a "catch and release" basis only except as the Board may expressly elect to permit in its discretion.

(b) All recreational activities within the lakes and lakeside areas will be governed by rules and regulations to protect said areas while providing for the enjoyment and recreation of the Members. No motorized boats, jet skies or other motorized water craft shall be operated within the lakes, except as the Board may expressly elect to permit in its discretion.

(c) The Board shall have the right to prohibit the feeding of all wildlife within the Neighborhood, and may establish any other rule or regulation respecting the wildlife within the Neighborhood it determines appropriate in its discretion including hunting and trapping.

### ARTICLE III THE ASSOCIATION

3.01 **General.** The Association has been organized, among other things, to the extent set forth in this Declaration, to preserve the beauty and value of all of the Property. The Association shall act in accordance with the terms and provisions of this Declaration, the Articles of Incorporation and the Bylaws. A copy of the Articles of Incorporation is attached hereto as **Exhibit "G"**. A copy of the Bylaws is attached hereto as **Exhibit "H"**.

3.02 **Membership.** The Owner of each Lot shall be a member of the Association and no one who is not an Owner of an interest in a Lot shall be a member of the Association. Each Owner accepts membership in the Association and agrees to be bound by this Declaration, the Articles and Bylaws of the Association and any rules and regulations enacted pursuant thereto. Membership in the Association is automatic upon acquisition of ownership of a Lot, and may not be transferred separate and apart from a transfer of ownership of the Lot. Membership automatically terminates upon the sale or transfer of an Owner's interest in a Lot, whether voluntary or involuntary. A member's voting rights or privileges in connection with the Common Property, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or Association rules. A Notice to Buyers is attached hereto as **Exhibit "C"** and incorporated herein.

3.03 **Voting Rights.** For purposes of voting rights, the Association shall be deemed to have two types of membership, Regular Membership and Developer Membership. Regular Members shall be all Owners of Lots with the exception of the Developer Members, if any. Subject to the terms of Section 6.02 hereof, Regular Members shall be entitled to one vote for each Lot in which such members hold a required ownership interest; provided, however, that when there are multiple Owners of a Lot, there shall nevertheless be only one vote for each Lot, which vote shall be exercised among the Owners of said Lot as provided in the Bylaws. Developer Members shall be the Developer or any successor to Developer who takes title for the purpose of development and sale, and any Partial Successor Developer designated by Developer. The Developer Members shall originally be entitled to three (3) votes for each Lot platted upon recording of each Plat that is part of the Neighborhood; this number shall be decreased at any given time by one vote for each Lot then owned by one or more Regular Members. If Developer conveys Lots to a Partial Successor Developer, it shall assign not less than one (1) nor more than three (3) Developer Member votes for each Lot so conveyed to a Partial Successor Developer. Any votes not so assigned to a Partial Successor Developer shall be retained by Developer. To the extent Developer assigns votes to a Partial Successor Developer, when a Partial Successor Developer conveys a Lot to a Regular Member, the vote attributable to the owner of such Lot shall be deducted from the number of Partial Successor Developer votes assigned to the Partial Successor Developer conveying such Lot. Developer Membership shall terminate and become converted to Regular Membership (the "Turnover Date") upon the happening of the earlier of the following:

- (a) The effective date on which Developer surrenders its right to Developer Membership in writing; or
- (b) Such earlier date as may be required law.

After the earliest of such events, the Developer Members shall be deemed to be Regular Members entitled to one vote for each Lot. Within sixty (60) days after such date, Developer shall call a meeting as provided in the Bylaws for special meetings to advise the membership of the termination of Developer member status.

3.04 **Election of Board of Directors.** Directors of the Association shall be elected at the annual meeting of the members in the manner provided in the Bylaws. Directors may be removed and vacancies on the Board shall be filled in the manner provided in the Bylaws. No annual meeting shall be held until such time as the Regular Members are entitled to elect a director pursuant to the provisions of Paragraph 3.05 below.

3.05 **Control of Board During Development.** Subject to the provisions of Section 5311, Ohio Statutes, during the time that Developer Members have more votes than the Regular Members, Developer shall have the right to designate or elect the members of the Board, and the Directors so designated by Developer need not be members of the Association. Provided, however, that Developer may waive its right to designate any one or more Directors, as provided in the Bylaws, and may assign its right, in whole or in part, to designate Directors to Partial Successor Developers.

3.06 **General Duties and Powers of the Association.** In addition to the duties and powers enumerated elsewhere herein and in the Articles and Bylaws, and without limiting the generality thereof, the Association shall:

(a) Enforce the provisions of this Declaration, the Articles and Bylaws by appropriate means and carry out the obligations of the Association hereunder.

(b) Maintain, regulate and otherwise manage all of the Common Property, except to the extent that such duties are performed by any other entity of government. An initial Maintenance Program for the Neighborhood is attached hereto as **Exhibit "D"** and incorporated herein. A Projected First Year Budget and Projected Five Year Budget are attached hereto as **Exhibit "E" and Exhibit "F"** respectively and incorporated herein. All budget figures, irrespective of any previous approvals, are subject to change from time to time. All budgets are estimates only and should not be relied upon as definitive figures for the purpose of establishing actual assessments

(c) Pay any real and personal property taxes and other charges assessed against the Common Property unless same are separately assessed to the Owners.

(d) Obtain, in the Association's name, all required utility and other services for irrigation and illumination of the Common Property, and obtain and pay for the cost of electrical power, water and other utilities used in connection therewith, except to the extent provided by the Athens Code Enforcement Department or other entity of government.

(e) Contract for and maintain such policy or policies of insurance as may be required hereunder or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its members.

(f) Have the power of entry upon any Lot reasonably necessary in connection with the carrying out of Association responsibilities hereunder.

(g) Have the power to acquire, accept, maintain, repair, improve and replace Common Property.

(h) Have the power to make and enforce reasonable rules and regulations governing the Common Property, which rules and regulations shall be consistent with this Declaration.

(i) Have the power to negotiate and contract for such materials and services for the benefit of Owners who subscribe to or elect to accept such materials or services, with payment for same to be separately billed to the Owners or advanced by the Association and repaid to the Association by Special Assessment for services.

(j) Have the power and duty to maintain Architectural Control with respect to the Neighborhood in accordance herewith.

(k) Have any and all powers reasonably necessary, appropriate or deemed desirable to oversee, manage, maintain and operate the Common Property, including, without limitation to enter into agreements with entities of government.

(l) Regulate all commercial parcels per restrictions which the Developer shall place in the deeds of each as they are sold or developed.

**3.07 Repair and Maintenance by the Association.** The Association shall be responsible for the maintenance, repair and replacement of the following.

(a) The Common Property, including all associated improvements, facilities, equipment and supplies.

(b) Any part of any Lot or Parcel designated as a "landscape easement" which shall include the right of entry and re-entry for the purpose of planting, maintaining, irrigating, trimming, pruning and replacing all landscape material located within such landscape easement, as well as attending to any signage and lighting forming a part of such landscape easement. This obligation shall also extend to the entry walls, signs, lighting, landscaping and irrigation located on either side of the entryway to the Neighborhood.

(c) Association shall maintain and preserve (i) all plants, trees, hedges, grass and landscaping in the entrance ways and boulevard medians and circles; (ii) shall maintain and preserve the entryway and signs within the entrance ways, and (iii) shall cause the same to be illuminated in accordance with the design thereof during such hours as it shall deem reasonably appropriate in its discretion. The obligation to maintain and preserve shall include irrigation systems, landscaping and walls, fences, gates, signs and such other structures as may be located within such rights of way for artistic or decorative purposes, other than street improvements and public utilities. This obligation shall also extend to the operation and maintenance of any entrance control structures, such as guard houses and gates that may be located within the Property.

(d) All retention lakes and ponds, wetland, conservation and nature areas located within or adjacent to the Neighborhood that are not dedicated to and accepted for maintenance by public authorities, and all such areas so dedicated to the extent not maintained by public authorities shall be maintained to an acceptable level as determined by the Board. The Association shall also maintain, as part of the Common Property, drainage structures for the properties and comply with conditions of the permits from the Ohio EPA District for the drainage system. The Association shall, when requested by Developer, accept transfer of the District permits applicable for the Neighborhood. The conditions include monitoring and record keeping, schedules, maintenance and other obligations as follows:

(i) Water quality data for the water discharged from the Permittee's property or into the surface waters of the state shall be submitted to the District as required. Parameters to be monitored may include those listed in agreements the Developer has in place with the OEPA, and ACOE.

(ii) The Association agrees to operate and maintain the system, and has sufficient ownership so that it has control over all water management facilities authorized; and

(iii) The Association shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the Permit;

(iv) The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the Permit, as required by the District. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the Permit and when required by District rules; and

(v) The Association, specifically agrees to allow authorized District personnel, upon presentation of credentials or other documents as may be required by law, access to the premises, at reasonable times, when the permitted activity is located or conducted, for the purposes of inspection and testing to determine compliance with this Permit.

(e) Any signs and attendant lighting and landscaping in medians or on any easement granted the Association, and any street signs installed by Developer or the Association, as well as public signs to the extent not maintained by public authorities to a level deemed acceptable by the Board.

(f) Any recreational facilities, including but not limited to, any swimming pool and associated pool building, cabana, restrooms, landscaping and such other recreational elements which may be provided by Developer or the Association as part of the Common Property.

The expense of all the foregoing shall be a Common Expense except as otherwise herein expressly provided, and the Association shall provide a uniform level of maintenance, repair and replacement of the Common Property and other items to be maintained hereunder. Provided, however, that if an item of maintenance, repair or replacement is the result of any intentional or negligent act of an Owner or member, his family, agents, contractors, invitees or licensees, then the cost of such maintenance, repair or replacement, to the extent so caused, shall be the responsibility of the Lot or Parcel, and even though the cost thereof may be advanced as a Common Expense, same shall be billed to the Owner and his Lot or Parcel for reimbursement. Also, any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited.

**3.08 Failure of Association to Maintain.** If the Association shall fail to maintain those parts of the Common Property that are deemed common open space under paragraph 1.07, as amended from time to time, then the Developer shall have the right to maintain same and the Association shall pay the Developer for such maintenance.

**3.09 Right to Maintain Lots and Buildings Thereon.** If after providing an Owner thirty (30) days advance written notice of the existence of a violation of a covenant or restriction set forth herein, and in order to preserve the beauty, quality and value of the property, the Association shall have the right, but not the obligation, to enter upon any Lot on which there exists a violation of a covenant or restriction set forth herein, to remove and cure such violation if possible without inconvenience to the Owner or otherwise disturbing the peace of the neighborhood. Additionally, the Association shall have the right to impose a fine and/or suspension upon the Owner in accordance with Paragraph 8.14. In addition to any fine or suspension imposed by the Association, any and all costs of any maintenance of a Lot or structure thereon shall be allocated and assessed by the Board upon the Lot so maintained, and the Association shall have the right (a) to impose a lien on such Lot as provided in Paragraph 7.10 and (b) to enforce such lien as provided in Paragraph 7.11.

**3.10 Transfer of Maintenance to Governmental Authority.** The Board may transfer any maintenance responsibility for any part of the Common Property, or for any item or items for which the Association has maintenance responsibility, to any special taxing district, taxing unit, other public agency, authority or entity organized or having jurisdiction of such matters without the necessity of Member approval, provided that such governmental authority or entity accepts such maintenance responsibility. If the transfer of such responsibility is affected, the Board shall retain the authority to supplement such maintenance to the extent such public authority does not maintain such items to an acceptable level as determined by the Board.

**3.11 Implied Powers of the Association.** The Association shall have all the power and authority reasonably necessary for it to carry out each and every of its duties set forth in this Declaration, the Articles or Bylaws,

including any right or power reasonably to be inferred from the existence of any other right, power, duty or obligation given to it or reasonably necessary to effectuate its duties hereunder.

**ARTICLE IV  
AUTHORIZED BUILDERS AND ARCHITECTURAL REVIEW**

4.01. **Authorized Builders.** In order to assure that the improvements within the Neighborhood will be constructed with the level of quality and consistency desired by the Developer, no improvements may be constructed on any Lot within the Neighborhood by any builder or contractor other than those authorized by the Developer (the "Authorized Builders"). Developer shall designate the Authorized Builders in Developer's sole discretion, and Developer shall have no obligation to designate any particular builder.

4.02 **Architectural Review Committee.** For the purposes of carrying out the Architectural Review process, there shall be an Architectural Review Committee (the "ARC"). The members of the ARC shall consist of the Board. Provided, however, that anything herein contained to the contrary notwithstanding, until such time as the Developer no longer has the right to elect or designate a majority of the Board, the original Developer or its designee shall serve as the ARC.

4.03 **Architectural Standards.** The ARC may, after thirty (30) days written notice to all Lot Owners and from time to time, adopt and promulgate architectural standards for the Neighborhood. The standards may not be contrary to the provisions of this Declaration or the Bylaws and shall be consistent with the original architectural, structural, aesthetic and environmental concept and the original development of the Neighborhood. All standards shall be adopted and applied on a uniform basis with respect to each Lot Type, and may be revised or expanded from time to time to take cognizance of new materials, techniques and proposals. All architectural standards shall be deemed to include the mandatory architectural obligations, prohibitions and guidelines contained in this Declaration. As a component of the Neighborhood's architectural standards, the ARC shall adopt and promulgate architectural standards prescribed by the Developer for the mandatory use of uniform house numbers, mailboxes, lampposts, security gate controls, car insignias, garbage cans, and such other items as may be prescribed for continuity in the development of homes for each Lot Type within the Neighborhood. All such items shall be deemed part of the Neighborhood's "Accessory Package." The ARC shall have the power and authority to require that each Owner of a Lot incorporate and comply with the required elements of the Accessory Package.

4.04 **When Architectural Review Required.** Architectural Review shall be required in each of the following circumstances:

- (a) Whenever the Owner of a Lot proposes to construct improvements thereto or remove improvements there from.
- (b) Whenever any reasonably visible exterior alteration or other improvement to an existing improvement is proposed by an Owner.
- (c) Whenever any Owner or the Association proposes to maintain or repair an improvement or Lot in any manner that will result in the application or use of materials of a different type, shade, color or quality than those originally used on the Lot and the improvement thereon.
- (d) Whenever the improvements to a Lot have been substantially damaged or destroyed, in whole or in part, by casualty or otherwise, and reconstruction or rebuilding is intended.
- (e) Without limiting the generality of the foregoing, the addition of swimming pools and patios shall be subject to Architectural Review, as shall the installation or removal or any landscaping, the construction of any fence, wall, tennis court, screen enclosure, water or sewer line, drain, mailbox, solar energy device, decorative building, outbuilding or other installation, device, equipment or structure which will alter the

appearance of the Lot or improvements located thereon when viewed from adjacent Lots or streets. The dish shall be painted the same color as the wall or roof behind it.

4.05 **Procedure.** Whenever an Owner or Partial Successor Developer proposes any improvements or alterations for which Architectural Review is required, there shall be submitted to the ARC a written application for approval and at least one complete set of plans and specifications for the proposed construction and landscaping. Such plans and specifications shall include, as appropriate, the following:

- (a) A site plan for the Lot showing the property lines, the location, shape and dimensions of all proposed structures, pavement and landscaping to be installed and plant material to be removed.
- (b) Complete floor plans and exterior elevations of all proposed structures, drawn to scale, and reflecting thereon the number of square feet of living area and other areas.
- (c) Specification of all materials to be used, including description of type, color and nature.
- (d) Specification of drainage plans, all plant and other material proposed for landscaping, irrigation plans and exterior lighting plans.
- (e) Samples of materials and proposed colors for external application.
- (f) Such other additional and supplementary information and materials as the ARC may reasonably require.
- (g) The reviewing committees will establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals.

The ARC may waive formalities in the submission process, and may waive any one or more of the above requirements if it deems the application, description, plans or specifications provide information of reasonably sufficient detail for the ARC to review. The ARC shall review and evaluate all submissions and shall, within thirty (30) days after receipt of such application or after all additional information required has been received, either approve or disapprove, or approve in part and disapprove in part, the application. The ARC shall issue its approval or disapproval in writing, and specify its reasons for disapproval and annotate its decision by reference to this Declaration or promulgated architectural standards where applicable. The ARC shall, to the extent reasonable, indicate as part of any written disapproval the general nature or type of changes necessary to achieve approval. The ARC may issue conditional approval, setting forth written stipulations for changes. In such event, if the applicant accepts such stipulations the proposal shall be deemed approved, subject to the changes or additions thereto contained in such stipulations. Failure of the ARC to approve or disapprove within thirty (30) days after receipt of all such material shall be deemed approval. No work shall proceed except in strict compliance with this Declaration and the approval by the ARC, and any improvements or work performed without such approval may be required to be removed by the Board. If any landscaping, construction or other improvements or alterations requiring ARC approval shall be commenced and completed without Architectural Review and approval by the ARC, or at variance with approved plans and specifications, and the ARC does not indicate disapproval thereof for a period of twelve (12) months after completion of such improvements, then such improvements shall be deemed to have been approved by the ARC. Provided, however, that if during such period after completion the ARC does indicate its disapproval, then such construction or other improvements may be required to be removed or altered to comply with such plans and specifications as may be approved by the ARC. Nothing shall prevent an Owner from making application to the ARC for approval of improvements already commenced or completed, but during the period of such application the Owner shall not perform any more work until the ARC has acted. The ARC shall expedite such application, but shall not have any increased obligation to approve merely because an Owner has already commenced or completed improvements in violation of this Declaration.

4.06 **Routine Procedures.** Where the ARC has established architectural standards approving certain colors, materials, decorative or other items of routine maintenance, repair or minor improvements, a Lot Owner may comply with such standards without formal approval, however, it is to be submitted, especially if there is any change to the Lot.

4.07 **Appeal.** Any person aggrieved by a decision of the ARC may appeal that decision in whole or in part to the Board. Such appeal shall be initiated by filing a notice of appeal in writing with the Board specifying the portions of the decision appealed. Such notice shall be filed not later than ten (10) days after the date upon which the decision of the ARC is made. Upon receipt of such appeal, the Board shall schedule a hearing on such matter within thirty (30) days, at which it may affirm, reverse or modify the decision of the ARC. Failure of the Board to act within such thirty (30) day period shall be deemed a decision and affirmation of the party appealing as to the point appealed. For the purposes of this Section, the aggrieved party shall have standing to initiate the appeal, and the Owners of any three (3) or more Lots shall also have standing to initiate an appeal from any decision of the ARC, provided such Lot Owners follow the provisions of this paragraph. Provided, however, that during the time the Developer serves as the ARC, there shall be no right of appeal from decisions of the Developer as the ARC.

4.08 **Rules and Regulations and Fees.** The ARC may adopt reasonable rules and regulations for the conduct of its authority. The Board may establish reasonable fees for Architectural Review. If, after providing an Owner with thirty (30) days advance written notice of the existence of a violation of the architectural standards, and in order to preserve the beauty, quality and value of the property, the ARC shall have the right to enter upon any Lot to remove and cure such violation if possible without inconvenience to Owner or otherwise disturbing the peace of the neighborhood. Without limiting the foregoing, upon and during any such violation, the ARC shall have the right to impose a fine and/or suspension upon the Owner in accordance with Paragraph 8.14. In addition to any fine imposed by the ARC, any and all costs of removing and curing violations of the architectural standards shall be allocated and assessed by the Board upon the violator's Lot, and the ARC shall have the right (a) to impose a lien upon such Lot as provided in Paragraph 7.10, and (b) to enforce such lien as provided in Paragraph 7.11.

4.09 **Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, the Board, the ARC, or any member of the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the ARC and their members shall be defended and indemnified by the Association as provided in the Bylaws.

4.10 **Records.** The Association, through the ARC, shall maintain records of all Architectural Review proceedings.

## ARTICLE V ARCHITECTURAL CRITERIA AND BUILDING RESTRICTIONS

5.01 **Residential Building.** No building shall be erected, placed or permitted to remain on any Lot other than one (1) detached residential dwelling and attached garage. Notwithstanding the foregoing, buildings and structures accessory to the use of the family occupying the dwelling may be erected on the Lot upon approval by the ARC provided that any such accessory buildings do not furnish residential accommodations for an additional family.

5.02 **Building Lines.** The building setback lines for the front, side and rear yards shall be as set forth in the then-applicable Athens Code and/or Development Agreement. No dwelling or structure shall be located in any such setback. While it is intended that the minimum setbacks shall be as set forth in the Athens Development Code and/or Development Agreement, the ARC as part of the architectural review process, may increase a specific setback where it finds that, because of the location, nature and shape of the Lot and design of the structure, such increase in setback is reasonable and appropriate and will result in a Lot that is developed and utilized in an appropriate manner that is not



detrimental to surrounding properties. In exceptional circumstances for good cause shown, and if allowed by applicable law or ordinance, the ARC may grant a variance from the provisions hereof.

5.03 **Building Height Limitation.** No dwelling, house or other building shall be more than two (2) stories in height, nor more than thirty (30) feet above the grade of the crown of the street upon which the Lot fronts. Developer and/or the Association may in their discretion establish differing height limitations for each Lot Type.

5.04 **Minimum Floor Space.** Each dwelling located on a Lot shall contain not less than the following minimum amount of living area, which shall not include porches, patios, lanais, garages or breezeways:

<u>Lot Type</u>	<u>Minimum Living Area</u>
"Executive"	2000 square feet
"Family Lot"	1600 square feet
"Single Family"	1200 square feet
"Single Family"	1000 square feet
"Patio Home"	1000 square feet
"Golf Villa"	650 square feet

5.05 **Garages.** Unless otherwise specifically approved by the ARC, no garage, tool shed or storage room may be constructed separate and apart from the dwelling. Garages on University Estates Boulevard will be side or rear loaded. Except for the Golf Villas, no carport shall be permitted. No garage shall be enclosed by screen or otherwise, or converted to other use without the substitution of another garage on the Lot meeting the requirements of this Declaration.

All vehicles, boats and all other items shall be kept within the enclosed garage at all times except for loading, unloading or washing. Garage doors shall be kept in a closed position when not in use. Certain residential neighborhood zones require side load or rear load garages and shall be identified by the Developer during the ARC review. Each dwelling shall have an enclosed garage which meets the following requirements

<u>Lot Type</u>	<u>Number of Automobiles that Garage Accommodates</u>	
	<u>Minimum</u>	<u>Maximum</u>
"Executive"	2	3
"Family Lot"	2	3
"Single Family"	2	3
"Single Family"	1	2
"Patio Home"	0	2
"Golf Villa"	0	1

5.06 **Driveways and Mailboxes.** All dwellings shall have a paved driveway of stable and permanent construction of at least twelve (12) feet in width. All driveways shall be constructed with concrete unless otherwise specifically approved by the ARC. An Owner shall repair in a neat and orderly fashion any and all curbs broken in construction of a driveway entrance. Mailboxes and supporting poles, newspaper boxes, and lampposts and lamps shall be of a design approved by the Developer or the ARC and lights shall operate automatically from dusk to dawn.

5.07 **Recreational Facilities.**

(a) All Recreation Facilities constructed or erected on a Lot, including, without limitation, swimming pools, tennis courts, and any other play or recreation structures, including basketball backboards,

platforms, playhouses, dog houses or other structures of a similar kind or nature (collectively referred to herein as "Recreation Facilities") shall be adequately walled, fenced or landscaped in a manner specifically approved by the ARC.

(b) Lighting of a Recreation Facility shall be designed so as to buffer the surrounding residences as reasonably practical from such lighting, and such design must be approved by the ARC.

5.08 **Utility Connections.** Connections for all utilities, including, but not limited to, water, sewage, electricity, telephone and television shall be run underground from the connecting point therefore to the building structure in such a manner as is acceptable to the respective utility authority or company and the ARC. All Lots will be required to purchase a gas tap from Southeast Natural Gas Company. See **Exhibit "J"** for disclosure statement.

5.09 **Air Conditioning Units.** No window, roof, or wall air conditioning units shall be permitted on any Lot without ARC approval.

5.10 **Antennae and Aerials.** Unless it is screened from public view, no antennae, mast, dish, disc, aerial or other similar device shall be placed upon any Lot or affixed to the exterior of any building, and no such facility placed or affixed within a building shall extend or protrude beyond the exterior of such building. The ARC may require such structure be painted to blend in with the environment or impose any other provisions that are legal. Provided, however, the ARC may approve any such item if it is erected and maintained in such a way that it is screened from public view. No such device is permitted under any circumstances if it sends, contributes to or creates interference with any radio, television or other communication reception or interferes with the operation of other visual or sound equipment located within any part of the Neighborhood.

5.11 **Clothes Drying Area.** No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot, and clothing, sheets, blankets, towels or other articles shall not be hung over fences or otherwise exposed, except where such activity is advised or mandated by governmental authorities for energy conservation purposes, in which event the ARC shall be required to approve the portions of any Lot used for outdoor clothes drying purposes and the types of devices to be employed.

5.12 **Signs.** The size and design of all signs located on a Lot shall be subject to the approval of the ARC and applicable law. Except as otherwise provided by law, no sign of any kind shall be displayed to general view on any Lot except under the following circumstances:

(a) Directional or traffic signs may be installed by the appropriate governmental authority, by Developer or by the Board and entrance or other identification signs or billboards may be installed by the Developer or the Board;

(b) Developer, its successors and assigns, may display signs in connection with development and sale of the Neighborhood;

(c) One "For Sale" or "For Lease" sign of not more than six square feet, being not wider than three feet nor higher than three feet, may be displayed on a Lot by the owner or the agent for the Owner thereof. A "For Sale" or "For Lease" sign, as furnished by a real estate agent is permissible without ARC review. However, a "For Sale by Owner" or "For Lease by Owner" sign shall be of the style, size, color, configuration and manner of placement as specified by the ARC, and

(d) Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than 30 days in advance of the election to which they pertain, and are removed within 15 days after the election. The ARC may specify size, location and quantity of such signage.

5.13 **Temporary Structures.** No structure of a temporary character, whether a trailer, tent, shack, garage, barn or any other such building, shall be placed on any Lot, provided, however, a temporary construction trailer and/or a storage or outbuilding for materials and supplies may be used in connection with and during the construction of a dwelling provided that any such temporary structure shall be removed immediately from the Lot upon the completion of such construction.

5.14 **Completion of Construction and Repairs.** The construction of any new building or the repair of the exterior of any building damaged by fire or otherwise shall be completed with reasonable promptness under ARC review.

5.15 **Offices and Model Homes of Developer.** Notwithstanding anything in this Declaration to the contrary, Developer, or its nominee(s) may construct and maintain sales and/or administrative offices and/or one or more model homes, together with a sign or signs and parking areas relating thereto, on Lots or a Lot of its choosing until such time as all of the Lots have been sold by Developer. Developer's offices shall not be required to undergo architectural review. Developer may maintain one or more garage offices consisting of a garage with French doors facing the street, or such other offices as Developer deems appropriate in Developer's sole discretion. In addition, Developer, or its nominee(s) shall have the right to take any action reasonably necessary to transact any business necessary to administer its interests, consummate the development of the Neighborhood and sales and/or leasing of the Lots herein and/or other properties of the Developer. The sales and/or administrative offices, model home sites, and the signs, parking areas, and all other items related thereto and to the development, sales and administration thereof shall remain the property of the Developer, or its nominee(s), as applicable.

5.16 **Compliance with OEPA, ACOE.** Each Owner is hereby notified that the property within the Neighborhood is subject to the requirements of Surface Water Management Permit(s) issued by the Ohio Environmental Protection Agency. It shall be the responsibility of each Owner at the time of construction of a building, residence or structure to comply with the construction plans for the storm water management system pursuant to Chapter 3745 OHIO REVISED CODE, approved and on file with the OEPA. No construction activities may be conducted relative to any portion of the surface water management system facilities without the prior approval of the Association and OEPA pursuant to Chapter 3745 O.R.C. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering and water control structure; or any other construction to modify the surface water management system facilities. The District shall have the right to take enforcement actions to enforce the terms hereof and Chapter 3745 O.R.C., including a civil action for injunction and/or penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities. In the event the Association is dissolved or otherwise fails to maintain the surface water management system facilities in accordance with the applicable permits and regulations, the District, upon reasonable notice and hearing, may enter the Common Property for the purpose of maintaining same. The cost of such maintenance by the District shall be assessed on a prorated basis against the Lots and such charges are payable by the Owners within sixty (60) days after receipt of a statement therefor from the District, and if unpaid at the end of such period shall become a lien on the Lots. Alternatively, at the option of the District, and subject to the limitations provided for herein, if the Association ceases to exist, all of the Lot Owners shall be jointly and severally responsible for operation and maintenance of the surface water management system facilities in accordance with the requirements of the Environmental Resource Permit unless and until an alternate entity assumes responsibility. Notwithstanding any other provision in this Declaration to the contrary, neither this Section nor any provision of this Declaration affecting the surface water management system facilities or the operation and maintenance of the surface water management system facilities may be amended without the prior written consent of OEPA.

5.17 **Conservation Easements.** The following acts and activities are expressly prohibited within the boundaries of the areas designated on the Plat as Conservation Easements without the prior consent of the Developer and/or appropriate authority:

- (a) Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground.
- (b) Construction or placing of utilities on, below or above the ground without appropriate local, state and federal permits or other authorization.

- (c) Dumping or placing of soil or other substances or material as landfill or dumping or placing trash, waste, unsightly or offensive materials.
- (d) Removal, mowing, or trimming of trees, shrubs or other vegetation.
- (e) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substances in such manner as to affect the surface.
- (f) Surface use except for purposes that permit the land or water areas to remain in its natural condition.
- (g) Any activity detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
- (h) Acts or uses detrimental to such retention of land or water areas.
- (i) Conservation easements and usage limitations specific to various sections of University Estates may be included as deemed necessary and shall be attached to these declarations if required.

**5.18 Miscellaneous Visual Restrictions.**

- (a) All garbage and refuse containers, air conditioning units, oil tanks, bottled gas tanks, and permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas as approved by the ARC so that they shall be substantially concealed or hidden from any eye-level view from any street, adjacent property, common property, or the golf course. No window, roof, or wall air conditioning units shall be permitted on any Lot.
- (b) The personal property of any resident shall be kept inside the residence dwelling, or a fenced or walled-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good condition.
- (c) Window treatments shall consist of drapery, blinds, decorative panels or other tasteful window covering. No newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one week after an Owner or tenant first moves into a dwelling or when permanent window treatments are being cleaned or repaired.
- (d) All solar heating and other alternative energy resource systems shall be so installed and maintained as not to be visible from the street upon which the dwelling fronts, and must be authorized by the ARC. It is the intent here of not to prohibit the use of renewable energy sources, but rather to direct that same be so designed, installed and maintained as to minimize visibility from the street in front of the dwelling

**5.19 Mandatory Lot Irrigation System.** If the Developer installs a Lot Irrigation System, each Lot shall be required by the ARC to have an automated lawn irrigation system with automated timers (the "Lot Irrigation System"). Such system shall be connected to the Central Irrigation System of the Neighborhood. The Lot Irrigation System shall be installed and connected to the Central Irrigation System at the time of original construction of Lot improvements at the cost and expense of the Owner of such Lot. The design and specification of materials used for the Lot Irrigation System and its connection to the Central Irrigation System for each particular Lot shall be as specified and approved by the ARC. In order to ensure the efficient operation of the Central Irrigation System and the individual Lot Irrigation System, the timer settings for each individual Lot Irrigation System shall be set in accordance with a watering schedule as established by the ARC or the Association, which schedule shall be adjusted by the ARC or the Association as they deem proper. If the water for individual Lot irrigation is supplied by the Association, the

Association shall have the right to assess each Lot Owner for water supplied by the Association to each Lot Owner's Lot. Such assessment may be included as part of the Regular Assessments or as a Supplementary Assessment. The respective obligations for maintenance, repair and replacement of the Central Irrigation System and the Lot Irrigation System shall be as follows:

(a) All components of the Central Irrigation System not located within a Lot up to the point of connection to each Lot (but not including the separate Lot Irrigation Systems of the Lot Owners on their respective Lots) shall be maintained and operated by the Association as a common expense; provided, however, the Owner of a Lot shall do nothing to interfere with the operation of the Central Irrigation System, and shall be liable to the Association for any damage to the Central Irrigation System caused by the willful acts or negligence of such Owner, his tenants and their respective families, guests, contractors, licensees and invitees. The owner of the Central Irrigation System and the Association and their agents shall have the right to enter upon any Lot to (i) monitor and set Lot Irrigation System timers; and (ii) inspect, maintain, repair and replace portions of the Central Irrigation System on such Lot, and shall have the right to relocate such installations from time to time.

(b) All components of the Lot Irrigation System and automatic timers up to the point of connection to the Central Irrigation System shall be maintained, repaired and replaced at the cost and expense of the Owner of such Lot.

(c) If the Developer doesn't do an Irrigation System, the Lot Owner must irrigate the street side of his property from the house to the street at time of construction of house.

5.20 **Reclaimed Effluent Irrigation System.** It shall be the responsibility of each Owner at the time of construction of a building, residence or structure, to comply with the requirements, if any, of the Athens County Public Works Department to have the ability to connect into any system for reclaimed effluent irrigation which may be installed in the future. In connection therewith, each Owner shall install an effluent meter, backflow preventer, and such other equipment required for connection to the reclaimed effluent irrigation system, if required by Athens. Notwithstanding the foregoing, each Lot shall remain connected to the Central Irrigation System and shall not connect to any reclaimed effluent system unless the Developer (or after turnover the Association) elects to require connection or unless connection is mandated and enforced by Athens.

5.21 **Single Family Building Zones.** Certain restrictions will be in place for different type single family residential home zones designated by the Developer. Examples of such restrictions, but not all inclusive, are materials used for exterior surfaces, square footage, side or rear facing garages, mixing of exterior materials, etc. The ARC will meet with each builder during the planning stage to determine which zone each Lot is located.

## ARTICLE VI USE RESTRICTIONS AND COVENANTS

6.01 **Residential Use.** The Lots shall be used solely for single-family residential purposes and for no other purpose. No business or commercial building may be erected on any Lot and no business or commercial activity may be conducted on any Lot, except for a sales and marketing program of the Lots by Developer and the construction and sale by builders-owners of speculative homes on Lots in accordance with the terms and provisions of this Declaration. No business or trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted in or from any Dwelling Unit, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the properties; and (d) the business activity is consistent with

the residential character of the properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the properties, as may be determined in the sole discretion of the Board.

**6.02 Further Subdivision.** The Lots shall not be further subdivided, but such prohibition shall not prevent the conveyance of portions of a Lot to the Owner of an adjacent Lot to the end that platted Lot lines may be reconfigured. Upon any such conveyance, the parcel so created shall be deemed a "Lot" subject to the provisions hereof, as though originally platted as such; provided, however, that at no time shall the aggregate of all such conveyances as they may pertain to any platted Lot result in a revised and reconfigured tract with land area deviating more than ten percent (10%) from the land area of such Lot as originally platted. The provisions of this section shall not apply to the Developer, and the Developer reserves the right to replat any one or more Lots to create a modified Lot or Lots, and to convey Lots with reconfigured boundaries shown on a plat and any such tract as so bounded and conveyed by the Developer shall be deemed a Lot as though originally platted.

**6.03 Maintenance by Owner.** Each owner shall maintain the exteriors of all structures on a Lot and any and all fixtures attached thereto in a generally excepted manner. In addition, commencing upon the date each Owner is issued the certificate of occupancy for his completed residence on his Lot, each Owner shall routinely maintain any sodded or landscaped areas adjacent to his Lot from the platted Lot lines up to the curb(s) or edge(s) of right-of-way pavement (the "Adjacent Areas"), excluding fences, walls, signs, or other structures common to the Neighborhood installed by Developer or the Association, which shall be the responsibility of the Association to maintain. The maintenance of such Adjacent Areas by each Owner shall at all times be subject to the rights and duties of Developer and the Association to regulate, manage, modify, improve and control said Adjacent Areas as set forth in this Declaration, including the right to take over the foregoing maintenance responsibilities and discontinue Owner maintenance at any time.

Each Owner shall maintain such Lot and improvements and the foregoing Adjacent Areas at his sole expense in good condition and repair and in an attractive condition in keeping with the standards of maintenance throughout the Neighborhood. Maintenance by the Owner shall include, but not necessarily be limited to, all maintenance, painting, repair, replacement and care of the structures, fixtures, equipment, appliances, roofs, gutters, downspouts, exterior building surfaces, screening and caging, shutters and other decorative and functional attachments to the exterior of the improvements, walks and other exterior improvements, street trees, exterior lawn, landscaping and Lot Irrigation System. All such maintenance and repair shall conform to such maintenance standards as may be promulgated from time to time by the Board in accordance herewith. The Board may from time to time adopt and promulgate maintenance standards for the Neighborhood, so long as such standards are reasonable and not contrary to the provisions of this Declaration.

**6.04 Litter, Trash, Garbage.** No garbage, trash, refuse or rubbish shall be deposited, dumped or kept on any Lots except in closed sanitary containers approved by the ARC. Such containers shall be kept in a sanitary condition in (a) an enclosed area attached to the dwelling and constructed in a manner approved by the ARC or (b) an underground container. Such containers may be placed on the Lot for pick up at the times and in accordance with the requirements of the franchised garbage removal utility for the property; however, because of the likelihood wild critters may invade garbage, trash shall not be put out prior to 6am of the day of pickup and containers shall be returned by 8pm of the day of pick up. This restriction shall not apply during construction of any single family home on a Lot provided that construction is diligently pursued after commencement.

**6.05 Nuisances.** No Owner shall cause on a Lot or permit to come from his Lot any unreasonable noises or odors. No Owner shall commit on his Lot or permit to be carried on his Lot any nuisance, any immoral or illegal activity or anything which may be an annoyance or a noxious or offensive activity to the neighborhood. The Board shall be the sole determinant of what constitutes a nuisance.

**6.06 Commercial and Recreational Vehicles.** Unless prior approval has been granted by the ARC, no commercial vehicle, recreational vehicle, trailer, camper, motor home, panel trucks, canoe or boat of any kind shall park

or be parked at any time on a Lot unless such a vehicle is in a garage or is a commercial vehicle in the process of being loaded or unloaded. The ARC may approve special storage arrangements for such vehicles, imposing strict location, time and other conditions as it may determine. A "panel truck" is any van or mini-van which does not have any rear passenger windows. "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship, or any other entity conducting business for a commercial purpose, and includes, without limitation, any vehicle displaying a commercial tag or any lettering, logo, symbol, or trademark on the vehicle's exterior. The ARC may adopt and promulgate additional standards for commercial and recreational

vehicles, and may revise or expand such standards from time to time to take cognizance of new forms or variations of commercial and/or recreational vehicles. In the event there is any dispute as to whether a particular vehicle is a commercial or recreational vehicle, such dispute shall be referred to the ARC and the determination rendered by the ARC with respect to such dispute shall be final and binding upon all parties thereto.

**6.07 Maintenance and Storage of Boats and Vehicles.** No maintenance, repair or storage of any boat or vehicle, shall be permitted upon any Lot except within an enclosed approved garage.

**6.08 Animals and Pets.** Only common domesticated household pets may be kept on any Lot or improvements thereto, and in no event may such pets be kept for breeding or any commercial purposes. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Neighborhood. Approved household pets may not be kept in unreasonable numbers. Permitted pets shall be kept only subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board, and unless otherwise provided by the Board, shall be kept on a leash except when within a fenced or other enclosed area. Any such pets, whether from number, disposition or otherwise, that cause, create or contribute to a nuisance or unreasonable disturbance or annoyance, may be required to be permanently removed within ten (10) days of receipt of written notice from the Board to the Owner or other person responsible for such pet. Pet owners are responsible for cleaning up any mess created by their pets within the Neighborhood. Excrement which is not picked up shall be deemed a nuisance hereunder. All pet owners are responsible for the actions of their pets, and each pet owner agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal on or within the Neighborhood. The Board may adopt rules and regulations which are more restrictive than the provisions of this Declaration.

**6.09 Vehicles and Repair.** No inoperative cars, trucks or trailers or other type of vehicles will be allowed to remain on or adjacent to any Lot for a period in excess of forty-eight (48) hours; however, this provision shall not apply to such vehicle which is kept within an enclosed garage.

**6.10 Fences.** In order to achieve and maintain the desired ambiance and character within the Neighborhood, it is desired that any fencing within the Neighborhood be kept to an absolute minimum. All fences shall require approval of the ARC after Architectural Review. The Developer, ARC and all Owners shall be obligated to keep fences within the Neighborhood to a minimum in order to preserve and protect the appearance and values of the Neighborhood Lots. In connection therewith, the use of trees, hedges and landscaping design shall be preferred over the use of fences, and the ARC may disapprove the use of fences where trees, hedges or landscaping may be used. Notwithstanding the foregoing, the Developer may install and the ARC may approve fences in conjunction with the use of trees, hedges and/or landscaping where deemed reasonably appropriate in the discretion of the Developer and/or ARC, such as along certain perimeter Lots which may abut other properties. All fences, walls, hedges or other enclosures shall be constructed only of wood, masonry, landscaping or other materials as may be approved by the ARC after Architectural Review. No such fence, hedge or wall may be located except behind the rear building line of the structure upon each Lot, and no such fence, hedge or wall shall be located within twenty-two (22) feet of the ordinary high water line of any lake or pond located within the Neighborhood. Fences and walls must be finished on all parts thereof visible from other Lots and the streets. Provided, however, that this provision shall not be deemed to apply to preclude small decorative fences, walls or other screening material located along the sides or front of a dwelling, which fences or walls form an integral part of the architectural design of the dwelling and are decorative in nature, and which are located within the front setback lines. In exceptional circumstances and for good cause shown, the ARC may grant a variance from the provisions hereof.

6.11 **Yards and Lawns.** That portion of each Lot, including the unpaved portion of a street right-of-way adjoining such Lot, which is not covered by dwellings, patios, and walkways, shall be sodded with natural grass at the time of the original construction of improvements. The lawn shall thereafter be maintained in good condition and replaced as may be necessary. In no event shall gravel or stone yards be permitted. Provided that nothing contained herein shall prohibit the use of gravel and/or wood shavings for decorative landscaping purposes of an otherwise sodded yard. Any portion of a Lot designated as a "visibility area" on the Plat shall be maintained such that traffic visibility is not obscured. Each Lot Owner shall maintain the lawn, landscaping, and irrigation system on their Lot in a good, neat and orderly appearance and condition, consistent with the standards of maintenance throughout the Neighborhood. All driveways, walks and parking areas shall be approved, and driveways and sidewalks shall be constructed of concrete, up to and including their intersection with a paved street to be constructed at the time of original construction of improvements and prior to issuance of a certificate of occupancy. Driveway and walkway design, location, materials and coloring shall be subject to ARC approval after Architectural Review. Approved landscaping shall be completed not later than thirty (30) days after completion of the dwelling. As part of the approved landscaping plan for each Lot, each Lot Owner shall plant, and continuously maintain the following canopy trees on the Lot:

- (a) A street tree for every fifty (50) linear feet, or substantial fraction thereof, or right-of-way. The trees should be located within twenty-five (25) feet of the rights-of-way, and shall be spaced no closer together than twenty-five (25) feet, unless they are part of a decorative grouping; and
- (b) One (1) additional tree per Lot, preferably located in the rear yard.
- (c) The following requirements shall apply to the trees, and their maintenance:
  - (i) The Lot Owner is responsible for the installation, maintenance and replacement of the required trees.
  - (ii) The trees shall meet the requirements of the City of Athens tree commission.
  - (iii) Existing native trees should be used to fulfill these requirements, whenever possible.
  - (iv) None of the required trees shall be planted within a public or private utilities easement.
  - (v) Each tree shall be a minimum height of ten (10) feet and a minimum Diameter Breast Height (D.B.H.) of 2 1/2 inches at the time of planting.
  - (vi) In the event a tree dies or is removed, the Owner of the Lot is responsible to replace the tree in the fall or spring, i.e. in "growing seasons."

6.12 **Tree Planting.** In connection with the construction of improvements on a Lot within the Neighborhood, all Lot Owners must receive approval of the ARC for plant materials, trees and other landscaping to be installed upon the Lot. Thereafter, the Lot Owner shall proceed with construction of improvements on the Lot, including the installation of trees.

6.13 **Tree Protection.** No person may remove, relocate or otherwise destroy any tree installed upon any Lot, or otherwise allow, authorize or assist in the removal, relocation or destruction of such tree, without first obtaining (i) approval of the ARC in the manner required by the Declaration; and (ii) a tree removal permit issued by the Developer.

6.14 **Replacement Tree Requirement.** Any tree removed from a Lot, other than that which is obstructing the building of a home, must be replaced with the same size and type of tree as originally planted on the Lot, whether such removal resulted from (a) authorizations and permits issued by the ARC and Developer, as required above, or (b) replacement of a diseased or dead tree.



6.15 **Pools.** No above-ground swimming pool shall be permitted at any time anywhere within the Neighborhood. This provision shall not be deemed to prohibit hot tubs, therapy pools and hydra spas when they are incorporated into improvements and approved after Architectural Review. Likewise, the ARC may approve pools incorporated into improvements so approved even though such pool may be above grade. All pools shall be enclosed and otherwise constructed to comply with applicable rules, regulations and standards of all governments having jurisdiction. The term "enclosed" shall mean the pool and surrounding patio area perimeter shall be bounded on all sides by parts of the approved dwelling, fences conforming to Section 6.10, screened cages, or combinations thereof. Such enclosure may have reasonable gates and doors which may be closed to make the enclosure continuous. All such pools, fencing, screening and caging shall be subject to Architectural Review.

6.16 **Garage or Yard Sales.** No garage or yard sale may be conducted on any Lot within the Neighborhood without the prior approval of the Association. The Association shall have the authority to prescribe reasonable rules and regulations for the conduct of any such sale, including, without limitation, rules regarding the manner of conducting such sales, permitted frequency, duration, hours and the type, size, location and number of signs advertising such sales. The failure of an Owner to observe such rules and regulations shall be grounds for the Association to withhold its approval of any future sales by such Owner, as well as the imposition of fines or other sanctions as authorized in this Declaration.

#### **ARTICLE VII ASSOCIATION EXPENSES, ASSESSMENTS AND LIENS**

7.01 **General.** In order for the Association to cause the covenants contained in this Declaration to be fulfilled; to maintain, irrigate and illuminate the Entrance and Boulevard and to preserve the property in the manner contemplated by this Declaration, the Association will incur certain expenses, which expenses are referred to herein as the "Association Expenses", and shall mean and refer to the actual and estimated cost of the following:

- (a) The maintenance, management, operation, repair and replacement of any Common Property, and all other areas of the Neighborhood maintained by the Association.
- (b) Obligations incurred by the Association in excess of revenues because assessments have not been paid.
- (c) Maintenance by the Association of areas within rights-of-way or drainage easements, systems or ditches adjoining or running through the Neighborhood as may be provided in this Declaration or as determined by the Board.
- (d) Expenses of administration and management of the Association.
- (e) The cost of any insurance obtained by the Association.
- (f) Reasonable reserves as deemed appropriate by the Board.
- (g) Taxes and other governmental assessments and charges paid or payable by the Association.
- (h) Utility charges, including deposits and charges for the lease or purchase of equipment, incurred in the carrying out of other Association obligations hereunder.
- (j) The cost of any other item or items designated herein as a Common Expense, or reasonably or necessarily incurred by the Association in connection with this Declaration, the Articles or Bylaws, and in furtherance of the purposes of the Association or a discharge of any obligations imposed on the Association by this Declaration.

**7.02 Affirmative Covenant to Pay Association Expenses.** Association Expenses shall be paid by the Association from funds assessed and collected from the Owners in the manner set forth in this Declaration, and there is hereby imposed upon each Lot and Owner the affirmative covenant and obligation to pay its respective share of the Association Expenses, which covenant shall run with the land. Each Owner, by acceptance of a deed or other instrument of conveyance, whether or not it shall be so expressed in such deed or instrument, *does hereby agree and covenant to pay* the share of Association Expenses allocated pursuant to this Declaration to the Lot of such Owner. No Owner shall be relieved of liability for payment of his respective share of Association Expenses by non-use or abandonment of his Lot. All Assessments shall be payable in the amount specified and no offsets shall be permitted for any reason, including without limitation, a claim that the Association is not properly exercising its authorities and carrying out its responsibilities as provided in this Declaration.

**7.03 Annual Assessments.** The Association shall assess each Owner for his respective share of Association Expenses by Annual Assessments determined and payable in the manner provided in Paragraphs 7.06 and 7.07 of this Declaration. The assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for improvement and maintenance of the Common Property.

**7.04 Establishment of Assessment Levels; Uniform Assessments for Each Lot Type.** The Association shall have the discretion to establish Assessment levels by Lot Type. Each Lot Type shall be assessed at a uniform rate with respect to all Assessments, including Annual and Special Assessments, except as otherwise provided herein.

**7.05 Interest of Owners.** No Owner shall have during the term of the existence of the Association any interest, right or claim in or to any of the funds of the Association or funds received or held by the Association under or pursuant to any Annual Assessment or otherwise.

**7.06 Annual Assessment Until Developer Relinquishes Control.** Commencing on the date of the closing of the purchase of a Lot from the Developer, each Owner shall be subject to an Annual Assessment (prorated as of time of closing for the fiscal year in which closing with the Developer shall occur) during such period in such an amount payable annually, and each Owner shall timely pay any and all such assessments. The Board, in its sole discretion, may permit such Annual Assessment to be paid in semi-annual, quarterly or monthly installments. Notwithstanding any provisions in this Declaration to the contrary, during the period prior to Developer's relinquishing control of the Association, Developer and the Lots owned by Developer, will not be liable for the payment of any Association Expenses or Assessment.

In consideration of such exemption, Developer shall be responsible for paying any cash shortages which result from (a) the Association's Common Expenses otherwise to be funded by Regular and Special Assessments, (excluding any reserves or expenses associated with Special Assessments for compliance, services or improvements), exceeding (b) the amount received or receivable from Owners other than Developer for such Regular and Special Assessments levied against such Owners or their Lots (the "Deficiency"). Notwithstanding the foregoing, the Association shall employ a fiscal management program designed to minimize the amount of any such Deficiency, including, without limitation, the deferral of expenses, to the extent reasonably possible. In addition, the Developer shall loan to the Association such amounts as may be required by the Association to pay the Common Expenses and not produced by Assessments actually received by the Association and the amount of the Deficiency paid by the Developer. Such loans are intended to assist the Association in managing cash and provide short-term borrowing to offset uncollected Assessments. The amount so loaned by the Developer, together with interest at the rate then charged on Delinquent Assessments shall be repaid to the Developer as funds are available to the Association, but in no event later than the Turnover Date.

Developer may at any time give written notice to the Association that it is withdrawing its obligation to fund the Deficiency, effective not sooner than sixty (60) days after such notice, whereupon Developer shall waive its right to total exemption from Regular and Special Assessments. Sixty (60) days after the giving of such notice or sixty (60) days after the Turnover Date, whichever first occurs, each Lot owned by Developer shall thereafter be assessed at one hundred percent (100%) of the Regular and Special Assessment level established for Lots owned by Regular Members;

provided, however, Developer shall continue not to be responsible for any reserves or Special Assessments for compliance, services, fines or improvements not consented to in writing by Developer. All such Assessments shall be prorated for the remaining months of the then current fiscal year, if applicable. Upon transfer of title of a Lot owned by Developer, the Lot shall then be assessed in the amount otherwise established for Lots owned by Owners other than the Developer, prorated as of and commencing with the month following the date of transfer of title.

Notwithstanding the foregoing, any Lots from which the Developer derives rental income as a completed housing unit or as to which Developer has a completed housing unit with a certificate of occupancy subject to possession by one holding a contractual right to purchase, shall be liable for Assessments with respect thereto in the same manner as any Regular Member, prorated to the date when both such possession and contractual interest have been created. In addition, Lots owned by Developer upon which Developer has constructed a "model" home will be subject to Assessments from the date that the certificate of occupancy is issued for the completed "model" home constructed by Developer.

**7.07 Annual Assessment Commencing After Developer Relinquishes Control.** After the Developer no longer controls the Association, Annual Assessments for Association Expenses shall be determined in the manner set forth in this paragraph. The total anticipated expenses for each fiscal year, including reserves as reasonably estimated by the Board, shall be set forth in a budget adopted by the Board no later than sixty (60) days preceding the fiscal year for which the budget is adopted (the "Budget"). The total anticipated Association Expenses set forth in such Budget shall be the Annual Assessment for Association Expenses for all of the Lots for such fiscal year (the "Aggregate Annual Assessment"). The Aggregate Annual Assessment shall be divided equally between all the Lots, and shall be due and payable by the Owner thereof or, if more than one Owner, the Owners, jointly and severally, of each such Lot in advance commencing on the first day of the fiscal year of the Association. The Board, in its sole discretion, may permit such Annual Assessment to be paid in semi-annual, quarterly or monthly installments. The Association shall mail to each and every Owner at least forty-five (45) days prior to the first day of the following fiscal year, a copy or a summary of the Budget – specifically indicating the total Association Expenses anticipated for the forthcoming fiscal year and the Annual Assessment upon each such Lot. All budget figures, irrespective of any previous approvals, are subject to change from time to time. All budgets are estimates only and should not be relied upon as definitive figures for the purpose of establishing actual assessments.

**7.08 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**7.09 Certificate of Payment.** The Association shall furnish to any Owner, upon request, a certificate in writing setting forth the remaining unpaid balance, if any, of any outstanding Annual Assessment, if any, assessed upon the Lot of such Owner and stating whether such Owner has failed to pay when due any such assessment or installment thereof. The Association may charge a reasonable fee for providing the certificate. A properly executed Certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**7.10 Lien.** In the event that an Annual or Special Assessment, or the Capital Contribution established in the manner set forth in this Declaration is not paid when due, such amount, together with interest thereon from the time the same becomes delinquent, at the highest rate permitted by law, and costs of collection, if any, including court costs and reasonable attorneys' fees at trial and appellate levels, shall be, and are hereby declared to be, a charge and continuing lien on such Lot; provided, however, such lien shall be effective only from and after the time of recording among the Public Records of Athens County, Ohio, of a claim of lien of the Association setting forth the amount of such lien as of the date of execution of such claim of lien. Such lien shall be binding upon the Owner thereof, his heirs, personal representatives, successors, assigns and tenants. Upon full payment of all amounts secured by such lien, the party making such payment shall be entitled to receive from the Association a satisfaction of lien in form for recording.

7.11 **Remedies.** In the event any Owner fails to pay any Annual or Special Assessment or installment thereof, or the Capital Contribution within thirty (30) days after the same becomes due and payable (whereupon the same shall be deemed delinquent), then the Board shall have the right to elect on behalf of the Association either some or all of the following remedies, which remedies shall not be mutually exclusive, and the election of any one (1) of such remedies shall not be deemed to be a waiver of any other such remedies:

- (a) **Acceleration.** To accelerate the entire amount of any Annual Assessment allocable to the Lot for the remainder of the fiscal year notwithstanding provisions for the payment thereof in installments;
- (b) **Late Charge.** To levy late charges such amounts as the Association deems appropriate from time to time;
- (c) **Foreclosure.** To file at any time after the effective date of a lien arising under Paragraph 7.10, an action to foreclose such lien in like manner as a foreclosure of a mortgage on real property; and
- (d) **Action at Law.** Without waiving any lien rights and rights of foreclosure, to file an action at law against the Owner to collect such unpaid assessment or contribution, plus interest thereon at the highest rate permitted by law, and costs of collection, including court costs and reasonable attorneys' fees at trial and appellate levels.

Provided, however, that as a condition to bringing an action at law pursuant to Paragraph 7.11(d), or for foreclosure of a lien pursuant to Paragraph 7.11(c), the Association shall first record a Notice of Lien among the Public Records of Athens County, Ohio, and furnish a copy of such notice to the then Owner by United States mail, either certified or registered, return receipt requested. (Failure of the Association to obtain a receipt for such notice shall not, however, prevent enforcement of such assessment or lien.) If such assessment or contribution, together with interest and costs attendant thereon, is not paid in full within thirty (30) days after the date such notice is deposited in the United States mail, then thereafter the Association may bring suit at law for damages or foreclose its lien, or both. Upon request of any first mortgagee on any Lot, the Association shall furnish to such mortgagee a copy of the lien and notice contemplated by this paragraph.

7.12 **First Mortgages.** The lien provided for in this Declaration shall be subordinate to the lien of any first mortgage on a Lot held by a first mortgagee that is recorded in the public records of Athens County, Ohio, prior to the recording of the claim of lien. Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

7.13 **Capital Contribution.** The Board may, in its discretion, require each Lot Owner who acquires his Lot directly from Developer to pay to the Association a one-time contribution (the "Capital Contribution") to be used by the Association solely for the payment of Association Expenses. The amount of the Capital Contribution shall be as determined by the Board, but shall not exceed the then applicable Annual Assessment. Capital Contributions shall be expended solely for regular Common Expenses. Capital Contributions are not advance payments of Assessments and shall not affect the liability of an Owner or a Lot for Assessments.

7.14 **Special Assessments for Services Provided by the Association.** If the Association provides materials or services which benefit individual Lots but which can be accepted or not by the Owner, then the amount paid or incurred by the Association on behalf of the Owner accepting or subscribing to such material or service shall be a Special Assessment against such Owner and his Lot. The Owner will be deemed to have agreed to such Assessment by subscribing to or requesting and accepting such material or service.

7.15 **Reserves.** The Board shall establish reserve accounts funded from Regular Assessments in reasonable amounts for such purposes and in such categories as are determined by the Board. Reserve amounts may be used by the Board on a temporary basis for cash flow management of the Association, even though such amounts are expended for

purposes other than those for which the reserve was established. The amount of such reserve shall be restored from revenues subsequently received, it being the intent that the Board may borrow from reserve accounts but same shall not diminish the obligation to levy and collect Assessments and charge fees and other revenues that will, upon collection, permit the restoration of all reserve accounts. Any decision of the Board with respect to reserves, including but not necessarily limited to, the establishment, non-establishment, continuation, discontinuation, level of funding or designation of purpose as to any particular reserve category, shall be subject to being modified or rescinded by the vote of Owners of sixty percent (60%) or more of the Lots at any regular or special meeting of the Association called for such purpose. Use of any reserve for other than its designated purpose, other than as above provided, may be authorized only by a vote of Owners of sixty percent (60%) or more of the Lots.

## ARTICLE VIII GENERAL PROVISIONS

**8.01 Incorporation of the Land Use Documents.** Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

**8.02 Release from Minor Violations.** Where a building has been erected on a Lot or the construction thereof substantially advanced, in such manner that the same constitutes a violation or violations of the covenants set forth in Paragraphs 5.02, 5.03 or 5.04, either the Developer or the Board may and each of them shall have the right at any time to release such Lot from such paragraph or paragraphs as are violated, provided, however, that neither the Developer or the Board shall release a violation or violations of such paragraph or paragraphs except as to violations that the party releasing the same shall determine to be minor.

**8.03 Dispute.** In the event there is any dispute as to whether the use of the property complies with the covenants and restrictions contained in this Declaration, such dispute shall be referred to the Board, and the determination rendered by the Board with respect to such dispute shall be final and binding on all parties thereto.

**8.04 Enforcement.** The covenants and restrictions contained in this Declaration may be enforced by Developer, the Association, any Owner or Owners, and any First Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or suit seeking damages, injunction, specific performance or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels.

(a) No judicial or administrative proceeding shall be commenced or prosecuted by or against the Association, or against Developer, unless approved by seventy-five percent (75%) of the Owners after being provided with detailed notice of any such potential action including the anticipated costs thereof, except in the following cases:

- (i) Actions brought by the Association against Persons other than Developer to enforce the provisions of this Declaration, any amendment hereto, the Articles of Incorporation, or the Bylaws;
- (ii) Actions brought by the Associations against Persons other than Developer for the collection of Assessments;
- (iii) Actions or proceedings involving challenges to ad valorem taxation; or
- (iv) Counterclaims brought by the Association in proceedings against it.

This subparagraph 8.04(a) shall not be amended unless such amendment is made by Developer or is approved by the percentage votes, and pursuant to the same procedures, necessary to commence proceedings as provided above.

(b) No Owner or other Person bound by this Declaration shall commence or prosecute any judicial or administrative proceeding against the Association or Developer involving any matter related to this Declaration, any amendment hereto, the Articles of Incorporation, the Bylaws, the Neighborhood, any property or improvements within the Neighborhood, or rights or interest therein, without first submitting the issue to which such proceeding relates to nonbinding mediation in accordance with the following provisions:

(i) If agreed to by Association or Developer, respectively, the mediation shall be conducted through the American Arbitration Association in accordance with Ohio Statutes.

(ii) In all other cases, the mediation shall be conducted in accordance with the Ohio Rules of Civil Procedure; provided, however, that mediation in accordance with such rules may be initiated through a mediator agreed upon by the parties without order of court. If the parties cannot agree upon a mediator, then either party may move the court to name a mediator and initiate mediation pursuant to such rules.

(c) The requirement for mediation may not be waived by the Association or Developer, except in a writing specifically waiving mediation as to a specific individual claim.

**8.05 Notices to Owners.** Any notice or other communication required or permitted to be given or delivered under this Declaration to any Owner shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing.

**8.06 Notices to Association.** Any notice or other communication required or permitted to be given or delivered under this Declaration to the Association or to the ARC shall be deemed properly given and delivered upon the delivery thereof or upon the mailing thereof by certified United States mail, postage prepaid to the Board or the ARC at University Estates, Inc. C/O ARC Committee Post Office Box 566, Athens, Ohio 45701 or at such other address as the Board may hereafter designate by notice to Owners in the manner provided in Paragraph 8.05.

**8.07 Captions.** Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms or provisions of this Declaration.

**8.08 Context.** Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed to mean the corresponding plural form thereof and vice versa.

**8.09 Severability.** In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or a reduction in the term of same by reason of the legal rule against perpetuities shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

**8.10 Term.** This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein, including, without limitation, the provisions for assessment of Lots, shall run with and bind the property and inure to the benefit of Developer, the Association, Owners and their respective legal representatives, heirs, successors, and assigns for a term of twenty-five (25) years from the date hereof, after which time this Declaration shall be automatically renewed and extended for successive periods of twenty-five (25) years each unless at least one (1) year prior to the termination of such twenty-five (25) year time or to each such twenty-five (25) year

extension there is recorded in the Public Records of Athens, Ohio, an instrument agreeing to terminate this Declaration signed by two-thirds (2/3) of all Owners and two-thirds (2/3) of all First Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the twenty-five (25) year term in effect at the time such instrument was recorded.

**8.11 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a high quality residential community, and for the maintenance of the Common Property and the portions of the Lots herein required to be maintained by the Association. This Declaration shall be construed under the laws of Ohio.

**8.12 Amendment.** Subject to the rights of Developer, this Declaration may not be amended by the Owners during the first four (4) years after this Declaration is recorded. Thereafter, this Declaration may be amended only by the affirmative written assent or vote of the Owners of not less than two-thirds (2/3) of all the Lots covered hereby. Anything herein to the contrary notwithstanding, during the time that Developer is a Developer Member of the Association and is actively developing the Neighborhood, Developer reserves the right to amend this Declaration, the Articles and the Bylaws in any manner whatsoever; provided, however, that Developer may not alter the character of the development as residential, nor may Developer delete the Common Property. Developer further reserves the right to use Lots owned by it and the Common Property for administrative and marketing offices for use by itself and its agents, and to erect temporary structures for use in its development business. So long as Developer owns any Lot of record, it may establish licenses, reservations, easements and rights-of-way in favor of itself, suppliers of utility and similar services and public authorities as may from time to time be reasonably necessary to the proper development and disposition of the Neighborhood. Notwithstanding anything to the contrary contained herein, any amendment of this Declaration which would affect the surface water management system of the Neighborhood, including the water management portions of the Common Property, must have the prior written approval of the OEPA.

**8.13 Assignment by Developer.** Developer reserves the right to assign all or any part of its rights and responsibilities hereunder as Developer, whether personal in nature or not, to any successor in interest, including any mortgagee, which may own all or any part of the property subject to these Covenants or proposed to be added to these Covenants pursuant to Article II. The rights of Developer may be assigned in whole or in part, and Developer may designate in writing one or more successor Developers as to portions of the property covered hereby, which instrument shall detail the extent and nature of the rights of Developer assigned thereby. Likewise, Developer may assign specific rights to a Partial Successor Developer in conjunction with the conveyance of Lots to such Partial Successor Developer. Assignments to a Partial Successor Developer need not be recorded. After any such assignment is recorded in the Public Records of Athens, Ohio, the assignee shall stand in the place of Developer as fully as if it had originally been the

Developer hereunder to the extent of the assignment described therein. Any mortgagee of all or substantially all of the undeveloped portions of the property covered hereby executed by Developer or any successor Developer shall be deemed to carry with it a conditional assignment of such Developer rights, unless otherwise specified therein. Such assignment shall not be deemed made in conjunction with any mortgage covering only a single Lot.

**8.14 Fines and Suspensions.** Each Owner shall comply, and shall cause the Owner's family, guests, tenants, and invitees to comply with the restrictions and covenants set forth in this Declaration, and any amendment hereto, applicable to such Owner's Lot. Each Owner shall further comply, and shall cause the Owner's family, guests, tenants, and invitees to comply, with the architectural criteria established by the ARC and any and all rules and regulations established by the Association. Upon lack of compliance of an Owner, the Association may, in addition to all other available remedies, impose a fine upon Owner and/or suspend the rights of the Owner, or the Owner's tenants, guests, or invitees, to use the Common Property pursuant to the following provisions:

- (a) **Notice.** The Association shall afford an opportunity for hearing to the Owner before a committee of at least three (3) members appointed by the Board who are not officers, directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee, after at least fourteen (14) days advance written notice. The notice shall include a statement of the date, time, and place of the hearing and a statement of the matters constituting the alleged violation.

(b) Hearing. At the hearing, the Owner shall have the opportunity to review, challenge, and respond to any material considered by the Committee; to present evidence; and to provide written and oral arguments on all issues involved.

(c) Imposition of Fine. The committee, by majority vote, may impose a fine not in excess of the maximum amount permitted by law per day from the date of the Owner's violation until such violation ceases. Any fine levied by the committee against an Owner shall be a Special Assessment applicable to the Owner's Lot.

(d) Application of Fines. All proceeds received by the Association from fines shall be applied to the payment of the Association Expenses, or as the Board in its discretion may determine.

(e) Suspensions. In addition to or instead of imposing a fine, the committee, by majority vote, may suspend the rights of the Owner, or the Owner's tenants, guests, or invitees, to use the Common Property for a reasonable period of time.

(f) Nonexclusive Remedies. Fines and/or suspensions shall not be construed as exclusive remedies and shall exist in addition to all other rights and remedies to which the Association may be legally entitled; however, any fine paid by an Owner shall be deducted or offset against any damages that the Association may otherwise be entitled to recover from Owner.

**8.15 Attorney's Fees.** In the event any action is instituted to enforce or construe the provisions of this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment a reasonable attorney's fee and the costs of such suit. If the Association is a prevailing party in such action, the amount of such attorney's fees and costs shall be a Special Assessment with respect to any Lot and its Owner if such Owner was the non-prevailing party in such litigation.

**8.16 Developer Provisions.**

(a) Developer, for itself, and its designees, further reserves the right to erect temporary structures for use in its development business and otherwise to establish and use any part of the property covered hereby for the development, construction, marketing, promotion and sale of Lots and improvements thereto. So long as Developer owns any Lot of record, it may establish licenses, reservations, easements and rights-of-way in favor of itself, suppliers of utility and similar services and public authorities as may from time to time be reasonably necessary to the proper development and disposition of the Neighborhood. In any instance where a structure has been erected upon a Lot, or the construction thereof is substantially advanced in a manner that violates the restrictions of this Declaration or in such a manner that same encroaches on any Lot line, easement area or setback, Developer reserves the right to release the Lot from the restriction and to grant an exception to permit the encroachment by the structure so long as Developer, in the exercise of its sole discretion, determines that the release, waiver or exception will not materially and adversely affect the health, safety and welfare of present and future Owners, the value of adjacent Lots and the appearance of the Neighborhood. The Developer may grant franchises or concessions to commercial concerns on all or part of the Common Areas and/or common facilities and shall be entitled to all income derived therefrom.

(b) Developer, for itself and its designees and assignees, reserves the exclusive ownership of, and right to control the use of, all water located in or existing from time to time within any drainage, retention or storm water ponds or lakes located on the Property subject to this Declaration. No use of the water may be made by the Association, any Lot Owner, or any other person or entity without Developer's prior written consent, which consent may be withheld for any reason deemed sufficient by Developer. Without limiting the foregoing, Developer shall have the right, in its sole discretion, to: (i) grant nonexclusive licenses to other persons or entities to use the waters from the Neighborhood for the benefit of other properties, whether or not located within the Neighborhood, and in connection therewith, to install electrical panels, pumps and irrigation



equipment to be used therefor; (ii) grant nonexclusive licenses to other persons or entities for the retention of storm water within the drainage, retention or storm water ponds located on the Property for the benefit of other properties, whether or not located within the Neighborhood; and (iii) increase or decrease the water level of the lakes or elements within the surface water management system of the Neighborhood from time to time by any means, including the installation, control, and use of: drainage control devices and apparatus; additional lakes, ponds, swales, culverts, inlets, and outfalls; wells and pumps; and reclaimed water and related facilities. The grant by Developer of additional licenses, if any, concerning the use of the waters within the Neighborhood shall be on such terms and conditions as Developer may approve, in its sole discretion. The right of Developer to grant additional licenses shall not be construed as an obligation to do so. The rights of Developer set forth herein are for Developer's sole benefit and may be exercised, waived, released, or assigned, in whole or in part, in Developer's sole discretion. No person shall have any cause of action against Developer on account of Developer's exercise, failure to exercise, waiver, release, or assignment, in whole or in part, of any of such rights.

(c) Developer hereby reserves easements for the benefit of Developer, its employees, subcontractors, successors, and assigns, over and upon the Neighborhood Common Property, and the front, side, and rear yards of all Lots within the Neighborhood, as may be expedient or necessary for the purpose of connecting any water, sewer or effluent water lines within the Neighborhood to additional properties, as Developer determines in its sole discretion. The easements herein described shall be perpetual and at all times inure to the benefit of and be binding upon the undersigned, all of their grantees and respective heirs, successors, personal representatives, and assigns.

(d) The Developer's retention of ownership of the waters within the Neighborhood, and the rights and easements contained herein, and such additional rights and easements as may be established and granted Developer, shall survive the termination of Developer's status as a Developer Member of the Association and Developer's turnover of control of the Association to the Regular Members, and shall survive the termination of this Declaration for any reason.

(e) In order to provide for an alternative and cost-effective supply of water for the irrigation of the Lots and Common Property within the Neighborhood, Developer, its affiliates and/or assigns and the Association may enter into a separate Storm Water License and Reimbursement Agreement, providing for the installation of the Central Irrigation System, establishing licenses and easements for the operation of the Central Irrigation System and setting forth the rights and obligations of the parties relating thereto. Title to all property within the Neighborhood and each Lot shall be subject to, and the Association and all Lot Owners will be bound by, the provisions of the Storm Water License.

(f) Notwithstanding the provisions of Section 8.12, there shall be no amendment to this Declaration which shall abridge, impair, prejudice, amend or alter the rights, privileges or priorities of Developer without the prior written consent thereto by Developer for so long as Developer holds at least one (1) Lot for sale in the ordinary course of business.

(g) For so long as Developer holds at least one (1) Lot for sale in the ordinary course of business Developer and its nominees shall have the right, at any time, to hold marketing and promotional events within the Common Areas and any common facilities, without any charge for use, Developer or its nominees, agents, affiliates, or assignees shall have the right to market the Neighborhood and Lots in advertisements and other media by making references to the Neighborhood, including, but not limited to, pictures or drawings of the Common Areas and common facilities, Lots and completed homes within the Neighborhood.

## ARTICLE IX INSURANCE AND RECONSTRUCTION

9.01 **Insurance by Association.** The Association shall obtain and continue in effect such insurance in such amount and coverage as the Board shall from time to time determine to be appropriate, necessary or desirable. All costs associated with such insurance shall be a Common Expense.

9.02 **Owner's Insurance.** Each Owner shall be responsible for obtaining and maintaining in effect all such casualty, liability and other insurance with respect to such Owner and such Owner's Lot as the Owner may from time to time determine. The Association shall not obtain any such insurance on behalf of an Owner, nor shall the Association insure the Lots or improvements thereto in any manner.

9.03 **Destruction of Improvements.**

(a) If any dwelling structure upon a Lot shall be substantially damaged or destroyed, the Owner thereof shall repair, rebuild or reconstruct the improvements as soon after such casualty as may be practical. All such work shall require Architectural Review as provided herein.

(b) Notwithstanding damage to or destruction of improvements to a Lot, the Owner of such Lot shall remain liable to the Association for all Assessments in connection with such Lot, even though such Lot may not be fit for occupancy or habitation and even though such improvements are not reconstructed.

(c) Within a reasonable time after such casualty, the Lot Owner shall remove all debris and portions of the improvements that cannot be preserved for incorporation into the replacement structure. All dangerous conditions shall be addressed and neutralized immediately. Debris shall be removed from the Lot no later than thirty (30) days after the date of the casualty.

(d) Within thirty (30) days of the date of the casualty, the Owner of the affected Lot shall notify the Board in writing of the intention to rebuild or reconstruct. Failure to notify shall be deemed evidence of such Owner's intention not to rebuild. Such Owner shall initiate Architectural Review within ninety (90) days of such notification, and shall commence rebuilding or reconstruction within sixty (60) days after final approval by the ARC and prosecute same to completion. If for any reason the Owner of the affected Lot does not notify, initiate Architectural Review, commence, diligently pursue or complete such building or reconstruction within the time limits established herein, then such Owner shall be deemed to have elected not to rebuild, and the Association shall have the rights and duties hereinafter specified. An Owner may at any time notify the Association in writing of an election not to rebuild.

(e) If an Owner elects or is deemed to have elected not to rebuild the improvements so damaged or destroyed, then such Owner shall have the duty, at his expense, to remove all portions of the improvements remaining, including the slab and foundation, but excluding underground utility lines which shall be secured. The Owner shall supply fill and install sod so that the Lot shall give the appearance of a landscaped open space. Such work shall be completed not later than thirty (30) days after the date upon which the Owner elects or is deemed to have elected not to rebuild.

(f) If an Owner fails to comply with any of the requirements of this section, then the Association may perform such acts as are of the responsibility of the Owner and the cost of same shall be treated initially as a Common Expense, but charged and assessed against the Lot and its Owner as a Special Assessment.

(g) Upon written application of an Owner, any of the time periods set forth in this section may be extended by the Board for good cause.

(h) The duties of the Association hereunder shall be performed by the Board.

**ARTICLE X  
CABLE TELEVISION BULK SERVICE AGREEMENT**

10.01 **Description of Agreement.** The Association has entered into that certain Bulk Standard Service and Right of Entry Agreement (the "Cable Agreement"), a copy of which is attached hereto as **Exhibit "I"** and incorporated herein.

10.02 **Binding Upon Owners.** In accordance with the terms of the Cable Agreement, each Lot within the Neighborhood shall be connected to the standard cable television system to be provided by the service provider as further described in the Cable Agreement, and each Owner shall be obligated to pay its respective share of the monthly service charges and other costs and expenses of the Association pursuant to the Cable Agreement, which service charges, costs and expenses are hereby deemed to be Association Expenses, and which shall be assessed and collected from the Owners in accordance with the provisions of this Declaration.

10.03 **Liability of Association.** The Association shall have no liability for the performance of any obligations of the service provider as set forth in the Cable Agreement and makes no warranty of any kind to the Owners with regard to the availability, quality, or nature of such cable television service, it being acknowledged and understood by the Owners that the Association has entered into the Cable Agreement for the convenience and enjoyment of the Owners within the Neighborhood but assumes no responsibility or liability therefor.

10.04 **Modifications and Substitutions to Cable Television Service.** The terms of the Cable Agreement are subject to modification or termination upon the mutual agreement of the Association and the service provider. In the event the service provider is unable or fails for any reason to provide bulk cable television service to the Owners within the Neighborhood in accordance with the terms of the Cable Agreement, or the Cable Agreement is otherwise terminated or canceled, then the Association shall have the power and authority to make such arrangements and enter into such agreements as the Board may elect in its discretion, and upon notice thereof being provided to the Owners, the Owners shall be bound by the terms of such arrangements or agreements. Such agreement may include a channel exclusive to University Estates with a character generator. Also, the Board may work out an advantageous arrangement that all homeowners may receive basic service as a part of their association amenities.

#### ARTICLE XI LOT MAINTENANCE SERVICES

11.01 **Services at Discretion of Developer.** Developer, and after the Turnover Date, the Association, in their discretion may elect that the Association provide from time to time certain Lot maintenance services, such as by way of example, mowing, fertilizing, yard pest control, tree trimming, landscape maintenance or other similar services ("Maintenance Services") for certain Lot Types. Developer, and after the Turnover Date, the Association, shall have the discretion of implementing such services on an optional or mandatory basis for each Lot Type for the services elected to be provided. Each Owner shall be obligated to pay its respective share of the monthly service charges and other costs and expenses of the Association in providing such Maintenance Services, which service charges, costs and expenses are hereby deemed to be Association Expenses, and which shall be assessed and collected from the Owners in accordance with the provisions of this Declaration. Such Maintenance Services shall be provided and may be discontinued at the discretion of the Developer, and after the Turnover Date, by the Association.

Signed, sealed and delivered  
in the presence of:

Signature

Print Name

Signature

Print Name

By: Richard T. Conard

Its: President

Post Office Address

STATE OF OHIO  
COUNTY OF ATHENS

The foregoing instrument was subscribed and sworn to before me this 4th day of October 2005 by Richard T. Conard as President of University Estates, Inc.

who is personally known to me,  
 who produced \_\_\_\_\_ as identification, and who acknowledged before me that he/she executed the same freely and voluntarily for the purposes therein expressed under authority duly vested in him/her by said Corporation.

My Commission Expires: Dec. 8, 2008

Kathy S. Irwin  
Signature

Kathy S. Irwin  
Print Name

Kathy S. Irwin  
Notary Public, State of Ohio  
My Commission Expires December 8, 2008

NOTARY PUBLIC - STATE OF OHIO

Commission No. \_\_\_\_\_

*Kathy S. Irwin*  
Notary Public, State of Ohio  
My Commission Expires December



**EXHIBIT "A"**

LIST OF HOLDINGS

The following is a list of holdings of University Estates, Inc, presently under construction, to be completed by the Developer, to-wit:

1.      Tract    : Lot number 3
2.      Tract    : Lot number 6
3.      Tract    : Lot number 12
4.      Tract    : Lot number 13
5.      Tract    :
6.      Tract    :

It is contemplated that the Community Association will, upon turnover of the Association, take title to the above-described common areas, and use and maintain the same pursuant to the Restrictions respecting said Neighborhood and the Code of Athens City or Athens County.

**EXHIBIT "B"**

RIGHT OF ENTRY  
and

COMPLIANCE WITH ATHENS COUNTY LAND DEVELOPMENT CODE

The Athens County Land Development Code requires adequate ownership and management measures be provided in residential developments to protect and perpetually maintain all common improvements and open space. The following provisions are stipulated and are hereby incorporated as part of the Declaration of Covenants, Conditions, and Restrictions for University Estates, Inc.

- I. **Right of Entry by County.** The Athens County law enforcement officers, health and pollution control personnel, emergency medical service personnel, and fire fighters, while in pursuit of their duties, are hereby granted authority to enter upon any and all portions of the Common Property as may be necessary to perform those duties.
- II. **Ownership of the Community Common Areas.** Notwithstanding anything herein contained to the contract, the Association shall not dispose of any Common Property, by sale or otherwise, except to an organization conceived and organized to own and maintain such Common Property, without first offering to dedicate the same to Athens County or other appropriate governmental agency.
- III. **Disturbance of Common Areas.** No lands in the Common Property shall be denuded, defaced, or otherwise disturbed in any manner at any time, except for maintenance or repair, without the prior written approval of the Athens County Planning Director.
- IV. **Maintenance and Care.** In the event the Association or its successors fail to maintain the Common Property in reasonable order and condition, the provisions of the Athens County Land Development Code allow for Athens County, upon notice and hearing, to enter said Common Property for the purpose of maintaining same. The cost of such maintenance by the County shall be assessed proratedly and such charges will be made payable by property owners within sixty (60) days after receipt of a statement therefor, and shall become a lien on the property if unpaid at the end of such period.
- V. **Violations.** Notwithstanding any other provision of this Declaration, no violation of federal, state, or local law shall be permitted.
- VI. **Limitation.** The Maintenance Program and Fiscal Program are estimates only prepared by the Developer based upon its experience, and reviewed and approved by the planning director of the County. The actual Maintenance Program will be as determined by the Association in accordance with this Declaration and the actual budget and amount of Assessments will be as determined by the Association in accordance with this Declaration. All amounts reflected on the Fiscal Program are estimates only, based on currently anticipated costs without taking into consideration the fluctuating purchasing power of the United States dollar. Such amounts can reasonably be expected to fluctuate with time, the economy, market conditions and in response to actual (as opposed to estimated or assumed) experience, unexpected circumstances, and specific services and levels of service determined by the Association. There is no guarantee, representation or warranty, either express or implied, by either the Developer or the County of the figures contained in the Fiscal Program, nor is the Maintenance Program represented or warranted as representative of the actual maintenance that will be required. No one to whom the precision of these figures or programs is of any consequence should enter a purchase agreement to acquire a Lot in the Neighborhood except with a full understanding of the purpose and nature of such materials.
- VII. **Amendments.** Notwithstanding any other provision of this Declaration relating to amendments, neither this Article nor any provision of this Declaration affecting this Article may be amended without the written consent of Athens County.

**EXHIBIT "C"**

**NOTICE TO BUYERS**

To the Purchasers of Lots in University Estates, Athens County, Ohio:  
YOU ARE HEREBY NOTIFIED that the purchase of your Lot is subject to:

1. The Declaration of Covenants, Conditions and Restrictions for University Estates, as amended (the "Declaration"), Public Records of Athens County, Ohio, as amended and supplemented from time to time, copies of which shall be provided upon execution of your contract to purchase.
2. Ownership of a Lot in said Neighborhood automatically makes you a member of University Estates Home Owners Association, Inc., and you are subject to its Bylaws and Regulations. Each Lot entitles its Owner to one vote in the affairs of the Association.
3. The Association has the right and power to assess and collect assessments, as provided in its Bylaws, for, among other things, the costs of maintenance and operation of the Common Property, which you have a right to enjoy, in accordance with said Restrictions, as well as Lot maintenance services which may be provided at the discretion of the Developer, and after the Turnover Date, of the Association. A copy of the proposed budget for the first year of operations is attached hereto.
4. The initial proposed annual assessment by the Association for the year running from 2005 through 2006 is as follows:

<u>Lot Type</u>	<u>Annual Amount</u>
Executive	\$ <u>175.00</u>
Family Lot	\$ _____
Single Family	\$ _____
Single Family	\$ _____
Patio Home	\$ _____

You are hereby notified that the Association may increase that amount as may be required to maintain the amenities of the Neighborhood. The Board may, in its discretion, require each Lot Owner who acquires his Lot directly from Developer to pay to the Association a one-time contribution (the "Capital Contribution") to be used by the Association solely for the payment of Association Expenses. The amount of the Capital Contribution shall be as determined by the Board, but shall not exceed the then applicable Annual Assessment.

5. All property within the Neighborhood is subject to the terms of the by laws, as said by laws may be amended from time to time. The Association will construct, operate and maintain certain improvements and facilities, including some within the Neighborhood and imposes (or will impose) taxes or assessments or both on property located therein. These taxes and/or assessments pay the debt service on the bonds and other costs associated with the construction, operation and maintenance of the improvements and facilities of the association and are set annually by the governing Board of the Association. These taxes and assessments are in addition to County and all other taxes and assessments provided for by law and the assessments provided for herein. Each Owner shall be responsible to pay the Association taxes and assessments as to the Lot(s) owned by such Owner.
6. The Owner of each Lot shall be responsible for the planting and maintenance of replacement trees on such Lot as required by Athens County or City ordinances or regulations set forth by the Association.
7. It shall be the responsibility of each Owner at the time of construction of a building, residence or structure, to comply with the requirements, if any, of the Athens City or County Public Works Department to have the ability to connect into any system for reclaimed effluent irrigation which may be installed in the future.

8.        Developer, and after the Turnover Date, the Association, in their discretion may elect that the Association provide from time to time certain Lot maintenance services, such as by way of example, mowing, fertilizing, yard pest control, tree trimming, landscape maintenance or other similar services ("Maintenance Services") for certain Lot Types. Developer, and after the Turnover Date, the Association, shall have the discretion of implementing such services on an optional or mandatory basis for each Lot Type for the services elected to be provided. Each Owner shall be obligated to pay its respective share of the monthly service charges and other costs and expenses of the Association in providing such Maintenance Services, which service charges, costs and expenses are hereby deemed to be Association Expenses, and which shall be assessed and collected from the Owners in accordance with the provisions of the Declaration. Such Maintenance Services shall be provided and may be discontinued at the discretion of the Developer, and after the Turnover Date, by the Association.

9.        The foregoing statements are only summary in nature and shall not be deemed to supersede or modify the provisions of the Declaration, or any Lot sales contract between Buyer and Developer.



**EXHIBIT "D"**  
**MAINTENANCE PROGRAM**

Supplied by Developer.

**EXHIBITS "E" and "F"**

**BUDGETS**

Projected First Year Budget and Projected Five (5) Year Budget to be completed by Developer. All budget figures, irrespective of any previous approvals, are subject to change from time to time. All budgets are estimates only and should not be relied upon as definitive figures for the purpose of establishing actual assessments.

**\$175.00 per year**

**Snow removal**

**Lawn and landscaping maintenance**

**Common area taxes**

**Lighting costs and maintenance**

**Other items deemed necessary by the Association Board**

EXHIBIT "G"



Instrument 200500007385 OR Book Page 388 2197

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT
04/01/2002	200208801936	DOMESTIC ARTICLES/FOR PROFIT (ARF)	125.00	100.00	.00	.00

Receipt  
This is not a bill. Please do not remit payment.

ESLOCKER & OREMUS CO. LPA  
16 WEST STATE ST.  
ATHENS, OH 45701

# STATE OF OHIO

Ohio Secretary of State, J. Kenneth Blackwell

1309331

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
**UNIVERSITY ESTATES HOMEOWNERS ASSOCIATION, INC.**  
and, that said business records show the filing and recording of:

Document(s)  
**DOMESTIC ARTICLES/FOR PROFIT**

Document No(s):  
**200208801936**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 29th day of March, A.D.  
2002.

*J. Kenneth Blackwell*  
Ohio Secretary of State



Prescribed by **J. Kenneth Blackwell**  
Ohio Secretary of State  
Central Ohio: (614) 466-3910  
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.state.oh.us/sos  
e-mail: b.ussery@sos.state.oh.us

Expedite this Form: (Select One)	
Mail Form to one of the Following:	
<input checked="" type="radio"/> Yes	PO Box 4380 Columbus, OH 43216
** Requires an additional fee of \$100 **	
<input type="radio"/> No	PO Box 570 Columbus, OH 43216

Instrument 200500007385 OR Book Page 388 2198

**INITIAL ARTICLES OF INCORPORATION**  
(For Domestic Profit or Non-Profit)  
Filing Fee \$125.00

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

(CHECK ONLY ONE (1) BOX)

<input checked="" type="checkbox"/> (1) Articles of Incorporation Profit (113-ARP) CRC 1721	<input type="checkbox"/> (2) Articles of Incorporation Non-Profit (114-ARN) CRC 1702	<input type="checkbox"/> (3) Articles of Incorporation Professional (170-APP) Profession _____ CRC 1785
---	--	---

Complete the general information in this section for the box checked above.

Name of Corporation UNIVERSITY ESTATES HOMEOWNERS ASSOCIATION, INC.

Location ATHENS ATHENS  
(City) (County)

Check here if additional provisions are attached

Complete the information in this section if box (2) or (3) is checked. Completing this section is optional if box (1) is checked.

Purpose for which corporation is formed

For the maintenance, preservation and management of the residential, commercial and professional properties and common areas within University Estates, a subdivision located in Athens County, Ohio and for such other purposes as authorized by law.

Complete the information in this section if box (1) or (3) is checked.

The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)

1500 Common No  
(No. of Shares) (Type) (Par Value)

(Refer to instructions if needed)

2007 MAR 29 11:2:09

Complete the information in this section if box (2) is checked.

The following are the names and addresses of the individuals who are to serve as Initial Directors. (optional)

(Name) \_\_\_\_\_  
 (Street) \_\_\_\_\_ NOTE: P.O. Box Addresses are NOT acceptable.  
 (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_

(Name) \_\_\_\_\_  
 (Street) \_\_\_\_\_ NOTE: P.O. Box Addresses are NOT acceptable.  
 (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_

(Name) \_\_\_\_\_  
 (Street) \_\_\_\_\_ NOTE: P.O. Box Addresses are NOT acceptable.  
 (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_

Must be authenticated by an authorized representative

Richard T. Conard  
Authorized Representative

3/28/02  
Date

Richard T. Conard  
Print Name

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

Complete the information in this section if box (1) (2) or (3) is checked.

ORIGINAL APPOINTMENT OF STATUTORY AGENT

University Estates Homeowners Association, Inc.

The undersigned, being at least a majority of the incorporators of hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is

Frederick L. Oremus

(Name)

16 W. State Street

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

Athens, Ohio 45701

(City)

(Zip Code)

Must be authenticated by an authorized representative

Richard T. Covert

Authorized Representative

3/28/02

Date

Authorized Representative

Date

Authorized Representative

Date

ACCEPTANCE OF APPOINTMENT

The Undersigned, Frederick L. Oremus, named herein as the

Statutory agent for, University Estates Homeowners Association, Inc., hereby acknowledges and accepts the appointment of statutory agent for said entity.

Signature: Frederick L. Oremus (Statutory Agent)

**BYLAWS  
OF  
UNIVERSITY ESTATES HOMEOWNERS ASSOCIATION, INC.  
A Corporation Not For Profit**

**ARTICLE I. IDENTIFICATION**

1.01 Identity: These are the Bylaws of University Estates HomeOwners Association, Inc., a corporation not for profit organized and existing under the laws of Ohio, hereinafter called "Association".

1.02 Purpose: The Association has been organized for the purpose of maintaining, preserving, and managing the Lots and common property within University Estates (the "Neighborhood"), a subdivision located in Athens, Ohio, same to be in accordance with the "Declaration of Covenants, Conditions and Restrictions for University Estates", herein called the "Covenants."

1.03 Office: The office of the Association shall be at University Estates Sales Office, until otherwise changed by the Board of Directors.

1.04 Fiscal Year: The fiscal year of the Association shall be the calendar year.

1.05 Seal: The seal of the corporation shall bear the name of the corporation, the word "Ohio", and the words "Corporation Not For Profit" and the year of incorporation.

**ARTICLE II. MEMBERS**

2.01 Qualification: The members of the Association shall consist of all of the record Owners of Lots in the Neighborhood which are subject to the Covenants, in accordance with the Covenants.

2.02 Change of Membership: Change of membership in the Association shall be established by the recording in the Public Records of Athens County, Ohio, of a deed or other instrument establishing a change of record title to a Lot in the Neighborhood. A copy of such instrument shall be delivered to the Association. Upon recording, the Owner established by such instrument of conveyance shall thereupon become a member of the Association and the membership of the prior Owner shall thereupon be terminated.

2.03 Multiple Owners: When a Lot is owned by more than one person, whether as co-tenants, joint tenants, tenants by the entirety or otherwise, each Owner shall be a member of the Association by virtue of being a record Owner of an interest in a Lot. Lessees of Lots shall not be members. All matters of voting shall, however, be determined on a Lot basis, as provided in Article III.

2.04 Restraint upon Assignment of Membership, Shares and Assets: The membership of an Owner, and the share of a member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner, except as an appurtenance to his Lot.

2.05 Evidence of Membership: There shall be no stock or membership certificates in the Association. Membership shall be determined by Ownership as herein provided.

**ARTICLE III. VOTING**

3.01 Voting Rights: The member or members who are the record Owners of each Lot in the Neighborhood shall be collectively entitled to one (1) vote for each such Lot, as provided in the Covenants and the Articles of Incorporation. Subject to Section 6.02 of the Declaration, if members own more than one Lot, they shall be entitled to one vote for each Lot owned. A Lot vote may not be divided. As provided in the Covenants, the Developer, together with any Partial Successor Developers, shall originally be entitled to three (3) votes for each

platted Lot upon recording of the Plat(s), notwithstanding the number of Lots owned by the Developer, such Successor Developer or Partial Successor Developers. The number of votes that the Developer Member is entitled to cast shall be decreased from time to time as provided in the Covenants and any amendments thereto, until such time as the Developer Member shall be deemed to be a regular member.

3.02 Voting Procedure: Subject to Section 6.02 of the Declaration, the single or multiple Owners of each Lot who are Regular Members shall have one vote for each Lot, and the Developer Member shall have the number of votes provided for in the Covenants. All determinations of requisite majorities and quorums for all purposes under the Covenants, the Articles of Incorporation and these Bylaws shall be made by reference to the number of votes, if any, to which the Developer Member is entitled. Decisions of the Association shall be made by a simple majority of votes entitled to be cast by members represented at a meeting at which a quorum is present, unless a greater percentage is required by the Covenants, the Articles of Incorporation, or these Bylaws.

3.03 Quorum: A quorum shall exist when members entitled to cast not less than twenty five percent (25%) of all votes are present, either in person, by designated voting representative or by proxy.

3.04 Designation of Voting Representative: The right to cast the vote attributable to each Lot shall be determined, established and limited pursuant to the provisions of this section:

- (a) Single Owner: If the Lot is owned by one natural person, that person shall be entitled to cast the vote for his Lot.
- (b) Multiple Owners: If a Lot is owned by more than one person, either as co-tenants or joint tenants, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record Owners and filed with the Secretary of the Association.
- (c) Life Estate with Remainder Interest: If a Lot is owned by a life tenant, with others owning the remainder interest, the life tenant shall be entitled to cast the vote for the Lot. If the life estate is owned by more than one person, the authority to vote shall be determined as herein otherwise provided for voting by persons owning a Lot in fee in the same manner as the life tenants own the life estate.
- (d) Corporations: If a Lot is owned by a corporation, the officers or employees thereof entitled to cast the vote for the Lot shall be designated by a certificate executed by an executive officer of the corporation and attested by the Secretary or an Assistant Secretary, and filed with the Secretary of the Association.
- (e) Partnership: If a Lot is owned by a general or limited partnership, the general partner entitled to cast the vote for the Lot shall be designated by certificate executed by all general partners and filed with the Secretary of the Association.
- (f) Trustees: If a Lot is owned by a trustee or trustees, such trustee or trustees shall be entitled to cast the vote for the Lot. Multiple trustees may designate a single trustee, or a beneficiary entitled to possession, and a single trustee may likewise designate such beneficiary as the person entitled to cast the vote for the Lot by a certificate executed by all trustees and filed with the Secretary of the Association.
- (g) Estates and Guardianships: If a Lot is subject to administration by a duly authorized and acting Personal Representative or Guardian of the property, then such Personal Representative or Guardian shall be entitled to cast the vote for such Lot upon filing with the Secretary of the Association a current certified copy of his Letters of Administration or Guardianship.
- (h) Tenants by the Entirety: If a Lot is owned by a husband and wife as tenants by the entirety, they may designate a voting member in the same manner as other multiple Owners. If no certificate designating a voting member is on file with the Association, and only one of the husband and wife is present at a meeting, he or she may cast the vote for their Lot without the concurrence of the



other Owner. If both spouses are present, they may jointly cast the vote for their Lot, but if they are unable to agree on the manner of casting such vote, they shall lose their right to vote on such matter, although the Lot may still be counted for purposes of a quorum.

- (i) Leases: If a Lot is leased, the Owner-Lessor shall be entitled to cast the vote for the Lot, except that the Owner may designate a lessee as the person entitled to cast the vote for the Lot by a certificate executed by all Owners and filed with the Secretary of the Association.
- (j) Certificate: Whenever a certificate designating a voting representative is permitted or required, such certificate shall, once filed, be valid until revoked. In the absence of a valid certificate, a Lot shall not be counted in determining a quorum unless all Owners required to execute such certificate are present, in person or by proxy, and such Lot Owners shall lose their vote on any particular matter unless they concur on the manner in which the vote of the Lot is to be cast on that matter.

3.05 Approval or Disapproval of Matters: Whenever the decision of a Lot Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Owner if at an Association meeting, unless the joinder of record owners is specifically required by the Covenants or these Bylaws.

3.06 Proxies: Votes may be cast in person or by proxy. A proxy shall be in writing and signed by the designated voting representative, or the Owner, if no voting representative has been designated. A proxy shall be valid only for the particular meeting designated in the proxy, and must be filed with the Secretary of the Association before the appointed time of the meeting or any adjournments thereof. A properly executed and delivered proxy may be revoked by a writing delivered to the Secretary prior to the appointed time of the meeting or any adjournments thereof, or by the attendance in person of the persons executing said proxy at any meeting or adjournment thereof. No one person may be designated to hold more than fifteen (15) proxies. In no event shall a proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given.

3.07 Method of Voting: Subject to the provisions of the Covenants, voting may be by roll call, voice vote or by written ballot; provided, however, that whenever written approval is required by the Covenants, or whenever any amendment to the Covenants is proposed, or when any borrowing of funds, pledge, or other disposition of common properties or assets is proposed, the voting shall be by written ballot. Routine matters such as approval of minutes, adjournment, acceptance of reports, parliamentary questions and social business may be determined by "Yeas" and "Nays" provided that any five (5) voting members, or the chairman, may require a roll call vote or vote by written ballot.

#### **ARTICLE IV. MEETINGS OF MEMBERS**

4.01 Annual Meeting: The annual meeting of the members shall be held during the month of November of each year on a day and at a time determined by the Board of Directors; provided that notice pursuant to Section 4.03 is given at least thirty (30) days prior to the date set for the annual meeting. The annual meeting shall be for the purpose of electing directors, and transacting any other business authorized to be transacted by the members. No annual meeting shall be held until such time as the regular members are entitled to elect a director pursuant to the provisions of the Covenants.

4.02 Special Meetings: Special meetings of the members shall be held whenever called by the President or Vice President, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from voting members entitled to cast not fewer than fifteen percent (15%) of the total number of votes.

4.03 Notice of Meetings: Notice of all meetings of the members, stating the time, place and subjects for which the meeting is called, shall be given by the President or Vice President or Secretary, unless waived in writing. All such notices shall be given in writing to each member's address, as it appears on the books of the Association; as the member may have otherwise directed in writing; or as it appears upon the instrument of

conveyance establishing the membership interest. The notice shall be mailed or delivered not fewer than ten (10) days, nor more than thirty (30) days, prior to the date of the meeting. A duplicate notice shall be furnished to the designated voting representative if such voting representative is not also an Owner. The notice for any meeting at which assessments against Lot Owners are to be considered shall contain a statement of the nature of such assessments and that such assessments will be considered. Proof of such mailing or delivery shall be given by an Affidavit of the person giving the notice. Notice of meetings may be waived in writing before, during or after meetings.

4.04 Place: Meetings of the Association members shall be held at such place in Athens County, Ohio, as the Board of Directors may designate in the Notice of Meeting.

4.05 Adjournments: If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

4.06 Order of Business: The order of business at annual meetings, and as far as practical at all special meetings, shall be:

- (a) Election of Chairman of the meeting (if necessary).
- (b) Calling of the roll and certifying of the proxies.
- (c) Proof of notice of the meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of officers.
- (f) Reports of committees.
- (g) Election of Directors.
- (h) Unfinished business.
- (i) New business.
- (j) Announcements.
- (k) Adjournment.

4.07 Action Without Meeting: Whenever the affirmative vote or approval of the members is required or permitted by the Covenants or these Bylaws, such action may be taken without a meeting if members entitled to cast not fewer than seventy five percent (75%) of the votes if such meeting were held, shall agree in writing that such action be taken and waive the necessity of such meeting. Provided, however, that if a greater percentage approval is required, then not less than such percentage must so agree in writing. Provided further that the Covenants, Articles of Incorporation and these Bylaws may not be amended without a meeting. Notice of the action so taken shall be given in writing to all members who did not approve such action in writing within ten (10) days of such approval.

4.08 Proviso: Provided, however, that until the Developer has terminated its control of the Association and its affairs in accordance with the Covenants, the proceedings of all meetings of the members of the Association shall have no effect unless approved by the Board of Directors, except for the rights of the Regular Members to elect Directors.

**ARTICLE V. DIRECTORS**

5.01 Number: The affairs of the Association shall be managed by a Board of not less than three (3) nor more than seven (7) Directors, the exact number to be determined by the members from time to time prior to the annual election of Directors. The Board of Directors shall at all times be comprised of an odd number of members. Until otherwise determined by the members, there shall be three (3) Directors.

5.02 Election of Directors: The election of Directors shall be conducted in the following manner:

- (a) Election of Directors shall be held at the annual meeting of the members. A nominating committee of not less than three (3) nor more than five (5) members may be appointed by the Board of Directors not less than thirty (30) days prior to the annual meeting of the members. The nominating committee shall nominate at least one (1) person for each Directorship. Other nominations may be made from the floor, and nominations for additional directorships, if any, created at the meeting shall be made from the floor.
- (b) The election shall be by ballots, unless dispensed with by unanimous consent, and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.
- (c) Any Director may be recalled and removed from office, with or without cause, by the vote or agreement in writing by a majority of all Lot Owners. A special meeting of the Lot Owners to recall a member or members of the Board may be called by ten percent (10%) of the Lot Owners giving notice of the meeting as required for a meeting of Lot Owners, and the notice shall state the purpose of the meeting. The vacancy in the Board of Directors so created shall be filled by vote of the members of the Association at the same meeting.
- (d) The Developer shall be vested with the power to designate the initial Board of Directors, the members of which need not be Owners of Lots. The initial Board of Directors shall serve until the first election of Directors. Any vacancies occurring prior to the first election shall be filled by the remaining Directors.
- (e) The first election of Directors shall be held when Developer Membership terminates.
- (f) When Developer Membership terminates and the Developer Member is deemed to be a Regular Member pursuant to the Covenants, then the Developer shall call a special meeting within sixty (60) days after such date, as provided in the Covenants. At such special meeting all Regular Members shall elect a Board of Directors, to serve until the next annual meeting. Thereafter, Directors shall be elected annually at the annual meeting.
- (g) Developer may waive its right to elect or designate any one or more Directors it otherwise has the right to designate under the Covenants and these Bylaws, which waiver shall, however, apply only to the specific election at which the waiver is made. If Developer does waive such right, the Regular Members shall elect the Board member or members who would otherwise have been elected or designated by Developer.

5.03 Term: Subject to the provisions of Section 5.02, the term of each Director's service shall extend to the next annual meeting of the members and thereafter until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.

5.04 Qualifications: All Directors shall be members of the Association; provided, however, that any Director elected or designated by Developer pursuant to these Bylaws need not be members. An officer of any corporate Owner and a general partner of any partnership Owner shall be deemed members for the purposes of qualifying for election to the Board of Directors.

5.05 Vacancies: Except as otherwise provided herein, if the office of any Director becomes vacant, whether by reason of death, resignation, retirement, disqualification, incapacity or otherwise, a majority of the remaining Directors shall select a successor, who shall hold the office for the unexpired term of the Director he is replacing. Vacancies following removal of office pursuant to Section 5.02(c) shall be filled as therein provided.

5.06 Disqualification and Resignation: Any Director may resign at any time by sending written notice to the Secretary of the Association. Such resignation shall take effect upon receipt by the Secretary, unless otherwise specified in the resignation. Any Director who must be a member of the Association shall be deemed to have resigned if he transfers his Lot so that he ceases to be a member of the Association. After the Developer Membership status has terminated pursuant to the Covenants, more than three (3) consecutive unexcused absences from regular Board meetings shall be deemed a resignation, which shall be effective upon acceptance by the Board.

5.07 Voting: All voting for the election of Directors shall be as provided in Article III hereof. Notwithstanding the foregoing, Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of Officers. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

5.08 Organization Meeting: The organization meeting of a newly elected Board of Directors shall be held within thirty (30) days of its election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary.

5.09 Regular Meetings: The Board may, from time to time, establish a schedule of regular meetings to be held at such time and place as the Board may designate. Any regular scheduled meetings may be dispensed with upon written concurrence of not less than two-thirds (2/3) of the members of the Board.

5.10 Special Meetings: Special Meetings of the Directors may be called by the President and must be called by the Secretary or an Assistant Secretary at the written request of one-third (1/3) of the Directors.

5.11 Notice:

- (a) To Directors: Notice of each regular or special meeting shall be given to each Director personally or by mail, telephone or telegraph at least three (3) days prior to the meeting date. All notices shall state the time and place of the meeting, and if a special meeting, the purposes thereof. Any Director may waive notice of a meeting before, during or after the meeting, and all such waivers shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall be deemed a waiver of notice by him.
- (b) To Members: Notices of all Board meetings, and meetings of any committee or similar body of the Board, shall be posted in a conspicuous place in the Neighborhood at least forty-eight (48) hours in advance of the meeting except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Neighborhood, notice shall be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. Notwithstanding the foregoing, in the event the number of Members is in excess of 100, a reasonable alternative to posting or mailing may be provided, including publication of notice or provision of a schedule of Board meetings. The notice for any meeting at which assessments against Lot Owners are to be considered shall contain a statement of the nature of such assessments and that such assessments will be considered. Proof of such posting, mailing or delivery shall be given by an Affidavit of the person giving the notice. Notice of meetings may be waived in writing before, during or after meetings.

5.12 Quorum: A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the act of the Board of Directors; except where approval of a greater number of Directors is required by the Covenants or these Bylaws.

5.13 Adjourned Meeting: If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

5.14 Joinder in Meeting by Approval of Minutes: The joinder of a Director in the action of a meeting, by signing and concurring in the minutes thereof shall constitute the concurrence of such Director for the purpose of determining requisite majorities on any action taken and reflected in such minutes or to create a quorum. Directors may join in minutes under this section only after an open meeting, for the purposes herein provided.

5.15 Meetings Open: Meetings of the Board of Directors shall be open to all members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would be otherwise be governed by the attorney/client privilege.

5.16 Presiding Officer: The presiding officer at Directors' meetings shall be the President. In the absence of the President, the Vice President shall preside. In the absence of both, the Directors shall designate one of their members to preside.

5.17 Directors' Fees: Directors shall not be entitled to receive Directors' fees, but may be reimbursed out of pocket expenses advanced by the Director.

5.18 Order of Business: The order of business of Directors' meetings shall be:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Reports of officers and committees.
- (e) Election of officers, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Announcements.
- (i) Adjournment.

#### **ARTICLE VI. POWERS AND DUTIES OF BOARD OF DIRECTORS**

The Board of Directors shall have all powers, authority, discretion and duties necessary for the administration of the Association and operation of the Neighborhood, except as may be reserved or granted to the Lot Owners, Developer or a specific committee or committees of the Association by the Covenants, Articles of Incorporation, or these Bylaws. The powers of the Board shall include, but shall not be limited to, the following:

6.01 General Powers: All powers specifically set forth in the Covenants, Articles of Incorporation and these Bylaws, and all powers incident thereto or reasonably to be inferred therefrom.

6.02 Enforcement: The Board of Directors shall, when deemed necessary by the Board, enforce by legal means, provisions of the Covenants, the Articles of Incorporation, the Bylaws and Rules and Regulations for the use of the Common Property.

6.03 Budget and Assessments: To adopt budgets and make assessments, and to use and expend assessments and other receipts of the Association to carry out the powers and duties of the Association pursuant to the Covenants and these Bylaws.

6.04 Employment: To employ, dismiss, control and contract for personnel and contractors for the administration of the Association, including but not limited to managers, maintenance personnel, attorneys, accountants and other professionals, by employment or contract, as the Board may determine.

6.05 Rules and Regulations: To adopt, amend and rescind reasonable rules and regulations relating to the administration of the Association and operation and use of any Common Property, subject to the Covenants and Bylaws. Provided, however, that any rules or regulations adopted by the Board may be supplemented, amended or rescinded by affirmative vote of the Owners of not less than two-thirds (2/3) of the Lots subject to the Covenants. Any such rules or regulations approved by the Owners shall not thereafter be amended or rescinded except upon affirmative vote of the Owners of not less than two-thirds (2/3) of the Lots in the Neighborhood subject to the Covenants.

6.06 Committees: To create and disband such committees as the Board may from time to time determine as reasonably necessary or useful in and about the administration of the Association, and to delegate such authority to such committees as may be reasonable in connection with their purpose, subject always to the provisions of the Covenants, Articles of Incorporation and Bylaws. All committees of the Association shall keep records and conduct meetings in the same manner, to the extent applicable, as is required of the Board of Directors.

#### **ARTICLE VII. OFFICERS**

7.01 Officers and Election: The officers of the Association shall be a President, who shall be a Director; a Vice President, who shall be a Director; a Treasurer, a Secretary and such other officers as may be determined from time to time by the Board, all of whom shall be elected annually by the Board of Directors, and who may be peremptorily removed by a majority vote of all Directors at any meeting. Any person may hold two offices except that the President shall not also be the Secretary or an Assistant Secretary. The Board of Directors shall designate the powers and duties of such other officers as it may create.

7.02 President: The President shall be the chief executive officer of the Association. The President shall have all of the powers and duties which are usually vested in the office of President of an Association; including but not limited to the power to appoint advisory committees from time to time, from among the members or others as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association. The President shall serve as Chairman at all Board and Membership meetings.

7.03 Vice President: The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President, and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

7.04 Secretary and Assistant Secretary: The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving and serving of all notice to the members and Directors. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association, as may be required by the Directors or the President. The Assistant Secretary, if such office is created, shall perform the duties of the Secretary, when the Secretary is absent. The minutes of all meetings of the members and the Board of Directors shall be kept in books available for inspection by members, or their authorized representatives, and Board members at any reasonable time. All such records shall be retained for not less than seven (7) years.

7.05 Treasurer: The Treasurer shall have the custody of all the property of the Association including funds, securities and evidences of indebtedness. The Treasurer shall keep the books of the Association in accordance with good accounting practices, and provide for collection of assessments, and perform all other duties incident to the office of Treasurer.

7.06 Compensation: The compensation of all officers and employees of the Association shall be fixed by the Directors. The provisions that Directors' fees shall be determined by members shall not preclude the Board of Directors from employing a Director as an employee of the Association, nor preclude contracting with a Director for the management services. No officer who is a designee of the Developer shall receive any compensation for his services.

7.07 Indemnification of Directors and Officers: Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which such Director or officer may be a party or in which such Director or officer may become involved by reason of being or having been a Director or officer of the Association, whether or not such Director or officer is a Director or officer at the time such expenses are incurred, except in such cases when the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of such Director's or officer's duties. The foregoing right of indemnification shall be in addition to and no exclusive of all other rights to which such Director or officer may be entitled.

7.08 Term: All officers shall hold office until their successors are chosen and qualify.

#### **ARTICLE VIII. FISCAL MANAGEMENT**

The provisions for fiscal management of the Association set forth in the Covenants shall be supplemented by the following provisions:

8.01 Accounting: Receipts and expenditures of the Association shall be credited and charged to Association accounts in accordance with generally accepted accounting principles consistently applied.

8.02 Budget: The Board of Directors shall adopt a budget for each calendar year which shall include the estimated funds required to defray the current expenses and funds for required reserves if deemed necessary by the Board. The budget may provide funds for specifically proposed and approved improvements.

8.03 Procedure: The Board of Directors shall adopt a budget in accordance with the Covenants.

8.04 Assessments: Regular annual assessments against a Lot Owner for such Owner's share of the items of the budget shall be made in advance on or before December 20 preceding the year for which the assessment is made. Such assessment shall be due either annually or, at the discretion of the Board, in two (2) semi-annual installments, which shall come due on the 1st day of January and July of the year for which the assessments are made. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and monthly payments thereon shall be due from the 1st day of each month until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget may be amended at any time by the Board and a supplementary assessment levied. The supplementary assessment shall be due on the 1st day of the month next following the month in which the supplementary assessment is made or as otherwise provided by the Board of Directors.

8.05 Acceleration of Assessments: Upon default in payment the Board may elect to accelerate remaining installments of any assessments in accordance with the Covenants.

8.06 Expenditures: All funds of the Association shall be expended only upon authorization of the Board of Directors. Approval of the budget shall be deemed authority to expend funds for the items and contingency funds within the budget. Funds derived from special assessments and funds in specifically designated reserves shall be expended solely for the purpose for which such assessment was made or reserve established. Contingency funds may be expended for any legitimate purpose by action of the Board.

8.07 Depository: The depository of the Association shall be in such bank or banks as shall be designated from time to time by the Directors, and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by appropriate

resolution of the Board of Directors. Funds of the Association may be co-mingled or kept in separate accounts, except as otherwise required by the Covenants.

8.08 Audit: After Developer transfers complete control of the Association, a report of the accounts of the Association shall be made annually by the Board, and a copy of the report shall be furnished to each member not later than April 1 of the year following the year for which the report is made.

8.09 Fidelity Bonds: Fidelity Bonds may be required by the Board of Directors from all persons handling or responsible for the Association's funds. The amounts of such bonds shall be determined by the Directors of the Association. The premiums on such bonds, if required by the Board, shall be paid by the Association as a common expense.

#### **ARTICLE IX. PARLIAMENTARY RULES**

Roberts Rules of Order, the latest edition, shall govern the conduct of the meetings of the Association, the Board of Directors and Committees of the Association when not in conflict with the Covenants, Articles of Incorporation or these Bylaws.

#### **ARTICLE X. AMENDMENT**

These Bylaws may be amended by the members of the Association at any regular or special meeting duly called for that purpose by the affirmative vote of an absolute majority of all votes entitled to be cast. Notwithstanding the foregoing, no amendment shall be made that is in conflict with the Covenants or the Articles of Incorporation, except as provided in said Covenants or Articles. Provided, however, that these Bylaws may be amended at any time by the Developer Members during the time that the Developer Members have and exercise the right to control the Association, provided that such amendment is not in conflict with the Covenants.

#### **ARTICLE XI. MISCELLANEOUS**

The provisions of these Bylaws shall be construed together with the Covenants and the Articles of Incorporation. In the event of a conflict between the provisions hereof and the provisions of the Covenants or Articles, the provisions of the Covenants or Articles shall control. Unless otherwise specifically provided, terms used herein shall have the meanings set forth in the Covenants. The provisions hereof shall be liberally construed to grant to the Association sufficient practical authority to implement its obligations and authorities under the Covenants. Whenever the context so requires, the use of any gender herein shall be deemed to include all genders, and the use of the plural shall include the singular and the singular shall include the plural.

The foregoing was adopted as the Bylaws of the Association at the first meeting of the Board of Directors on the \_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
an Ohio not for profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its:      President



**EXHIBIT "I"**

**BULK STANDARD SERVICE AND RIGHT OF ENTRY AGREEMENT**

See page 32 of this document. The bulk cable agreement is in development stage with Time Warner at the time of this printing and will be circulated when completed.

**Exhibit "J"**

**SOUTHEAST NATURAL GAS COMPANY DISCLOSURE STATEMENT**

Your natural gas service will be provided by Southeastern Natural Gas Company. A natural gas tap fee of \$750.00 has been included in the closing costs for your purchase of Lot number (s) \_\_\_\_\_ which is/(are) part of University Estates at 9200 Route 682 in Athens, Ohio. This fee covers the costs of the installation of facilities required for natural gas service to said property as follows: a natural gas tap, shut off valves, one hundred (100) feet of service line, meter riser, meter bar and regulator. Payment of Southeastern Natural Gas Company's portion of this fee will be placed in escrow until such time as natural gas facilities have been installed at your property which permits the provision of natural gas service.

Southeastern Natural Gas Company has a blanket right-of-way on your Lot for the express purpose of installation and maintenance of natural gas distribution facilities. This right-of-way is contained in a covenant in the deed for your Lot.

Acknowledgement:

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR UNIVERSITY ESTATES

5751938  
*WHEREAS*, the undersigned University Estates, Inc. is the Developer of University Estates, a planned mixed-use Planned Unit Development residential community; and

*WHEREAS*, Developer is a Developer Member of the University Estates Homeowners Association, Inc., an Ohio corporation (the "Association"); and

*WHEREAS*, Developer desires to amend the Declaration of Covenants, Conditions, and Restrictions for University Estates recorded in Volume 388, Page 2155, Athens County Official Records (the "Declaration"); and

*WHEREAS*, pursuant to Article 8.12 of the Declaration, during the time that Developer is a Developer Member of the Association, Developer has the right to amend the Declaration pursuant to the terms of said Article 8.12 thereof.

*NOW, THEREFORE*, Developer hereby amends the Declaration by adding the following:

**Non-Development Lots.** The purchaser of any lot in the University Estates subdivision to be used for residential purposes may be permitted to purchase an adjoining lot continuous and contiguous to the residential lot for the purpose of adding additional land but not for the purpose of building thereon. Said lots are defined as "Non-Development Lots." The home on the adjoining residential lot and any garage attached thereto may be permitted to encroach upon the Non-Development Lot. Non-Development Lots shall be subject to the following terms and conditions:

1. Homeowners association fees will be waived for Non-Development Lots, or any portion thereof, so long as the lots remain undeveloped. Non-Development Lots are eligible for the voting rights described in Article 3.03 of the Declaration.

2. The connection costs and fees referred to in Item 10 of the University Estates Builder Lot Sale and Purchase Agreement will be waived for Non-Development Lots upon initial purchase.

3. Non-Development Lots may be subdivided without negating any of the terms and conditions pertaining to Non-Development Lots so long as the portions of the Non-Development Lot so subdivided are owned continuously and contiguously with the adjoining residential lots. If a Non-Development Lot is subdivided, the party receiving the greater portion of the Non-Development Lot shall be the party entitled to the voting rights called for under these covenants.

4. Non-Development Lots shall be exempted from the Purchaser's Building Plans, Purchaser's Home Construction, the "Natural Gas", "Accessory Package", "Residential Use" and option of the Developer to repurchase provisions of the original Declarations and Home Owners Manual.

5. If a Non-Development Lot is later sold as a separate Lot for construction purposes, the new purchaser will be required to pay connection costs and fees for said Lot to the Developer. Non-Development Lots that are later developed under this paragraph will be responsible for Lot association and maintenance fees and shall be entitled to voting rights from the date that the Lot is conveyed as a stand alone parcel or construction begins on a stand alone structure located thereon. Any development on a Non-Development Lot will further subject the Lot to the Purchaser's Building Plans, Purchaser's Home Construction, the "Natural Gas", "Accessory Package" and "Residential Use" provisions of the original Declarations and Home Owners Manual.

6. Non-Development Lots will be maintained in an attractive and orderly manner and are specifically included under the purview of the Architectural Review Commission referenced in the Home Owners Manual.

This amendment shall be deemed an integral part of the Declaration and shall be incorporated therein, subject to the general provisions and duration thereof. All provisions of the original Declarations will remain in full force and effect unless specifically modified herein.

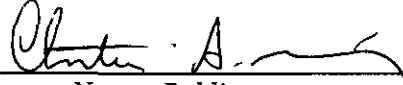
*EXECUTED* this 20<sup>th</sup> day of November, 2006.

UNIVERSITY ESTATES, INC.

By: Richard T. Conard  
Richard T. Conard, President

STATE OF OHIO:

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2006, by Richard T. Conard, President and duly authorized signatory of University Estates, Inc., an Ohio corporation, for and on behalf of the corporation.

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

My Commission Expires:  
(seal)



CHRISTIAN S. GERIG  
Notary Public, State of Ohio  
Commission Term, Ohio R.C. 147.03

Prepared by: Christian S. Gerig, Attorney at Law, Athens, Ohio

200600007864  
Filed for Record in  
ATHENS COUNTY, OHIO  
JULIA MICHAEL SCOTT  
11-21-2006 At 08:20 am.  
DECLARATION      32.00  
DR Book 404 Page 1982 - 1983

200600007864  
SECURE TITLE SERVICES  
ATHENS OH 45701