

WRENS CROSS DECLARATIONS

DR 303- 050

TABLE OF CONTENTS

	<u>PAGE</u>
PREAMBLE.....	1
ARTICLE I - DEFINITIONS:	
Section 1 Townhouse Association.....	2
Section 2 Wrens Cross Declaration.....	2
Section 3 Board.....	2
Section 4 Book of Resolutions.....	2
Section 5 Townhouse Common Area.....	2
Section 6 Common Area.....	2
Section 7 Declaration.....	2
Section 8 Developer.....	2
Section 9 First Mortgagee.....	3
Section 10 Founding Documents.....	3
Section 11 Governing Documents.....	3
Section 12 Living Unit.....	3
Section 13 Lot.....	3
Section 14 Members.....	3
Section 15 Notice.....	3
Section 16 Occupant.....	4
Section 17 Owner.....	4
Section 18 Person.....	4
Section 19 Properties.....	4
Section 20 Quorum of Members.....	4
Section 21 Quorum of Owners.....	4
ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO AND WITHDRAWALS THEREFROM.....	4
ARTICLE III - TOWNHOUSE ASSOCIATION:	
Section 1 The Townhouse Association.....	4
Section 2 Membership.....	5
Subsection A Basis.....	5
Subsection B Members Rights and Duties.....	5
Subsection C Voting Rights.....	5
Subsection (1) Class 1.....	5
Subsection (2) Class 2.....	6
Subsection (3) Class 3.....	6
Subsection D Exercise of Vote.....	6
Section 3 Board of Directors.....	6
Subsection A Number, Qualification and Election.....	6
Subsection B Authority of Board.....	7
Subsection C Duties.....	9
Subsection D Appeals to Decisions of Board of Directors.....	8
Subsection E Responsibility for Maintenance	8
ARTICLE IV - PROPERTY RIGHTS IN THE COMMON AREA OF TOWNHOUSE ASSOCIATION:	
Section 1 Obligation of the Townhouse Association.....	9

Section 2	Easement of Enjoyment of Common Area and Access to Common Area, Lots and Living Units.....	9
Section 3	Title to Common Areas.....	9
Section 4	Extent of Member's Easements..	9
Subsection A	.....	9
Subsection B	.....	10
Subsection C	.....	10
Subsection D	.....	10
Subsection E	.....	10
Subsection F	.....	10
Section 5	Extension of Privileges.....	10
ARTICLE V - COVENANTS FOR MAINTENANCE AND ASSESSMENTS:		
Section 1	Creation of the Lien and Personal Obligation of Assessments.....	10
Section 2	Association's Maintenance Responsibilities.....	11
Section 3	Annual Wrens Hollow Association Assessments.....	11
Subsection A	.....	11
Subsection A(1)	Purpose.....	11
Subsection A(2)	Basis for Assessment.....	12
Subsection B	Method of Assessment.....	13
Subsection C	.....	13
Section 4	Special Townhouse Association, Capital Improvement Assessment.....	13
Section 5	Effect of Nonpayment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association.....	14
Section 6	Subordination of the Lien to Mortgages.....	14
Section 7	Exempt Property.....	14
Subsection A	.....	14
Subsection B	.....	15
Subsection C	.....	15
ARTICLE VI: EASEMENTS:		
Section 1	Developer's Reservation of Easement.....	15
Section 2	Easement on Living Units.....	16
Subsection A	.....	16
Subsection B	.....	16
Section 3	Easement to Inspect.....	17
Section 4	Easement for Governmental Personell.....	17
Section 5	Party Wall Easements.....	17
Subsection A	.....	17
Subsection A(1)	.....	17
Subsection A(2)	.....	17
Subsection A(3)	.....	17
Subsection B	.....	17

OR 1303 - 051

Subsection B(1)	.....	17
Subsection B(2)	.....	17
Subsection B(3)	.....	18
Subsection C	.....	18
ARTICLE VII: COVENANTS AND RESTRICTIONS:		
Section 1	Intent.....	18
Section 2	Maintenance of Property.....	18
Section 3	Protective Covenants.....	18
Subsection A	Nuisances.....	18
Subsection B	Rules.....	19
Subsection B(1)	Trailers, Outbuildings, Etc., Prohibited.....	19
Subsection B(2)	Fences, Walls, Hedges, Etc....	19
Subsection B(3)	Protective Screening Areas....	19
Subsection B(4)	Poles, Wire, Antenna, Etc....	20
Subsection B(5)	Control of Domestic Animals...	20
Subsection B(6)	Signs.....	20
Subsection B(7)	Storage of Materials; Trash Handling.....	20
Subsection B(8)	Pipelines and Drilling and Reservations by Developer.....	21
Subsection B(9)	Home Industries or Professions Prohibited.....	21
Subsection B(10)	Air Conditioning Units.....	21
Subsection B(11)	Drying Clothes.....	22
Subsection B(12)	Manufacture or Sale of Liquor.	22
Subsection B(13)	Storage of Vehicles and Machinery.....	22
Subsection B(14)	Preservation of Wildlife; Fire- arms, Traps, Etc., Prohibited.	22
Subsection B(15)	Control of Trucks, Commercial Vehicles and Motorcycles.....	22
Subsection B(16)	Garage Doors.....	23
Subsection B(17)	Model Living Units.....	23
Subsection B(18)	Notice to Owner.....	23
Section 4	Resale of Living Unit.....	24
Subsection A	Reference to Declaration.....	24
Subsection B	Notification.....	24
Subsection C	Estoppel Certificate.....	25
ARTICLE VIII: GENERAL PROVISIONS:		
Section 1	Certain Rights of Developer...	25
Subsection A	.....	25
Subsection B	.....	25
Subsection C	.....	26
Subsection D	.....	26
Subsection E	.....	26
Subsection F	.....	26
Subsection G	.....	26
Subsection H	.....	26
Subsection I	.....	26
Section 2	Limitations.....	26
Section 3	Notices.....	26
Section 4	Enforcement.....	26

Section 5	Construction of the Provisions of the Governing Documents....	26
Section 6	Validity of Mortgages.....	27
Section 7	Governing Documents Binding on Grantees and Lessees.....	27
Section 8	Assignability.....	27
Section 9	Severability.....	28
Section 10	Violation or Breach of Restric- tions.....	28
Section 11	No Waiver.....	28
Section 12	No Condition Subsequent.....	28
Section 13	Injunctive Relief.....	28
Section 14	Nonliability of Developer.....	28
Section 15	Binding Effect.....	29
Section 16	Captions.....	29
Section 17	Variations in Pronouns.....	29
EXHIBIT A:		
EXHIBIT B:		

DECLARATION
OF WRENS CROSS #1 TOWNHOUSE ASSOCIATION

**THIS DECLARATION OF EASEMENTS, COVENANTS
AND RESTRICTIONS IS MADE THIS 25TH DAY
of June, 1989 BY
WRENS CROSS TOWNHOUSES, INC., DEVELOPER**

PREAMBLE

WHEREAS, The developer is the owner of the real property described in "Exhibit A" of this declaration and desires to create thereon a cluster association; and

WHEREAS, The developer desires that said cluster association be run in accordance with the terms of a certain Declaration of Easements, Covenants and Restrictions for Wrens Cross Community, Stow, Ohio, recorded in Vol. 6517, page 665, Summit County, Ohio, Records; and

WHEREAS, The developer further desires that the cluster association conform with the Planned Residential Development Ordinance of Stow, Ohio, as codified in Section 153.235, et seq., thereof; and

WHEREAS, The developer desires to provide for the preservation and enhancement of the property value, amenities and opportunities in said cluster association contributing to the personal and general health, safety and welfare of the member residents and for the maintenance of the land and improvements thereof, and to this end desires to subject the real property described in "Exhibit A", together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, and as previously set forth in the Declaration of Easements, Covenants and Restrictions for Wrens Cross Community, Stow, Ohio; and

WHEREAS, The developer desires to comply with all the terms of the Declaration of Easements, Covenants and Restrictions for Wrens Cross Community, Stow, Ohio; all terms and provisions of the declaration shall be constructed in a manner consistent with the Wrens Cross Community declaration. Any discrepancies or conflicts herein with the Wrens Cross Declaration shall be resolved in favor of the terms of the Wrens Cross Declaration; and

WHEREAS, To provide a means for meeting the purpose and intent herein set forth and the intent and requirements of the city of Stow, the developer has incorporated under the laws of the state of Ohio, such a cluster association hereinafter referred to as WRENS CROSS #1 TOWNHOUSE ASSOCIATION.

NOW, THEREFORE, The developer declares that the real property described on "Exhibit A", and such additions thereto as may hereafter be made, is and are and shall be transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth and those previously set forth in the Declaration of Easements, Covenants and Restrictions for Wrens Cross Community, Stow, Ohio, as recorded in Vol. 6517, page 665, Summit County, Ohio, Records.

AND FURTHER, The developer hereby delegates and assigns to the Wrens Cross #1 Townhouse Association the power of owning, maintaining and administering the community, properties and facilities and administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents.

ARTICLE I
DEFINITIONS

1. **TOWNHOUSE ASSOCIATION** shall mean and refer to the Wrens Cross #1 Townhouse Association and its successors and assigns.

2. **WRENS CROSS DECLARATION** shall mean the Declaration of Easements, Covenants and Restrictions for Wrens Cross Community, Stow, Ohio.

3. **BOARD** shall mean the board of directors of the association.

4. **BOOK OF RESOLUTIONS** shall mean and refer to the document containing the rules, regulations and policies of the association as they may, from time to time, be amended.

5. **TOWNHOUSE COMMON AREA** shall mean and refer to portions of the common area which are designated as "cluster common area" in the governing documents of the Wrens Cross Declaration and which are intended primarily for the use and enjoyment of members residing in such cluster.

6. **COMMON AREA** shall mean and refer to all real property and improvements thereon owned or leased by the Wrens Cross Service Association or over which the Wrens Cross Service Association has an easement for maintenance (excepting living units) for the use and enjoyment of the members.

7. **DECLARATION** shall mean and refer to the covenants, conditions and restrictions and all other provisions herein set forth in this entire document, as they may from time to time, be amended.

8. **DEVELOPER** shall mean and refer to Wrens Cross Townhouses, Inc., an Ohio corporation, and its successors and

assigns; provided, however, that no successor or assignee of the developer shall have any rights or obligations of the developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or unless such rights and obligations pass by operation of law. The rights and obligations set forth herein of the developer shall cease when the new living unit construction contemplated by the development plan is substantially completed or after seven (7) years have lapsed since the filing of the last supplementary declaration establishing a cluster, whichever shall sooner occur. In the event another, than the first developer, comes to stand in the same relation to the project as the first developer, that developer shall hold the same rights and obligations as would then have been held by the first developer; moreover, in the event that any lending institution of the developer would come to stand in the same relation to the project as the developer, then said lending institution shall hold the same rights and obligations as would then have been held by the developer.

9. **FIRST MORTGAGEE** shall mean and refer to an institutional lender who holds the first deed of trust on a lot or living unit and who has notified the association in writing of his holdings.

10. **FOUNDING DOCUMENTS** shall mean and refer to the articles of incorporation of the Townhouse Association, this declaration, supplementary declarations, Wrens Cross Declaration, see definition at Item 8, and the association bylaws, all as initially drawn by the developer and filed and recorded as the case may be, and all as may be duly amended from time to time.

11. **GOVERNING DOCUMENTS** shall mean and refer collectively and severally to the founding documents and the book of resolutions, as such may be amended from time to time.

12. **LIVING UNIT** shall mean and refer to any portion of a structure situated upon the properties and designed and intended for use and occupancy as a residence by a single family.

13. **LOT** shall mean and refer to an area of land under a living unit and shown on any recorded development plan of the properties or recorded subdivision map of the properties, with the exception of common area as hereinbefore defined.

14. **MEMBERS** shall mean and refer to members of the association, which shall consist of all owners and all occupants.

15. **NOTICE** shall mean and refer to: (i) written notice delivered personally or mailed to the last known address of the intended recipient, or (ii) notice published at least once each week for two (2) consecutive weeks in a newspaper having general circulation in Summit County, Ohio.

16. OCCUPANT shall mean and refer to an occupant of a living unit who is the owner or contract purchaser or lessee or sublessee who holds a written lease having an initial term of at least twelve (12) months.

17. OWNER shall mean and refer to the record holder of the fee simple title to any lot or living unit whether one or more persons or entities; and the term shall exclude those having such an interest merely as security for the performance of an obligation.

18. PERSON shall mean and refer to a natural person, corporation, partnership, limited partnership, trust and any other legal entity to which the law attributes the capacity of having rights and duties.

19. PROPERTIES shall mean and refer to all real property which is hereby subjected to the declaration.

20. QUORUM OF MEMBERS shall mean and refer to the representation by presence or proxy of members who hold sixty-six percent (66%) of the outstanding votes of each voting class.

21. QUORUM OF OWNERS shall mean and refer to the representation by presence or proxy of members who hold fifty-one percent (51%) of the outstanding Class 1 votes and the representation by presence or proxy of the Class 2 member so long as it shall exist.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS
THERE TO AND WITHDRAWALS THEREFROM**

The real property which is and shall be held, transferred, sold and conveyed and occupied subject to this declaration is located in the city of Stow, Summit County, Ohio, and is more particularly described on "Exhibit A" and represents the cluster association herein referred to as Wrens Cross #1 Townhouse Association and is a part of Planned Residential Development ("PRD") known as Wrens Cross.

**ARTICLE III
WRENS CROSS #1 TOWNHOUSE ASSOCIATION**

1. THE TOWNHOUSE ASSOCIATION. The Townhouse Association is a non-profit, non-stock corporation organized and existing under the laws of the state of Ohio and charged with the duties and vested with the powers prescribed by law and set forth in the governing documents, as such may be amended or otherwise changed or interpreted so as to be consistent with this declaration.

2. MEMBERSHIP.

A. BASIS. Each owner upon acquisition of the proper record title to a living unit shall automatically become a member of the association. Such membership shall terminate upon the sale or other disposition by such member of his living unit ownership, at which time the new owner of such living unit automatically shall become a member of the association. Membership shall be appurtenant to and may not be separated from ownership and/or occupancy of any living unit.

B. MEMBERS RIGHTS AND DUTIES. Members shall have all such rights and be burdened with such obligations as are set forth in this declaration, this association's articles of incorporation, bylaws and book of resolutions.

C. VOTING RIGHTS. The voting rights of this association shall be divided into three (3) classes and shall be entitled to the voting rights hereinafter (and in the articles of incorporation) set forth with respect to such classification. The three (3) classes of voting membership shall be Class 1, Class 2 and Class 3 and shall possess the following rights and obligations:

- (1) **CLASS 1** - Class 1 members shall all be owners with the exception of the developer. Class 1 members shall be entitled to one vote for each living unit which they hold the fee simple interest or interests. When more than one person holds such interest or interests in any living unit, all such votes shall be exercised as they among themselves determine but in no event shall more than one vote be cast with respect to any such living unit. Nothing in the governing documents limits Class 1 only to owners of living units which exist at the time of adoption of the articles of incorporation and bylaws of the association, but such Class 1 membership is hereby declared to include and to be extended to encompass all owners of living units in any present or future properties upon which the developer has imposed and filed a supplementary declaration granting membership rights in the association to owners of living units within said properties.

(2) **CLASS 2** - Class 2 members shall be the developer. The Class 2 member shall be entitled to five (5) votes for each living unit in which it holds the fee simple interest provided the Class 2 membership shall cease and become converted to Class 1 membership on the happening of the following events, whichever occurs earlier: (i) when (but not before January 1, 1995) the total votes outstanding with the Class 1 membership equal the total votes outstanding in the Class 2 membership; or (ii) on January 1, 1996. From and after the happening of these events, whichever occurs earlier, the Class 2 members shall be deemed to be a Class 1 member entitled to one vote for each living unit in which it holds a fee simple interest.

(3) **CLASS 3** - Class 3 members shall consist of all residents and occupants of living units when occupy same under a written lease with an owner, and who shall receive all the benefits of the association but shall not be entitled to vote on any matter brought before the members of the association except for the election of members to the board of directors.

D. **EXERCISE OF VOTE.** The vote for any membership which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted. Any person or entity qualifying as a member of more than one voting class may exercise these votes to which he or it is entitled for each such class of membership. If fewer than twenty-five percent (25%) of all Class 1 and Class 2 votes are in an election for any elected office, the board of directors may declare the results of such election invalid and may elect a member to fill such office.

3. **BOARD OF DIRECTORS.**

A. **NUMBER, QUALIFICATION AND ELECTION.** Until the first annual meeting of members of the Townhouse Association the board of directors shall consist

of three (3) persons appointed by the developer. None of such three (3) persons, or their replacements, need be members at the time of the first annual meeting of members of the association, which annual meeting shall be held no later than thirty (30) days following the date that: (i) fee simple title to twenty-three (23) living units has been transferred from the developer to an owner, and (ii) said twenty-three (23) units are occupied by an occupant, the three (3) persons serving as directors shall resign and thereafter the board of directors shall consist of five (5) persons, four (4) of whom shall be appointed by the Class 2 members and one of whom shall be elected by the Class 1 members. Thirty (30) days following the date that: (i) fee simple title to thirty (30) units has been transferred from the developer to an owner, and (ii) said thirty (30) units are occupied by an occupant, the five (5) persons serving as directors shall resign and thereafter the board of directors shall consist of five (5) persons, three (3) of whom shall be appointed by the Class 2 members and two (2) of whom shall be elected by the Class 1 members. Thirty (30) days following the date that: (i) fee simple title to thirty-five (35) living units has been transferred from the developer to an owner, and (ii) said thirty-five (35) living units are occupied by an occupant, then the five (5) persons serving as directors shall resign and thereafter the board of directors shall consist of five (5) persons all of whom shall be elected by the Class 1 members.

- B. **AUTHORITY OF BOARD.** Each owner hereby expressly and specifically constitutes and appoints the first board of directors of the association his true and lawful attorney to enter into employment and/or management contracts and/or other appropriate documents and/or instruments with respect to the use, enjoyment, care, operation and maintenance of the properties and the provisions of such employment and/or management contracts and/or other appropriate documents and/or instruments shall be binding upon each owner and its respective heirs, administrators, executors and assigns, and each owner hereby grants (and the transfer of title to his living unit to such respective owner shall be deemed a grant of) and irrevocable power of attorney to the first board of directors to execute and deliver the aforesaid employment and/or management contract and/or other appropriate documents and/or instruments with

respect to the community properties, as aforesaid, all as may be necessary to effectuate the foregoing, and each owner hereby confirms and ratifies said employment and/or management contract and/or other appropriate documents and/or instruments and agrees to be bound thereby.

C. DUTIES. The board of directors shall:

- (1) Fix the date of commencement and the amount of the assessment against each living unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time prepare a roster of the properties and assessments applicable thereto, which shall be kept at the office of the association and shall be open to inspection by any member.
- (2) Send written notice of any assessment to every member subject thereto.
- (3) Upon demand at any time, furnish to any member liable for said assessment, a certificate in writing, signed by an officer of the association, and setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

D. APPEALS TO DECISIONS OF BOARD OF DIRECTORS. Any member may appeal a decision of the board of directors to a special meeting of the members of the association upon the affirmative vote of seventy-five percent (75%) of the voting power of the members of the association.

E. RESPONSIBILITY FOR MAINTENANCE. Except as otherwise provided herein, or otherwise provided for in the Wrens Cross Declaration, the management, maintenance, replacement, repair, alteration and improvement of the properties shall be the responsibility of the association, and shall be conducted, operated and administered by the board of directors. The Townhouse Association may delegate all or any portion of its authority to discharge such responsibility to an agent. The board of directors shall have the power and authority to hire an agent for a period not to exceed two (2) years and to authorize said agent to enter into any contracts which are necessary for the comfort and convenience of the owners.

**ARTICLE IV
PROPERTY RIGHTS IN THE COMMON AREA
OF WRENS CROSS #1 TOWNHOUSE ASSOCIATION**

1. **OBLIGATION OF THE TOWNHOUSE ASSOCIATION.** The Townhouse Association shall maintain the entire Townhouse Association common area and any other property in the development which the Townhouse Association may, from time to time be the owner, in a clean, safe, neat, healthy and workable condition, and in good repair, and shall promptly make all necessary repairs and replacements, structural or nonstructural, ordinary as well as extraordinary, subject only to the provisions of the governing documents. The Townhouse Association shall provide equipment and supplies necessary for the maintenance and enjoyment of the common area and the recreational area and any of the property in the development which the Townhouse Association may own from time to time.

2. **EASEMENT OF ENJOYMENT OF COMMON AREA AND ACCESS TO COMMON AREA, LOTS AND LIVING UNITS.** All members and occupants shall have the right to enter upon the Townhouse Association common area, subject to the reasonable rules and regulations of the Townhouse Association in respect to lands submitted to cluster ownership and for the purpose of enjoyment of the Townhouse Association common area and for the purposes of ingress to and egress from the recreation and Townhouse Association common areas, and for the purpose of ingress to and egress from a lot and a living unit. Subject to the provisions of the governing documents, every member shall have the right and easement of enjoyment in the Townhouse Association common area and a blanket easement over the Townhouse Association common area for ingress to and egress from his lot and/or living unit and such easement shall be appurtenant to and shall pass with the title to every living unit.

3. **TITLE TO COMMON AREAS.** The developer may, at its sole discretion, retain the legal title to the Townhouse Association common area until ninety percent (90%) of the total number of living units constructed in the Townhouse Association, as described in "Exhibit B", have been occupied. At such time, or at such earlier time at the sole discretion of the developer, said developer shall convey fee simple title to the Townhouse Association common area to the Townhouse Association, subject to all mortgages on improvements, easements and restrictions of record, including those contained in the governing documents, and to taxes and assessments, both general taxes and special, which shall be assumed by the Townhouse Association.

4. **EXTENT OF MEMBER'S EASEMENTS.** The rights and easements of enjoyment created hereby shall be subject to the following:

- A. The right of the developer and of the Townhouse Association, in accordance with the governing

documents, to borrow money for the purpose of improving the Townhouse Association common area and in aid thereof, to mortgage all or any portion thereof; however, said Townhouse Association common area shall be free of the developer's mortgage at the time of conveyance to the Association.

- B. The right of the Townhouse Association to take such steps as are reasonable and necessary to protect the Townhouse Association common area against foreclosure.
- C. The right of the Townhouse Association to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and the right of the association to suspend the enjoyment rights of any members or any person to whom rights are extended pursuant to Paragraph 4 of this Article for any period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- D. The right of the Townhouse Association to limit the number of guests of members in or upon the Townhouse Association common area or any buildings or facilities located thereon.
- E. The right of the Townhouse Association to grant easements of rights-of-way to any public utility, public agency or governmental authority.
- F. The right granted for utility and sewer easements benefiting the properties and easements for lands along the roadways, highways and Townhouse Association common area serving the properties.

5. **EXTENSION OF PRIVILEGES.** A member's right of enjoyment in the Townhouse Association common area and the facilities located thereon shall extend automatically to all members of his immediate family residing on any portion of the properties. No guest shall be entitled to such right of enjoyment except as provided in rules and regulations promulgated by the Townhouse Association.

**ARTICLE V
COVENANTS FOR MAINTENANCE AND ASSESSMENTS**

1. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The developer, for each living unit owned by it within the properties, and each owner of any living unit within the properties by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance,

shall be deemed to covenant and agree to pay to the Townhouse Association such assessments to be fixed, established and collected from time to time as hereinafter provided. In addition, each owner agrees to maintain, repair and replace at his expense, all portions of the Townhouse Association common area which may be damaged or destroyed by reason of his willful or negligent act or neglect of himself or any other member of his household, or by the willful or negligent act and neglect of any invitee, licensee or guest of any such owner or member of his household. Such assessments, together with such interests thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and cost of collection thereof as provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. In case of co-ownership of any living unit, all such co-owners shall be jointly and severally liable. The developer further covenants for itself, its successors and assigns, that no contract will be made for the sale of any living unit and no deed conveying a living unit shall be delivered unless the same shall include provisions obligating the purchaser or grantee and his, her or its heirs, executors, administrators, successors and assigns to pay said assessments and create said charge and lien on said deed.

2. TOWNHOUSE ASSOCIATION'S MAINTENANCE RESPONSIBILITIES.
The Townhouse Association, in conjunction with the Wrens Cross Service Association, shall be responsible for keeping the properties, including the exterior of all living units and all improvements thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns; the pruning and replacing of dead trees and shrubbery; leaf raking; snow removal and street, parking lot and driveway repair; upkeep and repair of retention ponds, storm sewers, private water and sewer lines, etc.; and the painting and repair (or other appropriated external care) of all buildings and other improvements thereon, and in a manner and with such frequency as is consistent with good property management.

3. ANNUAL TOWNHOUSE ASSOCIATION ASSESSMENTS.

A. TOWNHOUSE ASSOCIATION ASSESSMENTS.

1. **PURPOSE.** The Townhouse Association assessment shall be used exclusively to promote the health, safety and welfare of the members and in particular, to improve, maintain and operate the Townhouse Association common areas and facilities, including funding of appropriate reserves for

future repair and replacement; and further, to improve and maintain all areas of the properties, including the exterior of all living units, as prescribed by the governing documents. Without limiting the generality of the foregoing, the Townhouse Association shall keep the properties and all improvements therein or thereon, including the exterior of all living units, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns; the pruning and replacing of dead trees and shrubbery; leaf raking, snow removal; and street, parking lot and driveway repair; upkeep and repair of retention ponds, storm sewers, private water and sewer lines, etc.; and the painting and repair (or other appropriate external care) of all buildings and other improvements thereon and in a manner and with such frequency as is consistent with good property management.

2. **BASIS FOR ASSESSMENT.** For Townhouse Association assessment purposes, there shall be three (3) classes of assessable units, all of which shall be assessed at a uniform rate within each class:

CLASS I: All living units which are or have been occupied by a single family shall be assessed at one hundred percent (100%) of the Townhouse Association assessment rate.

CLASS II: All living units for which an occupancy permit has been issued by the city of Stow, but which have never been occupied shall be assessed at twenty-five percent (25%) of the Townhouse Association assessment rate commencing ten (10) days after issuance of said permit.

CLASS III: All properties which are not otherwise assessable under Class I and Class II provisions, shall be assessed at ten percent (10%) of the Townhouse Association assessment rate, except that any property on which the developer or a builder is building units shall not be assessed; however, said developer or builder shall pay all maintenance costs for said units under construction until such time as an occupancy permit is issued for said unit.

B. **METHOD OF ASSESSMENT.** By a vote of two-thirds (2/3) of the board of directors, the board shall fix the Townhouse Association assessments at an amount that shall be sufficient to meet the obligations imposed by the governing documents, including any supplementary declaration. In the event the board fails to fix an assessment for any fiscal year, then each assessment established for the prior year shall automatically be continued until such time as the board acts. The Townhouse Association may change the basis of the annual general assessment prospectively for any period provided that any such change shall be approved by a fifty-one percent (51%) majority of the membership of the association voting at a duly convened meeting of the members.

C. The Townhouse Association assessment provided for herein shall commence on the first day of the month designated by the board of directors as the commencement date. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and such assessment shall thereafter be on a full calendar year basis. The board shall thereafter be on a full calendar year basis. The board of directors shall fix the amount of the Townhouse Association assessment at least thirty (30) days in advance of each annual assessment period and the due date for such assessment shall be established by the board of directors and each member shall pay one-twelfth (1/12) of his or its' Townhouse Association assessment each month commencing on the date designated by the board of directors to be the date of commencement. Separate due dates may be established by the board for Townhouse Association assessments as long as made thirty (30) days in advance thereof. Written notice of the Townhouse Association assessment shall be sent to every owner subject thereto. The association shall, upon demand at any time, furnish to any owner liable for such assessment, a certificate in writing signed by an officer of the association setting forth whether said assessment has been paid. A reasonable charge, as determined by the board of directors, may be made for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

4. **SPECIAL TOWNHOUSE ASSOCIATION ASSESSMENTS, CAPITAL IMPROVEMENT ASSESSMENT.** The association may levy, in any

assessment year, a special Townhouse Association assessment against assessable units, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of deferring, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the Townhouse Association 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 a quorum of owners.

5. **EFFECT OF NONPAYMENT OF ASSESSMENT: THE PERSONAL OBLIGATION OF THE OWNER: THE LIEN; REMEDIES OF THE ASSOCIATION.** If the general and/or special assessments are not paid by an owner on the date when due (being the dates specified in Paragraph 3(C) of this Article V), then such assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided thereupon become a continuing lien on all property of the owner upon which such assessments were levied, which lien shall bind such property in the name of the then owner, his heirs, devisees, personal representatives, successors and assigns, as the case may be. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation. In the event any assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the maximum rate provided for under Ohio law and the association may bring an action at law against the owner personally obligated to pay the same or certify the amount to the county auditor, for addition to the tax duplicate of said owner and in either case for foreclosure of the lien against the property and there shall be added to the amount of such assessments, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee, to be fixed by the court together with the costs of the action.

6. **SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of Townhouse Association and special assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereinafter placed upon the properties subject to assessment; provided however, that such subordination shall apply only to such assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the liens of any such subsequent assessments.

7. **EXEMPT PROPERTY.**

A. The following property subject to this declaration shall be exempted from the assessments, charges

and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (ii) all Townhouse Association common area as defined in Article I, Paragraph 8 of Wrens Cross Declaration and all Townhouse Association common areas; (iii) all properties exempted from taxation by the laws of the state of Ohio, upon the terms and to the extent of such legal exemption.

- B. All properties in the name of the developer until conveyed to an owner or leased to an occupant as defined herein. Any transfer to a person, firm, corporation or other entity merely for the purpose of changing the form of developer's ownership or for the purpose of holding said properties for sale or the construction of improvements thereon, shall not be deemed to be a transfer to an owner.
- C. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens as set forth in Article V.

ARTICLE VI EASEMENTS

1. **DEVELOPER'S RESERVATION OF EASEMENT.** All of the properties are subject to all easements and rights-of-way of record. Developer reserves unto itself the sole right to grant consents, rights, easements and rights-of-way for the construction, maintenance and operation of public utility facilities, electric, light, telephone and telegraph lines and conduits and gas, water and sanitary and storm sewer pipes, main and connections, downspouts, cable television antennas and cables and for any other public or quasi-public facility, service or function, whether above ground or under ground, in and upon any and all highways and streets, whether dedicated or not, now existing or hereafter established upon which any portion of the living units may now or hereafter front or abut. Developer reserves unto itself also the right to grant consents, easements and rights-of-way to, and to petition the gas, electric light, telephone, water, sewer and cable television companies or authorities for the extension of their respective service mains, connections, lines or cables, which in the opinion of developer, are necessary in the highways or streets, whether dedicated or not, upon which the living units shall front or abut, and the owners of any and all living units in the properties agree to and do hereby consent to and affirm all agreements that may be entered into between developer and the said gas, electric light, telephone, water sewer and/or cable television companies or authorities with respect thereto.

Developer reserves unto itself, and its successors and assigns, permanent easements and rights-of-way in, over, under and across the properties as shown by any recorded easements granted to the above-mentioned "companies" as evidenced by said recordations in the Summit County Records. Developer further reserves unto itself, its successors and assigns, the exclusive right, so long as Developer owns any part of the properties, and thereafter Developer reserves to the association so long as it continues in existence, to grant and/or assign the full and complete use of said easements and rights-of-way and further reserves the right to grant additional easements for use by similar facilities upon such terms and conditions consistent therewith and incidental thereto as developer and/or the association, as the case may be, may agree, to any and all persons, firms, corporations or authorities furnishing any one or more of the aforesaid facilities. In the event the association shall cease to exist, the right to so grant and/or assign the use of said easements and rights-of-way shall be exercised by the city of Stow.

2. **EASEMENT ON LIVING UNITS.** A blanket easement and right-of-way is hereby expressly reserved to developer, its successors and assigns, in, on, over and under the living units, lots and properties for the following purposes:

- A. For the erection, installation, construction and maintenance of: (i) poles, wires, lines and conduits, and the necessary or proper attachments in connection with the transmission of electricity, telephone community antenna television cables and other utilities and other similar facilities; and (ii) storm water drains, ditches and swales, catch basins, public and private sanitary and storm sewers, pipelines and lines supplying gas, and water, and for any other public or quasi-public utility facility, service or function, whether above ground or under ground.
- B. For slope control purposes, including the right to grade, rip rap and plan slopes and prevent the doing of an activity which might interfere with slope ratios approved by developer, its successors and assigns, or which might create erosion or sliding problems, or change, obstruct or retard drainage flow. Developer and its respective agents, successors and assigns, shall have right to enter upon all or part of the easement area of the properties for any of the purposes for which said easements and rights-of-way are reserved. Developer shall also have the right at any time of, or after grading any street, or any part thereof, to enter upon any of the properties and grade that portion of such properties adjacent to such street to a slope of two-to-one or less, if

developer deems necessary for the betterment of the development, but there shall be no obligation of developer to do such grading or to maintain the slope after the work is completed. Developer, and its respective agents, successors and assigns, shall have the right to enter upon all parts of the retention basin area for the purpose of repairing, maintaining, correcting or changing, from time to time, or desilting from time to time, said retention basin.

3. **EASEMENT TO INSPECT.** The Townhouse Association, upon reasonable notice, has the right to enter on the properties and the living units to ascertain the extent of compliance with the governing documents and to correct any default, if necessary.

4. **EASEMENT FOR GOVERNMENTAL PERSONNEL.** All necessary public officials, including police, fire, rescue and other personnel, shall have a right of entry to the properties and the living units for emergency purposes.

5. **PARTY WALL EASEMENTS.**

A. All parties to an abutting common wall shall have an easement for use of the common wall for the following purposes:

- (1) erection and support of his or her own building;
- (2) constructing, erecting, maintaining or repairing an external wall of property owner; and
- (3) any purpose in the enjoyment of his or her own property so long as such use shall not interfere with adjoining property owner's use and enjoyment of his or her property.

B. All property owners to an abutting common wall shall have an easement onto adjoining property owner's property for the purposes of:

- (1) excavating or performing other work necessary for construction or repair of party or wall or building;
- (2) placement of the party wall, it being the intention that one half of the thickness of the wall shall be on each adjoining owner's property; and

(3) in the event of minor construction errors, settlement or shifting of either adjoining property owner's structure, the party wall should encroach further onto the adjoining property owner's property an easement shall be established for the benefit of the encroaching property owner to the extent of the encroachment.

C. All property owners shall have the obligation to repair or reconstruct all common walls if damaged or destroyed by any cause. Expense of repair shall be borne equally by the adjoining property owners. All walls attached to a common wall that are damaged or destroyed shall be repaired at the property owner's sole expense.

ARTICLE VII COVENANTS AND RESTRICTIONS

1. **INTENT.** The intent of the governing documents is to cause the properties, within the development, to be kept and maintained as a quality, residential development. Therefore, the covenants and restrictions hereinafter provided shall be applicable to the owners, tenants and occupants of the development. The following covenants and restrictions shall be broadly construed and interpreted in furtherance of this intent.

2. **MAINTENANCE OF PROPERTY.** Each owner, occupant and tenant and the Townhouse Association shall keep and maintain all land in the development owned, leased to or controlled by such person and all improvements, buildings and structures therein or thereon, in a clean and safe condition and in good order and repair, including but not limited to, the seeding, watering and mowing of all lands; the pruning and cutting of all trees, shrubbery and grass; the painting (or other appropriate external care) of all buildings, structures and other improvements located thereon and the absence of conditions constituting violations of applicable building, fire and health codes, all in a manner and with such frequency as is consistent with good property management. In furtherance of this covenant, the Townhouse Association has recognized a management contract between the Wrens Cross Service Association and Wrens Cross #1 Townhouse Association.

3. **PROTECTIVE COVENANTS.**

A. **NUISANCES.** No noxious or offensive activity shall be allowed to occur on any portion of the properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the development. Exterior lighting shall be in

accordance with the rules and regulations of the architectural review board.

- B. **RULES.** The Townhouse Association shall have the authority to regulate a variety of areas, including parking, storage (of vehicles and other items), signs, animals, trash and other matters, some of which are hereinafter stated, and which rules may be modified, revoked or amended in accordance with the governing documents.
- (1) **TRAILERS, OUTBUILDINGS, ETC., PROHIBITED.** No structure or vehicle of a temporary character, including without limitation, trailers of any kind, ski mobiles, garage, building, basement, shed, shop, tent, shack, barn or other outbuilding, boats or recreational vehicles, shall be erected, placed or suffered to remain on any of the properties. No such temporary building or structure, nor any trailer of any kind, basement, tent, shack, garage, barn or other building, shall be used on any of the properties at any time as a residence, either temporary or permanent, nor shall any residence of a temporary character be permitted on any of the properties.
- (2) **FENCES, WALLS, HEDGES, ETC.** No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic; nor shall any fence or wall of any kind be erected, begun or permitted to remain upon any portion of the properties, other than as set forth in the final development plan, unless approved by the architectural review board.
- (3) **PROTECTIVE SCREENING AREAS.** Where protective screening areas, screen planting, fences or walls are shown on the attached plan, or any subsequent plan, the same shall be maintained by the association for the protection of any adjacent properties. No building or structure, except such planting, fence or wall shall be placed or permitted to remain in such area. No vehicular access shall be permitted over such area except for the purpose of installation and maintenance of screening, utilities and drainage facilities, if any.

- (4) **POLES, WIRE, ANTENNAS, ETC.** No facilities, including poles and wires and ham radio antennas or similar use or type antennas, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any of the properties or living units. External or outside antennas of any kind shall be prohibited. Easement for the installations and maintenance of underground utilities, supply and transmission lines and drainage facilities are reserved to the developer through all areas shown on the attached plan or any subsequent plan, whether within the boundaries of the properties, including the Townhouse Association common areas. Such easements shall include the right of ingress and egress, provided that any damage resulting from the installation, maintenance or repair of an underground utility, supply or transmission line or drainage facility shall be promptly repaired and replaced at the expense of the corporation or authority which directed the entry.
- (5) **CONTROL OF DOMESTIC ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any properties, except where indicated on the attached plan or subsequent plan. Dogs, cats and other household pets may be kept provided they are not raised, bred or kept for any commercial purpose, and do not violate any rules or regulations regarding the size and maintenance of pets which the architectural review board may promulgate.
- (6) **SIGNS.** No sign or other advertising device of any nature shall be placed upon any of the properties as provided herein. The developer or the architectural review board may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed.
- (7) **STORAGE OF MATERIALS; TRASH HANDLING.** No lumber, metals, bulk materials, refuse or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of wood in a fireplace), kept, stored or allowed to accumulate on any of the properties, except building materials during

OR 303 - 073

the course of construction of any approved building. No firewood shall be stored in front of or in sight of any living unit on the properties. Trash or other refuse is to be disposed of by being placed in the open on the day that a pick-up is to be made, at such place on the properties so as to provide access to persons making such pick-up. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The architectural review board, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the properties.

- (8) **PIPELINES AND DRILLING AND RESERVATION BY DEVELOPER OF HYDROCARBON RIGHTS.** No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any of the properties above the surface of the ground, except hoses and moveable pipes for irrigation purposes. Notwithstanding the foregoing, the Developer expressly reserves any and all hydrocarbon rights and all rights incidental thereto, for the purpose of exploring for and removing oil and gas from said property. It is expressly understood that such exploration has to occur before fifty percent (50%) of the herein units are built and any above-surface wells and equipment have to be completed and landscaped in accordance with the rules and regulations as set forth by the state of Ohio and the city of Stow; notwithstanding the foregoing, the developer shall not be prohibited from utilizing the hydrocarbon rights reserved hereunder in conjunction with other land, whether owned by the developer or others, in unitizing a drilling unit or units provided that said drilling is not performed on any of the properties.

- * (9) **HOME INDUSTRIES OR PROFESSIONS PROHIBITED.** No profession or home industry or religious or educational enterprise shall be conducted in or on any part of the properties.

- * (10) ^{No} **AIR CONDITIONING UNITS.** In any structure in which central air conditioning service is available, no individual, window or

through-the-wall air conditioning units shall be permitted.

- (11) **DRYING CLOTHES.** No clothing, laundry or wash shall be aired or dried on any portion of the properties in an area exposed to view from any other portion of the properties.
- (12) **MANUFACTURE OR SALE OF LIQUOR.** No spiritous, vinous or fermented liquors shall be manufactured or sold either at wholesale or retail, upon any of the properties.
- (13) **STORAGE OF VEHICLES AND MACHINERY.** No automobile or vehicle of any kind, licensed or unlicensed, shall be stored on any public or private right-of-way, driveway or anywhere else in or upon any portion of the properties. Vehicles are to be housed in the confines of the garages provided theretofore and the areas designated on the final development plan and any amended final development plans. No machinery of any kind shall be placed or operated upon any of the properties except such machinery which is customarily required for the maintenance of the properties and such machinery shall be stored out of sight of adjoining properties, provided that this provision shall not apply during the construction, reconstruction or repair of any building on any of the properties. Without limiting the generality of the foregoing, no owner or tenants shall use the garages of the respective living units for storage of personal property in such a manner that would not allow sufficient space within said garages for the storage of said owner's or tenant's automobile. The above, however, is not meant to be construed as to prohibit an occupant from parking a second automobile used daily, in an authorized parking spot close to his living unit.
- (14) **PRESERVATION OF WILDLIFE; FIREARMS, TRAPS, ETC., PROHIBITED.** Firearms of any kind shall not be discharged, nor shall any traps or snares be set, nor shall any hunting or poisoning of wildlife of any kind be permitted in or on the properties.
- (15) **CONTROL OF TRUCKS, COMMERCIAL VEHICLES AND MOTORCYCLES.** No trucks, commercial vehicles,

road machinery nor excavating equipment shall be permitted to remain on any of the properties or on the public right-of-way adjoining said properties for any period of time whatsoever, except while making deliveries, or performing services thereon. Motorcycles shall be stored in garages.

- 7
- (16) **GARAGE DOORS.** All garage doors have and will be provided with openers and at no time shall doors be left open. The architectural review board shall prepare rules and regulations and set penalties for any owner not complying with this restriction.
 - (17) **MODEL LIVING UNITS.** All else herein notwithstanding, with written approval of the architectural review board, any living unit on the properties may be used for a sales model for the purpose of selling units during the development and building period.
 - (18) **NOTICE TO OWNER.** If the architectural review board, after giving reasonable notice to the owner, occupant or tenant of the living unit involved and reasonable opportunity for such owner to be heard, determined by the affirmative vote of three-fourths (3/4) of the members that a breach of any protective covenant, as set forth in this article, has occurred and that it is necessary in order to prevent material deterioration of the development property values, that the architectural review board correct such breach, then, after giving such owner notice of such determination by certified mail, the architectural review board, through its duly authorized agents or employees, shall enter upon the living unit involved (but not into any living unit) and correct such breach of covenant by reasonable means. The cost of such correction of a breach of covenant under this article shall be assessed against said living unit and shall be the obligation of the owner, which obligation shall be immediately due and payable, and in all respects as provided in Article III, Paragraph C, subparagraph 5 hereof. Any owner, occupant or tenant of a living unit affected by such a determination of the architectural review board to correct a breach of covenant pursuant to this section may, within ten (10) days after the date of

the mailing of the certified mail notice of such determination, appeal such determination to the membership by sending a notice of appeal to the architectural review board by registered or certified mail at the address of such architectural review board at the time of such mailing. No action shall be taken or authorized by the architectural review board pursuant to any such determination until after seven (7) days have elapsed from the date the certified mail notice to the owner, occupant or tenant of a living unit involved was mailed, and, if notice of appeal has not been received by the architectural review board within such seven-day period, then the architectural review board may take or authorize the taking of action pursuant to such determination; but if within such period, such notice of appeal has been received, or if after such period, but before the taking of such action, a notice of appeal is received which has been mailed within such seven-day period, then no action shall be taken pursuant to such determination until such determination has been confirmed at a meeting of the architectural review board by the affirmative vote of a majority of the members of the architectural review board.

4. RESALE OF LIVING UNIT.

- A. REFERENCE TO DECLARATION.** Each owner, upon the sale or transfer of his living unit, shall refer, in the deed of conveyance, to this declaration and the Wrens Cross Declaration and to the governing documents. Such reference shall be by volume and page of recording with the Summit County Recorder in order to place the transferee on notice of the existence of said governing documents and declaration.
- B. NOTIFICATION.** It shall be the duty of each owner or occupant residing in a living unit to register with the secretary of the association in writing, the following:
(i) the name and address of such owner or occupant; (ii) the nature and satisfactory evidence of such owner's or occupant's interest or estate in living unit; (iii) the addresses at which such owner or occupant desires to receive notice, if entitled to

OR 303 - 077

such notice, of any duly called meeting of the association; (iv) the name and address of the first mortgagee, if any, of the living unit owned by said owner; and (v) the name of the owner or occupant, if there is more than one owner or occupant, who shall be authorized to cast a vote with respect to such living unit owned by such owner. If an owner or occupant does not register as provided in this paragraph, the association shall be under no duty to recognize the rights of such person hereunder, and shall not recognize such person's right to vote as provided herein, but such failure to register shall not relieve an owner or occupant of any obligation, covenant or restriction under this declaration or the governing documents. If there is more than one owner or occupant of a unit, each must execute the registration as provided in this paragraph.

- C. **ESTOPPEL CERTIFICATE.** The board of directors thereupon shall prepare an estoppel certificate which shall set forth any assessments and charges due upon such living unit at the time of conveyance and certify to whether or not there are violations of the governing documents remaining on the living unit as of the date of preparation of such certificate. This certificate shall be delivered to the place of closing, and outstanding assessments, if any, and reasonable charge to cover the cost providing such certificate, shall be deducted from the seller's account at the closing and transmitted directly to the Townhouse Association.

**ARTICLE VIII
GENERAL PROVISIONS**

1. **CERTAIN RIGHTS OF DEVELOPER.** For such time as the developer shall own real estate in the development, it's rights and interests shall not be prejudiced by any of the following actions, unless it shall, in writing, join in such actions. There shall be no amendments to the governing documents, which:

- A. Discriminate or tend to discriminate against its rights as an owner.
- B. Change Article I, Definitions, in a manner which alters it's rights or status.

- C. Alter the character and rights of membership or rights of the developer as set forth in Article III.
- D. Alter previously recorded or written agreements with public or quasi-public agencies as recorded easements and rights-of-way.
- E. Deny the right to convey Townhouse Association common areas to the Townhouse Association so long as such Townhouse Association common areas lie within the land area represented in the development plan.
- F. Alter the basis for assessments.
- G. Alter the provisions of the protective covenants as set forth in Article VII.
- H. Alter the number of selection of directors as established in the governing documents.
- I. Alter the developer's rights as they appear under this Article.

2. **LIMITATIONS.** As long as the developer has an interest in developing the properties as defined in Article I hereof, the association may not use its financial resources to defray any cost of opposing the development activities so long as they remain consistent with the general intents of the development plan. Nothing in this section shall be construed to limit the rights of members to act as individuals or in affiliation with other members or groups.

3. **NOTICES.** Any notice required to be sent to any member or owner under the provisions of this declaration, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or owner on the records of the Townhouse Association at the time of such mailing.

4. **ENFORCEMENT.** Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by the covenants in this declaration; and failure by the association or any owner to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the same.

5. **CONSTRUCTION OF THE PROVISIONS OF THE GOVERNING DOCUMENTS.** The Townhouse Association and the developer, where

OR 303 - 079

specifically authorized herein to act, shall have the right to construe and interpret the provisions of the governing documents, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefits bound by the provision hereof. Any conflict between any construction or interpretation of the Townhouse Association or the developer and that of any other person or entity entitled to enforce the provisions hereof, shall be resolved in favor of the construction or interpretation of the Townhouse Association or the developer.

The Townhouse Association and the developer to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this declaration. In so adopting and promulgating such rules and regulations, and in making any findings, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorization, approvals, rules or regulations, the Townhouse Association and the developer shall take into consideration the best interest of the owners and residents and the properties, to the end that the properties shall be preserved and maintained as a high quality community.

In granting any permit, authorization or approval as herein provided, the Townhouse Association and the developer may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph thereof.

6. **VALIDITY OF MORTGAGES.** No violation of any of this declaration shall defeat or render invalid the lien of any mortgagee made in good faith and for value upon any portion of the properties; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagee's foreclosure sale shall be bound by and subject to this declaration as fully as any other owner of any portion of the properties.

7. **GOVERNING DOCUMENTS BINDING ON GRANTEES AND LESSEES.** Each grantee accepting a deed, lease or other instrument conveying any interest in any living unit, whether or not the same incorporates or refers to this declaration, covenants for himself, his heirs, personal representatives, successors and assigns, to observe, perform and be bound by this declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

8. **ASSIGNABILITY.** The developer, it's successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer,

convey and assign all of it's right, title and interest under this declaration, provided that such transferee, grantee or assignee shall take such rights subject to all obligations also contained herein.

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

10. **VIOLATION OR BREACH OF RESTRICTIONS.** Violation or breach of any covenant and restriction herein contained, shall not be deemed to affect or limit the rights of the owners of any living unit or any other parcel of land within the properties to enforce the covenants and restrictions by appropriate judicial proceedings.

11. **NO WAIVER.** The failure of developer, the Townhouse Association or the owner of any living unit or any other parcel of land included in the properties, their respective legal representatives, heirs, successors and assigns, to enforce any covenant and restriction herein contained, shall in no event be considered a waiver of the right to do so, thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

12. **NO CONDITION SUBSEQUENT.** No covenant and restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.

13. **INJUNCTIVE RELIEF.** Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, any person or entity entitled to enforce any provisions hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

14. **NONLIABILITY OF DEVELOPER.** Neither developer, nor it's representatives, successors or assigns, nor any of developer's agents, shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this declaration or in developer's (or it's representative's or agent's) capacity as developer, contractor, owner, manager or seller of any condominium or cooperative properties, if any, whether or not such claim: (i) shall be asserted by any owner, occupant, the Townhouse Association or by any person or entity claiming through any of them; or (ii) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (iii) shall arise ex contractu or (except in the case of gross negligence) ex delictu. Without limiting the generality of the foregoing, the foregoing enumerations include all claims for, or arising by reason of, the living units, and/or the common

OR 303 - 081

properties or any part thereof, being or becoming out of repair, or containing any patent or latent defects, or by reason of any act or neglect of any owner, occupant or the association and their respective agents, employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the living units, and/or the common properties or by reason of the failure to function or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.).

15. **BINDING EFFECT.** Each grantee accepting a deed, lease or other instrument conveying any interest in any living unit, whether or not the same incorporates or refers to this declaration, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by this declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of this interest in any real property subject hereto.

16. **CAPTIONS.** The headings of the articles herein are for convenience only and shall not affect the meanings or interpretation of the contents hereof.

17. **VARIATIONS IN PRONOUNS.** Words in the singular number shall include the plural. Words in the masculine gender shall include the feminine and vice versa when the context in which such words are used indicate that such is the intent. Words in the singular followed by a plural suffix are to be read as singular or plural, depending on the situation under the agreement at the time of reading.

IN WITNESS WHEREOF, the Developer has hereunto set it's hand at CANAL FULTON, Ohio, this 25TH day of JULY, 1989.

IN THE PRESENCE OF:

[Signature]
[Signature]

WRENS CROSS TOWNHOUSES, INC.

BY [Signature] Pres.
BY [Signature]

STATE OF OHIO, STARK COUNTY, SS:

The foregoing instrument was acknowledged before me this 25TH day of JULY 1989, by WRENS CROSS TOWNHOUSES, INC., an Ohio Corporation, by DONALD J. SCHALMO, its