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DECLARATION OF RIGHTS AND RESTRICTIONS

As To MARBLE CLIFF VILLAS
A Subdivision in Sylvania Township,
Lucas County, Ohio

WHEREAS, KING CONDO, L.L.C., an Ohio Limited Liability Company, (hereinafter referred to as "Developer") is the owner in fee simple of all of the property constituting Marble Cliff Villas, a Subdivision in Sylvania Township, Lucas County, Ohio, as per plat thereof recorded at Volume 244, Page 890, of the Lucas County, Ohio Record of Plats ("Marble Cliff Villas");

WHEREAS, the property constituting Marble Cliff Villas is described on Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, common lots A and B, shown on Marble Cliff Villas shall be hereinafter referred to as "Common Lots";

WHEREAS, lots nos. 1-24, inclusive, in Marble Cliff Villas shall be hereinafter referred to as "residential lots", which residential lots have been planned and are being developed and improved as a zero lot line development;

WHEREAS, Developer desires to establish a general plan for the development, improvement and use of the Property as a first-class, high quality subdivision, and to establish restrictions upon the manner of use, improvement and enjoyment of the Property which will make the zero lot line residential lots more attractive for residential purposes and will protect present and future owners of the residential lots in their use and enjoyment thereof for residential purposes;

WHEREAS, Developer has reserved the right to establish restrictions upon the manner of use, improvement and enjoyment of the Property which will make the Property more attractive for residential purposes and will protect present and future owners of the Property in their use and enjoyment thereof for residential purposes;

WHEREAS, Developer may purchase other lands in the vicinity of the Property (the "Additional Property") which Developer may desire to develop as an extension of and in conjunction with the development of the Property and in accordance with the restrictions on the manner of use, improvement and enjoyment thereof as herein provided; and Developer reserves the right to extend the benefits and the burdens created by this Declaration to any such lands which may hereafter be acquired by Developer and developed in conjunction with the development of Marble Cliff Villas and any subsequent plat(s);
WHEREAS, Developer may exercise any of the above-mentioned reserved rights by filing consecutively numbered plats of Marble Cliff Villas together with supplemental declarations of restrictions subjecting such subsequent plats to this Declaration;

NOW, THEREFORE, Developer, in consideration of the enhancement in value of the Property by reason of the adoption of this Declaration, does for itself and its successors and assigns, hereby declare, covenant and stipulate that the lots and the residential lots in the Property shall be, and shall hereafter be conveyed by it, its successors and assigns, subject to the following rights and restrictions:

ARTICLE I

USE OF LAND

1.1 Each residence dwelling on a residential lot shall be used and occupied solely and exclusively for private residence purposes by a single family and such family's servants.

1.2 No structure shall be erected, placed or maintained on any residential lot other than one (1) single-family residence dwelling and a private garage of not more than two and one-half car capacity which shall be made an integral part of the residence dwelling provided, however, that on corner lots a private garage of not more than three car capacity shall be permitted with approval of the Architectural Control Committee.

1.3 Subject to Section 9.7 hereof, nothing contained in this Declaration shall prevent the use of a parcel of land composed of more than a single residential lot for one (1) single-family residence dwelling.

1.4 No portion of any residential lot or structure thereon shall be used or permitted to be used for any business purpose whatsoever and no noxious, offensive or unreasonably disturbing activity shall be conducted upon any part of the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance.

1.5 No well for gas, water, oil or any other substance shall at any time be erected, placed or maintained on any residential lot other than a well for water for maintenance purposes which shall first have been approved as provided under Article II hereof.

1.6 No trailer, basement, tent, shack, garage, barn, mobile home or other temporary shelter or housing device shall be maintained or used as a residence dwelling, temporarily or permanently, at the Property. No manufactured home or pre-fabricated structure of any kind shall be erected or placed on any residential lot, unless first approved as provided under Article II hereof. No residence dwelling shall be used or occupied as a residence until the exterior thereof has been completed in accordance with the detailed plans and specifications approved therefor as provided under Article II hereof.
1.7 Any truck, boat, bus, tent, mobile home, trailer or other similar housing device, if stored on a residential lot, shall be housed within a garage building. Roof mounted antennas are expressly prohibited on residential lots. No wash or laundry shall be hung or dried outside of any structure on any residential lot.

1.8 No residential lot shall be used for the storage of automobiles (other than vehicles for the personal use of owners of residential lots), trailers, scrap, scrap iron, water, paper, glass or any reclamation products or material; provided, however, that during the period a structure is being erected upon any residential lot, building materials to be used in the construction of such structure may be stored thereon, subject to the condition that any building material not incorporated in said structure within ninety (90) days after its delivery to such residential lot shall be removed therefrom. All structures must be completed by a residential lot owner within one (1) year after the date of the beginning of the construction thereof. No sod, dirt or gravel, other than that incidental to construction of approved structures, shall be removed from any residential lot without the prior written approval of the Developer, its successors and assigns.

1.9 Other than not more than two (2) dogs, not more than two (2) house cats and not more than two (2) small birds, all of which shall be maintained within residence dwellings, the maintenance or harboring of any animal(s), other than "dog runs" which shall first have been approved as provided under Article II hereof, is expressly prohibited on any lot within the Property.

1.10 All rubbish, garbage and debris (combustible and non-combustible) on residential lots shall be stored in underground containers, or stored and maintained in containers entirely within the garage or basement. Additional regulations for the storage, maintenance and disposal of rubbish, garbage, debris and leaves may from time to time be established by the Developer, its successors and assigns, or the Association (as hereinafter defined).

1.11 No sign of any character other than signs of not more than ten (10) square feet advertising the sale of the residential lot on which such sign is located shall be erected, placed, posted or otherwise displayed on or about any residential lot without the prior written permission of the Developer, its successors and assigns, or the Association; and the Developer, its successors and assigns, or the Association, shall have the right and discretion to prohibit, restrict and control the size, construction, material, wording, location and height of all such signs.

1.12 All electric facilities and services at Marble Cliff Villas shall be underground except for (a) those above-ground services, if any, existing on the date hereof, and (b) any new or replacement poles, facilities or services located along such exterior portions of the Property as are adjacent and contiguous to King Road public right-of-way.
1.13 No structure or any part thereof shall be erected, placed or maintained on any residential lot nearer to the front or street line or lines than any building setback line or lines shown on Marble Cliff Villas, except for a fence, hedge, wall or other enclosure which shall first have been approved as provided under Article II hereof and no structure or any part thereof shall be erected, placed or maintained on any residential lot nearer to the rear residential lot line or lines than any perimeter setback line or lines shown on Marble Cliff Villas except for a fence, hedge, wall, wooden deck or other enclosure which shall first have been approved as provided under Article II hereof.

1.14 Only detached single family units shall be erected, placed, constructed or maintained upon Lot 11 in Marble Cliff Villas. Only attached single family units shall be erected, placed, constructed or maintained upon the following pairs of residential lots in Marble Cliff Villas: 1-2, 3-4, 5-6, 7-8, 9-10, 12-13, 14-15, 16-17, 18-19, 20-21.

1.15 If any attached single family unit is not constructed or added to an existing paired single family unit within seven (7) months after the commencement of construction of the first paired single family unit, then the builder of the first paired single family unit shall be required to add siding to the first paired single family unit consisting of exterior plywood siding (T1-11) with matching stain.

1.16 No portion of any residential lot nearer to any street than the building setback line or lines shown upon Marble Cliff Villas shall be used for any purpose other than that of a lawn; provided, however, this covenant shall not be construed to prevent the use of such portions of residential lots for walks, drives, trees, shrubbery, flowers, flower beds, ornamental plants, statuary, fountains, fences, hedges, walls or other enclosures which shall first have been approved as provided under Article II hereof for the purpose of beautifying said residential lots. This Section 1.16 shall be construed, however, to prohibit the planting or maintaining of vegetables, crops or grains on said portions of the residential lots.

1.17 Notwithstanding any other provision hereof, (a) no fences or fence-type structures of any kind shall be permitted on any residential lots, unless first approved as provided under Article II hereof.

1.18 No trash burner, outdoor fireplace or other device expelling gas or smoke shall be placed on the Property.

1.19 Notwithstanding any other provision of this Declaration, Developer and other contractors approved by Developer shall not be prohibited from the construction and use of construction and/or sales office(s) and model home(s) on one or more lots at the Property.

1.20 No satellite dishes or similar receiving or transmitting devices shall be permitted on any residential lot unless first approved as provided in Article II hereof.
1.21 The underground sprinkler system using city water to be installed on each residential lot shall be used and maintained by each residential lot owner in accordance with such rules and regulations as are hereafter adopted and amended by the Marble Cliff Villas Homeowner's Association created pursuant to Article III hereof.

ARTICLE II
APPROVAL OF PLANS

2.1 Developer, its successors and assigns, shall act as the Architectural Control Committee to which detailed drawings, plans and specifications (the "Plans") for structures and other improvements (including, but not limited to, basements, fences, walls, asphalt driveways, hedges and other enclosures, and satellite dishes and similar devices) must be submitted for examination and approval before any erection or improvement shall be made upon any residential lot and before additions, changes or alterations may be made to any structure or other improvement then situated on a residential lot. The Plans shall show the size, location, type, architectural design, quality, cost, use, material construction, color scheme and grading plan for the residential lot and the finished grade elevation thereof and shall be prepared by a competent architect or draftsman. The Plans must be furnished to the Architectural Control Committee in sufficient numbers so that the Architectural Control Committee may retain a true copy thereof for retention with its records. Developer hereby expressly reserves to itself, and to its successors and assigns, the right and privilege of assigning or relinquishing its said rights and duties as the Architectural Control Committee from time to time and for such periods of time and purposes as it may desire. Such assignment or relinquishment will become effective from and after the time a written instrument evidencing the fact of such assignment or relinquishment, signed by the Developer or by its successors and assigns, is filed for record with the Lucas County, Ohio Recorder.

2.2 In requiring submission of the Plans as herein set forth, Developer contemplates the development of the Property as an architecturally harmonious and desirable residential zero lot line subdivision. In order to maintain an architecturally harmonious and desirable residential zero lot line subdivision, Developer shall require that the front elevation of all single family units shall be constructed using wood clad or aluminum clad windows, with brick, dry vit, wood or stone siding. The side and rear elevation of all single family units shall be constructed with brick, dry vit or wood siding and aluminum trim provided, however, on corner lots the rear and side elevations shall conform to the same requirements for front elevation. Notwithstanding the foregoing, Developer or the Architectural Control Committee reserves the right to modify or change the requirements for the front, rear and side elevations where the unique features of the residential lot require such modifications or change in the sole discretion of the Developer or Architectural Control Committee. In approving or withholding its approval of any Plans so submitted, the Architectural Control Committee may consider the appropriateness of the contemplated improvement in relation to improvements on contiguous or adjacent residential lots, its artistic and architectural merits, its adaptability to the residential lot on which it is proposed to be constructed and such other matters as may be deemed to be in the interest and benefit of the owners of residential lots in the Property as a whole.
2.3 Any determination made by the Architectural Control Committee, in good faith, shall be binding on all parties in interest.

2.4 The Architectural Control Committee shall have the sole and exclusive right to establish grades, slopes and elevations of residential lots and to fix the grade and elevation at which any structure or residence dwelling shall hereafter be erected or placed thereon, so that the same may conform to a general plan for the development and use of the Property.

2.5 In all instances where Plans are submitted to and approved by the Architectural Control Committee, if, subsequent to receiving such approval, there shall be any variance from the approved Plans in the actual construction or location of the improvement without the written consent of the Architectural Control Committee, such variance shall be deemed a violation of this Declaration.

ARTICLE III
MARBLE CLIFF VILLAS HOMEOWNERS' ASSOCIATION

3.1 There is hereby created by the Developer, who owns all of the residential lots at the present time, the Marble Cliff Villas Homeowners' Association (the "Association"). The members of the Association shall be the owners, from time to time, of all of the residential lots at the Property. Said owners or their respective heirs, executors, administrators, personal representatives, successors and assigns, and any other parties who may then be members of the Association, shall be permitted, at any time, to convey and assign all of their rights and duties hereunder to an Ohio non-profit corporation to be named the Marble Cliff Villas Homeowners' Association, or other similar available name, which shall thereafter act and function as the Association, and whose membership shall similarly be the owners from time to time, of all the residential lots at the Property.

3.2 The Association shall have the following powers and rights:

(a) To promote and seek to maintain the attractiveness, value and character of the residential lots through enforcement of the terms, conditions, provisions and restrictions set forth in this Declaration, in any rules and regulations which the Association may promulgate pursuant hereto, or in any subsequent declaration(s) encumbering any subsequent plat(s) of Marble Cliff Villas.

(b) To promote and seek to maintain high standards of community and neighborhood fellowship, and to provide a vehicle for voluntary social and neighborhood activities, in Marble Cliff Villas.

(c) To manage, operate, maintain, improve, repair and replace the exterior portions of all residential lots and the Common Areas within the Property, including, but not limited to, grass mowing, landscape installation and maintenance, snow removal and roadway maintenance.
(d) To promote and seek to maintain the attractiveness, value and character of the residential lots through enforcement of the terms, conditions, provisions and restrictions set forth in this Declaration, or in any regulations which the Association may promulgate pursuant hereto.

(e) To represent the owners of residential lots before governmental agencies, offices and employees, and to generally promote the common interests of the residential lot owners.

(f) To collect and dispose of funds as provided in Article IV hereof, and as may be provided in any subsequent declaration(s) encumbering any subsequent plat(s) of Marble Cliff Villas.

(g) If the Association is organized and operating as an Ohio non-profit corporation, to perform all such acts and functions as are generally authorized by law to be performed by such corporations.

(h) To acquire title from the Developer to any common areas (the "Common Areas") which may be designated for the common use and enjoyment of residential lot owners in the recorded plat of Marble Cliff Villas or in any other subsequent recorded plat(s) of Marble Cliff Villas, and to insure, manage, maintain, improve and repair the Common Areas.

(i) To purchase and maintain fire, casualty and liability insurance to protect the Association and its officers, trustees, managers and/or members from liability incident to the ownership and use of the Property; to pay all real estate, personal property and other taxes levied against the Association, and to discharge any lien or encumbrance for taxes or otherwise against the Association or its assets; and to establish reserves to pay the estimated future costs of any of the items set forth in this Section 3.2.

(j) To enforce all provisions herein and in any subsequent declaration(s) encumbering any subsequent plat(s) of Marble Cliff Villas.

(k) Subject to the provisions of this Declaration, to adopt rules and regulations of general application governing the use, maintenance, insurance and upkeep of the Common Areas and of any easement areas created or reserved in this Declaration or on the recorded plat of Marble Cliff Villas.

(l) To carry out all other purposes for which it was organized; to exercise all rights which it may be granted or reserved under this Declaration; and to perform all duties which it may be assigned under this Declaration.
3.3 Each member of the Association other than the Developer, its successors and assigns, shall be entitled to one vote in the Association for each residential lot which such member shall own. When more than one person holds an ownership interest in any residential lot, all persons holding such ownership interest shall be members of the Association and in such event the vote for such residential lot shall be exercised as the owners among themselves determine, but in no event shall more than one vote be cast with respect to any residential lot. Where a vote is cast by one of two or more owners of any residential lot, the Association shall not be obligated to look to the authority of the member casting the vote. Notwithstanding the above, so long as the Developer shall hold title to any residential lot(s) in Marble Cliff Villas or in any subsequent plat of Marble Cliff Villas as above described, the Developer shall be entitled to nine (9) votes for each residential lot owned by it.

ARTICLE IV
ASSESSMENTS OF OWNERS
INITIATION FEES - MONTHLY FEES

4.1 Each and every residential lot and residential lot owner shall be subject to an assessment in such amount as may be annually determined by the Association.

4.2 The assessments of residential lot owners shall be determined, levied and made on a uniform basis, with each residential lot being subject to the same yearly assessment payable by each residential lot owner to the Association monthly, quarterly, semi-annually or annually as determined by the Association; provided, however, that the assessment for residential lots owned by the Developer or Developer's successors in title upon which no construction has commenced shall be Twenty Dollars ($20.00) per month for each vacant residential lot until occupancy. Annual assessments for each calendar year shall be determined by the Association prior to the end of the preceding calendar year.

4.3 The aforesaid annual assessments shall be applied only toward payment of reasonable costs and expenses incurred by the Association in conducting, carrying out, enforcing and performing its powers, rights and functions as set forth in Article II and Article III. The Association shall exercise its discretion and judgment as to the amount of its funds to be expended in connection with each of the purposes for which its funds are collected, and its discretion in reference thereto shall be binding upon all interested parties. Upon demand of any residential lot owner and after payment of a reasonable charge therefor, the president, secretary or treasurer of the Association shall promptly issue a certificate setting forth whether all assessment have been paid for such owner's residential lot, and, if not, the total amount of any unpaid assessments. Any such certificate stating that all assessments have been paid shall be conclusive evidence of such payment.

4.4 The Association shall have a perpetual lien upon the residential lots to secure the payment of the assessments and each such assessment shall also be the personal obligation of the owner or owners of each residential lot at the time when the assessment becomes due. The lien of the assessments shall arise against each residential lot on the first day of the year in which it is due and shall be prorated between the owners of parts of residential lots in accordance with the proportion which the area of each part of a residential lot to which each owner holds record title bears to the total area of the residential lot against which the assessment is made. In the event of a failure to make payment of the assessment within thirty days after the same shall have become due, the Association may bring an action in any court having jurisdiction thereof to recover the amount of said unpaid assessment.
(60) days of its due date, the lien for said charge may be recorded by filing in the office of the Recorder of Lucas County, Ohio a "Notice of Lien" in substantially the following form:

NOTICE OF LIEN

Notice is hereby given that the Marble Cliff Villas Homeowners' Association claims a lien for unpaid annual assessments for the years ______ in the amount of $______ against the following described premises:

(Insert Legal Description)

MARBLE CLIFF VILLAS
HOMEOWNERS' ASSOCIATION

By: ______________

STATE OF OHIO  

E )

COUNTY OF ___ )

The foregoing instrument was acknowledged before me this __ day of _____, 2000 by __________, the ________ of MARBLE CLIFF VILLAS HOMEOWNERS' ASSOCIATION, an Ohio non-profit corporation, on behalf of the corporation.

__________________________

Notary Public

4.5 In the event any of said assessments are not paid when due, the Association may, when and as often as such delinquencies occur, proceed by process of law to collect the amount then due by foreclosure of said lien, or otherwise, and in such event, shall be entitled to recover and have and enforce against each residential lot a lien and judgment for its resulting costs and expenses, including court costs and reasonable attorney fees involved in the collection thereof. No owner may waive or otherwise escape liability for the annual assessments provided for herein by abandonment of his residential lot or for any other reason. The lien of said assessments shall be subordinate to any lien of any first mortgage. Sale or transfer of any residential lot shall not affect the assessment lien, or relieve said residential lot from liability for any assessments or from the lien thereof. However, the sale or transfer of any residential lot pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

4.6 In addition to the assessment set forth above, each and every residential lot owner shall be charged a non-refundable Two Hundred Dollar ($200.00) initiation fee payable to the Association upon acquiring title to each residential lot. The Two Hundred Dollars ($200.00) initiation fee shall be charged to all original residential lot owners as well as all subsequent residential lot owners upon the resale of all residential lots in Marble Cliff Villas.
4.7 In addition to the non-refundable initiation fee set forth above, each and every residential lot owner shall be charged a monthly maintenance fee of One Hundred Dollars ($100.00). The initial monthly maintenance fee may hereafter be changed and adjusted in accordance with such rules and regulations as are hereafter adopted and amended by the Marble Cliff Villas Homeowner's Association created pursuant to Article III hereof.

ARTICLE V

EASEMENTS

5.1 The Developer reserves to itself and to its successors and assigns, the exclusive right to grant consents, easements and rights of way for the construction, operation, maintenance and replacement of electric light, electrical transmission, natural gas transmission, cable television, telephone and telegraph poles, wires and conduits, including underground facilities, and for drainage and storm and sanitary sewers on, over, below or under all of the areas designated as "Utility", "Drainage", "Ditch", "Sanitary", "Roadway", "Water Line", "Emergency Access", "Access", "Ohio Bell Telephone", "Common Area" or with words of similar import on Marble Cliff Villas, and along and upon all highways now existing or hereafter established and abutting all the lots in Marble Cliff Villas. The Developer also reserves to itself and to its successors and assigns, the right to go upon or permit any public or quasi-public utility company to go upon the lots from time to time to install, maintain, repair, replace and remove such equipment and facilities, and to trim trees and shrubs which may interfere with the successful and convenient operation of such equipment and utilities. No structures or any part thereof shall be erected or maintained upon any part of the areas designated on Marble Cliff Villas as "Utility", "Drainage", "Ditch", "Sanitary", "Roadway", "Water Line", "Emergency Access", "Access", "Ohio Bell Telephone", "Common Area" or with words of similar import; provided, however, that this prohibition shall not apply to driveways, fences, hedges, sidewalks and other non-structural features.

5.2 No owner of any residential lot in Marble Cliff Villas shall have the right to reserve or grant any easements, rights of way upon or over any of the residential lots in Marble Cliff Villas without the written consent of the Developer, its successors and assigns.

5.3 In connection with the development and platting of Marble Cliff Villas, the Developer has granted certain drainage easements to the Board of Lucas County Commissioners over portions of the areas designated on Marble Cliff Villas as "Drainage Areas" or with words of similar import. The Drainage Areas shall be kept clear and free of debris and otherwise maintained by the Developer or its successors and assigns, from time to time. In this regard, all residential lots shall be subject to drainage maintenance assessments in the event that, and at such time as, the Lucas County Engineer determines that the Developer or its successors and assigns are not properly maintaining the Drainage Areas.
Areas, in which case the amount and method of assessment shall be determined by the Lucas County Engineer. In such event, no party other than the residential lot owners shall have any liability or responsibility for maintenance of the Drainage Areas or for any assessments or costs relating thereto.

5.4 In addition to the provisions of paragraph 5.3 above and, in connection with the development and platting of Marble Cliff Villas, the Developer has executed an Easement Agreement with Genevieve L. Winters, Trustee, the owner of real property adjoining Marble Cliff Villas. The Easement Agreement was executed May 29, 2000 and received and recorded for second record by the Lucas County Recorders office on September 14, 2000 at Instrument Record 00-0464-E04 at sec. In the Easement Agreement the said Genevieve L. Winters, Trustee granted and conveyed to the Developer, its successors and assigns an irrevocable easement over, through and under the western 20 feet of certain premises owned by the Genevieve L. Winters, Trustee adjoining the Property owned by Developer to construct, maintain, operate, relocate, replace and repair a drainage line and related components. In conjunction with said Easement Agreement, Developer, its successors and assigns, hereby agree and acknowledge that the Board of Lucas County Commissioners shall have the right to assess all owners of lots in Marble Cliff Villas drainage maintenance assessments in the event that the Developer or its successors and assigns are not properly maintaining the 20 foot drainage easement, in which case the amount and method of assessment shall be determined by the Lucas County Engineer. In such event, no party other than the residential lot owners shall have any liability or responsibility for maintenance of the 20 foot drainage easement or for any assessments or costs relating thereto.

5.5 The Developer reserves to itself and to its successors and assigns, the exclusive right to extend any of the public rights-of-way in Marble Cliff Villas to any Adjacent Property or Additional Property that may be the subject of a subsequent plat or plats as an extension of Marble Cliff Villas.

ARTICLE VI
ZERO LOT LINE RESIDENTIAL LOTS

6.1 Residential lots nos. 1-21, inclusive, in Marble Cliff Villas have been planned and are being developed and improved as a zero lot line development. Accordingly, these residential lots will be made subject to certain rights and restrictions (relating to grass mowing, landscape maintenance, snow removal, private roadway maintenance and general maintenance, repair and upkeep of common areas) set forth herein below.

6.2 Unless the owners of adjoining residential lots should otherwise agree, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built or maintained at any time pursuant to plans and specifications approved by the Architectural Control Committee. In the event that any portion of any structure, including any foundation, footer, overhang, fire wall, party wall, decorative wall or fence, which has
been constructed on or along a residential lot line in accordance with plans and specifications approved by the Architectural Control Committee shall protrude not more than six inches onto or over an adjoining residential lot, such protrusion shall not be deemed to be an encroachment upon the adjoining residential lot, but the rights and obligations of the adjoining residential lot owner with respect thereto shall be governed by this Section 6.2 and no residential lot owner shall maintain any action or the removal of such protrusion. In such event, there shall be deemed to be a perpetual easement in favor of the encroaching party, so long as such use shall be maintained, for (a) continuing maintenance and use of such protrusion, including the right to extend, enlarge, remodel and reconstruct the same, and (b) lateral support of such protrusion by the subsoil of and minerals in and under the servient parcel; provided, however, that the foregoing easement shall not be construed to prevent the owner of any residential lot from making excavations on such owner’s lot for construction, reconstruction, enlargement, maintenance or repair of such owner’s dwelling so long as such owner shall protect the rights granted the adjoining residential lot owner hereunder in making such excavations. The foregoing shall also apply to any replacements of the original structure, party wall, decorative wall or fence, and the foregoing rights, once established, shall not be subject to amendment or change by way of amendment of this Declaration. This Section 6.2 shall apply only to party walls and party fences which have been properly located under plans and specifications approved by the Architectural Control Committee and shall not be deemed to validate or to waive the right of any residential lot owner to require the removal of any encroachment which has not been so approved by the Architectural Control Committee.

6.3 The cost of reasonable repair and maintenance of a party wall or party fence shall be equally shared by the residential lot owners who make use of the wall or fence in proportion to such use.

6.4 If a party wall or party fence is destroyed or damaged by fire or other casualty, any residential lot owner who has used the wall or fence may restore it, and if the adjoining residential lot owner thereafter makes use of the wall or fence, said adjoining owner shall contribute to the cost of restoration thereof in proportion to such use without prejudice to the right of the residential lot owner who restores the wall or fence to call for a larger contribution from the other owner under any rule of law regarding liability for negligent or willful acts or omissions. Such right of any residential lot owner to contribution from any other residential lot owner shall be appurtenant to the land and shall pass to such residential lot owner’s successors in title.

6.5 In establishing the easements for an location of utility lines as described in Article V hereof, the Developer may determine it to be an esthetic benefit to and in the best interest of the Property to locate such utility lines and the surface improvements serving such lines (such as electrical transformers and meters) in the areas lying between pairs of residential lots to minimize the number of such installations which will be visible at the Property. In such event, the utility lines serving one residential lot in a pair of lots may extend over the adjacent residential lot and/or through the dwelling located on such adjacent residential lot. Where such situation should occur, there is hereby created an easement for such lines over the servient residential lot and, to the extent necessary, through any dwelling
located thereon for the benefit of the benefitted lot and the dwelling located thereon with right of access, upon reasonable notice, to maintain, replace and repair such lines at the sole cost of the benefitted residential lot and in such manner as will cause the least disturbance to the servient lot.

6.6 Developer shall establish a master plan for landscaping of Marble Cliff Villas which master plan shall take priority over individual landscaping plans with individual fences or hedges being allowed only with the written approval pursuant to Article II.

ARTICLE VII
COMMON AREAS AND PRIVATE LOTS

7.1 Each member of the Association, in common with all other members of the Association as owners of residential lots, shall have the right to use the Common Areas as shown on Marble Cliff Villas and designated as Lots A and B for open space and drainage detention purposes and for no other purposes.

7.2 The Developer, its successors and assigns, shall have the right, at any time and from time to time, to convey fee simple title to Lots A and B to the Association, and in such instance, the Association shall be required to accept delivery of a quit-claim deed for such purpose; provided, however, that the Association shall not be required to accept title until such time as 50% of the residential lots are owned by persons or entities other than the Developer.

7.3 Notwithstanding the provisions of Section 7.2 and any designation of Lots A and B on Marble Cliff Villas or any plat of the Adjacent Property or the Additional Property, neither the Association nor any owner of any residential lot shall have any ownership interest in or any right to control the use or development of any such Common Area unless and until the Developer shall convey such Common Area to or for the benefit of the Association. Thereafter, the owners of the residential lots at the Property shall have only those rights with respect to Lots A and B as are granted them hereunder and under the Articles and Code of Regulations, if any, of the Association.

ARTICLE VIII
DURATION OF RESTRICTIONS; AMENDMENTS

8.1 This Declaration shall run with the land and shall be binding upon the Developer and all persons claiming under or through the Developer until the first day of January, 2021, at which time this Declaration shall be automatically extended for successive periods of ten (10) years.

8.2 This Declaration may be amended prior to January 1, 2021, with the written approval of the then owners of not less than two-thirds (2/3) of the residential lots, which amendment shall become effective from and after the filing with the Recorder of Lucas County, Ohio, of an instrument stating the amendment and signed by all approving residential lot owners with the formalities required by law. This Declaration may be terminated as of January 1, 2021, and may be amended or terminated thereafter with the written approval of the owners of not less than one-half (1/2) of the residential lots upon the filing of an instrument as aforesaid with the Recorder of Lucas County, Ohio.
ARTICLE IX
ENFORCEMENT OF RESTRICTIONS; OTHER MATTERS

9.1 Any violation or attempt to violate any of the covenants, agreements or restrictions herein while the same are in force shall be unlawful. The Developer, the Architectural Control Committee, the Association or any person or persons owning any residential lot may prosecute any proceedings at law, or in equity, against the person or persons violating or attempting to violate any such covenant, agreement or restriction to prevent him or them from so doing, to cause the removal of any violation and/or to recover damages for such violation or attempted violation.

9.2Invalidation of any of the covenants, agreements or restrictions herein contained by judgment or court order or amendment hereof by act of the owners of residential lots shall not affect any of the other provisions contained in this Declaration, which shall remain in full force and effect.

9.3 All transfers and conveyances of each and every lot in Marble Cliff Villas shall be made subject to this Declaration.

9.4 Any notice required to be sent to any owner of a lot in Marble Cliff Villas or to the Developer or to the Architectural Control Committee shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as such owner or to the Developer or to any member of the Architectural Control Committee as such address appears on the applicable public records or on the records of the Association or on the records of the Architectural Control Committee.

9.5 The rights, privileges and powers granted by this Declaration to, and/or reserved by, the Developer shall be freely assignable and shall inure to the benefit of the successors and assigns of the Developer.

9.6 The Developer, its successors and assigns, or the Association, as the case may be, shall have the right to construe and interpret this Declaration, and such construction or interpretation, in good faith, shall be final and binding as to all persons and property benefited or bound hereby.

9.7 No owner of any residential lot shall subdivide the same or convey less than the whole of any residential lot without first obtaining the written consent of the Developer, its successors and assigns, or the Association.

9.8 No restrictions imposed hereby shall be abrogated or waived by an failure to enforce the provisions hereof; no matter how many violations or breaches may occur.

9.9 Each residential lot owner, by acceptance of a deed to a residential lot, agrees and consents and shall be deemed to agree and consent that if, in the opinion of the Developer, its successors and assigns, the shape of, dimensions or topography of the residential lot upon which a residence dwelling or other improvement is proposed to be made, is such that a strict construction or enforcement of the building lines as shown on Marble Cliff Villas, or of the yard requirements stated herein or of any other provision of this Declaration would work a hardship, the Developer, its successors and assigns, shall be
permitted to modify this Declaration, in writing, as to such residential lot(s) so as to permit the erection of such residence dwelling or the making of the proposed improvements. The Developer, its successors and assigns, shall not be limited in its exercise of this aforesaid right to modify this Declaration by reason of the fact that it may be the owner and/or builder for whose benefit such modification is granted.

9.10 In the event of a material change in conditions or circumstances from those existing at the time this Declaration is adopted which would cause the enforcement of this Declaration to become a hardship upon any of the owners of residential lots, or which would cause this Declaration to cease being beneficial to the owners of such residential lots, the Developer, its successors and assigns, after giving written notice by mail to the record owners of all residential lots, and after receiving the written approval of the holders of record title to sixty-seven percent (67%) or more of the residential lots, may modify this Declaration so as to remove the hardship, or make this Declaration such as to be beneficial to the affected residential lot owner. The provisions of this Section 9.10 shall not be construed as a limitation upon the right of the Developer to modify the provisions of this Declaration as provided in Section 9.9 nor shall it limit the provisions of Article VIII hereof.

9.11 Wherever used herein, the term "structure" shall mean and refer to any thing, or device (other than trees, shrubbery which is less than two (2) feet high in the form of a hedge, and landscaping, the placement of which upon any residential lot may affect the appearance of such residential lot, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothesline, radio or television antenna, fence, curbing, satellite dish or similar facilities, paving, wall, hedge more than two (2) feet in height, signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such residential lot. The term "structure" shall also mean and refer to (a) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any residential lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any residential lot, and (b) subject to Section 2.4, any change in the grade of any residential lot of more than six (6) inches from that existing at the time of purchase by an owner.

9.12 Marble Cliff Villas requires that four (4) foot wide sidewalks be located along one or both sides of certain roadways within the Property. On those residential lots where sidewalks are so required, no residence or dwelling or structure shall be constructed or occupied without the construction of said sidewalks, at the sole expense of the residential lot owner(s). The exact location of any required sidewalk shall be determined and designated by the Architectural Control Committee at the time it approves the Plans for a particular structure or improvement.
9.13 In the event that there shall be any conflicts, contradictions or inconsistencies between the provisions of this Declaration and any rules and regulations adopted or enacted by the Association, the provisions of this Declaration shall take precedence, govern and control.

IN WITNESS WHEREOF, KING CONDO, L.L.C., an Ohio Limited Liability Company, has caused this Declaration of Rights and Restrictions to be executed this ___ day of December, 2000.

Signed and acknowledged in the presence of:

KING CONDO, L.L.C.,
an Ohio Limited Liability Company

By: ____________________________
   David Schmitt, Member
STATE OF OHIO

) SS:

COUNTY OF LUCAS

Before me, a Notary Public, in and for said County, personally appeared Richard B. Stansley, Jr. and David Schmitt, members of King Condo, L.L.C., an Ohio Limited Liability Company, who acknowledged that they did sign said instrument on behalf of said limited liability company and that they did sign the foregoing instrument as their respective free act and deed and as the free act and deed of said limited liability company for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this day of December, 2000.

Notary Public

This Instrument Prepared By:
William S. McCready, Esq.
Ritter, Robinson, McCready & James
1850 National City Bank Building
Toledo, Ohio 43604

00 4329D11
EXHIBIT A

Marble Cliff Villas of which is a correct plat, situated in the Township of Sylvania County of Lucas, State of Ohio, and being part of the E 1/4 of the NE 1/4 of Section 17, Town 9 South, Range 6 East, a tract of land bounded and described as follows:

Commencing at an iron pin in concrete found marking the northeast corner of the NE 1/4 of said Section 17 and being the intersection of the centerline of Brint Road with the centerline of King Road;

thence on the east line of the said NE 1/4 and said centerline of King Road, S00°01'04"E a distance of 272.25 feet to the southeast corner of land described in Deed 94-069F09 of Lucas County Deed Records, and being the PRINCIPAL point of beginning of the tract of land herein described:

thence continuing on said east line and said east line and said centerline, S00°01'04"E a distance of 819.75 feet to the northeast corner of land described in Deed 96-059E03 of the Lucas County Deed Records;

thence on the north line of said land described in Deed 96-059E03 and parallel with the north line of the said NE 1/4 S00°00'00"W, a distance of 382.00 feet to a concrete monument set at the northwest corner of said land described in Deed 96-059E03 and on the east line of land as described in Deed 89-23812 of the Lucas County Deed Records and passing a concrete monument set 50.00 feet;

thence on said east line and the east line of The Parklands Plat Three, a subdivision recorded in Volume 139, Page 82 of the Lucas County Plat Records and parallel with the said east line of the NE 1/4, N00°01'04"W a distance of 819.75 feet to a concrete monument set at the southwest corner of said land described in Deed 94-069F09;

thence on the south line of said land described in Deed 94-069F09 and parallel with the north line of the said NE 1/4, N00°00'00"E, a distance of 382.00 feet to the PRINCIPAL point of beginning, and passing a concrete monument set at 50.00 feet west thereof, and containing 7.189 acres of land more or less subject however to all legal highways and prior easements of record.

7800
RECEIVED & RECORDED

DEC 20 2000
SUE RIOUX
RECORDE, LUCAS COUNTY, OHIO

00 4329D12