

TIDEWATER AT NEW ALBANY  
DECLARATION OF COVENANTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS, ASSESSMENT LIENS  
AND TIDEWATER HOMEOWNER'S ASSOCIATION

THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS, ASSESSMENT LIENS AND TIDEWATER HOMEOWNER'S ASSOCIATION (the "Declaration") is made as of the 24 day of April, 2006, by Tidewater Associates, LLC, an Ohio limited liability company (the "Developer"), with offices located at 495 South High Street, Suite 150, Columbus, Ohio 43215.

A. Developer is the owner in fee simple of the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin, and in the Village of New Albany:

Being Lots Numbered One (1) through Sixty (60), both inclusive, and Reserves B, C, E and F of **TIDEWATER AT NEW ALBANY**, as said lots and reserves are numbered, delineated and designated upon the recorded plat thereof, of record in Plat Book 108, pages 41, 42, 43, and 44, Recorder's Office, Franklin County, Ohio.

Last Transfer: Official Instrument No. 200505310103659, Recorder's Office, Franklin County, Ohio

Each of the lots numbered One (1) through Sixty (60), inclusive, is referred to herein as a "Lot", and collectively they are referred to herein as the "Lots". A "Lot Owner" is each owner of a fee simple interest in a Lot. Each of the reserves delineated as B, C, E, and F are open space reserves, hereinafter individually referred to as a "Reserve" and collectively the "Reserves". The Tidewater subdivision is referred to herein as the "Subdivision."

B. Developer declares that all of the Lots and Reserves shall be held, developed, encumbered, leased, occupied, improved, used, and conveyed subject to the following covenants, easements, conditions and restrictions (the "Restrictive Covenants"), which are for the purpose of protecting the value and desirability of, and which shall run with the Lots and be binding on all parties having any right, title or interest in the Lots, their heirs, successors and assigns, and shall inure to the benefit of each Lot Owner.

C. This Declaration is hereby declared to inure to the benefit of all future owners of any Lot and all others claiming under or through them; the Developer, its successors and assigns; and all utility companies or agencies or instrumentalities of local government providing utility services.

D. Developer intends, during the course of development of the Subdivision, to construct certain entranceway improvements (hereinafter referred to as the "Entranceway Improvements"), and pedestrian pathways and open space/green space improvements, including fencing, grasses, and landscaping, within certain areas of Reserves B and F and Lot No. One (1), and provide for the servicing and maintenance of such improvements (the "Open Space Improvements and together with the Entranceway Improvements, the "Improvements"), for the benefit of the Developer as well as the Lot Owners. It is intended that the Reserves shall be deeded to and maintained by an Association of Lot Owners, as hereinafter defined.

E. Simultaneously with its execution hereof, Developer has caused an unincorporated association

of Lot Owners to be formed, named the Tidewater Homeowner's Association (hereinafter the "Association"), to:

1. administer maintenance of the Improvements within the Reserves and Lot No. 1;
2. own, maintain, and service areas and improvements set aside by plat or plats comprising future sections and/or phases of the Subdivision for common or general subdivision uses;
3. to maintain certain improvements, if any, installed in entranceway areas leading into future sections and/or phases of the Subdivision, including grass, landscaping, fencing, signage, and other improvements constructed in connection with such additional entranceways;
4. to operate in accordance with the terms and conditions of, and shall be subject to, the restrictions provided hereinafter and to administer and enforce the covenants and restrictions set forth on the plat or plats ultimately comprising the Subdivision in this Declaration, and any supplemental declarations related to future sections or phases of the Subdivision; and
5. to take any action or exercise such other powers, rights and privileges which are contained in the rules and regulations adopted by the Association and the establishment and collection of assessments for the maintenance and servicing of Improvements.

The Association may, by a majority vote, elect to incorporate under statutes set forth in the Ohio Revised Code as an Ohio not-for-profit corporation and adopt a set of bylaws regulating the operation of the Association.

It is hereby declared that irreparable harm will result to the Developer and other beneficiaries of this Declaration by reason of violation of the provisions hereof or default in the observance thereof and therefore, each Owner shall be entitled to relief by way of injunction, damages or specific performance to enforce the provisions of this Declaration as well as any other relief available at law or in equity.

NOW, THEREFORE, in pursuance of a general plan for the protection, benefit and mutual advantage of the Property described above and of all persons who now are or may hereafter become Owners of any of the Lots, the following restrictions, conditions, easements, covenants, obligations, and charges are hereby created, declared and established:

## GENERAL PROVISIONS

### I. APPLICABILITY

This Declaration shall apply to all the Lots and Reserves described above. If the Developer acquires and/or develops additional parcels adjacent to the Lots, the Developer may declare said parcels to be subsequent phases of the Subdivision. Developer shall have the right, but not the obligation, to subject such parcels to the terms and conditions of this Declaration. Developer may subject said adjacent parcels to this Declaration without modification, or Developer may supplement and amend this Declaration as it applies to such additional phases of development. As to each development phase of the Subdivision, Developer may re-record this Declaration with an attached exhibit which modifies and/or supplements this Declaration with respect to such phase, or Developer may incorporate this Declaration by reference into a supplemental declaration which establishes the modifications and/or supplemental provisions desired by Developer to be applicable to such phase. The modifications and/or supplemental

provisions applicable to different phases of development may be comparable to, or more restrictive than the parallel provisions applicable to other development phases, as determined to be appropriate by Developer in the exercise of its sole discretion. In the event of any inconsistency between the provisions of this Declaration and the provisions of any phase-specific modifications and/or supplements hereto, the terms of the phase-specific document shall control.

## II. DEFINITIONS

- A. Annual Assessment: an amount to be paid to the Association by each Owner annually.
- B. Assessments: collectively referring to Annual Assessments, Lot Assessments and Special Assessments.
- C. Association: the legal entity (and its successors and assigns) named the Tidewater Homeowner's Association.
- D. Association Documents: the formative documents of the Association, consisting of the articles of incorporation and a code of regulations, when incorporated, and any and all procedures, rules, regulations or policies adopted by the Association, or comparable formative documents of the Association when not a corporate entity.
- E. Board: the board of directors or other management body of the Association.
- F. Common Expenses: expenses incurred in maintaining the Common Property.
- G. Common Property: all real and personal property now or hereafter acquired, pursuant to this Declaration or otherwise, and owned by the Association for the common use and the enjoyment of the Owners.
- H. Developer: Tidewater Associates, LLC, an Ohio limited liability company, and any manager, member, successor or assign thereof to which Developer specifically assigns any of its rights under this Declaration by a written instrument.
- I. Lot Assessment: an assessment that the Association may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner of those Lots; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Lot Assessment by the Board.
- J. Lot Improvements: all man-made or man-installed alterations to Lot which cause a Lot to deviate from the natural condition, including but not limited to buildings, outbuildings and garages; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools and tennis courts; slope and drainage alterations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches, trees, hedges, shrubs and other forms of landscaping, and all other structures of every type.
- K. Manager: a person or entity retained by the Board to assist in the management of the

Association.

L. Member: any person or entity entitled to membership in the Association.

M. Owner: the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for performance of an obligation.

N. Property: all of the Lots and Reserves described above and such additional property as may be added by amendment or supplement to this Declaration, or that is owned in fee simple by the Association, together with all easements and appurtenances.

O. Rules: the rules and regulations governing use of the Reserves as may be established by the Board from time to time.

P. Special Assessment: an assessment levied by the Association against all Lots to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Reserve Fund.

Q. State: the State of Ohio, and, unless the context requires otherwise, any political subdivision thereof exercising jurisdiction over the Property.

### III. GOALS

The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes:

- A. Compliance with all zoning and similar governmental regulations;
- B. Promotion of the health, safety and welfare of all Owners and residents of the Lots;
- C. Preservation, beautification and maintenance of the Lots and all Improvements, including Lot Improvements; and
- D. Establishment of requirements for the development and use of the Reserves and Lots.

### DEVELOPMENT & USE RESTRICTIONS

#### IV. USE RESTRICTIONS

The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Developer and every Owner or occupant, their respective heirs, successors and assigns, as well as their family members, guests, and invitees.

A. Tree Preservation: Because the trees located throughout Tidewater intrinsically enhance all Lots and are enjoyed aesthetically by all the residents of the Subdivision whether or not such trees are located on that resident's particular Lot, no trees larger than four (4) inches in diameter, as determined at the time of any anticipated removal of such trees, shall be removed from any Lot without the prior approval of Developer, its successors or assigns. The cost of removal of said trees shall be borne by the

Owner. Developer shall have the right to assign its rights and obligations under this Section IV (A) without consent of any Owner of any Lot. Enforcement of this Article rests exclusively with Developer, its successors or its assigns.

B. Land Use: All of the above described Lots shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot that would exceed forty-five (45) feet in height from the finish grade of the building, together with necessary accessory buildings including a garage, unless specifically approved by Developer and the Village of New Albany, Franklin County, Ohio, if approval of the Village is required.

C. Lot Split: No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise so as to create a newer Lot.

D. Trade, Business or Commercial Activity Barred: Lots shall be used for private residential purposes only. No activity shall be conducted on any Lot except those activities deemed to be customary home occupations as defined by the then existing Zoning Regulations of the Village of New Albany, Franklin County, Ohio. No trade, business or commercial activity shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to any of the Owners of any other Lot; provided, however, the construction upon or the sale of a Lot or a house by any Owner shall not be considered to be a commercial activity as defined herein.

E. Minimum Building Size: The plans and specifications for any home residence shall provide a minimum living area square footage, excluding garages and porches in accordance with the following schedule:

1. Ranch or one-story home: 2,400 square feet;
2. Two story home: 3,000 square feet with a minimum of 1,000 square feet on the first floor;
3. One and one-half story home: 3,000 square feet of finished living area.

F. Building Location: No building shall be located on any Lot nearer to the Lot lines than the minimum building front, rear and side lines as shown on the Subdivision plat; provided, however, if the appropriate governmental authority shall grant a variance to such setbacks, then the requirements hereof shall be so modified. For the purposes of this covenant, eaves and steps shall not be considered as a part of a building provided, however, that this shall not be construed to permit any portion of the building on a Lot to encroach upon any other Lot. No portion of any Lot nearer to any street than the building setback line shall be used for any purposes other than that of a lawn nor shall any fence or wall of any kind, for any purposes be erected, placed or suffered to remain on any Lot nearer to any street now existing, or hereafter created, than the front railings, or fences not exceeding three (3) feet in height located on or adjacent to entrance platforms or steps. Nothing herein contained, however, shall be construed as preventing the use of such portion of the Lots for walks, drives, the planting of trees or shrubbery, the growing of flowers or other ornamental plants, or for small statutory entrance ways, fountains or similar ornamentations for the purpose of beautifying said premises. No vegetable or grains of the ordinary field variety shall be grown on such portions of said Lots, and no weed, underbrush or other unsightly growths shall be permitted to grow or remain anywhere thereon. Nothing herein contained shall be construed so as to permit a violation of any applicable law, ordinance, or governmental regulations.

G. Temporary Residence: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

H. Temporary Structure: No temporary building, trailer, garage, storage building or structure shall be placed upon any Lot for storage purposes without the express written consent of Developer.

I. Fuel Storage: No fuel storage facility or tank shall be allowed on any part of a Lot unless located below the surface of the ground or within the confines of the dwelling.

J. Animals: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets can be kept, provided that they are not kept, bred, or maintained for any commercial purposes. No kennels or enclosures for animals shall be erected or maintained on any Lot.

K. Mailbox: To give uniformity to the Subdivision, Developer shall specify an approved curb side mailbox to be installed on each Lot. Such mailbox shall have the street numbers for the Lot. If the mailbox is damaged, destroyed or deteriorates, then each Lot Owner, at such Lot Owner's expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailboxes approved by Developer.

L. Signs: No sign of any kind shall be displayed to the public view on any Lot except one professional sign which conforms with the then existing Zoning Regulations of the Village of New Albany, Franklin County, Ohio, one sign of not more than six (6) square feet, advertising the property for sale, or signs used by a building to identify the property during the construction and sales period shall be permitted. Developer has the right to display signs which conform to village ordinances during the period of sale and development.

M. Boat, Trailer and Vehicle Parking and Storage: No trucks, trailer, commercial vehicles, boats, campers, recreational vehicle or similar type vehicles shall be parked or stored for a period of more than forty-eight (48) hours in a thirty (30) day period on any Lot unless the same are in a garage or other vehicle enclosure and out of view.

N. Waste Disposal: No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and removed from view from the street and abutting properties.

O. Garage: No present or future Owners of all or any part of any Lot shall occupy any garage, or any unfinished building or dwelling house, either for temporary or permanent residence, and no garage shall be erected on any Lot, or any part thereof, except contemporaneously with or subsequent to the erection of the dwelling house built on the premises. No dwelling may be constructed on any Lot unless any enclosed garage is also constructed thereon.

P. Antennas: No radio antenna, television antenna, or other antenna shall be attached or affixed in any way to the exterior of any house or garage, any part of any fence, pole or structure, or any tree, bush or other living thing. Notwithstanding the foregoing, one (1) satellite dish receptor not exceeding two feet (2) feet in diameter and placed only behind the Lot's building set back line may be

affixed to a house or garage; if located on the Lot and not attached to the house or garage, it and must be shielded and landscaped from public view and view of neighboring homes and yards. This prohibition against satellite receiving dishes in excess of 24" in diameter shall also apply to those receivers designed or disguised to appear to have multiple uses.

Q. Clothes Lines: No clothes lines or clothes hanging devices shall be permitted.

R. Fencing: No fences or walls may be constructed on any part of a Lot unless prior written approval is obtained from the Developer or its designee pursuant to the provisions of Article V hereof. The Developer shall have the authority to establish standards for permissible fencing and walls, including the authority to prohibit or require fencing or walls of certain types to be installed in certain areas. All fencing and walls shall meet zoning or development plan approval requirements established by applicable governmental authorities, shall conform to standards set forth by the Developer and must be approved in writing prior to the installation thereof. By way of example and not limitation, compliance with the following standards shall be considered by the Developer in reviewing fence applications:

1. Fences shall be constructed only of black painted aluminum in a style similar to that depicted in Exhibit "A" attached hereto and made a part hereof and consisting of one (1) page;
2. No fence or wall shall be constructed in excess of fifty-two (52) inches (52") above finished grade, provided however, that if other provisions of this Declaration or a governmental agency exercising jurisdiction over the Lot on which the fence or wall is to be constructed requires a minimum height in excess of 52" for certain fences or walls in certain areas, or for safety reasons (i.e. swimming pool enclosure), such fence or wall may exceed 52" above finished grade, but only to the extent necessary to meet the provided or governmentally required minimum;
3. Fences or walls shall not be located closer to the street than a line parallel to the street extending from the midpoint between the front and rear corners of the home building, and in no event shall fences be located closer to any street than the building line shown on the Subdivision plat, except for ornamental railings, walls or fences not exceeding three feet (3') in height which are located on or adjacent to entrance platforms or steps; and
4. All fencing located upon any Lot shall be maintained by the Owner of the Lot on which it is located, in a neat and orderly condition.

Nothing contained herein shall be interpreted or construed to permit the use of approved fencing material to accomplish a purpose or use otherwise prohibited hereunder.

S. Grading and Drainage: No construction, grading or other improvements shall be made to any Lot if such improvement would interfere with or otherwise alter the general grading and draining plan of the Subdivision or any existing swales, floodways or other drainage configuration.

T. Office: Notwithstanding any other provision of this instrument, a developer or home builder may perform within the Subdivision development activities by showing Lots in the Subdivision and by maintaining a temporary development or sales location, whether trailer or other structure.

U. Reservations Binding: The reservations, restrictions, conditions, easements, charges, agreements, covenants, obligations, rights and uses and provisions shall bind the Developer, its successors and assigns, and shall be considered covenants running with the land.

V. Street Tree: Developer has determined and the Lot Owners agree to uniform trees which Developer shall designate and each Lot Owner agrees to plant. Each Lot Owner shall care for and if necessary, replace such tree or trees at the Lot Owner's expense with a like type of tree.

W. Lot Maintenance: Each Owner of a Lot hereof not improved with a residential dwelling agrees to maintain such Lot in a clean and sanitary condition and agrees to periodically cut the weeds and brush upon such Lot. Upon failure of the Owner to so maintain a Lot, the Association, as hereinafter defined, shall have the right but not the obligation to clear such Lot of weeds and brush, the expenses thereof to be assessed to the Owner of the Lot and if not paid the Association may create a lien upon such Lot in the same manner as described herein.

X. Nuisance: No nuisance of any character shall be committed, suffered, or maintained on any Lot or Reserve, or any part thereof. All Lots or parts thereof on which residences are constructed shall be graded and landscaped properly upon completion of such residences, and shall thereafter, be maintained neatly and in accordance with the description, plans and specifications thereof. Upon notice from Developer, the Owner of any Lot or part thereof shall forthwith abate any nuisance and/or put such Lot or part thereof in good order and in accordance with such plans, descriptions, and specifications, and upon failure to do so, Developer may summarily abate such nuisance, restore such premises to good order, and the cost thereof shall be a lien on the subject premises until paid, but subject to any first mortgage on said premises, and Developer shall not be liable for any damages at law or in equity.

Y. ENTRANCEWAY EASEMENTS: Easements are herein reserved over the crosshatched area of Lot One (1) of the Subdivision, as shown on Exhibit "B" attached hereto, made a part hereof, and consisting of one (1) page, and over Reserves B and F of the Subdivision, for the installation of Entranceway Improvements, and the repair and maintenance of thereof.

## V. ARCHITECTURAL STANDARDS

A. Design Review: No building shall be erected on any Lot unless the plans and specifications shall have the written approval of the Developer or its designee. Upon approval of the plans and specifications, no change or addition to the plan, specifications, building grade, use or other matter or thing, shall be done without the express written approval or waiver of Developer or its designee nor shall any waiver of any terms, regulations, restrictions, charge or covenant, be a waiver of any other terms, regulations, restrictions, charge or covenant. If any approval, or any waiver is limited as to duration, then any terms, conditions, regulations, restrictions, charges, and covenants, which are therein waived or suspended, shall be deemed to be suspended only for such period as is set forth in such approval or waiver, and shall thereafter apply with full force and effect. If Developer or its designee fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted in accordance with the terms hereof, they shall be deemed to have been approved and the requirement herein fulfilled. If Developer ceases to exist as a company, and unless Developer has assigned its rights herein, the approval of plans and specifications shall not be necessary and the provisions of this Article shall not be operative. If the Developer or its designee disapproves said plans and specifications, the Lot Owner may revise and resubmit said plans and specifications until approval is received.



Upon conveyance of all of the Lots in the Subdivision by the Developer, and approval of the initial building plans and specifications of all Lots by the Developer or its designee, the approvals required thereafter shall automatically vest in the Association.

All construction work commenced on the Property shall be completed within a reasonable time after the start of construction in accordance with the plans and specifications approved by Developer or its designee, and Developer and/or its designee shall have the right to inspect all such construction work at all reasonable times to ensure the compliance with the plans and specifications submitted to it. Developer its successors, assignees, designees, or delegates, shall have the right to approve the exterior color of all homes in the Subdivision.

B. Variances: To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, Developer or its designee shall have the authority to grant reasonable variances from the provisions of this Article and from the architectural standards established pursuant to this Article, provided that the activity or condition is not prohibited by applicable law; and provided further that, in their judgement, the variance is in the best interest of the community and is within the spirit of the standards of the Subdivision. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Declaration as applied to any other person or any other part of the Property.

C. Improvements by Developer: Notwithstanding the foregoing to the contrary, all Improvements constructed by the Developer or its members or agents or required by the Village of New Albany shall be deemed to comply in all respects with the requirements of this Declaration.

## VI. EASEMENTS AND LICENSES

A. Easement of Access and Enjoyment Over Common Property: Every Owner shall have a right and easement (in common with all other Owners) of enjoyment in, over, and upon the Common Property, and a right of access to and from his/her/their Lot, which rights shall be appurtenant to, and shall pass with the title to, his/her/ their Lot, subject to the terms and limitations set forth in this Declaration, subject, however, to the Rules. An Owner may delegate his/her/their rights of access and enjoyment to family members, occupants, guests and invitees.

B. Right of Entry for Repair: The duly authorized agents, officers, contractors, and employees of the Association shall have a right of entry and access to the Lots and Reserves, for the purpose of performing the Association's rights or obligations set forth in this Declaration. The Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Property, but only during reasonable hours and after providing seventy-two (72) hours advance notice to the Owner, except in cases of emergency.

C. Easement for Utilities and Other Purposes: The Board or Developer may convey easements over the Common Property to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, ducts, cables, and other equipment necessary to furnish electrical, gas, sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Subdivision and to any entity for such other purposes as the Board or Developer deems appropriate; provided that such equipment or the exercise of such easement rights shall not unreasonably interfere with the Owners' use and enjoyment of the Owner's Lot. The Board or Developer may grant such easements over all portions of the Subdivision for the benefit of adjacent properties as the Board or Developer deems appropriate; provided that the grant of such

easements imposes no undue, unreasonable, or material burden or cost upon a Lot or Lot Owner; and further provided that the Board or Developer may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably delayed or withheld).

D. Easement for Services: A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage removal personnel, and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Common Property to perform their duties.

E. No-Build Zones: Any areas designated on the Subdivision plat, in prior deed restrictions, or on Exhibit "C", as "No-Build Zones" shall be areas in which no Owner shall have the right to construct or locate any Improvements. In vegetated No-Build Zones, Owners may perform maintenance necessary for the safety of persons and property (i.e. removing noxious and poisonous plants, or removing dead trees which may fall and harm persons or other Improvements). Grassed No-Build Zones shall be mowed, trimmed and watered by the person(s) responsible for the maintenance of the specific area in question according to the other terms hereof.

## VII. HOMEOWNERS' ASSOCIATION

A. Purpose; Membership: The Association shall be to own, maintain, and landscape Reserves B, C, E, and F, as well as the entry features and other areas that may from time to time be conveyed to it; and, if necessary, to establish uniform rules and regulations pertaining to the maintenance and use of the Reserves and the Improvements. The Association membership shall be comprised of the record Owners of all Lots. The Owners of each Lot shall have one (1) vote for each Lot owned in all elections and in all matters requiring a vote as set forth herein.

B. Assessments: Each Owner of any Lot, by acceptance of a deed or other conveyance thereto, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association an initial assessment, an annual assessment for common expenses (as hereinafter defined) and special assessments (as hereinafter provided).

1. Annual Assessment for Common Expenses:

- a. Annual Assessment: The annual Common Expense Assessment per Lot shall commence within sixty (60) days following the issuance of an occupancy permit or other instrument allowing occupancy of a dwelling, which shall be at the rate determined by the Association for all Lots in the Subdivision.
- b. Increases: Increases are limited as provided in the Rules or corporate documents of the Association.

2. Special Assessment for Capital Improvements: In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or major maintenance related to the Reserves or Improvements, provided that any such Special Assessment shall have the assent of sixty percent (60%) of the total votes of all Owners of Lots at a meeting duly called for this purpose; provided, however, any Lot owned by the Developer shall not be entitled to vote for such increase.

3. Notice of Meeting and Quorum for Any Action Authorized: Written notice of any Members' meeting called for the purpose of taking any action for increases in excess of fifteen percent (15%) above the Assessment for the previous year or for the purpose of special increases or Special Assessments for capital improvements shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members or of proxies entitled to cast a majority of all votes shall constitute a quorum.
4. Date of Commencement of Annual Assessments; Due Dates: The Annual Assessments for Common Expenses shall commence within sixty (60) days following the issuance of an occupancy permit or other instrument allowing occupancy of a dwelling as to each Lot. The Association shall fix the amount of the Annual Assessment for Common Expenses against each Lot not later than December 1 of each calendar year for the following calendar year. Written notice of the Annual Assessment for Common Expenses shall be sent to every Owner subject hereto. Unless otherwise established by the Association, Annual Assessments for Common Expenses shall be collected on an annual basis.
5. Lien for Assessment: All sums assessed to any Lot pursuant hereto, including those owned by Developer together with interest and all costs and expenses of collection, including reasonable attorneys fees, shall be secured by a continuing lien on such Lot in favor of the Association.
6. Effect of Nonpayment of Assessment; Remedies of the Association: Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessment provided for herein by non-use of the Reserves or Association property, or abandonment of the Lot.
7. Foreclosure: The lien for sums assessed pursuant hereto may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Ohio. In any such foreclosure, the Owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorneys fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date the Owner's title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.
8. Subordination of the Lien to Mortgages: The lien of the Assessment provided for herein shall be subordinate to the lien of any first mortgage which is given to or held by a bank, savings and loan association, FNMA, GNMA, insurance company, mortgage company or other lender, or which is guaranteed or insured by the FHA or VA. The sale or transfer of any Lot pursuant to foreclosure of such a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which shall become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments which thereafter become due or from the lien thereof. The Association shall, upon written request, report to any such first mortgagee of a Lot any Assessments remaining unpaid for a period longer than thirty (30) days after the same shall have become due, and shall give such first mortgagee a period of thirty (30)

days in which to cure such delinquency before instituting foreclosure proceedings against the Lot; provided, however, that such first mortgagee shall have furnished to the Association written notice of the existence of its mortgage, which notice shall designate the Lot encumbered by a proper legal description and shall state the address to which notices pursuant to this paragraph are to be given. Any such mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Article.

C. Right of Association to Repair Lot. If any Owner fails to maintain his/her/their Lot in the manner required herein, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Property by Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of this Declaration, then the Board may authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred.

D. Damage to Common Property By Owner or Occupant. If the Common Property is damaged by any Owner or occupant, his/her/their family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

### MISCELLANEOUS TERMS

#### **XII. PLAT NOTES**

The Subdivision plat creates various easements, limitations and restrictions with respect to the property encompassed thereby. Those limitations and restrictions include the following:

NOTE A: No determination has been made by the Village of New Albany, Ohio, as to whether the area proposed to be platted contains area(s) that could be classified as Wetlands by the Army Corps of Engineers. It is the Developer's responsibility to determine whether Wetlands exist on the Subdivision site. The Village of New Albany's approval of the Subdivision plat does not imply any approval for the development of the site as it may pertain to Wetlands.

NOTE B: At the time of platting, all of the Subdivision land is in Zone A (No base flood elevations determined), Zone AE (Base flood elevations determined), Zone X (areas of 500-year flood; areas of 100-year flood with average depths of less than one foot or with drainage areas less than one square mile and areas protected by levees from 100-year flood) and Zone X (areas determined to be outside 500-year flood plain) designated and delineated upon the FEMA Flood Insurance Rate Map for Franklin County Ohio, and Incorporated Areas, map number 39049CO182G with effective date August 2, 1995.

NOTE C: Reserve "A" as designated and delineated on the Subdivision plat shall be owned and maintained by the Village of New Albany for the purpose of open space.

NOTE D: Reserve "D" as designated and delineated on the Subdivision plat shall be owned and maintained by the Village of New Albany, Ohio. The Developer, however, reserves the right to obtain Reserve "D" from the Village of New Albany at no cost in connection with a future development of property north of Reserve "D".

NOTE E: Reserves "B", "C", "E" and "F" as designated and delineated on the Subdivision plat

shall be owned and maintained as public open space by the Association comprised of the Lot Owners. Said Association shall maintain said Reserves at its cost and at its risk and shall hold the Village of New Albany, Ohio, harmless from actions resulting from said ownership and maintenance.

NOTE F: Minimum front, side and rear yard setback distances: The minimum front, side and rear yard setback distances, required by the zoning district regulations in effect at the time of platting for each Lot in the Subdivision, are given in the following table:

Front:	(front the street right-of-way line) Distance indicated by "Building Line" as shown on this plat.
Side:	10 feet minimum
Rear:	30 feet minimum

NOTE G: Depressed Driveways: Depressed driveways are hereby prohibited on all Lots. Nothing herein, however, shall prohibit the construction and use of, if otherwise permitted, a driveway alongside or to the rear of a residential structure.

NOTE H: Stream and/or Wetland Preservation Zone Restrictions: The stream and/or Wetland Preservation Zone (Preservation Zone) indicated herein will run with the land in perpetuity so that the Preservation Zone shall forever be restricted from development with buildings, structures, and uses. It is also the intent and purpose of the Preservation Zone to restrict and forbid any activity or use which would as a natural consequence of such, impede or make more difficult the accomplishment of the purpose of which the Preservation Zone was created.

Additional restrictions include:

- No dumping or burning of refuse
- No hunting or trapping
- Natural resources of the Preservation Zone shall remain undisturbed and no topsoil, sand, gravel or rock shall be excavated or removed.
- Nothing shall be permitted to occur on the premises which would contribute to the erosion of the land and no trees shall be cut or removed except for removal of such dead, diseased, noxious, or decayed trees or vegetation which may be required for conservation or scenic purposes, or for reasons of public safety.
- No private encroachment shall be permitted, such as, but not limited to, planting of flowers, shrubs, garden material, etc., dumping of trash or debris, or the installation of any type of recreation or other facility or convenience.
- No roadway or any facility of any public utility facilities or those outlined in the original plan shall be permitted to be constructed or installed in the premises.

NOTE I: Tree Preservation and No Build Zone: Within those areas designated on the Subdivision plat as "Tree Preservation and No Build Zone", no accessory building, fences, walks, steps or improvements of any kind shall be constructed, except underground utility lines that may be necessary to serve a Lot or other uses in the area. Reasonable efforts shall be used to ensure that minimal vegetation disturbances or minimal topography alterations occur in these areas. No trees over four inches in diameter shall be removed in these designated areas excepting where utilities cross these designated areas. Dead plant material may be removed. Said zones shall be maintained by the Owners of the Lots upon which such zones are located. Said zones shall also be for the purpose of constructing, operating and maintaining major storm water drainage swales and/or other storm water drainage facilities.

NOTE J: Paved hiking/biking trails located within the limits of the Subdivision shall be open for use by the general public. These trails, located within Lot 1, Reserve "B", Reserve "C", and Reserve "F" and certain public street rights-of-way in the Subdivision shall be maintained by the Association and the Association shall maintain said trails at its cost and at its risk and shall hold the Village of New Albany, Ohio, harmless from actions resulting from said maintenance.

NOTE K: 100 Year Design Flood In Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, and 33:

The boundary of the 100-year design flood in Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, and 33, which boundary is shown hereon and designated "100-year flood limit", is intended to be in a location that is coincident with the locations of the elevations of the 100-year design flood along the watercourse located along the northerly or southerly sides of said lots. Portions of this boundary are in locations that anticipate the finished ground surface in the applicable areas of said lots being in accordance with the grading plan for said area as shown on the approved master grading plan for Tidewater at New Albany. Correspondingly, portions of the boundary of the Drainage Easement area shown hereon adjacent to said 100-year flood limit boundary were set in anticipation of said finished ground surface being in accordance with said grading plan. The watercourse referred to hereinabove shall remain open and enclosure by pipe structure or any other structure in the future is hereby prohibited unless otherwise approved by the Village of New Albany, Ohio, Municipal Engineer.

NOTE L: Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, and 33:  
On each of Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, and 33, no building shall be constructed which has an opening, unprotected from flooding, in its foundation wall, the lowest point of which opening is lower than the flood protection elevation for that lot given in the following table:

Lot No.	Flood Protection Elevation (NAVD 1988)
14	1095.5
15	1095.5
16	1092.8
17	1091.6
18	1089.4
20	1097.9
21	1097.9
22	1100.6
23	1101.4
24	1101.8
25	1102.3
26	1103.0
27	1103.6
28	1103.6
32	1105.0
33	1104.8

Each of the foregoing flood protection elevations are approximately 2.0 feet above the applicable 100-year design flood elevation as calculated by EMH&T, Inc.

NOTE M: Foundation Walls, Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, and 33:  
The foundation all of the building to be constructed on each of Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24,

25, 26, 27, 28, 32, and 33 shall be designed by a Registered Engineer and submitted to the Municipal Engineer of the Village of New Albany, Ohio, for approval.

NOTE N: Landscape Buffer: The area of land in each of Lots 30 to 39, both inclusive, designated hereon as "Landscape Buffer" shall be improved with landscaping. Existing trees within said buffer areas shall be preserved using current and practical methods for doing so, provided that trees that are dead or diseased may be removed therefrom. The owner of the fee simple title to each of said lots shall care for and maintain said landscaping and trees located within said owner's lot. The Tidewater at New Albany homeowner's association shall have and is hereby granted a nonexclusive right and easement in and over said areas of land designated "Landscape Buffer", to care for and maintain said landscaping and trees. Said association shall have the right but not the obligation to care for and maintain said landscaping and trees within each area designated "Landscape Buffer" should the owner of the fee simple title thereof fail to do so.

### XIII. MISCELLANEOUS

A. Term. This Declaration shall bind and run with the land for a term of thirty (30) years from and after the date that this Declaration is filed for recording with the appropriate governmental office and thereafter shall automatically renew forever for successive periods of 10 years each, unless earlier terminated by a majority of the Members, or by the Developer.

B. Enforcement; Waiver. This Declaration may be enforced by any proceeding at law or in equity by the Developer, any Owner, the Association, and their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant or restriction, to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees). Failure of the Developer, the Association or any Owner to enforce any provision of this Declaration or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement of this Declaration or the Rules.

C. Amendments. Until the sale of the last Lot by Developer, Developer may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants, conditions, restrictions and easements upon any Lots or Reserves in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Subdivision. After the sale of the last Lot by Developer, Developer may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is:

1. necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial order,
2. necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots,
3. necessary to conform to the requirements of United States Federal Housing Administration, or

4. necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. An amendment to this Declaration shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Developer, to reflect and address the different character or intended development of any such additional property.

Upon conveyance of all of the Lots by the Developer, this Declaration may be amended only by a majority vote of the Lot Owners.

- D. Developer's Rights to Complete Development. Developer shall have the right to:
  1. complete the development, construction, promotion, marketing, sale, resale and leasing of Lots;
  2. construct or alter Improvements on any Lot owned by Developer;
  3. construct or alter the Improvements on the Reserves;
  4. maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any Lot owned by Developer or the Association; or
  5. post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Lots.

Further, Developer shall have the right of ingress and egress through the streets, paths and walkways located in the Subdivision for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of Developer or require Developer to obtain approval to: (i) excavate, cut, fill or grade any Lot owned by Developer or construct, alter, remodel, demolish or replace any Improvements on any Reserves; or (ii) remove or alter any property owned by Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any Lot; or (iii) require Developer to seek or obtain the approval of the Association for any such activity or Improvement on any Reserve or any Lot owned by Developer. Nothing in this Section shall limit or impair the reserved rights of Developer as elsewhere provided in this Declaration.

E. Mortgagee Rights. A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

1. any proposed amendment of this Declaration;



2. any proposed termination of the Association; and
3. any default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon request and at such mortgagee's expense, to inspect the books and records of the Association during the normal business hours.

G. Indemnification. The Association shall indemnify every Board member, officer and director of the Association against any all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or director. The Board members, officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The Board members, officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Board members, officers and directors may also be Members of the Association), and the Association shall indemnify and forever hold each such Board member, officer and director free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any Board member, officer or director, or former Board member, officer or director may be entitled.

H. Severability. If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law of the State, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstances; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

I. Captions. The caption of each Article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.

J. Notices. Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.

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**SIGNATURES ON  
FOLLOWING PAGE**

IN WITNESS WHEREOF, the Developer has caused the execution this Declaration as of the date first above written.

TIDEWATER ASSOCIATES, LLC,  
an Ohio limited liability company,  
by: Duffy Homes, Inc.,  
an Ohio corporation and its authorized member

by: Charles P. Driscoll  
Charles P. Driscoll, Vice-President

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this 24 day of April, 2006, by Tidewater Associates, LLC, an Ohio limited liability company, by Duffy Homes, Inc., an Ohio corporation, its authorized member, by Charles P. Driscoll, its duly authorized Vice-President, for and on behalf of the Company and the Corporation.

Witness my hand and official seal.

Susan Wilgus  
Notary Public



SUSAN WILGUS  
Notary Public, State of Ohio  
My Commission Expires 06-25-  
2010

This instrument prepared by:

Thomas Markworth, Attorney-at-Law  
495 South High Street, Suite 150  
Columbus, Ohio 43215  
(614) 241-2078

Shared Docs/Restrictions/Tidewater Restrix 04-13-06

EXHIBIT "C"  
RESPONSIBILITIES OF BUYER DURING CONSTRUCTION  
Tidewater at New Albany

For the protection of all purchasers of Tidewater at New Albany lots and to assure the overall success of the project, the following rules have been set-up and will be strictly monitored and enforced by the Seller.

1. Buyer will have all sanitary sewer manholes, storm sewer manholes, rear yard drains, main water line tap boxes uncovered, exposed and adjusted to finish grade after sodding and seeding of the yard or installation of walks and driveways.
2. Buyer, his agents, customers, licensees or subcontractors will only enter his lot through the road frontage of that lot. No access through adjacent lots will be permitted.
3. Buyer agrees that he will repair any damage to curb or utility improvements anywhere within the subdivision which he, his agents, customers, licensees, or subcontractors may cause. Buyer, also agrees that if such damage is not promptly repaired, the Seller may make such repairs and receive, upon demand, from Buyer the actual cost incurred.
4. Buyer will store necessary construction material and equipment only on his lot. Storage on the other lot will be forbidden.
5. Buyer will spoil excavated material on his lot only. Any excess spoilage will be trucked off the project, not place on other lots within the subdivision unless prior approval is granted by the Seller.
6. BUYER WILL SET THE HOUSE ELEVATION AND FINISH GRADES IN STRICT ACCORDANCE WITH THE OVERLOT GRADING PLAN FOR THE SUBDIVISION. NO DEVIATION THEREFROM WILL BE ALLOWED WITHOUT WRITTEN PERMISSION FROM SELLER.
7. Buyer will install the main concrete sidewalk and driveway apron where required or escrow the amount necessary to pay for such improvements before any occupancy of the premises.
8. Buyer must mow vacant lots at least twice annually, once between May 15 and June 15 and once between August 1 and September 15.
9. Buyer will display no more than two signs of five square feet each while houses are for sale.
10. Buyer will remove ALL trash and construction debris from vacant lots at least monthly and at least weekly during house construction. Buyer will be responsible for keeping gutters and streets clean along his frontage weekly.

I hereby agree that I will adhere to the above rule while building in the Tidewater at New Albany subdivision.

Date of acceptance: \_\_\_\_\_ Buyer: \_\_\_\_\_

EXHIBIT "A"

