

**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
OF  
LAKE ERIE SHORES**

**THIS DECLARATION** (the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 1999, by and between **DISANTO ENTERPRISES, INC.** (hereinafter referred to as "Developer") and **LAKE ERIE SHORES HOMEOWNERS ASSOCIATION, INC.** (hereinafter sometimes referred to as "Association"), both of 32100 Solon Road, Solon, Ohio 44129.

**WITNESSETH:**

**WHEREAS**, Developer is the owner of the real property described in Article II, Section 1 of this Declaration and desires to create thereon one or more residential communities with open spaces and other common areas, and to this end, desires to subject said real property to the covenants, restrictions, easements, charges and liens, hereinafter set forth, for the benefit of said property and each owner thereof, the Developer, its successors and assigns, and Painesville Township (the "Township") as hereinafter set forth; and

**WHEREAS**, it is understood and anticipated that the Developer may assign a portion, or all, of its obligations hereunder to a nominee; and

**WHEREAS**, it is further understood and anticipated that there may be Subsequent Amendments made to this Declaration to which the Township shall not unreasonably withhold its consent; and

**WHEREAS**, Developer has deemed it desirable for the efficient preservation of the values and amenities in Lake Erie Shores in Painesville, Ohio (the "Subdivision"), to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, the Association has been incorporated under the laws of the State of Ohio, as a non-profit corporation, for the purpose of exercising the functions aforesaid; and

**WHEREAS**, the Association joins in the Declaration for the purpose of accepting the duties and responsibilities imposed upon it herein;

**NOW, THEREFORE**, Developer declares that the real property described in Article II, Section 1 (the "Property") shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements, and restrictions of record and hereinafter set forth, and further specifies that the covenants, easements, and restrictions imposed, granted and/or reserved in this Declaration shall constitute covenants, easements, and restrictions running with the land and shall be binding upon Developer, its successors and assigns, and all other owners of any part of said real property, including, but not limited to, the Association and Owners, together with their grantees, successors, heirs, executors, administrators or assigns.

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** The following words when used in this Declaration shall have the following meanings (unless the context shall prohibit):

(a) "Association" shall mean and refer to LAKE ERIE SHORES HOMEOWNERS ASSOCIATION, INC.

(b) "Common Areas" shall mean and refer to the real property in the Subdivision devoted to the common use and enjoyment of the Owners, consisting of all of the land designated Exhibit "A" attached hereto, including, without limitation, private roads, drives, paths and walks not within the bounds of a Parcel and the entrances, exits and any other installations related thereto; the ponds or other water bodies other than those located on a Parcel; the beach and bluff areas; parking areas other than those located on a dedicated road or a Parcel; and any landscaped or open areas not located within a Parcel. The Common Areas shall be conveyed by the Developer to the Association as defined herein.

(c) "Declaration" shall mean and refer to this Master Declaration of Covenants, Conditions, Easements and Restrictions of Lake Erie Shores and any supplements or amendments thereto.

(f) "Developer" shall mean and refer to **DiSanto Enterprises, Inc.**, an Ohio corporation, its successors and assigns.

(g) "Lake" shall mean and refer to Lake Erie.

(h) "Living Unit" shall mean and refer to all units of residential housing constructed or to be constructed upon the Property, whether they are single-family residences, cluster dwelling units, residential condominium units or any other type of living unit permitted to be constructed or created upon the Property under any applicable zoning code that now exists or may hereafter be amended; provided, further, that condominium units shall not be stacked units and shall be designated on a recorded condominium declaration and drawing filed therewith.

(i) "Member" shall mean and refer to all who are members of the Association as provided in Article III, Section I hereunder.

(j) "Neighborhood" shall mean and refer to each separately developed and denominated residential area which is subject to this Master Declaration and which is also governed by a Neighborhood Declaration. The Developer or Association alone shall have the right to designate a Neighborhood.

(k) "Neighborhood Association" shall mean an association which administers a Neighborhood and of which all Owners of property in the Neighborhood shall be members.

(l) "Neighborhood Declaration" shall mean a declaration subjecting the Neighborhood to covenants and restrictions in addition to this Declaration and recorded with the Lake County Recorder. A Neighborhood Declaration may be a condominium declaration as set forth in Section 5311.05 of the Ohio Revised Code.

(i) "Occupant" shall mean an Owner, lessee, land contract vendee and their family members or any other person or persons occupying a Living Unit in the Subdivision as their residence.

(j) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel and/or Living Unit situated upon the Property but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(k) "Parcel" shall mean and refer to any lot on the recorded plat of the Subdivision upon which a Living Unit is constructed or is intended to be constructed.

(l) "Township" shall mean and refer to Painesville Township, Ohio, a municipal corporation organized and existing under the laws of the State of Ohio. It is specifically agreed and acknowledged by all parties to this Declaration that the Township is and shall continue to be a third party beneficiary to, and has the authority to administer and enforce these covenants, charges and liens as they relate to the Common properties and facilities located thereon to be used for permanent open spaces, recreational facilities and other common facilities.

## **ARTICLE II** **PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1 – The Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Painesville Township, County of Lake, State of Ohio, and is more particularly described on Exhibit "B" attached hereto and made a part hereof.

**Section 2 –Mergers.** Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association. Alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligation of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger of consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Property except as hereinafter provided.

**Section 3 – Additional Land.** Developer, its successors and assigns hereby reserves the right, but not the obligation, from time to time to add additional property (the "Additional Land") to the Property and to subject the same to the provisions of this Declaration by amendment hereto duly executed and recorded with the Recorder of Lake County without any action by the Association or its members.

## **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1 – Membership.** Every Owner shall be a member of the Association. The membership of the Association shall be divided into two classes, Class A and Class B, entitled to the rights hereinafter set forth with respect to such classifications. Class A members shall be all

those Owners as defined in Article I with the exception of Developer. The only Class B member shall be the Developer.

**Section 2 – Voting Rights.**

(a) Class A members shall be entitled to one vote for each Living Unit or Parcel in which they hold the fee simple interest or interests. When more than one person holds such interest or interests in any Living Unit or Parcel, all such persons shall be members, and the vote for such Living Unit or Parcel shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Living Unit or Parcel.

(b) The Class B member shall be entitled to three votes for each Living Unit or Parcel owned by Developer in the Property, provided that the Class B membership shall cease and become converted to Class A membership as soon as the total votes outstanding in the Class B membership equals or is less than the total votes outstanding in the Class A membership. Thereafter, the Class B member shall be deemed to be a Class A member entitled to one vote for each Parcel in the Property owned by it.

For purposes of determining the votes allowed under this Section, when Living Units are counted, the Parcel or Parcels upon which such Living Units are to be situated shall not be counted.

**Section 3 – Articles and Code of Regulations of the Association.** The Articles of Incorporation and Code of Regulations (“Code”) of the Association may contain any provisions not in conflict with this Declaration or any Supplemental Declaration as are permitted to be set forth in such Articles and Code of Regulations by the non-profit corporation law of the State of Ohio as it may be in effect from time to time.

**ARTICLE IV**  
**COMMON AREAS; NEIGHBORHOODS**

**Section 1- Title to Common Areas.** Every Owner shall have a right and easement in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Parcel. The Common Areas shall be conveyed to the Association.

Developer shall retain the legal title to the Common Areas until such time as the sale of the first Parcel to an Owner. If the Common Area within the Subdivision is conveyed to the Association before completion of all Living Units within the Subdivision, the Developer shall retain for itself, or the Association shall grant, a construction easement to Developer until such time as construction of all Living Units within the Subdivision are complete.

**Section 2 – Neighborhood.** Every Living Unit shall be located within a Neighborhood. The Owners in such Neighborhood shall be members of a Neighborhood Association in accordance with a Neighborhood Declaration in addition to the Master Association. Any Neighborhood Association comprised of condominium Living Units shall make payments to a Sanitary Sewer and Water Line Reserve Maintenance Fund as required by Lake County for the maintenance and repair of sanitary sewers and water lines servicing such Neighborhood.

**ARTICLE V**  
**ASSOCIATION’S AND OWNER’S MAINTENANCE RESPONSIBILITY**

**Section 1 – Association’s Maintenance Responsibility.** Developer shall maintain the Common Area as set forth below until the Common Area is conveyed to the Association. Thereafter, the Association shall keep the Common Area in good condition and repair, in a clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. Without limiting the foregoing, the Association shall have the following responsibilities within the Subdivision:

(a) All grassy and landscaped and other open areas, including the perimeter buffer areas, within the Common Area of the Subdivision (excluding areas remaining in their natural state) shall be cut, pruned, trimmed, mulched, fertilized and otherwise maintained on a regular basis, replacing any grass and landscaping as required to keep such areas neat, trimmed, and aesthetically pleasing. For purposes of this Article V, “landscaping” shall be deemed to mean all permanent plantings such as grass, trees and shrubs; provided, however, that if a shrub or tree requires replacement, the Association shall determine whether to substitute a new plant of like or different kind or type, or whether to replace with grass, beds or otherwise, at such discretion of the Association.

(b) Snow and ice shall be removed from all (i) private roads and (ii) designated parking areas to keep the same reasonably free from such snow and ice as the circumstances may reasonably permit.

(c) Private roads and designated parking areas shall be repaired and, if necessary, replaced, to keep them in good condition and repair.

(d) Utility facilities within the Subdivision to the point where they intersect with a Parcel, including lighting installations, and water, sewer, gas, electric and cable television lines and appurtenances which are not maintained by a utility company shall be repaired and replaced, if necessary, to keep the same in good working order and repair.

(e) All mailbox facilities (but not the boxes themselves) servicing more than one Living Unit and any other facilities within the Subdivision intended for use by more than one Owner within the Subdivision shall be repaired and replaced, if necessary, to keep the same in good working order and repair.

(f) The coastal area adjacent to the Lake shall be kept in a clean and safe condition and in good order and repair, and preventative measures shall be taken as is necessary to prevent shoreline erosion. The Homeowners Association shall enter into a submerged land lease with the Ohio Department of Natural Resources an applicable county agencies and shall pay costs associated with the submerged land lease promptly as they become due.

(g) The beach, upper bluff and picnic areas shall be kept clean and in good condition and repair.

(h) All Common Areas, including open areas, all walks and paths shall be maintained by the Association.

The Association may, in its sole discretion, assume the maintenance responsibilities of a Neighborhood set out in this Declaration or in any Subsequent Amendment or declaration subsequently recorded which creates any Neighborhood Association upon all or any portion of the Property. In such event, all costs of such maintenance shall be assessed only against the Living

Units within the Neighborhood to which the services are provided. This assumption of responsibility may take place either by contract or agreement or because, in the opinion of the Association, the level and quality of service then being provided is not consistent with the community-wide standard for the Property. The provision of services in accordance with this Section shall not constitute discrimination within a class.

**Section 2 – Owner’s Maintenance Responsibility.** Unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration or a Neighborhood Association pursuant to a recorded declaration, each Owner shall maintain his or her Parcel, the interior and exterior of all dwellings and all other structures within his or her Parcel in good condition and repair consistent with the Association standards and all applicable covenants of this Declaration. In addition, each Owner shall keep Owner’s Parcel and the adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests.

Each Owner shall make all repairs and replacements and shall perform such maintenance and repairs to any facility that otherwise would be maintained by the Association if required as the result of the tortious or negligent acts or omissions of the Owner.

**If a repair or replacement required of an Owner is not promptly commenced or is not diligently and continuously completed by Owner, the Association shall have the right (but not the obligation) to commence or complete the repair or replacement and shall charge the Owner for the cost thereof (together with a reasonable charge for the Association’s overhead or administrative costs). If said charge is not paid by the Owner, the Association shall levy a special Assessment against the Owner.**

## **ARTICLE VI** **COVENANT FOR MAINTENANCE ASSESSMENT**

**Section 1 – Creation of the Lien and Personal Obligation of Assessment.** Each Owner of a Living Unit or Parcel with the exception of the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or their conveyance, shall be deemed to covenant and agree to pay the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**Section 2 – Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, materials, equipment, management and supervision thereof. Annual Assessments shall include an amount for the purpose of future shoreline protection which shall be paid by the Association and the amounts due under the submerged land lease by the Association to the Ohio Department of Natural Resources and applicable county agencies.

**Section 3 – Basis of Annual Assessments.** The annual assessment shall be first determined by Developer in good faith, which may be collected by the Association on a per month basis. The assessment period shall be based on the calendar year. After the initial year, the Board of Trustees of the Association, after consideration of costs and future needs of the Association, may fix the assessment for any year at a greater or lesser amount. The Developer shall pay fifty percent (50%) of the monthly assessment for each Living Unit held where a Living Unit has been constructed and is ready for occupancy. In the initial year, Developer also agrees to pay to the Association a reasonable amount to cover the difference between the actual costs charged to the Association to maintain the Subdivision pursuant to its obligations set forth in Article V, Section 1 (which costs shall not include additional improvements not originally installed by Developer) and the assessments collected by or owed to the Association for such initial year.

**Section 4 – Special Assessments.** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any improvement or unexpected repair or replacement, including shoreline erosion control, provided that any such special assessment shall have the assent of two-thirds (2/3) of the Board of Trustees and be approved pursuant to the Code.

The assessments set out above are enforceable under Article VI, Section 7 of this Declaration.

**Section 5 – Date of Commencement of Assessments.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) with the occupancy of the first Occupant in a Living Unit on a Parcel. Notwithstanding anything set forth in this Article VI to the contrary, the first annual assessment shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the date fixed by the Board of Trustees, or become due and payable on a monthly basis on dates fixed by the Board of Trustees. The due date of any special assessments under Section 4 hereof shall be fixed in the resolution authorizing such assessments.

**Section 6 – Duties of the Board of Trustees.** The Board of Trustees of the Association shall fix the amount of the assessment against each Parcel for each assessment period at least thirty (30) days in advance of such period and shall, at that time, prepare a roster of the Property and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

**Section 7 – Effect of Non-Payment of Assessment; Personal Obligation of the Owner; the Lien, Remedies of the Association.** If any assessment is not paid on the date when due, then such assessment shall become delinquent, together with such interest thereon and cost of collection thereof as hereinafter provided.

If an annual or special assessment, or installment of a special assessment, is not paid within thirty (30) days after the due date, the Association may charge an administrative late fee as set forth in the rules and regulations adopted by the Subdivision (the "Rules") such delinquent assessment or installment shall bear interest from the due date at the rate of one and one-half percent (1 ½%) per month provided that such rate does not exceed the highest rate permitted by law in which event the rate charged shall be the highest rate permitted by law. The Association may after such thirty (30) day period bring an action at law against the Owner responsible for the payment of such assessment, and (additionally or alternatively) may foreclose the lien against the property, and in the event a judgment is obtained, such judgment shall include interest on the assessment or installment amount as above provided, together with the costs of the action and reasonable attorney's fees in an amount to be determined by the court.

The personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

The Association may file in the office of the County Recorder a Notice of Lien to evidence any delinquent assessment or installment, but the Association shall not be under any duty to file such Notice of Lien and its failure or omission to do so shall not in any way impair or affect the Association's lien and other rights in and against the property and against the Owner of such property.

**Section 8 – Exempt Property.** The following property subject to this Declaration shall be exempted from the charges, assessments and liens created herein: (a) all Common Areas; (b) all land exempted from taxation by the laws of the State of Ohio upon the terms and to the extent of such legal exemption; and (c) Parcels, land and Living Units owned by Developer.

## **ARTICLE VII** **ADDITIONAL COVENANTS AND RESTRICTIONS**

The intent of this Declaration is to cause the Subdivision to be kept and maintained as a high quality development. Therefore, the covenants and restrictions provided in this Article shall be applicable to the Owner and Occupants of a Living Unit or Parcel. The following Covenants and Restrictions shall be broadly construed and interpreted in furtherance of this intent.

The Association shall have authority to make and to enforce standards and restrictions governing the use of the Property including, but not limited to, those contained herein. Such regulations and use restrictions shall be binding upon all Owners and Occupants of a Parcel or Living Unit thereon.

**Section 1 – Trailers.** No temporary buildings, trailer, recreation vehicle, garage, tent, shack, barn or any similar structure shall be used, temporarily or permanently, as a residence on any part of the Property at any time.

**Section 2 – Nuisance.** No noxious or any activity constituting an unreasonable source of discomfort or annoyance shall be carried on upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to others Owners. The Association shall have absolutely power to determine what is "reasonable" and what is "unreasonable" under this Section.



**Section 3 – Animals.** No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any portion of the Property without the approval of the Association, except that no more than a cumulative total of two (2) dogs, cats, birds or other customary household pets approved by the Association may be kept, subject to Rules adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three days' written notice from the Association. Dogs shall at all times whenever they are outside a Living Unit be confined on a leash held by a responsible person. The Rules may limit the number of pets which may be kept in any one Living Unit. The Association shall have absolute power to prohibit a pet from being kept on the Property or within a Living Unit if the Association finds a violation of this Section.

**Section 4 – Signs.** No sign or other advertising device of any nature shall be placed upon any portion of the Property except for signs and advertising devices installed by or at the direction of the Township or the Association, or which the Association approves as to color, location, size and similar characteristics. "For Rent" and "For Sale" signs are prohibited, except that a placecard of reasonable size may be placed in the window of such Living Unit. Notwithstanding the foregoing, the restrictions of this Section 4 shall not apply to Developer.

**Section 5 – Storage of Material and Trash Handling.** No lumber, metals, bulk material, refuse, or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of firewood in a fireplace), kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the course of construction or reconstruction of any approved building or structure, except firewood may be stored within Living Unit, on patio areas or other areas designed by the Association. If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. At all other times such containers shall be stored in such manner that they cannot be seen from adjacent and surrounding property. No dumping or rubbish shall be permitted on any portion of the Property. Anything herein to the contrary notwithstanding, the Association may adopt a rule or rules which permit burning, incineration or storage of refuse or trash if the same becomes reasonably necessary for the safety, health or welfare of the Owners and/or Occupants, and is permitted by law.

**Section 6 – Commercial or Professional Uses.** Except as expressly permitted in this Declaration, or by the Rules, no industry, business, trade or full-time occupation or profession of any kind, commercial, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property; provided, however, an Owner and/or Occupant may use a portion of his or her Living Unit for his office or studio, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner and/or Occupant and that such use does not result in the Living Unit becoming principally an office, school or studio as distinct from a Living Unit. Furthermore, no trade or business may be conducted in or from any Living Unit without the written approval of the Association first obtained. Such approval shall be granted so long as: (a) the existence or operation of the business activity is not apparent or detectable by sign, sound or smell from outside the Living Unit; (b) the business activity conforms to all Township zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in a Living Unit except by appointment only; (d) the business activity does not involve door-to-door solicitation of Occupants of the Property; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be

determined in the sole discretion of the Association. The Association may adopt Rules which intensify, relax or amend the prohibitions of this Article. Nothing in this Section shall preclude the leasing of the Living Unit by the Developer or an Owner; the right of the Developer or the Association (or firm or agent employed by the Developer or Association) to approve commercial activities such as charity events, temporary food and beverage operations, the right of the Developer to maintain brokerage offices for sales of Parcels and resales thereof and the right of Developer to utilize a Living Unit for office purposes.

**Section 7 – Storage of Vehicles and Machinery.** No truck (except a two-axle truck with no more than four tires), camper, camper trailer, recreation vehicle, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, van, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except in the confines of garages, or parking areas approved by the Association. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping.

**Section 8 – Control of Trucks, Commercial Vehicles.** No tractor trailer, commercial tractors, commercial vehicles, road machinery or excavating equipment shall be permitted to remain on any portion of the Property or on the public right-of-way adjoining any portion of the Property for any period of time whatsoever, except while making deliveries or performing services thereon and except as necessary for the construction, reconstruction or repair of buildings or structures on the Property.

**Section 9 – Traffic Regulations.** All vehicular traffic shall be subject to the provisions of the laws of the State of Ohio, County of Lake, and the Township concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable Rules governing vehicular and pedestrian traffic on any private roads, including reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Ohio, County of Lake or the Township, and such Rules promulgated by the Association, the more restrictive Rules shall govern. Only drivers licensed to operate motor vehicles by the State of Ohio or by any other state in the United States may operate any type of motor vehicle within the Property. All vehicles of any kind and nature which are operated on any private road shall be operated in a careful, prudent, safe, and quiet manner.

**Section 10 – Poles, Wires, Antennae and Satellite Dishes.** Subject to applicable easement rights, no facilities, including poles, wires, antennae and satellite dishes for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained on or above the surface of the ground in any portion of the Property without the prior approval of the Association. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure.

**Section 11 –Lakes and Water Bodies.** Subject to the restriction provided herein and the rules and regulations of the Association, as the same may from time to time be promulgated, each Owner shall be permitted to use the Lake for the swimming and recreational purposes. All ponds, streams, water courses and wetlands, other than the Lake, shall be for aesthetic purposes only, and no other use thereof, including without limitation, irrigation, swimming, boating, fishing, wading, ice skating, playing or use of floatation devises, shall be permitted. Fishing shall be permitted in the Lake, provided that all persons fishing in the Lake comply with the rules and regulations of the

Association and the laws and regulations of the State of Ohio. Those persons engaging in activities, whether permitted or otherwise, upon, in, around or above the lakes, ponds, streams and water bodies of the Property, expressly assume the risk of the inherent dangers of said activities and agree that the Developer and Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of said lakes, ponds, streams and water bodies.

**Section 12 – Grading.** No Person shall change the grade on any portion of the Property without first obtaining the consent of the Association.

**Section 13 – Drainage Ditches.** No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The Township or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property within the Township.

**Section 14 – Residential Size Requirements.** Minimum square footage calculations shall be calculated from the length and width dimension shown on the proposed floor plans. Areas which shall not be included in the minimum square footage calculation are garage, enclosed basement area, sun porches not heated for year round use, breezeways, crawl spaces and attics. The minimum square footage for living units to be constructed on the Property is as follows:

	<u>Housing Type</u>	<u>Minimum Square Footage</u>
(a)	Single-family residence	1,350
(b)	Condominium unit	1,200

The foregoing minimum square footage requirements may be increased for any Neighborhood pursuant to a Neighborhood Declaration.

**Section 15 – Compliance with Township Codes.** Each Owner and/or Occupant shall comply with applicable sections of Painesville Township Housing Code. It is agreed that a violation of any such requirements or any restriction, condition, covenant or restriction imposed now or hereafter by the provisions of this Declaration is a nuisance per se that can be bated by the Association or such governmental authority.

**Section 16 – Use of the Name “Lake Erie Shores”.** No Person shall use the name “Lake Erie Shores” or any derivative thereof in any printed or promotional material without the prior written consent of Developer. However, Owners may use the name “Lake Erie Shores” in printed and promotional material where such words are used solely to specify that particular property is located within Lake Erie Shores.

**Section 17 – Sale, Leasing or Other Alienation of Living Unit.**

(a) Owner’s Right of Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Parcel, and an Owner shall be able to transfer his Parcel freely by sale, gift, devise, lease or otherwise without restriction except as provided in subsection (b) below.

(b) Owner's Right to Lease Living Unit. An Owner shall have the right to lease all (but not less than all) of his Living Unit upon such terms and conditions as the Owner may deem advisable, except that no Living Unit shall be leased or sub-leased for transient or hotel purposes. Any lease or sublease of a Living Unit for a period of less than six months shall be deemed to be a lease or sublease for transient or hotel purposes. Any lease or sublease of a Living Unit shall be in writing and shall provide: (1) that the lease or sublease shall be subject to the terms of this Declaration, the Code and Rules and that failure of a lessee to comply with the terms of this Declaration, the Code and Rules shall be a default under the lease or sublease; (2) that the Association shall have the right to require the Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Declaration, the Code and Rules. The limitations with respect to the leasing of Living Unit shall not apply to the Developer or a first mortgagee of a Living Unit.

(c) Names of Owners and Occupants of Living Unit. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of a Living Unit, each Owner shall notify the Association in writing, within five days after such Owner's Living Unit has been transferred or leased to another person. In addition, each Owner shall provide to a purchaser or lessee of such Owner's Living Unit a copy of this Declaration, the Code, the Rules and other relevant documents.

**Section 18 – Waiver of Subrogation.** Each Person as a condition of accepting title and/or possession of a Living Unit and the Association agree for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement within the Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance, the rights, if any, of any of them against the other, or against the employees, agents, licensees or invitees of any of them with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived.

**Section 19 – Violation of this Article.** If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of the same, including, but not by way of limitation, design review criteria or standards established by the Association or the Developer (as long as the Developer is a Class "B" Member of the Association), the Association shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

Except in the case of an emergency situation, the violating party shall have 15 days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Developer and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Developer and/or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and the Developer contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' fees and paralegals' fees. Furthermore, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstances be construed, deemed or held to be a waiver with respect to any

subsequent breach or violation thereof. Subject to the provisions of the Declarations and the Code, a Person in violation of this Article shall be obligated to the Association and/or Developer for money damages and for the full amount of all costs and expenses, including attorneys' fees and paralegals' fees, incurred to remedy such violation. If said amounts are not paid within ten calendar days following said notification, then said amount shall be deemed "delinquent," and shall, as provided in this Declaration, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

**Section 20 – Restrictions of Other Documents.** Nothing contained in this Article shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Association so long as such restrictions are not inconsistent with restrictions imposed by this Declaration, or adopted by the Board. The Township is a third party beneficiary of these covenants and restrictions; provided, however, if the Township's zoning, building or other requirements of ordinances and general law are more restrictive than these covenants and restrictions, the Township's requirements shall prevail.

**Section 21 – Certificate of Compliance with Restrictions.** Upon the conveyance of a Parcel or an interest therein, the grantor shall have the right to request the Association to issue a Certificate of Compliance stating that it has no record of a violation of this Article. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Association, nor any trustee, officer or agent shall have any liability to the grantor, grantee or mortgagee of a Parcel or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the advance payment of a processing fee not to exceed \$50.00 for the issuance of the Certificate of Compliance.

## **ARTICLE VIII** **EASEMENTS**

**Section 1 – Parking Easement.** There is hereby reserved an easement upon portions of the Property, as determined by Developer and/or the Association, in favor of the Developer, the Association, all Owners, Occupants, and their respective guests, licensees and invitees for the construction, alteration, rebuilding, restoration, maintenance, repair and use of designated parking areas within the subdivision. Notwithstanding anything set forth above to the contrary, parking in such designated parking areas is solely for the guests, licensees and invitees of the Owners and Occupants, emergency and service personnel, and such needs of Owners and Occupants as approved by the Association.

**Section 2 – Landscaping Easement.** There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, an easement upon, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all landscaping installed or determined to be installed by Developer and/or the Association.

**Section 3 – Utility Easements.** There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, an easement upon, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer and the Association and their successors

and assigns, the Township or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Living Unit and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Developer, the Association or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Developer and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property.

**Section 4 – Easement for Ingress and Egress.** There is hereby reserved an easement upon, across, over and through the private streets and any sidewalks, walkways, and parking areas in favor of the Developer, the Association, all Owners, Occupants, and their respective guests, licenses and invitees, emergency and service personnel for pedestrian and vehicular ingress and egress, as the case may be, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Developer and/or the Association may limit this right of ingress and egress by a Subsequent Amendment.

**Section 5 – Easements for Construction, Alteration, etc.** There is hereby reserved in favor of Developer and the Association an easement upon portions of the Property necessary in connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Living Unit or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Living Unit or other structure or improvement on the Property.

**Section 6 – Maintenance Easement.** There is hereby reserved to Developer and for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such action, unless otherwise provided herein; and provided, further, that the exercise of its rights hereunder the Association shall be entitled to be reimbursed by such Owner pursuant to the provisions of this Declaration. Furthermore, the Association is granted easement rights to enter upon the Property for the purpose of maintaining the Common Areas as provided in this Declaration.

**Section 7 – Scope of Easements and Dedication of Roadways and Utilities.** To the extent the easement rights granted or reserved hereunder are definable within specific areas, the Developer or the Association (with the Developer's prior written consent so long as Developer is a Class "B" Member) shall have the right (but not the obligation) to: (a) limit such easements to specific areas and purposes, and record a document or documents releasing the balance of the lands from the burden of such easements; and/or (b) record a plat or other document or documents setting forth the specific areas subjected to such easements; and/or (c) dedicate to public or private use specific areas (and the improvements contained therein) within the Property to meet the requirements of the County, Township and other public authorities having jurisdiction over the same. The Developer or the Association may exercise any of such rights without the necessity of obtaining the consent or approval of Owners and other Persons for whose benefit the easement rights are granted or served.

**Section 8 – Easements to Run with Lands.** All easements and rights described herein are easements appurtenant to the Property and the Common Areas, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Developer, its successors and assigns, and any Owner, Tenant, Occupant, purchaser, mortgagee, the Township or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor their successors and assigns, as easements appurtenant to the remainder of such properties, easements created by this Declaration for the benefit of the Association, any Owner, Tenant, Occupant, purchaser, mortgagee, the Township or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

Developer and (after transfer of the Common Areas) the Association shall have the right to grant easements for the installation and maintenance of street and traffic signs, sanitary sewers, storm sewers, drainage and swales to the Township. No Owner or Occupant shall in any way hinder or obstruct the operation or flow of the drainage system. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the Township by formal action.

## **ARTICLE IX** **ARCHITECTURAL CONTROL**

**Section 1 – Architectural Control.** No building, fence, wall or other structure shall be erected, placed, or altered within the Property, until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved by the Developer or its designated architect in writing. Payment for the cost of architectural review fees shall be the responsibility of the applicant. Responsibility for Architectural Control as described above will transfer from the Developer to the Association upon completion of the construction of all Living Units within the Property, or such time as Developer determines in its sole discretion.

## **ARTICLE X** **GENERAL PROVISIONS**

**Section 1 – Duration.** This Declaration shall run with the land and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from date of recording of this Declaration, after which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots and Living Units has been recorded, agreeing to terminate said Covenants and Restrictions.

For purposes of meeting the two-thirds (2/3) requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. Provided, however, that no such agreement to terminate shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

**Section 2 – Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, prepaid, to the last known address of the person who appears as Member or Owner of the records of the Association at the time of such mailing.

**Section 3 – Enforcement.** Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 4 – Binding Effect.** Each Grantee accepting a deed, lease or other instrument conveying any interest in a Lot, Proposed Living Unit, or Living Unit, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration.

**Section 5 – Assignability.** The Developer, its successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all or part of its rights, title and interest under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all obligations also contained herein.

**Section 6 – Amendments.** The terms and conditions of this Declaration may be amended, annulled or waived by an instrument in writing recorded in the public records of Lake County, Ohio, in the following manner and subject to the following conditions:

(a) Until such time as the Developer, or Developer's designated successors or assigns has completed the sale of all Parcels, Developer, or Developer's designated successors or assigns, shall have the sole right and power of granting waivers to provisions of this Declaration and amending this Declaration provided no such amendment shall materially and adversely affect the value of existing Living Units or shall prevent a Living Unit from being used by the Owner in the same manner that it was being used prior to the adoption of such amendment, and the Township shall not unreasonably withhold its consent to such an amendment.

(b) After the sale of all of the Parcels of the Property by the Developer to Owners, an amendment, annulment or waiver of any provision hereof shall have been approved at duly called and held meetings by not less than 66-2/3 percent of the membership.

(c) In addition to the above, Developer and/or the Association shall have the right to amend this Declaration without the consent of any person to correct errors of omission or commission or as required to comply with requirements of any governmental agency or public, quasi-public or private entity, or to bring the Declaration in compliance with the applicable laws, statutes and ordinances.

**Section 7 – Special Amendment.** Either Developer or the Association shall have the right and power to authorize and record a special amendment to this Declaration at any time and from time to time, which amends this Declaration to correct clerical or typographical errors in this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Developer and to the Association to make a special amendment on behalf of each



Owner, as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting the Property and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Developer and to the Association to vote in favor or make and record special amendments.

**Section 8 – Severability.** Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Developer and Association have hereunto set their hands at Cleveland, Ohio, the date and year first above written.

**Signed and acknowledged  
in the presence of:**

\_\_\_\_\_  
\_\_\_\_\_

**DISANTO ENTERPRISES, INC.**

By: \_\_\_\_\_  
**MICHAEL DISANTO, President**

**LAKE ERIE SHORES HOMEOWNERS  
ASSOCIATION, INC.**

\_\_\_\_\_  
\_\_\_\_\_

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

STATE OF OHIO :  
: SS.  
COUNTY OF CUYAHOGA :

**BEFORE ME**, a Notary Public in and for said County and State, personally appeared the above-named **DISANTO ENTERPRISES, INC.**, by **Michael DiSanto**, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, and the free act and deed of said corporation.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO :  
: SS.  
COUNTY OF CUYAHOGA :

**BEFORE ME**, a Notary Public in and for said County and State, personally appeared the above-named **LAKE ERIE SHORES HOMEOWNERS ASSOCIATION, INC.**, by \_\_\_\_\_, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, and the free act and deed of said corporation.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT "A"**

**Common Areas**

**EXHIBIT "B"**

**The Property**