

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

## **FOR THE RESERVE AT BROOKSIDE**

### **A SINGLE FAMILY RESIDENTIAL DEVELOPMENT**

#### **IN THE CITY OF SPRINGBORO, COUNTY OF WARREN, OHIO**

The undersigned BROOKSIDE JOINT VENTURE, an Ohio general partnership (hereinafter referred to as "Developer"), as owner and developer of real property described in Exhibit A attached hereto and known as The Reserve at Brookside, Section One (including lots 1 to 29 and referred to herein as the "Subdivision"), imposes the following plat restrictions and covenants on the Subdivision for the benefit of all present and future owners of any lot in the Subdivision.

### **DECLARATIONS**

All lots within the Subdivision shall be subject to the following development standards, restrictions, covenants, conditions, and assessments, which are for the benefit of all lot owners and occupants within the Subdivision and which shall run with the property and shall be binding on all owners and all persons claiming under them until December 31, 2005, at which time said covenants, conditions, restrictions and assessments shall be automatically extended for successive periods of ten (10) years, unless by a majority vote of the then owners of the lots in the Subdivision it is agreed to change said covenants, conditions, restrictions and assessments in whole or in part:

#### **Article 1. Use Restrictions**

1.01 Each lot within the Subdivision (said lots hereinafter being referred to collectively as "Building Lots" or separately as a "Building Lot") shall be used for single-family residential purposes only. However, Developer, its agents or assigns, may use the Building Lots for construction and sales purposes during any building and sales period.

1.02 No residence, building, shed, fence, flagpole, mailbox, light pole or fixture, swimming pool, tennis court, pavement, driveway, awning, wall or structure of any kind shall be erected, placed or altered on any Building Lot without first obtaining the written consent of the Architectural Control Committee subsequently described herein. All requests for written approvals from the Architectural Control Committee shall be accompanied by detailed plans and specifications for the proposed improvements showing, where applicable, the size, location, type, architectural design, spacing, quality, use, construction materials, color scheme, grading plan, and finish grade elevation for said improvements. The Architectural Control Committee may deny any such request for approval in its sole and absolute discretion or may attach such conditions as it deems necessary or appropriate.

1.03 Each two (2) story single-family dwelling constructed on any Building Lot shall have a minimum of 1,600 square feet of living area and each single story single-family dwelling shall have a minimum living area of 1,400 square feet, exclusive of basements, open porches, garages, and other unheated areas. Each dwelling shall have an attached garage with space for not less than two (2) automobiles.

1.04 All structures or improvements commenced by an owner of any Building Lot within the Subdivision must be completed within six (6) months from the date of commencement unless otherwise approved by the Architectural Control Committee.

1.05 A front walk pole light operated by a photo optic cell (or other darkness sensing technology) that illuminates automatically at darkness shall be installed in the front yard of each Building Lot at the time of construction of a dwelling thereon. The Building Lot owner shall maintain the light in operating condition at all times.

1.06 No antenna or radio, television or microwave tower shall be erected or maintained on any Building Lot or attached to any structure in the Subdivision. No satellite dish shall be erected or maintained on any Building Lot or attached to any structure in the Subdivision without the approval of the Architectural Control Committee. The Architectural Control Committee may deny any such request for approval in its sole and absolute discretion or may attach such conditions as it deems necessary or appropriate.

1.07 No residence shall have a sump pump which discharges directly into the street through a curb.

1.08 No building shall be located nearer to any street than the building setback line shown on the recorded plat of the Subdivision. The setback areas designated on the recorded plat shall be for lawn purposes only. This covenant shall not be construed to prevent the use of the setback areas for walks, drives, trees, shrubbery, flowers, or ornamental plants used for the purpose of beautification.

1.09 No structures or materials shall be placed or permitted within the utility or drainage easement areas as designated on the recorded plat of the Subdivision. Plantings within said utility or drainage easement areas are at the Building Lot owner's sole risk of loss if such plantings, as determined solely by the applicable utility company or the Architectural Control Committee, would damage or interfere with the installation or maintenance of utilities or would change or retard the flow of surface water from its proper course. Each Building Lot owner shall maintain such portion of any utility or drainage easement area as is located upon such owner's Building Lot.

1.10 No business activities of any kind shall be conducted on any Building Lot or open space in the Subdivision without the approval of the Homeowners' Association; provided, however, that the foregoing shall not apply to the business activities of Developer or the construction, sale, or maintenance of Building Lots and residences by authorized builders or by Developer, its agents, or assigns, during the construction and sales period.

1.11 No outside drying or airing of clothes shall be permitted on any Building Lot except in an enclosed area, not visible to the public.

1.12 No buses, campers, motor homes, trailers, boats, or other similar recreational vehicles shall be stored on any Building Lot. All automobiles, trucks, motorcycles, vans, jet skis, snowmobiles or other such vehicles shall be housed within a garage building. No inoperable vehicles shall be stored on any Building Lot.

1.13 No exterior portion of any Building Lot shall be used as a dumping ground or storage area for, rubbish, machinery, scrap, paper, glass or other such materials. Garbage or other waste shall be kept in trash containers. All containers used for the storage or disposal of trash or recyclable materials shall be kept in a clean and sanitary condition and screened from public view. Building materials to be used in the

construction of approved structures may be stored on a Building Lot, provided such building materials are incorporated into the approved improvement within ninety (90) days after their delivery to such Building Lot.

1.14 No sod, dirt, or gravel, other than incidental to the construction of an approved structure or the normal maintenance of lawn areas, shall be removed from any Building Lot without the written approval of the Architectural Control Committee.

1.15 No weeds, underbrush, or unsightly growths or objects of any kind shall be permitted to remain on any Building Lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner and shall be mowed on a regular basis. The Homeowners' Association may regulate and control the maintenance of lawn areas by publishing rules and regulations as it deems necessary from time to time.

1.16 No geothermal or solar heating system shall be installed on any Building Lot or on any dwelling thereon without the prior approval of all applicable agencies and the Architectural Control Committee.

1.17 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Building Lot, except that dogs, cats, or other usual household pets may be kept on a Building Lot, so long as such pets are not kept, bred, or maintained for any commercial purpose. No animal shall be permitted to run loose or become a nuisance to any Owner of any Building Lot in the Subdivision. The Homeowners' Association may regulate and control the maintenance of such household pets by publishing such rules and regulations as it deems necessary from time to time.

1.18 No sign or billboard shall be erected or displayed on any Building Lot except (a) one (1) sign of no more than five (5) square feet advertising the property for sale; (b) signs used by Developer, its successors and/or assigns, to advertise lots or residences for sale during the construction and sales period; and (c) signs approved by the Architectural Control Committee.

1.19 All tanks for the storage of propane gas, fuel, or oil shall be located beneath ground level, except that propane tanks for service to the entire Subdivision, for portable gas grills or, on a temporary basis, for construction of an approved structure may be located above ground.

1.20 No well for the production of gas, water, or oil, whether intended for temporary or permanent purposes, shall be drilled or maintained on any Building Lot without the written consent of the Architectural Control Committee.

1.21 No chain link fence will be permitted on any Building Lot in the Subdivision.

1.22 No above ground swimming pool in place for more than forty-eight (48) consecutive hours will be permitted on any Building Lot in the Subdivision.

1.23 No private water supply system or private sewage disposal system shall be permitted on any Building Lot in the Subdivision.

1.24 Nothing shall be done, placed, or stored on any Building Lot which may endanger the health or unreasonably disturb the occupants of the dwellings on neighboring Building Lots.

1.25 The owner of each Building Lot within the Subdivision, upon acquisition of title to such lot, shall automatically become a member of the Homeowners' Association created in accordance with Article 3.01 hereof. Such membership shall be an appurtenance to and shall not be separated from ownership of the

Building Lot and such membership shall terminate upon the sale or other disposition by such member of such lot ownership.

1.26 Invalidation of any of these covenants and restrictions by judgment or court order shall in no way affect any other provision hereof, all of which shall remain in full force and effect.

It shall be lawful for Developer, the City of Springboro, the Homeowners' Association, or any person or persons owning a Building Lot to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any covenant or restriction contained herein. The proceeding may seek to prevent such person or persons from violating or continuing to violate the restrictions or to recover damages for such violation together with the costs incurred in enforcement of the restrictions.

## **Article 2. Additional Drainage Easement Restrictions**

Drainage easements shown on the recorded plat of the Subdivision may include storm water detention or retention areas designed to direct, detain, or retain water. The following covenants and restrictions are for the benefit of all Building Lot owners in the Subdivision and are to run with the land and shall be binding on all parties, on all owners, and all persons claiming under them forever, as follows:

2.01 No owner of any Building Lot in the Subdivision shall do or permit to be done any action or activity which would result in (a) the pollution of any retained water, (b) the diversion of water, (c) a change in the elevation of the water level, (d) silting, or (e) an adverse effect on water quality, drainage or proper water management, or which would otherwise impair or interfere with the use of such areas for drainage and related purposes for the benefit of all Building Lot owners.

2.02 No boating, fishing, swimming, ice skating, or other recreational activity shall be conducted in, on, or above said drainage easement areas.

2.03 The Homeowners' Association shall have the right to establish rules regarding the use of any drainage easement areas, provided such rules are not in conflict with any other provision contained herein, and are reasonably established to protect the safety and welfare of the residents of the Subdivision and their guests, or are established to assure the continued service of the areas for the purposes for which they were designed.

2.04 Developer, the City of Springboro, the Homeowners' Association, or any person or persons owning a Building Lot may prosecute proceedings at law or in equity against any person or persons violating or attempting to violate any of the above covenants and restrictions or seek restraining orders or other mandatory relief for the correction of any interference with or damage to the drainage and detention or retention system, and to recover compensation for any damages incurred by the complaining party together with the costs incurred in enforcement of the restrictions.

## **Article 3. Homeowners' Association**

3.01 After the recording of this Declaration, Developer shall form and incorporate a Homeowners' Association to be known as The Reserve at Brookside Homeowners' Association (the "Association") to promote the common interest of all Building Lot owners, to handle maintenance of certain areas within the Subdivision as set forth below, and to promote compliance with the covenants, conditions, and use restrictions set forth in this Declaration. The Association shall be comprised of the owners of all the

Building Lots in the Subdivision. Developer reserves the right to expand the membership and duties of the Association to include other sections of The Reserve at Brookside to be developed in the future. Attached hereto as Exhibit B is a description of real property which may be developed by Developer (the "Expansion Property"), the lot owners of which may, at the option of Developer, be required to become members of the Association. If Developer elects to develop all or a portion of the Expansion Property and elects to include the owners of lots in such portion of the Expansion Property as members in the Association and to expand the Association's responsibilities to include similar duties for such portion of the Expansion Property, Developer may do so by filing an amendment to this Declaration to include such portion of the Expansion Property within ten (10) years from the date hereof, explicitly setting forth that the lot owners within such portion of the Expansion Property shall become members of the Association and detailing the additional rights and obligations of the Association.

3.02 The management and control of the affairs of the Association shall be vested in its board of directors. The board of directors shall be composed of three (3) members. The three (3) initial members of the board of directors shall be selected by Developer. The three (3) initial members of the board of directors shall serve until (a) that date which is ninety (90) days after 100% of all Building Lots within the Subdivision and 100% of all lots within the Expansion Property which have been developed and made a part of The Reserve at Brookside as set forth above in Article 3.01 have been sold, or (b) Developer elects to turn over control of the Association to the Building Lot owners, whichever shall first occur. Upon the incapacity, resignation or death of any initial director, a successor, who shall serve the remaining term of the departed director, shall be appointed by the remaining members of the board of directors within three (3) months after the incapacity, resignation or death of the departed director. Subsequent board members shall be elected by a majority of the Building Lot owners as more fully set forth in the Articles of Incorporation and By-Laws for the Association.

3.03 The Association, its agents or assigns, shall have the right to enter onto any open space, public right-of-way, landscape easement area as shown on the recorded plat of the Subdivision or other easement area as it from time to time deems necessary for the purpose of maintaining the same. Such maintenance may include, but shall not be limited to:

- (a) regular mowing, trimming and fertilizing of grassy areas;
- (b) periodic mulching of flower beds within the Subdivision;
- (c) regular weeding of flower beds;
- (d) flower planting within the Subdivision;
- (e) maintenance of street lighting, if any, and associated electric service billings;
- (f) construction or repair of any permanent signs;
- (g) construction or repair of any stone wall, wingwall, or fencing;
- (h) treatment of water in any detention or retention areas to limit algae and grassy growth; and
- (i) planting, trimming, pruning, removal and replacement of trees and bushes, as necessary.

3.04 For the purpose of providing funds to carry out the responsibilities of the Association hereunder the Association shall be empowered to levy, assess, and collect from the owner of each and every Building Lot

in the Subdivision, excepting those Building Lots owned by Developer, an amount up to Two Hundred Dollars (\$200.00) per year, irrespective of whether the Subdivision has been completed. Provided, however, that such limit of Two Hundred Dollars (\$200.00) per Building Lot per year may be increased in proportion to any increase in the Consumer Price Index of the U.S. Bureau of Labor Statistics from the base period of August 1995. Any fees assessed by the Association in excess of Two Hundred Dollars (\$200.00) per Building Lot per year or its adjusted equivalent, must be approved by a majority of the Building Lot owners in the Subdivision.

3.05 Any amount assessed or levied hereunder by the Association against a Building Lot owner shall become a lien on each Building Lot until paid and shall bear interest at the rate of ten percent (10%) per annum until paid, beginning thirty (30) days after the date of assessment. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the Association may file with the Warren County Recorder a Notice of Lien. The Notice of Lien shall contain a description of the Building Lot against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessment or assessments. The lien provided for herein shall remain valid for a period of five (5) years from the date a Notice of Lien is duly filed, unless sooner released or satisfied in the same manner provided for by law in the State of Ohio for the release and satisfaction of mortgages on real property or until discharged by the final judgment or order of the Court in an action brought to discharge the lien. The lien shall secure not only the amount of the unpaid assessments, but also the costs incurred in collection, including, but not limited to interest, attorney's fees and court costs. The lien of the assessment provided for herein shall be subject and subordinate to the lien of any duly executed mortgage on any Building Lot recorded prior to the recording of the Notice of Lien. The holder of any such mortgage which comes into possession of a Building Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure shall take the property free of claims for unpaid installments of assessments or charges against the Building Lot which become due and payable prior to the time such holder or purchaser takes title to the Building Lot.

3.06 Any and all of the rights, powers, duties and obligations assumed by, reserved to, created in, or given to the Association may be exercised by Developer until such time as the Association is formed and control thereof transferred to the Building Lot owners. At such time as control of the Association is transferred to the Building Lot owners, Developer may reserve the exclusive right to approve the plot plan, construction plans, color scheme, and landscape plan associated with any structure on any Building Lot on which a dwelling unit has not yet been completed and occupied, so long as Developer clearly identifies the Building Lots for which it is retaining such right at the time of the turnover. Developer shall maintain said right of approval for each Building Lot until such time as a dwelling unit has been completed on that Building Lot and occupied by the homebuyer.

## **Article 4. Architectural Control Committee**

An Architectural Control Committee (the "Committee") is hereby established as a standing committee of the Association to carry out the functions set forth for it in this Declaration. The Architectural Control Committee's procedures and duties shall be as follows:

4.01 The Committee shall be composed of three (3) members. Developer shall appoint each of the three (3) initial members of the Committee.

4.02 The three (3) initial members of the Committee shall serve until such time as Developer turns over control of the Homeowners' Association to the Building Lot owners, as set forth in Article 3.02 hereof. Any subsequent members shall be appointed by the Association and shall serve for terms of three (3) years, except that the first appointed members of the Committee shall serve for staggered terms of one (1), two (2), and three (3) years as directed by the board of directors of the Association. All members of said Committee shall serve until the expiration of their terms or until their incapacity, resignation, or death. Upon the incapacity, resignation, or death of a member of the Committee, a successor, who shall serve the remaining term of the departed Committee member, shall be appointed by the board of directors of the Association within three (3) months after the incapacity, death, or resignation of the departed member.

4.03 The use restrictions require the submission of detailed plans and specifications to the Committee prior to the erection of, placement on, or alteration of any structure or improvement on any Building Lot. The intent is to achieve an architecturally harmonious, artistic, and desirable residential subdivision. Therefore, while considering the approval or disapproval of any plans and specifications submitted, the Committee is directed to consider the appropriateness of the improvement contemplated in relation to the improvements on contiguous or adjacent lots, the artistic and architectural merits of the proposed improvement, the adaptability of the proposed improvement to the Building Lot on which it is proposed to be made, and such other matters as may be deemed by the Committee members to be in the interest and benefit of the owners of the Building Lots in the Subdivision as a whole.

4.04 To assist it in making its determinations, the Committee may require that any plans and specifications submitted to the Committee be prepared by a registered architect or civil engineer. The Committee shall also have the right to require any other reasonable data including, but not limited to, grading or elevation plans, material lists, landscape plans, and color scheme designations.

4.05 The Committee's decisions shall be in writing and shall be binding upon all parties in interest. The Committee shall approve, disapprove, or request additional information with respect to any request for approval within thirty (30) days after the request shall have been submitted to the Committee for approval. The failure of the Committee to approve, disapprove, or request additional information within said time period shall be deemed an approval of any request.

4.06 If, in the opinion of the Committee, the enforcement of these restrictions would constitute a hardship due to the shape, dimension, or topography of a particular Building Lot in the Subdivision, the Committee may permit a variation which will, in its judgment, be in keeping with the maintenance of the standards of the Subdivision.

## **Article 5. Other Conditions**

5.01 All transfers and conveyances of each and every Building Lot in the Subdivision shall be made subject to these covenants and restrictions.

5.02 Any failure to enforce these restrictions shall not be deemed a waiver thereof or an acquiescence in, or consent to, any continuing, further or succeeding violation hereof.

5.03 If any covenant, condition, or restriction hereinabove contained, or any portion thereof, is invalid, such invalidity shall in no way affect any other covenant, condition, or restriction.

5.04 All costs of litigation and attorney's fees resulting from violation of this Declaration shall be the financial responsibility of the Building Lot owner or owners found to be in violation.

5.05 So long as Developer maintains control of the Association as set forth in Article 3 hereof, Developer reserves the right to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority, or financial institution (including, but not limited to, the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar entity) or to the extent necessary to enable Developer to meet any other reasonable need or requirement in order to complete the Subdivision, all without the approval of the Building Lot owners, and each Building Lot owner, by the acceptance of a deed to a Building Lot within the Subdivision, consents to this reserved right.

5.06 Only the Building Lots contained in the Subdivision shall be subject to and bound by the restrictions, covenants, and conditions set out in this Declaration and none of said provisions shall in any manner affect or be operative in respect to any other land of the owner or its successors or assigns.

IN WITNESS WHEREOF, said Brookside Joint Venture has caused this instrument to be executed by its duly authorized representative this day of 15<sup>th</sup> day of September, 1995

Signed and acknowledged in the presence of: BROOKSIDE JOINT VENTURE, an Ohio general partnership

By: REPUBLIC DEVELOPMENT CORPORATION, an Ohio corporation, managing general partner

By Richard L. Arnos, Vice President

STATE OF OHIO            )  
                                      ) SS:

COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of September, 1995, by Richard L. Arnos, Vice President of REPUBLIC DEVELOPMENT CORPORATION, an Ohio corporation, managing general partner of BROOKSIDE JOINT VENTURE, an Ohio general partnership, on behalf of the partnership.

THIS INSTRUMENT PREPARED BY: Brookside Joint Venture

CHERYL L MILLER, Notary Public, State of Ohio, Commission Expires 3-13-99



**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE RESERVE AT BROOKSIDE  
TO PROVIDE FOR THE ADDITION OF THE RESERVE AT BROOKSIDE,  
SECTION TWO**

The undersigned BROOKSIDE JOINT VENTURE, an Ohio partnership (hereinafter referred to as "Developer"), was the developer of a certain residential development in the City of Springboro, Warren County, Ohio, known as The Reserve at Brookside, Section One as delineated on a plat thereof recorded in Plat Book 32, Pages 23 and 24 of the plat records of Warren County, Ohio ("Development").

WHEREAS, Developer imposed certain restrictions, covenants, and conditions upon the Development pursuant to the terms and conditions of a certain Declaration of Covenants, Conditions, and Restrictions for The Reserve at Brookside, dated September 15, 1995 (the "Declaration"), which Declaration was recorded in Official Record Volume 1149, Page 544 Warren County, Ohio Records.

WHEREAS, Developer, pursuant to Article 3.01 of the Declaration, retained the right to add additional real estate to the Development out of the Expansion Property as described in Exhibit B of the Declaration.

WHEREAS, Developer is developing The Reserve at Brookside, Section Two, a subdivision in the City of Springboro, Warren County, Ohio consisting of lots 30 through 81, inclusive (the "Subdivision"), which is contiguous to the Development and which is a part of the Expansion Property described in the Declaration.

WHEREAS, the real estate upon which the Subdivision is being developed is described in Exhibit A attached hereto.

WHEREAS, Developer desires to amend the Declaration to add the Subdivision to the Development and to subject the Subdivision to the terms, conditions, and restrictions contained in the Declaration.

NOW, THEREFORE, the undersigned states as follows:

1. Developer hereby subjects the Subdivision to, and imposes upon the Subdivision, all of the restrictions, covenants and conditions and benefits contained in the Declaration as if the Subdivision had been included in the Declaration and described in Exhibit A of the Declaration. All owners of Building Lots within the Subdivision shall become members of the Homeowners' Association created pursuant to Article 3 of the Declaration.

IN WITNESS WHEREOF, BROOKSIDE JOINT VENTURE has caused this instrument to be executed by its duly authorized representative this 6<sup>th</sup> day of May, 1996.

Signed and acknowledged in the presence of: BROOKSIDE JOINT VENTURE, an Ohio partnership

BY: REPUBLIC DEVELOPMENT CORPORATION, an Ohio corporation, managing general partner

By: Richard L. Arnos, Vice President

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this 6 day of May, 1996, by RICHARD L. ARNOS, Vice President of REPUBLIC DEVELOPMENT CORPORATION, an Ohio corporation, managing general partner of BROOKSIDE JOINT VENTURE, an Ohio partnership, on behalf of the partnership.

Cheryl L. Miller, Notary Public, State of Ohio, Commission Expires 3-13-99

**BYLAWS**  
**OF**  
**THE RESERVE AT BROOKSIDE HOMEOWNERS ASSOCIATION, INC.**

These Bylaws are adopted by the incorporators of THE RESERVE AT BROOKSIDE HOMEOWNERS ASSOCIATION, INC., an Ohio not-for-profit corporation (the "Association"), acting pursuant to Ohio Revised Code § 1702.10, in order to provide for the conduct of its affairs and the management of its property. These Bylaws are intended to compliment, clarify, and expand the provisions of the Association's Articles of Incorporation (the "Articles") and the Declaration of Covenants, Conditions, and Restrictions for The Reserve at Brookside, filed with the Warren County Recorder, as subsequently amended and expanded (the "Declaration"). All Members and any other persons or entities entitled to certain privileges of membership shall be subject to these Bylaws. All capitalized terms used in these Bylaws shall have the meanings assigned in parentheses following their first use or assigned in the Articles.

**ARTICLE I: THE ASSOCIATION**

1.01 Name. The Association shall be an Ohio not-for-profit corporation and shall be known as THE RESERVE AT BROOKSIDE HOMEOWNERS ASSOCIATION, INC.

1.02 Location. The principal office of the Association shall be located in Toledo, Lucas County, Ohio, or such other location as may be designated in writing by the Association.

1.03 Membership. Each owner acquiring title to a lot in the Project shall automatically become a Member of the Association as provided in Article IV of the Articles. Each membership shall automatically terminate upon the transfer of title to the Member's lot and the new lot owner(s) shall automatically become a Member of the Association.

1.04 Activities of Association. The Association shall engage in activities to benefit the Association and its Members, including but not limited to the following:

- (a) To establish and/or enforce reasonable rules and regulations for the use of: (i) landscaped "islands" lying within the public rights of way; (ii) easement areas; or (iii) any areas reserved for common use of the Members.
- (b) To establish an orderly and efficient system for the payment of, or reimbursement for, all expenses of the Association, and of billing to pay those amounts.
- (c) To establish and operate arbitration procedures for the settlement of disputes among Members.
- (d) To provide or arrange for any service specifically authorized by the Board of Trustees, including landscape maintenance services.
- (e) To promulgate and/or enforce rules and regulations and to perform any other acts that it deems necessary to carry out its duly authorized purposes.

(f) To purchase, lease, or otherwise acquire, improve, construct, own, hold, use, maintain, operate, exchange, encumber, sell, convey, or otherwise dispose of, real and personal property of every kind, nature, or description, as necessary or desirable to promote the purposes of the Association.

(g) To make and perform contracts of every kind for any lawful purpose without limit as to any amount, with any person, firm, association, corporation, municipality, state, government, or municipal, or political subdivision.

1.05 Voting Rights. All votes shall be cast by Members of the Association as provided in Article IV of the Articles. If the Association holds title to any lot in the Project (whether in its own name or in the name of an agent, designee, or nominee acting on behalf of all Members), then the Association may not exercise any of the voting rights appurtenant to that lot.

1.06 Proxies, Record Date, Manner of Voting. Votes may be cast in person or by proxy. A person appointed as proxy need not be an owner of a lot within the Project. Proxies must be in writing and filed with the secretary of the Association prior to the appointed time of each meeting or vote. Each proxy shall be revocable and it shall automatically terminate upon the transfer of the appointing Member's interest in the lot or upon the suspension of the appointing Member's voting privileges as provided in these regulations.

The Board of Trustees may fix a date no more than seven (7) days before the date of any meeting, as the record date for the determination of the Members entitled to vote at that meeting. Only the members of record on the record date shall be entitled to vote at any meeting. If no record date is fixed for a meeting, then any person or entity who is a Member at the time the meeting is convened shall be entitled to vote at that meeting.

Voting for the election of Trustees shall be by secret written ballot, but all other votes shall be conducted orally, unless otherwise directed by the Board of Trustees.

1.07 Place of Meeting. Meetings of the Association shall be held at any place designated by the Board of Trustees.

1.08 Annual Meeting. No annual meeting shall be required before the Turnover Date. After the Turnover Date, the Members shall hold a regular annual meeting during the month of November each year at a time and place designated by the Board of Trustees. If the Board of Trustees fails to fix a date and time for the annual meeting then it shall be held at 7 p.m., on the second Tuesday of November or, if that day is a legal holiday under Ohio law, then on the next day that is not a legal holiday.

1.09 Special Meetings. Before the Turnover Date, either the President of the Association or the

Board of Trustees may call a special meeting of the Members. After the Turnover Date, a special meeting may be called either as above or by Members possessing at least twenty-five percent (25%) of the voting power of the Association. Calls for special meetings shall be made by delivering a written request to the President or Secretary. The request shall state the time, place, and purpose of the special meeting and the persons by whom it is called. The officer to whom the request is delivered shall deliver notice of the special meeting to the Members who are entitled to vote. If the officer does not send notices of the special meeting to the Members within ten (10) days after receiving the request, then the person(s) making the

request may call a special meeting by delivering notice as provided in Section 1.10 of this Article 1. No business shall be transacted at any special meeting except as stated in the notice or consented to by eighty percent (80%) of the votes that the Members present, either in person or by proxy, are entitled to vote.

1.10 Notice of Meeting. Written notice of any meeting of the Members shall be given by, or at the direction of, the secretary or any other person duly authorized to call the meeting. Notices shall be mailed by U.S. mail postage prepaid, to each Member entitled to vote; addressed to the Member's address appearing on the books of the Association. Notices shall be mailed at least fifteen (15) days, but not more than thirty (30) days, prior to the date for any meeting and shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Notices shall be mailed only to the Members shown in the records of the Association on the day before the day notice is mailed.

1.11 Waiver of Notice. Any member, either before or after any meeting, may waive any notice required by law, the Articles, the Declaration, or these Bylaws. Waivers must be in writing and filed with the secretary of the Association and entered upon the records of the meeting. Notice of a meeting will be deemed to have been waived by any Member who attends the meeting and who does not, before or at the commencement of the meeting, protest lack of proper notice.

1.12 Quorum. At any meeting of the Members, a quorum shall consist of Members who hold more than twenty percent (20%) of the voting power of the Association, except when a greater number is required by law. In the absence of a quorum, the Members present and entitled to vote shall have the power to adjourn the meeting, without notice other than announcement at the meeting, until a quorum is present or represented. At any reconvened meeting at which a quorum is present, any business may be transaction that might have been transacted at the meeting as originally called.

1.13 Organization. At each meeting of the Members, the President or, in his or her absence, the Vice President, or in the absence of both, any other person chosen by the majority vote of the Members present and entitled to vote, shall act as chairman. The Secretary, or, in the Secretary's absence, any other person appointed by the chairman, shall act as secretary for the meeting.

1.14 Order of Business. The order of business at all meetings of the Members shall be as follows:

- (a) Roll call. THEN IF A QUORUM IS PRESENT
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting and subsequent action, unless dispensed with by unanimous consent of the Members present
- (d) Report of the Board of Trustees, if any
- (e) Report of the officers, if any
- (f) Report of the committees, if any
- (g) Election of Trustees, if any
- (h) Unfinished business, if any
- (i) New business, if any

(j) Adjournment

The order of business at any meeting may be changed by the affirmative vote of Members possessing a majority of the voting power of the Members present and entitled to vote.

1.15 Action by Unanimous Written Consent of the Members. Any action that may be authorized or taken at a meeting of the Members may be authorized or taken without a meeting in any writing(s) signed by all of the Members. The writing(s) evidencing any action taken by the unanimous written consent of the Members shall be filed with the records of the Association.

1.16 New Members. Any person or entity claiming membership in the Association shall deliver written notice of this fact to the Association. The notice shall include the claimant's full name (and if an entity, the state in which it is organized), the claimant's address for notice, the number of the lot in which the claimant holds a fee simple interest, and the amount of the full or fractional fee interest held by the claimant. Until this notice is delivered to the Association, the person or entity claiming membership may not vote or receive notice of meetings of the Association.

1.17 Guests. Guests of Members, when and only when accompanied by a Member, shall be entitled to use any of the Association's facilities, subject to the fees, rules, conditions, and regulations as may be adopted by the Board of Trustees.

## **ARTICLE II: BOARD OF TRUSTEES**

2.01 General Powers of Board of Trustees. The Board of Trustees shall govern the affairs of the Association, shall conduct its business and affairs, and shall control and manage its property, except where otherwise required by the Association's Organizational Documents or the law of Ohio.

2.02 Powers of the Board. The Board of Trustees shall have the power (but not the duty) to:

(a) Adopt and publish rules and regulations governing: (i) the arbitration of disputes among Members arising out of restrictions on the use of lots; (ii) the use of the Association's recreation and other facilities, including the personal conduct of the Members and their guests while using those facilities; and (iii) the penalties for violating any of the published rules and regulations.

(b) Suspend a Member's voting rights and right to use the recreation facilities, if any, during any period in which the Member is in default for payment of any assessment levied by the Association, or as a result of any Member's infraction of the rules and regulations established by the Trustees.

(c) Declare the position of any Trustee to be vacant if that Trustee is absent from three (3) consecutive regular meetings of the Board of Trustees, without permission of the board.

(d) File a Notice of Lien for unpaid assessments against any lot if the assessments are not paid within sixty (60) days after the due date and foreclose said lien on behalf of the Association, or bring an action at law against any party personally obligated to pay the assessments.

(e) Employ employees (including, without limitation, an Association facilities manager) as necessary or appropriate to operate the facilities owned by the Association, or to furnish landscape maintenance or other services to the Members, and to prescribe the duties of each employee.

(f) Enter into contracts, agreements or any other arrangements necessary or appropriate to operate and maintain the facilities owned by the Association, to maintain any landscaped easement or public right of way areas and to furnish or provide other services the board deems necessary for the Members.

(g) Bond all officers and employees with fiscal responsibilities.

(h) Purchase, lease, or otherwise acquire real or personal property in the name of the Association.

(i) Do all things necessary to carry out the purposes of the Association.

2.03 Duties of the Board. The Board of Trustees shall have the power and the duty to:

(a) Keep a complete record of all its acts and the Association's affairs and present a statement to the Members at the annual meeting of the Members, or at any special meeting when such a statement has been specifically requested in writing by Members possessing at least 25 percent of the voting power of the Association.

(b) Supervise all officers, agents, and employees of the Association and see that their duties are properly performed.

(c) Fix the amount of the annual assessment for each lot at least thirty (30) days in advance of each fiscal year and to fix any adjustment in the annual assessment if the board determines an adjustment is needed.

(d) Send written notice of the assessment to every Member at least thirty (30) days in advance of each change in the amount of the annual assessments and levy all those assessments as a lien.

(e) Require that all facilities owned by the Association and all buildings and landscaped areas located on the Members' lots be well maintained.

(f) Procure and maintain liability and fire and other hazard insurance on all property owned by the Association.

(g) Take all other actions necessary or appropriate to achieve the purposes for which the Association was formed.

2.04 Number. There shall be three (3) Trustees. Each Trustee shall be a person who is either a Member or a representative of a Member who is not an individual.

2.05 Term of Office. The initial Trustees named in the Articles of Incorporation shall serve until the Turnover Date. At the first meeting of the Members, which shall be held within thirty (30) days after the Turnover Date, the Members shall elect three (3) Trustees for three staggered terms ending at the next three (3) successive annual meetings. The person who receives the most votes at the first meeting shall serve for three (3) years, the person with the next highest vote count shall serve for two (2) years, and the person with the third highest vote count shall serve for one (1) year. At each subsequent annual meeting, the Members shall elect one Trustee who shall sit for a term of three (3) years.

2.06 Removal. Any Trustee may be removed from the Board with or without cause, by the affirmative vote of Members possessing two-thirds (2/3) of the voting power of the Members present and entitled to vote

at any annual or special meeting of the Members, but only if the intention to consider removal is specifically stated in the notice of the meeting.

2.07 Resignation. Any Trustee may voluntarily resign at any time by delivering a written notice of resignation to the other Trustees. Unless the resignation specifies otherwise, it shall be effective on the date specified in the notice, whether or not the resignation has been accepted by the other Trustees.

2.08 Vacancies. Any vacancy in the Board of Trustees shall be filled by an appointee of the remaining Trustees. Any Trustee so appointed shall serve only for the unexpired portion of the term of the vacating Trustee.

2.09 Compensation. Trustees may be reimbursed for actual expenses incurred in the performance of their duties but no Trustee shall receive compensation from the Association for any service rendered to the Association.

### **ARTICLE III: NOMINATION AND ELECTION OF TRUSTEES**

3.01 Nominating Committee. Prior to each annual meeting of the Members, the Board of Trustees may announce its appointment of a Nominating Committee, consisting of three (3) Members, to serve from the close of the annual meeting until the close of the next annual meeting at which Trustees are elected. The Nominating Committee shall propose persons for election to the Board of Trustees. After the Turnover Date, nominations may also be made from the floor at any annual meeting.

The Nominating Committee shall nominate any number of persons for election to the Board of Trustees, but not less than the number of vacancies that are to be filled. Nominations may be made only from among Members or representatives of Members entitled to vote.

3.02 Election. Election to the Board of Trustees shall be by secret written ballot. At each election, the Members or their proxies may cast as many votes as they are entitled to cast under the provisions of the Articles and these Bylaws for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting shall not be permitted.

### **ARTICLE IV: MEETING OF TRUSTEES**

4.01 Regular Meetings. Regular meetings of the Board of Trustees shall be held at the times and places designated by the Board of Trustees. After the Turnover Date, the Board of Trustees shall hold at least four (4) such meetings per fiscal year.

4.02 Special Meetings. Special meetings of the Board of Trustees shall be held when called by the President of the Association or by any two (2) Trustees, after not less than three (3) days notice to each Trustee.

4.03 Quorum. A majority of the Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required elsewhere in the Organizational Documents.

4.04 Organization. At each meeting of the Board of Trustees, the President, or, in the President's absence, the Vice President, or in the absence of both, a person chosen by a majority of the Trustees present, shall



act as chairman. The Secretary, or, in the Secretary's absence, any person appointed by the chairman of the meeting shall act as secretary of the meeting.

4.05 Action Writing in Lieu of Meeting. Any action that could be taken at a meeting of the Trustees may be taken without a meeting if authorized in a writing signed by all the Trustees.

4.06 Meetings Through Communications Equipment. Meetings of the Board of Trustees may be held through any communications equipment if all persons participating in the meeting can hear each other. Each person participating through communications equipment shall be deemed to be present at any meeting held pursuant to this Section 4.06.

## **ARTICLE V: OFFICERS AND THEIR DUTIES**

5.01 Enumeration of Officers. The officers of this Association shall include a President, a Vice President, a Secretary, a Treasurer and any other officers elected by the Board of Trustees.

5.02 Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the Members.

5.03 Term. Each officer of the Association shall be elected annually by the Board of Trustees and shall hold office until his successor is elected, unless the officer resigns, or is removed or is otherwise disqualified to serve.

5.04 Special Appointments. The Board of Trustees may specially appoint as many officers as the Trustees determine are necessary to carry out the purposes of the Association. Each specially appointed officer shall hold office for the period, have the authority and perform the duties assigned by the Board of Trustees. The Board of Trustees may delegate to any officer the power to appoint any subordinate officers, agents, or committees.

5.05 Resignation and Removal. Any officer may be removed from office with or without cause by majority vote of the Board of Trustees. Any officer may resign at any time by giving written notice to the Board of Trustees, the President, or the Secretary. Unless the notice specifically requires acceptance, the resignation shall be effective on the date the notice is delivered or on any later date specified in the notice.

5.06 Vacancies. The Board of Trustees may appoint a new officer to fill any vacancy in any office. The officer appointed to fill any vacancy shall serve for the remainder of the term of the previous officer.

5.07 Multiple Offices. No person shall simultaneously hold more than one (1) office in the Association except that the same person may hold the offices of Secretary and Treasurer and any officer may also serve in any of the special offices created under Section 5.04 of this Article.

5.08 Duties. Unless the Board of Trustees directs otherwise, the officers of the Association shall have the duties described in this section.

(a) President. The President shall preside at all meetings of the Board of Trustees and of the Members; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds, contracts, and other written instruments to which the Association is a party; sign all checks and, upon authorization of the Board of Trustees, cosign promissory notes of the Association.

(b) Vice President. The Vice President shall act in the place and stead of the President if the President is absent, unable, or refused to act

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Trustees and the Members; serve notice of meetings of the Board of Trustees and the Members; keep appropriate current records showing the Members of the Association, their addresses and the lot numbers on which their membership is based.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse funds as directed by the Board of Trustees; keep proper books of account, and upon authorization of the Board of Trustees, cosign all promissory notes of the Association. After the Turnover Date, the Treasurer shall prepare an annual budget and a statement of the income and expenditures (for the preceding fiscal year) to be presented to the membership at its regular annual meeting; deliver a copy of each statement to the Members prior to the annual meeting; and have the Association's books reviewed by an accountant at the completion of each fiscal year. **Provide, at the annual meeting, the present and past dues status of all lots.**

The Board of Trustees may, for any reason, delegate the power and duties of any officer to any other officer or to any Trustee. Each officer shall perform any other duties assigned by the Board of Trustees or the President.

## **ARTICLE VI: BOOKS AND RECORDS**

6.01 The books, records and papers of the Association shall be available during reasonable business hours for inspection by any Member. The Articles and Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

## **ARTICLE VII: AMENDMENT AND REGULATIONS**

7.01 These Bylaws may be amended by the affirmative vote of Members possessing not less than two-thirds (2/3) of the voting power of the Members present and entitled to vote at any properly noticed meeting of the Members as long as the notice contains the proposal to amend the Bylaws.

## **ARTICLE VIII: MISCELLANEOUS**

8.01 Conflict Between Articles and Bylaws. In the case of any conflict between the Articles and the Bylaws, the Articles shall control.

8.02 Fiscal Year. The fiscal year of the Association shall begin on the first (1<sup>st</sup>) day of January and end on the thirty-first (31<sup>st</sup>) day of December of every year, except that the first fiscal year shall begin on the date of filing the Articles with the Secretary of the State of Ohio.

8.03 Service of Notice on the Board of Trustees. Notices to the Board of Trustees or to the Association may be delivered to any Trustee or officer of the Association, either personally or by regular mail, addressed to the Trustee or officer at his home.

8.04 Nonwaiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

8.05 Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Organizational Documents shall be deemed to be binding on all Members, their successors, heirs, and assigns.

8.06 Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of these Bylaws, each of which shall be construed to as nearly as possible accomplish the original goals and intentions of these Bylaws.

8.07 Grammar. The singular shall be construed to mean the plural, when applicable. Any necessary grammatical changes required to make the provisions of these Bylaws apply to corporations, partnerships or individuals shall be assumed.

IN WITNESS WHEREOF, the incorporators of the Association have executed these Bylaws to become effective as of December 22, 1998.

Richard L. Amos, Incorporator

John E. Buckey, Incorporator

Kathy Henhne, Incorporator