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DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR  
THE VILLAS AT HICKORY POINTE

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THIS INSTRUMENT PREPARED BY:

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VILLAS AT HICKORY POINTE**

**THIS DECLARATION**, creating covenants, conditions and restrictions, is made on the date hereinafter set forth by **ASSOCIATE CONSTRUCTION, INC.**, an Ohio corporation, hereinafter referred to as "Declarant" under the circumstances summarized in the following Recitals that utilize capitalized terms as defined in Article I of this Declaration.

**RECITALS:**

A. Declarant is the owner of certain real property situated in the City of Germantown, County of Montgomery, State of Ohio, described as follows, hereinafter referred to as the "Property":

Situate in the City of Germantown, County of Montgomery, State of Ohio and being Lots 2254 through 2294 of the revised and consecutively numbered lots of the City of Germantown, Ohio.

B. Declarant intends to develop the Property as The Villas at Hickory Pointe, a Planned Community, pursuant to the terms of this Declaration.

**DECLARATIONS:**

**NOW, THEREFORE**, for the purpose of establishing and assuming a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property the Declarant declares that the Property shall be held, occupied, sold and conveyed subject to this Declaration.

**ARTICLE I**  
**DEFINITIONS**

**1.01**      **General.** The following terms used herein are defined as hereinafter set forth. The singular, wherever used, shall be construed to mean the plural when applicable.

- 1.02** Amendment and/or Amendments shall mean an instrument executed with the same formalities of the Declaration and Recorded for the purpose of amending the Declaration, the By-Laws or any other Exhibits.
- 1.03** Annual Assessments shall mean those Assessments levied and assessed against all Owners for the purpose of paying the Common Expenses.
- 1.04** Articles and Articles of Incorporation shall mean the articles filed with the Secretary of State of Ohio incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time.
- 1.05** Assessments shall mean Annual Assessments and Special Individual Lot Assessments.
- 1.06** Association shall mean The Villas at Hickory Pointe Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.
- 1.07** Association Easements shall mean any easements granted to the Association.
- 1.08** Board shall mean those persons who, as a group, serve as the Board of Directors of the Association.
- 1.09** Building shall mean a structure constructed on the Property containing a Dwelling Unit.
- 1.10** By-Laws shall mean the By-Laws of the Association, which also serve as the Articles of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code, attached hereto as Exhibit "A".
- 1.11** Common Element(s) shall mean that part of the Property that has been conveyed to and owned by the Association for the common use, enjoyment and benefit of the Association and shall include any Association Easements.
- 1.12** Common Expenses shall mean any expenses or financial liability of the Association.
- 1.13** Damage/Enforcement Assessments shall mean those assessments chargeable to a particular Lot for the costs of maintenance, repair or replacement incurred due to the willful or negligent act of an Owner or Occupant or their family, guests, tenants or invitees and the costs to enforce the Organizational Documents against a particular Owner. Costs shall include but not be limited to court costs, reasonable attorney and paralegal fees and other expenses.



- 1.14**        **Declaration** shall mean this instrument and any and all Amendments.
- 1.15**        **Development Period** shall mean the period commencing on the date this Declaration is Recorded and terminating on the date which is the earlier of: (a) the date twenty (20) years after the date of such Recording; or (b) the date when the Declarant has sold the last Lot that may be created on the Property.
- 1.16**        **Director** shall mean a member of the Board.
- 1.17**        **Dwelling Unit** shall mean that portion of a Building that is designed and intended for use and occupancy for residential purposes by a single household or family.
- 1.18**        **Eligible First Mortgagee** shall mean any First Mortgagee who has provided the Association with written notice of its right to receive notices or other information from the Association.
- 1.19**        **Exhibit** shall mean any document or instrument attached to this Declaration.
- 1.20**        **First Mortgagee** shall mean the holder of any valid Recorded first mortgage on the Property.
- 1.21**        **Lot** shall mean those parcels of real property on which Dwelling Units have been or are to be constructed.
- 1.22**        **Majority of Owners** shall mean those Owners holding fifty-one percent (51%) of the voting power of the Association.
- 1.23**        **Managing Agent** shall mean a person or entity retained or employed by the Association to act as a manager or managing agent for the Association.
- 1.24**        **Member** shall mean an Owner that is subjected hereto.
- 1.25**        **Occupant** shall mean any person who resides in a Dwelling Unit.
- 1.26**        **Ohio Planned Community Law** shall mean Chapter 5312 of the Ohio Revised Code, effective September 20, 2010, and any amendments thereto.
- 1.27**        **Organizational Documents** shall mean this Declaration, the Articles and the By-Laws, including any amendments thereto.
- 1.28**        **Owner** shall mean the Owner of fee simple title of any Lot. Owner does not include any person that has an interest in a Lot solely as security for an obligation.

**1.29** Person shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

**1.30** Planned Community as defined under the Ohio Planned Community Law, shall mean a community comprised of individual lots for which a deed, common plan or declaration requires that owners become members of an owners association that governs the community, or that owners or the owners association holds or leases property or facilities for the benefit of owners, or that owners support by membership or fees, property or facilities for all owners to use.

**1.31** Property shall mean the real property subject to this Declaration as described in Recital A.

**1.32** Quorum shall mean the presence in person or by proxy of the number of Owners as set forth in the By-Laws.

**1.33** Recorded shall mean the filing with the Recorder of Montgomery County, Ohio.

**1.34** Rules and Regulations shall mean those rules and regulations, as may be amended from time to time, adopted by the Board pursuant to the provisions set forth in the Declaration.

**1.35** Special Individual Lot Assessment shall mean Damage/Enforcement Assessment and any other assessment assessed against a particular Lot or Lots to the exclusion of other Lots, pursuant to the Organizational Documents.

## **ARTICLE II**

### **DESCRIPTION OF PROPERTY**

**2.01** General. The Property is described in Recital A.

**2.02** Dwelling Units. The Dwelling Units have been constructed or are to be constructed on the following described property, with one (1) Dwelling Unit per Lot:

Situate in the City of Germantown, County of Montgomery, State of Ohio and being Lots 2254 through 2289 and 2291 through 2294, inclusive of the revised and consecutively numbered lots of the City of Germantown, Ohio.

**2.03** Common Element(s). The Common Elements(s) shall consist of the following described property, and to the extent applicable, any Association Easements:



Situate in the City of Germantown, County of Montgomery, State of Ohio and being Lot 2290 of the revised and consecutively numbered lots of the City of Germantown, Ohio.

### **ARTICLE III** **ASSOCIATION**

**3.01      Organization.** The Association was formed as an Ohio not-for-profit corporation pursuant to the provisions of Chapter 1702 of the Ohio Revised Code, by the filing of its Articles. The By-Laws are attached as Exhibit "A".

**3.02      General Powers.** The Association shall have the following authority and power:

(a) Hire and fire managing agents, attorneys, accountants and other independent contractors and employees that the board determines are necessary or desirable in the management of the Property and the Association;

(b) Commence, defend, intervene in, settle or compromise any civil, criminal or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Property, or that involves two (2) or more Owners and relates to matters affecting the Property;

(c) Enter into contracts and incur liabilities relating to the operation of the Property;

(d) Regulate the use, maintenance, repair, replacement, modification, and appearance of the Property;

(e) Adopt Rules and Regulations that regulate the use or occupancy of Dwelling Units, the maintenance, repair, replacement, modification and appearance of the Dwelling Units, Common Elements and Lots when the actions regulated by those rules affect Common Elements or other Dwelling Units or Lots;

(f) Cause additional improvements to be made as part of the Common Elements;

(g) Acquire, encumber, convey or otherwise transfer real and personal property; provided however, that the Association may not assign the right to Assessments or the future income from those Assessments, or convey any fee interest or any security interest in any portion of the Common Elements without the approval of seventy-five percent (75%) of the Owners;



(h) Acquire, encumber and convey or otherwise transfer personal property;

(i) Hold in the name of the Association the real property and personal property acquired pursuant to subsections (g) and (h) of this section;

(j) Grant easements, leases, licenses and concessions through or over the Common Elements;

(k) Impose and collect fees or other charges for the use, rental or operation of the Common Elements or for services provided to Owners;

(l) Impose interest and late charges for the late payment of Assessments and impose returned check charges;

(m) Promulgate and, pursuant to the Special Individual Lot Assessment provision, impose reasonable enforcement assessments for violations of the Organizational Documents and Rules and Regulations, and reasonable charges for damage to the Common Elements or other property;

(n) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

(o) Impose reasonable charges for preparing, recording or copying the Organizational Documents, Rules and Regulations, resale certificates or statements of unpaid assessments;

(p) Enter into a Dwelling Unit or upon a Lot for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Elements, another Dwelling Unit, or to the health or safety of the Occupants of that Dwelling Unit or another Dwelling Unit;

(q) To borrow funds as needed, with the consent of two-thirds (2/3) of the Owners, and pledge such security and rights of the Association as may be necessary or desirable to obtain any such loan including, without limitation, the pledge or assignment of the Association's right to future income and the Association's right to levy assessments upon the Members;

(r) Suspend the voting privileges of an Owner if the Owners of which are delinquent in the payment of Assessments for more than thirty (30) days or in violation of the Rules and Regulations for more than sixty (60) days;

(s) Purchase insurance and fidelity bonds or such other insurance and fidelity bonds as the Board considers appropriate or necessary;



- (t) Exercise powers that are:
  - (1) Conferred by the Organizational Documents, or Ohio law;
  - (2) Necessary to incorporate or reincorporate the Association as an Ohio not-for-profit corporation;
  - (3) Permitted to be exercised in Ohio by a not-for-profit corporation;
  - (4) Necessary and proper for the government and operation of the Association.

**3.03      Membership.** During the Development Period the Association shall have Class A Members (being all Owners except Declarant) and the Class B Member (Declarant). After the Development Period, the Class B Membership shall terminate and Declarant, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner. The term "Member", as used in the Declaration and the By-Laws, shall mean both the Class A Members and, during the Development Period, the Class B Member.

**3.04      Voting Rights**

(a) Each Class A Member shall be entitled to vote, with regard to matters submitted to the Members for a vote, a number of votes equal to the number of Lots owned by that Class A Member at the time of the vote (i.e. one (1) vote per Lot). If co-Owners of a particular Lot cannot mutually agree on how their vote shall be cast, no vote shall be cast with respect to that Lot.

(b) During the Development Period the Class B Member shall be entitled to three (3) votes for each Lot owned by Declarant. After the Development Period Declarant's voting rights shall be the same as any other Owner.

**3.05      Administration of Property.** The administration of the Property shall be in accordance with the provisions of the Organizational Documents. Each Owner or Occupant shall comply with the provisions of the Organizational Documents and the decisions and resolutions of the Association or its representative.

**3.06      Board.** The Board, as provided by the By-Laws, shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law and the Organizational Documents, except as otherwise specifically provided; provided



however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by or vested in a member of the Board he/she shall be deemed to act in such capacity to the extent required to authenticate his/her acts and to carry out the purposes of the Organizational Documents.

**3.07        Delegation to Managing Agent.** The Association may delegate all or any portion of its authority to discharge its responsibility to a Managing Agent, subject to the limitations that:

(a) Any such delegation is by a written contract with a term of not longer than one (1) year in duration.

(b) That any such contract is terminable by either party without cause upon sixty (60) days written notice without any termination charges or other penalties.

#### **ARTICLE IV** **EASEMENT(S)**

**4.01        Owner's Easement(s) of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with title to every Lot subject to the right of the Association to adopt Rules and Regulations as to its use. Any Owner may delegate, in accordance with the By-Laws, his/her right of enjoyment in and to the Common Elements to the members of family, his/her tenants, or land contract purchasers who reside on the Property.

**4.02        Easements for Repair, Maintenance and Restoration.** The Association shall have a right of access and an easement to, over and through each Lot during reasonable hours and upon giving reasonable notice for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair, restoration or servicing of any items, Lots, things or areas of or on the Property, including the removal, correction or abatement of any violation or breach of any attempted violation or breach of the covenants and restrictions herein.

**4.03        Service Easement.** Each Owner hereby grants a non-exclusive easement to all law enforcement officers, firefighters, ambulance/medic personnel, mail carriers, delivery persons, garbage and trash removal personnel, and all other similar persons, and to local governmental authorities, but not to the public in general, to enter upon his/her Lot and the Common Element(s) in the performance of their duties.



**4.04        Consent to Easements.** Each Owner hereby grants, and the transfer of title to an Owner shall be deemed to grant, to the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Owner and his/her mortgagee or mortgagees, such instruments as may be necessary to effectuate any easements granted or reserved by the Association in this Article.

**4.05        Easements Shall Run With Land.** All easements and rights described are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on any Owner, purchaser, mortgagee and any other person having an interest in the Property or any part or portion thereof. Failure to refer specifically to any or all of the easements described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said easement but same shall be deemed conveyed or encumbered along with the Lot.

## **ARTICLE V** **ASSESSMENTS**

**5.01        Creation of Lien and Personal Obligation of Assessments.** For each Lot owned within the Property, each Owner by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association: (a) Annual Assessments; (b) Special Individual Lot Assessments, such assessments to be established and collected as hereinafter provided; and (c) interest, costs and reasonable attorney's fees incurred by the Association in enforcing the provisions hereof.

**5.02        Purpose of Annual Assessment.** The Annual Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and the enforcement of these restrictions. The assessments shall include, without limitation, the following Common Expenses:

(a) Maintenance and repair of those items which have been assigned to the Association hereunder;

(b) Hazard, liability and Board insurance premiums for insurance obtained by the Association;

(c) Taxes and assessments on the Common Element(s);

(d) Costs for the operation, management and administration of the Association, including without limitation, fees for property management, fees for legal and accounting services, fidelity bonds, cost of mailing and postage;



(e) A general operating reserve to assure the availability of funds for the purposes hereunder.

**5.03 Owner's Share of Annual Assessments.** The Annual Assessment for every Lot shall include those expenses the Association incurs for administration, management, legal, accounting, insurance, taxes and assessments and maintenance of the Common Elements. Each Owner's share of these expenses shall be equal to a fraction; the numerator of which is the total number of Lots owned by such Owner; the denominator of which is the total number of all Lots on the Property

**5.04 Preparation of Estimated Budget.** On or before December 1<sup>st</sup> of every year, the Association shall prepare an estimate of the total amounts necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reserve for contingencies and replacements. On or before December 15<sup>th</sup> each Owner shall be notified in writing as to the amount of such estimate, with reasonable itemization thereof. On or before the date of the annual meeting in each calendar year, the Association shall supply to all Owners an itemized accounting of the maintenance expenses actually incurred for the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimate provided; and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to next year's budget or the reserves, at the option of the Board, and any net shortage shall be added according to each Owner's share of the assessments to the payment next due after rendering of the accounting.

**5.05 Fiscal Year Option.** In lieu of the calendar year format, the Board may elect to adopt a fiscal year. In such event, the requirement for the preparation of the estimated budget shall be the first day of the month immediately preceding the beginning of such fiscal year and notices of such estimate shall be forwarded on or before the 15<sup>th</sup> day of such month. In such event, assessments shall commence on the first day of the fiscal year and payments shall be adjusted accordingly.

**5.06 Reserve for Contingencies and Replacements.** The Association shall build up and maintain a reasonable reserve for contingencies and replacement. Extraordinary expenditures not originally included in the annual estimate that may be necessary for the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, the same shall be assessed to the Owners according to each Owner's share of the Assessments. The Association shall serve notice of such further Assessment on all Owners by a statement in writing giving the amount and reasons therefore and such further Assessment shall become effective within ten (10) days after the delivery or mailing of such notice of further Assessment. All Owners shall be obligated to pay the adjusted amount.



**5.07      Failure to Prepare Annual Budget.** The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves as herein provided, whether the same shall be determined. In the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the maintenance charge at the existing rate established for the previous period until the maintenance payment which occurs more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

**5.08      Payment of Annual Assessments.** Annual Assessments shall be payable in monthly installments commencing on the 1<sup>st</sup> day of each month or a quarterly, semi-annual or annual basis, as determined by the Board.

**5.09      Commencement of Assessments.** Annual Assessments shall begin with respect to each Lot on the date on which the deed transferring title to such Lot from Declarant to an Owner is Recorded. On such date the amount payable shall be a pro-rated amount determined as of such date until the next payment date.

**5.10      Declarant's Obligations to Pay Assessments.** Notwithstanding any provisions hereof, Declarant shall have no obligation to pay Annual Assessments for the Lots owned by it; except that Declarant will pay to the Association an amount equal to the difference between the actual operating expenses of the Association and the aggregate of the Annual Assessments paid by the Owners, other than Declarant. Declarant's obligation to pay said deficiency shall cease when Declarant relinquishes control of the Board, at which time Declarant shall pay the Annual Assessment for each Dwelling Unit owned by it which either has been issued an occupancy certificate or is being offered for sale or rent.

**5.11      Non-Payment of Assessment; Remedies of the Association.** If any Assessment, or any installment or portion of any Assessment is not paid within ten (10) days after the same has become due, the entire unpaid balance shall immediately, without notice or demand, become due and payable, and the Board, at its option, without notice or demand, may charge additional amounts for:

(a) Reasonable, uniform administrative late fees as determined by the Board from time to time;

(b) Enforcement charges and collection costs (including, without limitation, attorney and paralegal fees) the association incurs or estimates that it will incur in connection with the collection of the delinquency;

(c) Interest on the entire unpaid balance of Assessments and costs incurred by the Association in connection with such collection, at the maximum rate provided by law; and



- (d) Any other charges authorized by the Organizational Documents.

**5.12      Application of Payments.** Payments made by an Owner for Assessments shall be applied:

(a) First, for the payment of interest accrued on the delinquent installments or portions of unpaid Assessments and on costs incurred by the Association in connection with such collection, at the maximum rate provided by law;

(b) Second, for the payment of administrative late fees charges with respect to the delinquency applicable to the Lot;

(c) Third, to reimburse the Association for enforcement charges and collection costs, including, without limitation, attorney and paralegal fees incurred by the Association in connection with the delinquency; and

(d) Fourth, to the payment of delinquent installments or portions of Assessments which remain unpaid.

**5.13      Abandonment.** No Owner may exempt himself from liability for his/her Assessments by the abandonment of his/her Lot.

## **ARTICLE VI**

### **REMEDIES FOR NON-PAYMENT OF ASSESSMENT**

**6.01      Late Charges.** If any Assessment is not paid within ten (10) days after the same has become due the Board, at its option and without demand or notice, may charge a late charge, as determined by the Board, and/or interest on any unpaid balance at the maximum legal rate.

**6.02      Lien of Association.** The Association shall have a lien upon the estate or interest in any Lot of the Owner thereof for the payment of the portion of the Assessment or charge, as well as any related interest, administrative late fees, collection costs, attorney's fees and paralegal fees chargeable against such Lot which remain unpaid for thirty (30) days after the same have become due and payable from the time a certificate therefore subscribed by the President of the Association, or an authorized personnel representative, is Recorded pursuant to authorization given by the Board. Such certificate shall contain a description of the Lot, the name(s) of the record Owner thereof and the amount of such unpaid portion of the Assessments. Such lien shall remain valid for a period of five (5) years from the time of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the court in an action brought to discharge such lien as hereinafter provided.



The lien is a continuing lien upon the Lot against which each Assessment or charge is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, enforcement Assessments, collection costs, attorney's fees, paralegal fees and court costs.

**6.03      Priority of Association's Lien.** The lien provided for herein shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens which have been Recorded, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association. In any such foreclosure action, the Owner(s) of the Lot affected shall be required to pay a reasonable rental for such Lot during the pendency of such action and the plaintiff in such action and/or the Association is entitled to the appointment of a receiver to collect the same. Any rental payment a receiver collects during the pending of the foreclosure action shall be applied first to the payment of that portion of the Common Expenses chargeable to the Lot during the foreclosure action. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

**6.04      Dispute as to Assessments.** Any Owner, who believes that the portion of Assessments chargeable to his/her Lot for which a certificate of lien has been filed by the Association has been improperly charged against him or his/her lot, may bring an action in the Court of Common Pleas for Montgomery County, Ohio for the discharge of such lien. In the action, if it is finally determined that the unpaid amount of the Assessment or charge was improperly charged to the Owner or the Lot, the court shall enter an order that it determines to be just, which may provide for a discharge of all or a portion of the lien.

**6.05      Non-Liability of First Mortgagee for Past Due Assessments.** When a First Mortgagee acquires title to a Lot as a result of foreclosure of a lien, such First Mortgagee shall not be liable for the share of Assessment by the Association chargeable to such Lot that became due prior to the acquisition of title to such Lot. Such unpaid share of assessments shall be deemed to be Assessments collectible from all of the Lots, including that of such First Mortgagee.

**6.06      Liability for Assessments Upon Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid Assessments to the Association against the grantor and his/her Lot for his/her share of the Assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee and his/her mortgagee shall be entitled to a statement from the Board setting forth the amount of all unpaid and current



Assessments against the grantor due the Association, and such grantee shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid Assessments made by the Association against the Grantor in excess of the amount set forth in such statement for the period reflected in such statement.

## **ARTICLE VII**

### **REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS**

**7.01        Abatement and Enjoinment.** The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision contained in the Organizational Documents shall give the Board the right, in addition to the rights hereinafter set forth in this section: (a) to enter upon the Lot or Dwelling Unit portion thereof upon which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of the Organizational Documents and the Board, or its Managing Agent, shall

not be thereby deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

**7.02        Procedures for Enforcement of Violations.**

(a)    Notice. Prior to imposing a Damage/Enforcement Assessment the Board shall give the Owner of the Lot written notice containing:

- (i)    A description of the property damages or the violation;
- (ii)   The amount of the proposed charge or assessment;
- (iii)   A statement that the Owner has a right to a hearing before the Board to contest the proposed charge or assessment;
- (iv)   A statement setting forth the procedures to request a hearing pursuant to this Article;
- (v)   A reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge or assessment.

(b)    Hearing. An Owner may request a hearing by delivering written notice of such request no later than the tenth day after receiving the notice provided in this Article. If the Owner fails to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose the charge



for damages or enforcement assessment referenced in the notice provided in this Article, or may allow a reasonable time to cure the violation before imposing a charge or assessment. If an Owner requests a hearing, the Board shall not levy the charge or assessment before holding a hearing, and will, at least seven (7) days prior to the hearing, provide the Owner with a written notice of the date, time and location of the hearing. Within thirty (30) days following a hearing at which the Board imposes a charge or assessment, the Board shall deliver a written notice of the charge or assessment to the Owner.

(c) Manner of Notice. Any notice required under this Section to be served:

(i) Upon the Owner, shall be delivered personally to the Owner or Occupant at the Dwelling Unit, or mailed, by certified mail, return receipt requested, to the Owners at the address of the Dwelling Unit, provided that if the Owners have provided the Association with an alternate address, all such notices shall be mailed (by certified mail, return receipt requested) to the Owner at such alternative address;

(ii) Upon the Association, shall be delivered personally to any officer of the Association or to any on-site representative of any professional management company hired by the Association; or mailed, by certified mail, return receipt requested, to any officer of the Association or to the management company hired by the Association.

**7.03** Proper Party. An action by the Association under this Article may be commenced by the Association in its own name or in the name of its Board or in the name of its Managing Agent.

## **ARTICLE VIII**

### **COVENANTS AND RESTRICTIONS ON USE AND OCCUPANCY**

**8.01** Purposes/Use Restrictions. In order to promote the health, safety and welfare of all Owners and Occupants and to preserve, beautify and maintain the Property as a subdivision of high quality, and to preserve and promote environmental quality, the following covenants, restrictions and limitations as to use and occupancy of the Property are declared and established.

(a) Permitted Uses. Except as otherwise provided in this Declaration, no Lot shall be used for any purposes except as a Dwelling Unit for single-family or a family-sized group. To the extent permitted by law an Owner may use a portion of a Dwelling Unit for his/her office or studio (other than a music studio) as long as those activities do not interfere with the quiet enjoyment or comfort of any other Owner or Occupancy, and as long as those activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of that Owner's Dwelling Unit.



Except as permitted by the preceding sentence, no industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property.

(b) Structures. No Building shall be maintained on any Lot except in accordance with the following provisions:

(i) only Buildings with single family Dwelling Units shall be permitted, not to exceed one (1) story, not including basements, attic spaces and garage spaces. No garage shall exceed the height of the accompanying Dwelling Unit;

(ii) roof pitch on all Buildings and garages shall not be less than 6/12;

(iii) no Building shall be placed nearer to the Lot lines than the setback lines shown on the recorded plat;

(iv) the living area of any Building shall not be less than 1,000 nor more than 2,000 square feet;

(v) all Buildings shall be brick in the front, with brick, wood or vinyl siding on the sides and rear;

(vi) all walkways to a street or to a driveway must be at least four (4) feet in width;

(vii) during the Development Period no Building shall be constructed on any Lot without prior approval of the plans and specifications by Declarant based on the harmony of the proposed plans with the other residences and Buildings in the Property;

(viii) any Building on any Lot that is partially destroyed by fire, storm or other casualty shall be repaired, reconstructed or removed within six (6) months of the occurrence of such casualty. Any Building repaired or reconstructed after any such casualty shall be repaired or reconstructed to substantially the same design and appearance of the Building prior to such casualty; and

(ix) all Buildings are to have uniform subdivision mailboxes. No secondary mailboxes are permitted.



Variances from the above requirements may be granted by the Board based on the Board's determination that the variance will not have an adverse impact on adjoining property values, on the overall harmony and integrity of the plan for the development contemplated by this Declaration. During the Development Period the Declarant shall not be required to obtain approvals for variances for Buildings constructed by the Declarant.

(c) Exterior Surfaces; Signs Owners shall not cause or permit anything to be hung or displayed on the outside walls or windows of a Building on a Lot, and no signs shall be affixed to or placed upon the exterior of a Building, or upon any other area of a Building that is visible from the street, or upon any other part of a Lot, without the prior consent of the Board, except for: (a) one (1) real estate sign as permitted by the applicable zoning code; or (b) no more than a total of two (2) political signs endorsing either candidates for public office or issues on the ballot as permitted by the sign code of the jurisdiction in which the Property is located. Without limiting the foregoing, signs addressing social, political, business and personal issues, except those specifically permitted by clauses (a) and (b) of the preceding sentence, are prohibited. Further, Owners shall not permit any curtains, shades or other window coverings to be hung inside or outside any windows that will show any color other than those approved by the Board. Notwithstanding anything to the contrary herein, Declarant and its agents shall have the unrestricted right to place "For Sale" or "For Rent" signs on any unsold or unoccupied Lots, the Common Elements or other Buildings on the Property, and to use unsold Lots or Buildings as models, for promotional purposes and/or as offices in connection with the construction, sale, management, maintenance, repair, remodeling and/or rental of Lots.

(d) Parking. No inoperative or unlicensed vehicle may be parked on the Property. No vehicles may be parked on the streets located within the Property. No part of any driveway shall be used for parking any trailer, truck, boat or anything other than operative automobiles, motorcycles, bicycles, scooters or other vehicles permitted. Any trailer, truck or boat parked on the Property must be parked in the rear of a Lot, behind the residence permitted on such Lot. No more than one (1) truck, trailer or boat may be parked on a Lot. The word "trailer" shall include any trailer coach, house trailer, boat trailer, mobile home, automobile trailer, camp car, camper, recreational vehicle or any other similar vehicle. The word "truck" shall include every type of motor vehicle other than a passenger car and pickup trucks, sport utility vehicles and vans that are used as a primary source of transportation by an Owner or Occupant and that are not identified and used as a commercial vehicle. Notwithstanding the foregoing, vehicles being used for the purpose of construction, delivery to or repair work upon any Lot shall be permitted to park on the Property during the time that the services are being provided; short-term visitor parking (less than one week) of prohibited vehicles is permitted on the driveway of a Lot, but not on the streets located within the Property, and trailers may be parked in the driveway for a period not to exceed twenty-four (24) hours for loading and unloading purposes. The Association shall have the right to tow



away vehicles parked in violation of these provisions after twenty-four (24) hour notice to the affected Owner or Occupant or by placing a twenty-four (24) hour notice of intent to tow on the vehicle itself. The costs of towing shall be borne by the Owner, Occupant or other person responsible for the vehicle.

(e) Hazardous Uses and Waste. Nothing shall be done or kept on any Lot or on the Common Elements that is unusually hazardous in relation to ordinary residential uses, or that increases the rate of insurance on the buildings or their contents, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his/her Lot or on the Common Elements that will result in the cancellation of insurance on the Buildings or their contents, or will be in violation of any law. No waste shall be committed on the Common Elements.

(f) Animals and Pets. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, is prohibited on any Lot except that this shall not prohibit the keeping of dogs, cats, caged birds or aquarium fish or other domestic pets, provided they are not kept, bred or maintained for commercial purposes and provided that they are kept according to the Rules and Regulations and not more than three (3) dogs and/or cats are kept by an Owner. Any pet causing or creating a nuisance or unreasonable disturbance or that is kept in violation of this Declaration or the Rules and Regulations shall be permanently removed from the Property upon seven (7) days written notice from the Board. No pet shall be allowed to run unattended. No device or apparatus to which a line, wire or rope is connected for the restraint of animals or pets shall be constructed or permitted upon any part of a Lot or the Common Elements.

(g) Nuisances. No activity that may be considered noxious or offensive by reason of odor, sound, appearance or sight shall be conducted on any Lot or any part of the Common Elements, nor shall anything be done on any Lot either willfully or negligently, that may be or become an annoyance or nuisance to the other Owners or Occupants.

(h) Trash. Trash, garbage or other waste shall not be kept upon any part of the Property except in sanitary containers and screened from visibility from the streets of the Property. Notwithstanding the foregoing, sanitary containers containing trash, garbage or other waste may be visible on any day such trash, garbage or other waste is scheduled to be removed from the Property.

(i) Antennas and Satellite Dishes. No antenna shall be fastened to a metal or artificial flue of any kind. Owners shall be permitted to place over-the-air reception devices (such devices and their supporting apparatus being referred to herein as "satellite dishes") on their Lots upon compliance with the following criteria: (i) any satellite dish must be one meter or less in diameter; (ii) the preferred location of any satellite dish shall be in the rear yard, nor visible from the street, unless the placement



in the rear yard would unreasonably delay or prevent, or unreasonably increase the cost of installation, maintenance or use of such satellite dish or preclude the reception or transmission of an acceptable quality signal; (iii) installation of equipment that is merely duplicative and not necessary for the reception of video programming is prohibited; (iv) where the satellite dish is located on or immediately adjacent to the residence, the satellite dish shall be painted to blend with the color of the residence, unless painting the satellite dish would result in voiding the manufacturer's warranty, would unreasonably delay or prevent, or unreasonably increase the cost of installation, maintenance or use of such satellite dish or preclude the reception or transmission of an acceptable quality signal; (v) where the satellite dish is not attached to or immediately adjacent to the residence, the Owner shall take reasonable measures to screen or camouflage the satellite dish from view by the installation of shrubbery or other screening measures that do not unreasonably delay or prevent, or unreasonably increase the cost of installation, maintenance or use of such satellite dish or preclude reception or transmission of an acceptable quality signal; and (vi) satellite dishes shall not be placed on any Common Elements.

(j) Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

(k) Fences. Fences complying with the requirements of this Section shall be permitted. No fence or any portion thereof may be installed on that part of any Lot that is closer to the street than the rear plane of the residence on the Lot. No fences on the sides of the residence or closer to the street are permitted.

Fences shall not exceed six (6) feet in height shall be opaque or translucent black or in the brown family in color and constructed of maintenance free vinyl or vinyl coated material; provided, however, all fences constructed on a Lot shall be of similar color, material, design and construction and include at least two (2) adjacent thirty-six (36) inch gates creating an unobstructed opening of seventy-two (72) inches when the gates are open.

All corner Lots are classified as double fronting Lots. Double fronting Lots must adhere to the fifty (50) foot minimum building setback requirements and no fence shall be permitted to extend beyond the plane of the house. Any fence enclosing an in-ground swimming pool and located entirely within thirty (30) feet of such pool may be of a design and construction as is from time to time required by applicable governmental authorities for enclosures of swimming pools. No fence shall obstruct the flow of storm water. Any fencing that is not in accordance with this Section shall be prohibited. Notwithstanding anything to the contrary, no fences shall be erected without the prior approval of the Association.



(l) Swing Sets and Play Equipment. All swing sets, treehouses, jungle gyms and other outdoor play equipment that are affixed to a Lot shall require the Board's prior approval.

(m) Laundry on Parcels. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any Lot or on the Common Elements.

(n) Sheds. A maximum of one (1) storage shed shall be permitted on any Lot. Any such shed shall be no more than one hundred (100) square feet total and shall be constructed of materials similar to the primary Building, painted to match the existing primary Building and have a similar appearance and design as that of the existing primary Building. No shed shall exceed ten (10) feet in height. Sheds not in accordance with this Section shall be prohibited.

(o) Landscaping. Within three (3) months of occupancy of a Dwelling Unit by an initial Owner the Lot upon which such Dwelling Unit is located shall be landscaped with at least one (1) hardwood shade tree and ten (10) other bushes or shrubs, excluding flowers.

(p) Use of the Common Elements. The Common Elements shall be used only in accordance with the purposes for which they are intended and no Owner or Occupant shall hinder or encroach upon the lawful rights of other Owners or Occupants. This restriction includes, but is not limited to the following:

(i) Except as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be stored in the Common Elements, without the prior consent of the Association;

(ii) In using the Common Elements no Owner or Occupant shall violate any provisions of the Organizational Documents, the Articles or the Rules and Regulations;

(iii) Nothing shall be altered, constructed in or removed from the Common Elements except as otherwise provided in this Declaration or except with the prior consent of the Association; and

(iv) The Common Elements shall be kept free of rubbish, debris and other unsightly materials.



## **8.02        Rental, Leasing.**

No Lot or any Building or improvement thereon shall be rented, leased or occupied by anyone other than the owner of such lot (if the Owner is not an Occupant), except pursuant to one or more of the exceptions set forth below.

### **(a)        Family Rentals; Family Shared Lots Exception**

Notwithstanding the above, an Owner may lease or grant the use of a Lot to an immediate family member, which is defined as a grandparent, parent, son, daughter or grandchild, provided that said lease or use shall comply with the other provisions of this Section.

### **(b)        Land Installment Contract Exception**

Any sale of a Lot under a Land Installment Contract, as defined by Ohio Revised Code 5313, shall be considered a rental of the Lot unless all of the following criteria are met:

(i)        A minimum Five Thousand Dollar (\$5,000.00) down payment is made by the Vendee. A copy of the check, or other proof of payment as the Board may require, shall be attached to the contract;

(ii)       The term of the Land Contract shall not exceed five (5) years, without the express written consent of the Board;

(iii)      The Land Contract shall be in writing and in compliance with Ohio Revised Code 5313 and shall be Recorded; and

(iv)      An Affidavit is provided to the Board, along with a copy of the contract and down payment check or other proof by the Vendor and Vendee that the Land Contract is a true, accurate and complete statement of the transaction entered into between the parties and that it is not being entered into in an attempt to circumvent the leasing restrictions of this Section.

### **(c)        Undue Hardship Exception**

Notwithstanding any of the conditions set forth in Section, the Board, at its sole and absolute discretion, shall be empowered to allow reasonable leasing of Lots, upon written application, in the event of "Undue Hardship". Undue Hardship may include, but is not limited to: (i) when an Owner must relocate his/her residence and has been unsuccessful in selling the Lot, after having made reasonable efforts to do so, for a period of ninety (90) consecutive days from the date the Lot was placed on the market (i.e. the Lot must be listed for sale with a multiple listing service);



(ii) an Owner dies and said Lot is being administered by his/her estate; or (iii) where an Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot. If an Owner believes that he/she, they or it must lease a Lot in order to avoid Undue Hardship, then said Owner must submit a written application to the Board which sets forth the circumstances necessitating the leasing, the name of the proposed lessee, if available, a copy of the lease which shall not exceed a term of twelve (12) months, and such other information as the Board may reasonably require. The Board shall approve or reject in writing the Owner's request to lease the Lot within fifteen (15) days after receipt of the written request and a copy of the lease (or proposed lease) has been submitted to the Board. In the event the hardship condition, as set forth above, should continue for a period of time longer than the term granted for the initial hardship period, the Owner may reapply to the Board for an additional Undue Hardship consideration, which may be extended, at the Board's option, for one (1) additional term up to a twelve (12) month period. In no case shall a Lot be leased or rented under the Undue Hardship provisions for more than two (2) Undue Hardship periods, even if one or more of such undue hardship periods is less than twelve (12) months.

(d) Not Greater than Five Percent (5%) Rental Use Exemption

The Board shall assert its best efforts to keep a current record of all approved Lots used for rental purposes. The Board shall, on a first come, first serve basis, grant any Owner an exception under this Section permitting the rental use of a Lot, so long as each of the following conditions are satisfied by the Owner at the time of the Owner's written request for exception: (i) the Owner is not otherwise in default in any of the terms, conditions or requirements of the Organizational Documents; (ii) there are five percent (5%) or less Lots (no more than two (2) Lots) in the Development (total of 40 Lots) used for rental purposes and/or exempted for rental purposes (without consideration of Family Rentals as defined above), as reflected on the Board's records thereof; and (iii) the Owner has submitted to the Board a copy of the proposed lease, which is in compliance with this Section. The Board's records shall be the sole basis for determining the availability of a rental use.

(e) Standard Provisions

In no event shall less than an entire Lot be leased or shall any Lot be leased for a term less than thirty (30) days, and no Lot shall be rented for transient or hotel purposes, which shall be defined as: (i) rental for any period less than thirty (30) days; or (ii) any rental in which the occupants of the Lot are provided customary hotel services such as room service for food and beverages, maid services, or the furnishing of laundry and linens. All leases of any Lot shall be in writing. All such leases shall provide that they are subject to all of the provisions of the Organizational Documents and Rules and Regulations and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease. A copy of each lease shall be given to the Board immediately after it is executed.



(f) Remedies for Breach

Any transaction or situation which does not comply with this Section shall result in the Owner(s) and/or the Lot being subject to (but not limited to) one (1) or more of the following remedies: (i) the transaction shall be voidable at the option of the Board; (ii) such fines and penalties, assessments and liens as the Board may authorize in accordance with the Organizational Documents; and/or (iii) injunctive relief. All remedies and actions shall be cumulative in nature.

(g) Burden of Proof

(i) The burden of proof of an exemption from the prohibition on renting or leasing a Lot shall always be upon the Owner. The existence of an exemption from this Section shall be deemed to not exist until the Owner has made application to the Board for an exemption, proves such proof of qualification for the exemption to the Board, as the Board may reasonably require, and the Owner has received written approval of the asserted exemption. An approved exemption shall automatically terminate upon the happening of any of the following events:

- (a) A change in Ownership of the Lot;
- (b) The expiration of time granted by the Board for the exemption;
- (c) The failure of any condition required by the Board; and/or
- (d) A change in circumstances which would not qualify for the exemption originally requested.

**8.03 Expiration/Termination of Approved Exemption.** Upon the expiration or termination of an approved exemption, continued exempt status shall require the submission and approval of a new application for exemption status.

**8.04 No Sale or Lease to or Occupancy by a Sexually Oriented Offender.** No Owner shall lease, convey or transfer a Lot to any person who is required, pursuant to Section 2950.04 of the Ohio Revised Code (or other similar statute from any other jurisdiction), to register as a sexually oriented offender, nor shall any Unit Owner permit a Lot to be occupied by any such sexually oriented offender. The Association shall not be liable to any Owner, Occupant or their guests as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction. Any violation of this restriction shall be subject the Owner and any resident or Occupancy of the Owner's Lot to any and all remedies provided by law, as well as this Declaration.



**8.05**        **Failure to Comply.** Failure to comply with any of the requirements of this Section shall constitute a Default. A Default by any Occupant or other person residing in, occupying or visiting a Lot or Common Elements at the request or with the implied or express permission of the Owner or any other Occupant of the Lot, or committed by any agent, employee, business invitee or contractor of the Owner or Occupant of a Lot, shall be attributed to that Owner and Lot.

## **ARTICLE IX** **RULES AND REGULATIONS**

**9.01**        **General.** The Board may by majority vote adopt reasonable Rules and Regulations and amend the same which the Board may deem advisable for the maintenance, conservation, protection and beautification of the Property and for the health, comfort, safety and general welfare of the Owners and Occupants. Such Rules and Regulations may include reasonable fines and penalties for violations. Written notice of the Rules and Regulations will be forwarded to all Owners and copies thereof shall be available to all Owners.

**9.02**        **Conflict.** In the event of any conflict between the Rules and Regulations and the provisions of the Declaration, the provisions of the Declaration shall govern.

## **ARTICLE X** **ARBITRATION**

**10.01**       **General.** In the event of any dispute between Members as to the application of the restrictions set forth in Article VIII, or any Rule or Regulation, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and a place for hearing thereon within twenty (20) days thereafter, and give written notice to the party thereof no less than three (3) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action of law may be instituted by the party to such dispute unless arbitration pursuant hereto has first been had.

## **ARTICLE XI** **MAINTENANCE**

**11.01**       **Association.** The Association shall be responsible for the maintenance, repair and replacement of the Common Elements subject to the exceptions and provisions hereof:



**11.02**        **Owner.** The Owner of each Lot shall be responsible for the maintenance, repair and replacement to his/her Lot and improvements thereon.

**11.03**        **Failure to Maintain.** In the event an Owner shall fail to maintain his/her Lot and improvements situated thereon to such an extent that in the opinion of the Board the conditions require maintenance, repair or service for purposes of protecting the public safety or residents in or visitors to the Property, or in order to prevent or avoid damage to or destruction of any part, portion or aspect of the value thereof, including adjoining Dwelling Units and/or Lots, the Association shall have the right, upon approval of the majority of the Board, to enter upon that Lot and maintain, repair or service the same. The cost of such maintenance, repair or service shall be added to and become a Special Individual Lot Assessment, chargeable to the Lots they maintained, repaired or serviced.

## **ARTICLE XII REAL ESTATE TAXES**

**12.01**        **Owner.** The Owner of each Lot shall pay the real estate taxes and assessments that are, from time to time, levied against his/her individual Lot.

**12.02**        **Association.** The Association shall be responsible for the payment of all taxes and assessments, if any, that are from time to time levied against the Common Elements.

## **ARTICLE XIII INSURANCE**

**13.01**        **Fire and Extended Coverage Insurance.** The Association shall at all times maintain, in its name, insurance coverage on the structures which are part of the Common Elements now or at any time in the future, including fixtures and equipment, against loss or damage by fire, lightning and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils that are customarily covered with respect to projects similar in construction, location and use, including perils normally covered in a "special form" policy of property insurance, where such is available in the locale of the Property.

**13.02**        **Liability Insurance.** The Association, as a Common Expense, shall insure itself, the Board, all Owners and Members of their respective families and other persons residing with them in the Property, their tenants and all persons lawfully in the possession or control of any Lot and Dwelling Unit located thereon, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from destruction of property occurring upon, in or about, or arising from the Common Element(s), for such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury,



disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident. Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Lots or Dwelling Units located thereon.

**13.03      Other Insurance.** As a Common Expense, the Association shall obtain such insurance as the Board considers necessary, including without limitation, fidelity bonds and crime insurance for anyone who either handles, or is responsible for funds held or administered by the Association. The amount of such fidelity bond and crime insurance shall be equal to, at a minimum, the maximum funds that will be in the custody of the Association at any time such bond is in effect. In addition, such fidelity bond coverage must equal one-quarter (1/4) of the Annual Assessments, together with the reserve funds, if any.

**13.04      Notice of Cancellation or Substantial Changes.** Any insurance coverage obtained by the Association shall contain a provision requiring the insurer to notify the Association and any mortgagee named in the mortgage clause, if applicable, in writing of the cancellation or a substantial change or coverage at least ten (10) days prior to such cancellation or substantial change.

**13.05      Annual Review.** The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually.

## **ARTICLE XIV** **AMENDMENT**

**14.01      General.** Except as provided in this Declaration any provision of this Declaration may be amended in whole or in part or terminated by a Recorded instrument approved by: (a) the Members representing at least seventy-five percent (75%) of the total votes of the Association; and (b) so long as it is the Owner or at least one (1) Lot, the Declarant.

(a) The President of the Board shall determine whether the persons who have approved of any amendments or the termination of this Declaration constitute the Owners of the required percentage of Members. Promptly after the approval of any amendment or termination of any part of this Declaration the President of the Board shall cause to be Recorded: (a) the written instrument of amendment or termination executed in properly recordable form by the President of the Association (and the Declarant, if the Declarant owns at least one (1) Lot); and (b) the certificate of the President of the Association that the Members representing at least seventy-five percent (75%) of the total votes of the Association have approved such instrument.



(b) Notwithstanding the above, this Declaration may be amended at any time during the Development Period, without the vote of Owners, by a written instrument executed by the Declarant for any of the following purposes: eliminating or correcting any typographical or other inadvertent errors; eliminating or resolving any ambiguity; making minor or non-substantial changes; clarifying or modifying the use restrictions; clarifying Declarant's original intent; and/or making any changes necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Mortgage Corporation, or any other agency that may insure or purchase lots on a Lot. No Amendment for these purposes shall materially adversely affect any Owner's interest in his/her Lot, the Association or the Common Elements without that Owner's written consent. Each Owner and his/her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering a Lot, shall be deemed to have consented to and approved of the provisions of this section and the amendment of this Declaration by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of the Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by the Declarant to be necessary or proper to effectuate the provisions of this section.

**14.02      Right of First Refusal.** Any Amendment attempting to or giving the Association or any Owners a right of first refusal on the sale, transfer or other disposition of a Lot shall contain a provision exempting such right of first refusal as to any Lot, the title of which is obtained by a First Mortgagee pursuant to remedies provided in the mortgage, or foreclosure of the mortgage, or a deed to such mortgage in lieu of foreclosure. Notwithstanding any provision hereof, this provision and the requirement herein cannot be amended without unanimous written consent of all Owners and First Mortgagees.

**14.03      Mortgage or Mortgagee.** Any Amendment that adversely affects the value, priority or security of any mortgagee of record shall require the written consent of such mortgagee of record. Any Amendment affecting the underwriting requirements of any mortgagee shall require the written consent of such mortgagee and also its underwriters, if required by such mortgagee. Any Amendment of language specifically referring to mortgagees shall require the written consent of all mortgagees of record.

## **ARTICLE XV**

### **ARCHITECTURAL CONTROL AND RESTRICTIONS**

**15.01      General.** No swimming pool, tennis court, fence, wall, patio, deck or other structure or improvement shall be commenced, erected or maintained on the Property, nor shall any exterior addition to or change or alteration be made until the plans and



specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE XVI** **GENERAL**

**16.01        Covenants Running with Land.** The covenants, conditions, restrictions, easements, reservations, liens and charges created by this Declaration shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Property, and their respective heirs, executors, administrators, successors and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which it shall automatically extend for successive periods of ten (10) years, unless amended as herein provided.

**16.02        Enforcement.** In addition to any other remedies provided in this Declaration the Association or any Member shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein now or hereafter imposed by or through the Rules and Regulations. Failure by the Association or by any Member to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restrictions, condition, covenant, reservation, easement lien or charge. The Association shall not deliberately refuse to enforce the provisions hereof or discontinue operations, or attempt to terminate its operation without giving thirty (30) days prior written notice to all Eligible First Mortgagees.

**16.03        Notice to Mortgagees.** Notwithstanding any other provisions hereof, the Association shall notify any Eligible First Mortgagee in writing of any default by the Owner of such Lot in performance of that Owner's obligations under the Organizational Documents, which is not cured within thirty (30) days.

**16.04        Severability.** Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall not in any way affect any other provisions hereof, all of which shall remain in full force and effect.

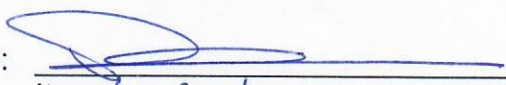


**16.05**      **Gender and Grammar**. Any necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships or individuals, male or female, shall in all cases be assumed as though in each case fully expressed herein.

**16.06**      **References**. Unless otherwise specified, all references to a particular Article or Section shall refer to such Article or Section of the Declaration.

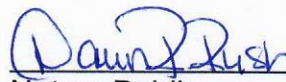
**EXECUTED** on the date set forth in the acknowledgement of the signatures below.

**ASSOCIATE CONSTRUCTION, INC.**

By:   
Its Vice-President

**STATE OF OHIO, COUNTY OF MONTGOMERY, SS:**

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 2018 by Ryan Morris, President of Associate Construction, Inc., an Ohio corporation, on behalf of such corporation.

  
Notary Public  
DAWN R. RUSH, Notary Public  
In and for the State of Ohio  
My Commission Expires Dec. 2, 2019



**THIS INSTRUMENT PREPARED BY:**

**HANS H. SOLTAU**  
Attorney at Law  
6776 Loop Road  
Centerville, Ohio 45459



**EXHIBIT "A"**

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**BY-LAWS OF  
THE VILLAS AT HICKORY POINTE ASSOCIATION, INC.**

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**BY-LAWS**  
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## **ASSOCIATION BY-LAWS**

The within By-Laws are executed and attached to the Declaration for The Villas at Hickory Pointe, pursuant to the Ohio Planned Community Act. Their purpose is to provide for the establishment of an association for the administration of the Property in the manner provided by the Declaration and by these By-Laws. All present or future Owners or tenants or their employees, and any other person who might use the facilities of the Property in any manner shall be subject to any restrictions, conditions or regulations hereafter adopted by the Board. The mere acquisition or rental of any of the Dwelling Units located within the Property described in the Declaration or the mere act of occupancy of any of the Dwelling Units will constitute acceptance and ratification of the Declaration and of these By-Laws. The terms used herein shall have the same meaning as defined in the Declaration.

### **ARTICLE I THE ASSOCIATION**

**1.01        Name of Association.** The Association shall be an Ohio corporation, not-for-profit, and shall be called **THE VILLAS AT HICKORY POINTE ASSOCIATION, INC.**

**1.02        Membership and Voting Rights.** Membership requirements and the voting rights of its Members are set forth in the Declaration.

**1.03        Proxies.** Votes may be cast in person or by proxy. The person appointed as proxy need not be an Owner. Proxies must be in writing and filed with the Secretary of the Association or property manager before the appointed time of each meeting or action taken. Unless otherwise provided, all proxies shall be revocable at any time by delivering written notice of such revocation to the Secretary or property manager of the Association. If, by the terms of a first mortgage an Owner has designated such mortgagee as his/her proxy, the presentation to the Secretary of the Association or property manager by a representative of such mortgagee of a copy of the mortgage containing such proxy designation shall constitute notice of such proxy designation and if the mortgage so states, notice of the irrevocability of such designation.

**1.04        Place of Meetings.** Meetings of the Association shall be held at such place upon the Property or at such other place as may be designated by the Board and specified in the notice of the meeting at such time as may be designated by the Board and specified in the notice of the meeting.



**1.05        Annual Meeting.** There shall be at least one (1) annual meeting of the Association as determined by the Board.

**1.06        Special Meetings.** It shall be the duty of the President of the Association to call a special meeting of the Owners as directed on his/her own initiative by resolution of the Board or upon a petition signed by twenty-five percent (25%) of the Owners and having been presented to the Secretary or property manager of the Association. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the Owners present, either in person or by proxy.

**1.07        Notice of Meetings.** It shall be the duty of the Secretary of the Association or property manager to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each Owner of record, at least fourteen (14) days but not more than twenty-eight (28) days prior to such meeting. The Owners of record will be determined as of the day preceding the day on which notice is given. In the event an Owner has provided the Secretary of the Association or property manager with an e-mail address, notice of any meeting can be sent to such e-mail address.

**1.08        Waiver of Notice.** Notice of the time, place and purpose of any meeting of Members may be waived in writing, either before or at the commencement of such meeting by any Members which writing shall be filed with or entered upon the records of the meeting. The attendance of any Members at any such meeting without protesting prior to or at the commencement of the meeting the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting.

**1.09        Action by Written Consent of a Majority of the Owners.** Unless otherwise provided in the Declaration or in these By-Laws, any action which may be authorized or taken at a meeting of the Owners may be authorized or taken without a meeting in a writing or writings signed by a majority of the Owners. The writing or writings evidencing such action taken by written consent of the Owners shall be filed with the records of the Association. Written notice of any action proposed to be taken by written consent of the Owners shall be sent to all persons entitled to notice under these By-Laws at least five (5) days prior to the circulation of the action for written consent among the Owners and shall specify the action proposed to be so taken.

**1.10        Order of Business.** Unless otherwise set forth in the Notice of Meeting, the order of business at the annual meetings of the Owners shall be as follows:



- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Reports of officers
- (e) Report of committees
- (f) Election of directors
- (g) Unfinished business
- (h) New business
- (i) Adjournment

**1.11**        **Quorum.** For the annual meeting the presence in person or by proxy of twenty-five percent (25%) of the Owners shall constitute a quorum. For all other purposes the presence in person or by proxy of a Majority of Owners shall constitute a quorum. If at any meeting of the Association there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At the continuation of any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

## **ARTICLE II**

### **BOARD OF DIRECTORS**

**2.01**        **Number and Term.** The initial Board shall continue as the Board during the Development Period. With reasonable promptness after the end of the Development Period the Secretary of the Association shall call a special meeting of the Members. The term of the initial Directors shall expire as of the date of such special meeting and three (3) new Directors shall be elected. One (1) Director shall be elected for a term of one (1) year and until his/her successor is elected and qualified; one (1) Director shall be elected for a term of two (2) years and until his/her successor is elected and qualified; and the third Director shall be elected for a term of three (3) years and until his/her successor is elected and qualified. Thereafter all successor Directors shall be elected for a term of three (3) years. If at any time one (1) Eligible First Mortgagee shall hold mortgages upon more than fifty percent (50%) of the Lots, such Eligible First Mortgagee may designate its representative who shall be an additional member to the Board.

**2.02**        **Qualification.** After the Development Period all Directors must be Owners or spouses of Owners, or if the Lot is not owned by an individual, then any principal, member of a limited liability company, partner, director, officer, employee, trustee of such Owner may be nominated and serve on the Board.



**2.03        Election of Directors.** The required Directors shall be elected at each annual meeting of the Members. Only persons nominated as candidates shall be eligible for election as directors and the candidates receiving the greatest number of votes shall be elected. Each Member may vote for as many candidates as there are vacancies in the Board due to the expiration of their terms; provided, however that a vacancy in the position of a representative of an Eligible First Mortgagee, if any, shall be filled by such Eligible First Mortgagee.

**2.04        Vacancies During the Term.** In the event of the occurrence of any vacancy or vacancies on the Board during the term of such director(s), the remaining directors, though less than a majority of the whole authorized number of directors, may, by the vote of a majority of their number, fill any such vacancy for the unexpired term; provided, however that a vacancy in the position of a representative of an Eligible First Mortgagee, if any, shall be filled by such Eligible First Mortgagee.

**2.05        Resignation.** Each director shall hold office until his/her term expires or until his/her earlier resignation, removal from office or death. Any Director may resign at any time by oral statement to that effect made at a meeting of the Board or in a writing to that effect delivered to the Secretary or property manager of the Association; such resignation to take effect immediately or at such other time as the Director may specify.

**2.06        Removal of Directors.** At any regular or special meeting duly called, any one or more of the directors may be removed with or without cause by the vote of Members entitled to exercise at least fifty percent (50%) of the voting power of the Association, except that a Director, if any, acting as a representative of a lending institution may not be removed by such vote. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at such meeting. In the event that a Director is removed by vote, his/her successor shall then and there be elected to fill the vacancy thus created.

**2.07        Organizational Meeting.** After each annual meeting of the Members the newly elected Director shall hold an organizational meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

**2.08        Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, but at least four (4) such meetings shall be held during each year.

**2.09        Special Meetings.** Special Meetings of the Board may be held at any time upon call by the President or any two (2) Directors. Written notice of the time and place of each such meeting shall be given to each Director either by personal delivery, mail, telegram, electronic or telephone, at least two (2) days before the meeting, which



notice shall specify the purpose of the meeting; provided, however that attendance of any director at any such meeting without protesting prior to or at the commencement of the meeting the lack of proper notice, shall be deemed to be a waiver by him/her of notice of such meeting and such notice may be waived in writing either before or at the commencement of such meeting. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**2.10      Owner's Attendance and Participation.** No Owner other than a director may attend or participate in any discussion or deliberation of a meeting of the Board unless expressly authorized by the Board to attend.

**2.11      Board's Quorum.** At all meetings of the Board a majority of the directors shall constitute a quorum for the transaction of business and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At the continuation of any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**2.12      Electronic Communication.** Meetings of the Board may be held by any method of communication, including electronic or telephonic communications, provided that each director can hear, participate and respond to every other member.

**2.13      Action by Unanimous Written Consent of the Board.** Any action which may be authorized to be taken at a meeting of the Board may be taken or authorized without a meeting in a writing or writings signed by all of the members of the Board. The writing or writings evidencing such action taken by the unanimous written consent of the Board shall be filed with the records of the Association.

**2.14      Fidelity Bonds.** The Board shall require that all officers and employees of the Association handling or responsible for the Association funds shall furnish adequate fidelity bonds. The premiums for such bonds or crime policy covering theft and faithful performance of duties shall be paid by the Association.

### **ARTICLE III** **POWERS OF THE BOARD**

**3.01      General.** The Board shall exercise all powers and authority, under law, and under the provisions of the Organizational Documents, that are not specifically and exclusively reserved to the Owners by law or by other provisions thereof, and without



limiting the generality of the foregoing, the Board shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law, and the Organizational Documents;
- (b) obtain insurance coverage no less than that required pursuant to the Declaration;
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (d) repair, maintain and improve the Common Elements;
- (e) establish, enforce, levy and collect assessments as provided in the Declaration;
- (f) adopt and publish Rules and Regulations:
  - (i) governing the use of the Common Elements and the personal conduct of Owners, Occupants and their guests thereon;
  - (ii) governing any aspect of the Property that is not required by statute to be governed by the Organizational Documents; and
  - (iii) establishing penalties for the infraction thereof;
- (g) suspend the voting rights of an Owner during any period in which such Owner shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for each infraction of published Rules and Regulations or of any provisions of the Organizational Documents;
- (h) declare the office of a member of the Board to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board;
- (i) authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association and to facilitate the efficient operation of the property. It shall be the primary purpose of such management agreements to provide for administration, management, repair and maintenance as provided in the Declaration, and the receipt and disbursement of funds as may be authorized by the Board. The terms of any management agreements shall



be as determined by the Board to be in the best interest of the Association, subject, in all respects, to the provisions of the Organizational Documents;

(j) cause funds of the Association to be invested in such reasonable investments as the Board may, from time to time, determine;

(k) borrow funds, as needed, and pledge such security and rights of the Association as might be necessary or desirable to obtain any such loan including, without limitation, the pledge of the Association's right to levy assessments upon the members; and

(l) do all things and take all actions permitted to be taken by the Association by law, or the Organizational Documents not specifically reserved thereby to others.

#### **ARTICLE IV** **DUTIES OF THE BOARD**

**4.01      General.** It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at each annual meeting of Owners, or at any special meeting when such statement is requested in writing by Owners representing a Majority of the Owners;

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

(c) as more fully provided in the Declaration, to:

(i) fix the amount of Assessments against each Lot;

(ii) give written notice of each Assessment to every Owner subject thereto within the time limits set forth therein; and

(iii) foreclose the lien against any property for which Assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Owner(s) personally obligated to pay the same, or both;

(d) issue, or to cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid;



(e) procure and maintain insurance and bonds as provided in the Declaration, and as the Board deems advisable;

(f) cause the Property to be maintained within the scope of authority provided in the Declaration;

(g) cause the restrictions created by the Declaration to be enforced;  
and

(h) take all other actions required to comply with all requirements of law and the Organizational Documents.

**4.02**        **Compliance.** The Board shall comply with all applicable state and federal laws concerning prohibitions against discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age or ancestry, including, but not limited to Chapter 4112 of the Ohio Revised Code. No private right of action additional to those conferred by the applicable state and federal anti-discrimination law is conferred on any aggrieved individual by the preceding sentence.

## **ARTICLE V** **OFFICERS**

**5.01**        **Designation.** The principal officers of the Association shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by and from the Board. The offices of Treasurer and Secretary may be filled by the same person.

**5.02**        **Term of Office; Vacancies.** The officers of the Association shall hold office until the next organization meeting of the Board and until their successors are elected, except in case of resignation, removal from office or death. The Board may remove any officer at any time, with or without cause, by a majority vote of the Directors then in office. Any vacancy in any office may be filled by the Board.

**5.03**        **President.** The President shall be the chief executive officer of the Association. He/she shall preside at all meetings of the Association and of the Board. Subject to directions of the Board, the President shall have general executive supervision over the business and affairs of the Association. He/she may execute all authorized deeds, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board or otherwise provided for in the Organizational Documents.



**5.04**        **Vice President**. The Vice President shall act in the place and stead of the President in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

**5.05**        **Secretary**. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He/she shall have charge of such books and papers as the Board may direct. He/she shall be in charge of sending any notices and he/she shall, in general, perform all duties incident to the office of Secretary.

**5.05**        **Treasurer**. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He/she shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board.

## **ARTICLE VI** **BOOKS**

**6.01**        **General**. The Association shall maintain correct and complete books, records and financial statements of the Association, including, without limitation, the Organizational Documents, names and addresses of the Owners, actions and Board resolutions, minutes of all meetings of Members and the Board, documents relating to its financial condition, all receipts and expenditures, budget, financial statements and annual audited financial statements when such are prepared.

**6.02**        **Availability**. Any Owner, duly authorized agent of any Owner, Eligible Mortgagee, insurer or guarantor of a first mortgage on a Dwelling Unit, may examine and copy any of the foregoing books, records and financial statements pursuant to reasonable standards established in the Organizational Documents which may include, without limitation, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents.

**6.03**        **Limitations**. Notwithstanding the foregoing section, the Association shall not be required to permit the examination and copying of any of the following:

- (a)      information that pertains to Property related personnel matters;



(b) communications with legal counsel or attorney work product pertaining to pending litigation or other Property related matters;

(c) information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;

(d) information that relates to the enforcement of the Organizational Documents against Owners; or

(e) information, the disclosure of which is prohibited by state or federal law.

**6.04      Review or Audit.** Upon the written request executed by a Majority of Owners, the books of the Association shall be reviewed or audited, but not more than once every three (3) years by an independent registered or Certified Public Accountant, the results of which shall be sent to every Owner and Eligible First Mortgagee who requests a copy in writing.

## **ARTICLE VII** **COMMITTEES**

**7.01      General.** The Board may appoint committees as deemed appropriate in carrying out its purpose.

## **ARTICLE VIII** **INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES,** **AGENTS AND VOLUNTEERS**

**8.01      General.** To the extent permitted by law, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed civil, criminal, administrative or investigative action, suit or proceedings, other than an action by or in the right of the Association, by reason of the fact that he/she is or was a Director, officer, employee, agent or volunteer of the Association, or is or was serving at the request of the Association as a director, officer, employee, agent or volunteer of another corporation, domestic or foreign, non-profit or for profit, or a partnership, joint venture, trust or other enterprise, against expenses, including attorney fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with the action, suit or proceeding, if he or she acted in good faith and in a manner he/she reasonably believed to be in or not



opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, if he/she had no reasonable cause to believe his/her conduct was unlawful.

The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he/she is or was a Director, officer, employee, agent or volunteer of the Association, or is or was serving at the request of the Association as a director, officer, employee, agent or volunteer of another corporation, domestic or foreign, non-profit or for profit, or a partnership, joint venture, trust or other enterprise against expenses, including attorney fees, actually and reasonably incurred by him/her in connection with the defense or settlement of the action or suit if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of his/her duty to the Association unless, and only to the extent that, the court of common pleas or the court in which the action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case the person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court deems proper. This determination shall be made: (a) by a majority vote of a quorum consisting of Directors of the Board who were not and are not parties to or threatened with the action, suit or proceedings; or (b) whether or not a quorum is obtainable, and if a majority of a quorum of disinterested Directors so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the Association or any person to be indemnified within the past five (5) years, or (c) by the Members; or (d) by the court of common pleas or the court in which the action, suit or proceeding was brought. Any determination made by the disinterested Directors or by independent legal counsel as described above shall be promptly communicated to the person who threatened or brought the action or suit by or in the right of the Association and within ten (10) days after receipt of such notification, that person shall have the right to petition the court of common pleas or the court in which the action or suit was brought to review the reasonableness of this determination.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the person seeking indemnification may be entitled under the Articles of Incorporation, this Code of Regulations or any agreement, vote of the Members or disinterested Directors, or otherwise, both as to actions in his/her official capacity and as to actions in another capacity while holding office, and shall continue as to a person who has ceased to be a Director, officer, employee, agent or volunteer of



the Association and shall inure to the benefit of the heirs, executors and administrators of that person.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

**9.01        Copies of Notices to Eligible First Mortgagees.** Upon written request to the Board, Eligible First Mortgagees shall be given a copy of any and all notices and other documents permitted or required by the Organizational Documents to be given to the Owner or Owners whose Lot ownership is subject to such mortgage, and a copy of any lien filed by the Association.

**9.02        Service of Notices on the Board.** Notices required to be given to the Board or to the Association may be delivered to any Member of the Board, officer or property manager of the Association, either personally or by mail, addressed to such member or officer at his/her Lot.

**9.03        Non-Waiver of Covenants.** No covenants, restrictions, conditions, obligations or provisions contained in the Organizational Documents and/or the Rules and Regulations shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**9.04        Agreements Binding.** All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Organizational Documents and/or the Rules and Regulations shall be deemed to be binding on all Owners, their successors, heirs and assigns.

**9.05        Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these By-Laws.

**9.06        Gender and Grammar.** Any necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies, partnerships, trusts, individuals, male or female, shall in all cases be assumed as in each case fully expressed herein.



**EXECUTED** on the date set forth in the acknowledgement of the signature below.

**ASSOCIATE CONSTRUCTION, INC.**

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

Its President

**STATE OF OHIO, COUNTY OF MONTGOMERY, SS:**

The foregoing instrument was acknowledged before me this 6th day of December, 2018 by Ryan Morris, President of Associate Construction, Inc., an Ohio corporation, on behalf of such corporation.

Dawn R. Rush  
Notary Public

DAWN R. RUSH, Notary Public  
In and for the State of Ohio  
My Commission Expires Dec. 2, 2019



**THIS INSTRUMENT PREPARED BY:**

**HANS H. SOLTAU**  
Attorney at Law  
6776 Loop Road  
Centerville, Ohio 45459