

SAMPLE
DECLARATION OF
COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS
FOR

_____ [SUBDIVISION]

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS, FOR _____ (“Declaration”) is made the ___ day of _____ 2019 by _____. The term “Declarant” as used herein refers to _____, or any successor and/or assigns to its rights hereunder as referenced in **Section 9**, below.

RECITALS

A. Declarant is the fee owner of certain real property located in Berlin Township, County of Delaware, Ohio being Lots numbered _____ through _____ of the development known as _____ Subdivision (the “Subdivision”), and approximately _____ acres of real estate being for open space, storm detention, and landscaping and depicted as Reserve A on the Plat, as depicted on the Plat for Section 1 of the _____ as recorded in Plat Book _____, pages _____ of the _____ County Recorder’s Office (the “Section 1 Plat”). Collectively, such land is hereinafter referred to as the “Property”. The Property is more particularly described on **Exhibit A**, which is attached hereto.

B. Declarant intends that no more than one (1) detached single-family residence (a “House”) will be constructed on each Lot within the Subdivision. Declarant desires to protect the Property by placing appropriate restrictions thereon as to use and improvement of the Lots and to make the Subdivision more desirable for residential purposes.

C. The Property and the Subdivision may be developed and expanded in phases by Declarant, the number and timing of which will be determined as the development of the Property proceeds. The Additional Property, as defined in **Section 2** below, may be added to the Property. A House constructed on any Additional Property shall be compatible with the Houses constructed on the Property under this Declaration in terms of quality of construction, architectural style, and the principal materials to be used.

DECLARATION

NOW, THEREFORE, Declarant hereby declares, reserves and imposes upon said Lots in the Subdivision and such Additional Property as may be subjected to the provisions hereof, shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements set forth in this Declaration:

1. **Definitions.** The words in this Declaration which begin with capitalized letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the meanings set forth in this **Section 1**.

1.1 **Additional Property.** “Additional Property” means other real property in the vicinity of the Property which is owned and/or acquired by either Declarant which may be added to the Property in accordance with **Section 2** below.

1.2 **Annual Meeting.** “Annual Meeting” shall have the meaning ascribed to it in the Bylaws.

1.3 **Articles of Incorporation.** “Articles of Incorporation” or “Articles” mean those articles, filed with the Secretary of State of Ohio, incorporating _____ Homeowners’ Association, as a non-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be amended from time to time.

1.4 **Assessments.** “Assessments” means any or all of the General Assessment, Special Assessment, and Individual Lot Assessment.

1.5 **Association.** “Association” means _____ Homeowners’ Association, an Ohio non-profit corporation.

1.6 **Board or Trustee(s).** “Board” or “Trustees” means the Board of Trustees of the Association established pursuant to its Articles of Incorporation, Bylaws and this Declaration.

1.7 **Bylaws.** “Bylaws” of the Association, as the same may be amended from time to time, pursuant to Chapter 1702 of the Ohio Revised Code, a copy of which is attached hereto as **Exhibit B** and made a part hereof.

1.8 **Declarant.** “Declarant” means _____.

1.9 **Declaration.** “Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements for _____ Subdivision, as the same may from time to time be amended in the manner prescribed herein.

1.10 **Default.** “Default” means any violation or breach of, or any failure to comply with, this Declaration, the Bylaws, and any rules and regulations promulgated or adopted by the Association.

1.11 **Development.** “Development” means the general plan of development for the Property and any of the Additional Property, as set forth on any site or preliminary plan. For the Subdivision.

1.12 **Development Period.** “Development Period” means period commencing on the date of this Declaration until the sale of the last Lot in the Development to a third party that intends to occupy the same

1.13 **Drainage Easement.** “Drainage Easement” means those easements shown on any Plat for the drainage of water over the Property.

1.14 Future Phase. “Future Phase” means one or more future sections and phases of real estate being all or a part of the Additional Property, which may be annexed, subdivided, and designated by Declarant, in Declarant’s sole discretion.

1.15 General Assessment. “General Assessment” as defined in Section 7.2 of this Declaration.

1.16 House. “House” means any building or portion of a building situated upon the Property designed and intended for use and occupancy by a single person, a family, or a family-sized group of persons.

1.17 Individual Lot Assessment. “Individual Lot Assessment” as defined in Section 7.4 of this Declaration.

1.18 Lot. “Lot” means each separated and platted lot for a single-family residence in the Subdivision.

1.19 Member. “Member” means every person or entity that is a record owner of any Lot in the Subdivision.

1.20 Owner. “Owner” means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.21 Person. “Person” means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.22 Plat. “Plat” means the Section 1 Plat and any subsequent record plat for future sections and phases of the Subdivision.

1.23 Special Assessment. “Special Assessment” means the charge established by Section 7.3 of this Declaration.

1.24 Structure. “Structure” means anything or object (other than trees, shrubbery, landscaping and hedges which are less than two feet high) the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation, porch, shed, barn, storage facility, covered or uncovered patio, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement.

1.25 Subdivision. “Subdivision” means all phases or sections of the Plat for _____, a subdivision in the _____ County, Ohio and consisting of all the property from time to time made subject to the provisions of this Declaration.

1.26 Supplemental Declaration. “Supplemental Declaration” shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects all or any portion of the Additional Property to this Declaration; imposes, expressly or by reference, additional restrictions and obligations on the land subject to this Declaration.

2. **Property and Annexation of Additional Property.**

2.1 **Subject Property.** The Property which is, and shall be held, sold, conveyed or otherwise transferred or occupied and improved subject to this Declaration particularly described in **Exhibit A** attached hereto and by this reference is made a part hereof. Notwithstanding anything in this Declaration to the contrary, Declarant intends, but is not obligated, to develop and subdivide the Property and any Additional Property, or portions thereof. For the purposes of this Declaration, the general plan of development for the Property and any Additional Property.

2.2 **Additional Property; Annexation.** From the date of this Declaration until the expiration of the Development Period, Declarant shall have the unilateral right, privilege, and option (but not the obligation) to add additional property, which may be subdivided and designated by Declarant, in Declarant's sole discretion, as a Future Phase without the consent of the Association or any other Owner. Declarant shall effectuate any such addition by recording a supplement to this Declaration with the _____ County Recorder's Office (a "Supplemental Declaration"). Such Supplemental Declaration may contain such additional covenants, conditions, restrictions and easements, as Declarant, in its sole discretion, shall deem necessary for the purposes of completing the development.

3. **Restrictions of Use and Design.** All Lots and improvements hereunder at a minimum are subject to the following:

3.1 **Single Family Residence.** All Houses, Structures, and other improvements erected, altered, or placed on a Lot shall be of new construction, and each Lot shall be used only for a single-family residence. However, an Owner may be permitted to use a portion of his or her residence as a home office, provided such use is not visible from outside such residence, has no impact on traffic, parking, or noise levels, does not interfere with any other Owners' use of his or her property, and does not violate any applicable zoning ordinance. The Association shall have the sole authority to determine whether any such use is in violation of this "home office" exception. Houses of substantially the same appearance shall not be located next to each other.

3.2 **Minimum Net Floor Area.** The minimum net floor area for living quarters, as defined in the Township Zoning Resolution, of any House constructed on any Lot, shall be _____ square feet (_____ sq. ft.).

3.3 **Height and Elevation.** The applicable zoning regulations for the Township of _____ shall determine the maximum height of any improvements on the Lots. Notwithstanding, there shall not be any improvements on a Lot higher than two and one-half (2 ½) stories in height as measured from the basement floor elevation. All elevations of a House shall be compatible in design, material and content.

3.4 **Accessory Structures.** No accessory Structure may be erected or maintained within the front yard or the side yard of any Lot. Any accessory Structure only may be erected or maintained within the rear yard and shall not violate any setback lines; however, such accessory Structure shall not be erected or maintained without the advance approval of the Association. Any accessory Structures erected with the foregoing approval shall be constructed of similar materials and colors as used in the construction of the House. Accessory Structures of a temporary character, including, but not limited to, mobile homes, tents, shacks, barns or other outbuildings used for storage are not permitted. No permitted accessory Structure shall at any time be used as a residence, either temporarily or permanently. Further, any accessory Structures erected with the foregoing approval, shall not be erected on the Lot prior to a House already being constructed thereon.

3.5 Fences and Trees. There shall be no solid (e.g., stockade) or chain-link (whether metal, plastic, vinyl-coated or otherwise) fencing except as may be utilized by homebuilders with the approval of the Association, as the case may be, for temporary storage of building materials and supplies during construction. Other than temporary fences constructed by a homebuilder, construction of fences is prohibited on any Lot until plans and specifications for fencing are approved by the Association. No fences may be built on any part of any Lot between a line formed by (and extended to the side property lines) the rear corners of the building constructed thereon and the street in front of the building. Fences erected on said Lot from a line formed by (and extended to the side property lines) the rear corners of the building to the back property line may not be in excess of four feet (4') in height and shall be either black aluminum picket fences or three rail polar fences. All fencing on any Lot must be well maintained at all times.

Street trees shall be provided along the internal public street at a rate of not less than one (1) street tree per lot for single frontage lots and two (2) street trees per lot for corner lots with one (1) street tree located on each frontage of the corner lot. Tree planting at the rate of four (4) trees per 100 lineal feet shall be planted in the Subdivision.

3.6 Gutters and Downspout. All projections, such as gutters and downspouts shall be finished or painted to match the surface from which they project.

3.7 Garage, Driveway, Parking and Sidewalks. In conjunction with the construction of a House and prior to occupancy of the same, the homebuilder of such Lot will construct a driveway on the Lot. All driveways must be either pavers stone or poured concrete construction. If using poured concrete, a stamped and/or tinted concrete patterns are encouraged. Asphalt driveways are not permitted. Driveways shall be located so as to maximize visibility and safety of access onto the roadway. Grade shall be eased to minimize destruction of trees and avoid interference with natural drainage. In addition, concrete sidewalks and drive aprons and approaches between the driveway and the developed roadway, all of which shall conform with any applicable municipal code, zoning ordinance, and other rules or regulations. Garages shall be of sufficient size to accommodate not less than two (2) cars. Garages shall be attached to Houses. Carports are not permitted. No vehicle shall be permitted to obstruct any sidewalk, including when such vehicle is parked in a private driveway.

3.8 Approval of Plans. No House, Structure or other significant exterior improvements (landscaping is not included hereunder) shall be erected, placed or altered on any Lot located on any of the Lots without the prior approval of the Declarant until the expiration of the Development Period and then the Association subsequent to the expiration of the Development Period. Such approval shall not be unreasonably withheld or delayed. Nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of a House or to paint the interior of a House any color desired.

4. Protective Covenants and Restrictions.

4.1 Clean and Neat Premises. The Owner of each Lot will assure that their Lot is kept clean of debris, trash and junk. Each Owner will be responsible for the removal of mud or other debris in the streets of the Subdivision or adjacent public streets caused by the acts or omissions of its contractors, subcontractors and laborers. Such removal shall be accomplished on the same day that debris and mud problem occurs. The foregoing restriction does not apply to activities of Declarant and its employees, agents and contractors during the development of improvements or to any homebuilder during the construction of houses and improvements on a Lot or the Property.

4.2 Further Subdivision. Except as permitted by Declarant during the Development Period or the Board after the Development Period, the Lots established by a plat for any of the Property may not be further subdivided, or portions thereof split off and conveyed to any other party, including the Owner of an adjoining Lot.

4.3 Nuisance. No noxious or offensive trade shall be carried on or, upon any Lot or within any house or improvement situated upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or the other Owners.

4.4 Satellite Dishes. To the extent that the same legally may be limited by private covenant, no satellite dish, antennas or receivers shall be permitted on any Lot. All satellite dishes, antennas and receivers must not exceed one (1) meter in diameter. Further, any applicable satellite dishes, antennas and receivers must be attached to the house and must not exceed two feet (2') in height above the roof line.

4.5 Signs. No signs, letters, numbers, symbols, markings or illustrations shall be erected, posted, attached or displayed upon, or on any Lot or House except: (i) street identification signs installed by the Association or Declarant; (ii) one temporary sign, approved by Association, informing the public that the real estate is for sale, provided that the sign must not exceed five (5) square feet in area and must be erected upon the Lot to which it refers; and (iii) identification numerals on the mailbox, as and a post office house number on the House (iv) signs used by Declarant or other homebuilders to advertise or promote the Development; and (v) permanent entrance sign(s)/monument(s) to the Development that may be installed and maintained by the Association.

4.6 Trash. No burning of any trash, accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot. The Owner of a Lot may not perform or permit any Lot to be used or maintained as a dumping ground for rubbish. All trash, garbage or other waste on or about any Lot must be kept in a clean and sanitary container. The Owner of a Lot will keep all equipment for the storage or disposal of such waste material in a safe, clean and sanitary condition. The Owner of a Lot will keep all trash and garbage containers in a location that is out of public view, except on the day of trash collection, and the evening prior to the day of trash collection. The foregoing restrictions will not apply to activities of Declarant and its contractors and homebuilders (i) during the original development of improvements of the Subdivision or (ii) in the initial construction of Houses on Lots.

4.7 Boat, Trailer and Vehicle Parking Storage. For the purpose of this Section, the word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of animals, machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. For the purpose of this Section, the phrase "commercial truck" shall include and mean every type of motor vehicle other than passenger cars, passenger vans, motorcycles and any vehicle other than any light or standard sized pickup truck which is used as a personal automotive vehicle by an Owner of a Lot or other resident. No commercial truck, boat, trailer, camper, recreational vehicle or commercial vehicle shall be parked or stored in front of, adjacent to, or on any Lot unless it is in a garage or other vehicle enclosure out of the view from the street and abutting properties; provided, however, that nothing herein shall prohibit the occasional and nonrecurring temporary parking of such truck, boat, trailer, camper, recreational vehicle or commercial vehicle on a Lot for a period not to exceed seventy-two (72) hours in any period of thirty (30) days. Any violation of this Section shall be deemed a nuisance to the welfare of the Development and may result in the removal of the violating item from the Lot at the expense of the Owner of the Lot. Vehicles being

used for the purpose of construction, delivery, or repair work upon any Lot shall be temporarily permitted to park on or in front of any Lot.

4.8 Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats and other household pets, provided they are not kept, bred or maintained for commercial purposes. The Owner of a Lot with a pet shall be responsible for cleaning up after the pets.

4.9 Hazardous Actions or Materials. Nothing shall be done or kept in or on any Lot or in or on any portion of the Reserve Areas (as shown on any Plat) or other common areas or facilities of the Subdivision that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering such Reserve Areas (as shown on any Plat) or other common areas or facilities of the Subdivision or that might unreasonably disturb the quiet occupancy of any person residing on any other Lot. This Section shall not be construed to prohibit Declarant or any builder from construction activities consistent with residential construction practices.

4.10 Quiet Enjoyment. No Owner of a Lot or resident shall permit or suffer anything to be done or kept upon such Lot which will obstruct or interfere with the rights of quiet enjoyment of other Owners or residents or annoy them by unreasonable noises or otherwise. No speakers, horns, whistles, bells, or other sound devices shall be located, used or placed on any Lot except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. No Owner of a Lot or resident shall commit or permit a nuisance on the Lot or commit or suffer any immoral or illegal act to be committed thereon. Each Owner of a Lot and resident shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said Lot, including zoning, building code, property maintenance and signage requirements. Picketing shall not be permitted on or near any Lot, either in person or through signage, banners or other forms of communication.

4.11 Sight Distance of Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be permitted to remain on any corner Lot formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street line, or in the case of a rounded property corner from the intersection of the street property lines extended. The same line limitation shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such area of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

4.12 Storing Vehicles. No automobile or motor-driven vehicle shall be left upon or in front of a Lot for a period longer than seven (7) days in a condition wherein it is unable to be operated upon the public highway. Similarly, no automobile or motor-driven vehicle that is in operable condition may be stored on the Lot in public view for a period of more than seven (7) days within a thirty (30) day period. Any violation of this Section shall be deemed a nuisance to the welfare of the Development and may result in the removal of the automobile or motor-driven vehicle from the Lot at the expense of the Owner of the Lot.

4.13 Landscape Buffers. If landscape buffers are required on certain Lots, the Owner of such Lots, at the Owner's sole cost and expense, shall maintain in good condition the landscape buffer zones so required.

4.14 Occupancy Restriction. To the fullest extent that the same is legally enforceable, a person who is classified a Tier III or Tier II sexual offender/child-victim offender, or any future

equivalent classification, and for whom the County Sheriff or other government entity must provide community notification of the sex offender's residence is prohibited from residing in or occupying a Lot or remaining in or on any of the Property for any length of time. The classification of a sexual offender/child-victim offender and determination of whether notice is required is made by a court of law pursuant to the Ohio Sex Offenders Act, as may be amended and/or renamed from time to time, or similar statute from another jurisdiction. Neither the Declarant nor the Association shall be liable to any Owner, Occupant or any other person whatsoever as a result of alleged failure, whether negligent, intentional, or otherwise, to enforce the provision of this restriction.

4.15 Maintenance of Lots. No Lot or improvement thereto shall be permitted to become overgrown, unsightly or to fall into disrepair, and all residences and improvements shall at all times be kept in good condition and repair, with lawns trimmed and weeds controlled, and improvements adequately painted or otherwise finished in accordance with specifications established by the Board. In the event of damage or destruction to any improvements on a Lot, the Owner shall cause such improvement to be removed within ninety (90) days or repaired within a reasonable period of time not to exceed two hundred seventy (270) days, and the improvement or land thereon restored to an orderly and attractive condition. Each Owner of a Lot and the Owner's successors and assigns, hereby grants to the Association the right to make any necessary alterations, repairs or maintenance approved by the Board to carry out the interest of this Section and further agree to reimburse the Association for any expenses incurred in carrying out the foregoing. The Association may assess and collect such reimbursement an assessment.

5. Reserve Areas; Common Facilities and Easements.

5.1 Storm Water Retention Basin. Except as may be otherwise provided or limited herein or otherwise set forth on any Plat, every Owner shall have a non-exclusive common right and easement for storm water drainage across and under all necessary Lots of the Subdivision so that each Owner's storm water discharge collects into the storm water drainage system for this Subdivision and for such use of any storm water retention basin and/or detention basin area(s) Nothing herein shall be construed to conflict with any storm water detention, retention and/or drainage easement areas as may be set forth on any Plat. The Owner of each Lot will not construct any improvements, alter the grading, place debris or vegetation, or take any other action that would interfere with the normal flow of storm water within the Subdivision. Any Owner that alters or interferes with any water drainage flow, path, or system shall indemnify and hold harmless Declarant from any and all liability or damages (including reasonable attorneys' fees) for the same.

5.2 Landscaping, Entrance Feature & Reserves. Declarant hereby declares, creates, and reserves on behalf of itself and the Association an easement for the purpose of installing, maintaining, repairing, improving, replacing and otherwise dealing with landscaping improvements, the landscaped entrance feature at the public street entrance, all fencing designated on the Plat, Reserve A and all other reserve areas and open space areas as designated on the Plat.

5.3 Streetlights. Streetlights shall be located on the side of the streets of the Subdivision as determined by the Declarant. The Association shall pay all costs for the operation of the streetlights until such time that the streetlights may be publicly dedicated and accepted by any applicable governing jurisdiction.

5.4 Right of Declarant to Add, Reduce and Relocate Easements. Declarant hereby declares, creates, and reserves the right to declare on its behalf or grant on behalf of the Association or the

Owners, without consent of the Association or any Owner, easements across, through, or under any Lot in the Property for the purpose of installing, maintaining, repairing, improving, operating, replacing and otherwise dealing with utilities, sanitary sewer, storm and surface water drainage so long as such easements will not result in a material loss of utility or functionality to the Owner of any such Lot. Further, Declarant hereby declares, creates and reserves the right to declare on its behalf or grant on behalf of the Association or the Owners, without consent of the Association or any Owner, easements across, through or under any reserve areas and common areas in the Property and Subdivision. Declarant also will have the rights (i) to reduce the size of any easement areas from time to time to the extent that such reduction will not result in a material loss of utility or functionality to the Owner of any Lot benefited by such easement as a result of the reduction in size of such easement area, (ii) to relocate any easements to other areas on property then owned by Declarant or by other Owners as long as (a) the relocation is at the cost and expense of Declarant, and (b) the relocation will not result in a material loss of utility or functionality to the Owner of any Lot benefited by such easement. Thus, all Lots shall be subject to an access easement in favor of Declarant and the Association in order to exercise any of their respective rights set forth above in this Section. Declarant has no obligation whatsoever to enforce such rights for the benefit of any Owner hereunder. The foregoing rights are additionally constrained by the regulatory authority of any governmental entity with jurisdiction over the Property and such easements

5.5 Easement for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage removal personnel and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the reserve areas and/or open space areas (as shown on any Plat) or other common areas or facilities of the Subdivision to perform their duties.

5.6 Dedication Rights. Declarant and/or the Association hereby specifically reserves the right to “Dedicate to the Use of the Public” any part of or all of the streets, detention areas and easements in part or in full

5.7 Damage by Owner. If any of the Reserve Areas (as shown on any Plat) or other common areas or facilities of the Subdivision are damaged by any Owner, or the Owner’s family members, guests or invitees, then the Board may levy a individual lot assessment against the Owner and the Owner’s Lot for the cost of repairing or replacing the damaged cause by said party.

6. Homeowners’ Association.

6.1 Association. The Association has been created as a non-profit corporation for the benefit of the Owners of the Lots in the Subdivision. The Association is organized under the laws of the State of Ohio. All Owners shall be subject to and abide by this Declaration, the Articles of Incorporation, the Bylaws as well as additional rules and regulations of the Association that may be adopted from time to time. Any reference on any Plat to the “Home Owners’ Association” or similar references shall mean the Association.

6.2 Membership Rights. Every person or entity that is a record owner of any Lot in the Subdivision is each a member of the Association and such membership shall be appurtenant to and not be separated from the ownership of the Lot. The foregoing does not include persons or entities that hold an interest merely as security for the performance of an obligation. Upon the conveyance of any Lot, the new owner of such Lot will replace the former owner as a member of the Association. The membership rights of all Owners are subject to the limitations, terms, and conditions set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association as well as additional rules and regulations of the Association that may be adopted from time to time.

6.3 Voting Rights.

6.3.1 Voting by Declarant. At any time that Declarant owns any Lot in the Subdivision, Declarant shall be entitled to exercise one hundred percent (100%) of the voting rights of the Association. Any signature of the Declarant on behalf the Association during such period shall be deemed to be the unanimous vote of the Association to affirm the approval, denial, action, or inaction of the Association associated with the signature. Declarant may assign its voting rights under this Section by a written instrument signed by Declarant and upon such assignment the assignee shall be the Declarant under this Declaration. Declarant may relinquish its voting rights under this Section by a written instrument signed by Declarant. Notwithstanding anything in this Declaration to the contrary, if Declarant's voting rights terminate for any reason and Declarant annexes Additional Property to the Subdivision in accordance with Section 2.2, Declarant's voting rights under this Section shall be renewed as if the same had never terminated.

6.3.2 Voting by Owners. At any time that (i) Declarant does not own at least one Lot in the Subdivision or has relinquished its voting rights pursuant to Section 6.3.1, and (ii) as long as such Owner has paid all Assessments current as and when they are due, each of the Owners shall be entitled to one (1) vote as a member of the Association for each Lot owned. If an Owner owns more than one (1) Lot, he or she will have as many votes as it has Lots. To the extent that the ownership rights in a Lot are divided, each Owner will hold the same percentage of right to cast one (1) vote as he or she has a percentage interest in a Lot.

6.4 Maintenance. The Association shall maintain, as the Association deems reasonable in its sole and absolute discretion, all landscaping improvements, all reserve areas and open space areas as designated on the Plat and other common areas or facilities of the Subdivision that collectively benefit any and all Owners. Such maintenance shall be performed in such manner as the Board determines in its sole and absolute discretion. Such maintenance may include, without limitation, entrance monumentation and the landscaped areas surrounding the same, Reserve A, drainage easements, utility easements, ponds, open spaces, recreation areas or other similar easements and area and the appurtenant improvements located therein. The Association has no obligation whatsoever to enforce or maintain any covenants, conditions, restrictions, and easements for the benefit of one or more Owner. Such decision will be made in the sole and absolute discretion of the Board. Except as may otherwise be required by any Plat or zoning plan or ordinance, nothing obligates the Declarant or the Association to install or maintain any improvements or structures within the Reserve Areas. All Owners shall pay Assessments pursuant to Section 7 of this Declaration and thereby will share in the cost of maintenance of all such common maintenance activities undertaken by the Association.

6.5 Liability Insurance. The Association shall procure and maintain public liability insurance insuring Declarant, the Association, and the Owners against any occurrence upon, in, about, or relating to any reserve areas and/or open space (as shown on any Plat) or other common areas or facilities of the Subdivision, which shall afford protection in certain amounts as determined from time to time by the Board of Trustees in its sole and absolute discretion.

6.6 Other Insurance. The Association, as determined from time to time by the Board in its sole and absolute discretion, may obtain and maintain one or more of the following additional insurances: (a) fidelity bond coverage and workers' compensation insurance for all officers, trustees and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) additional insurance against such other hazards and casualties as is required by law, and (d) any other insurance the Board deems necessary.

6.7 Bonding and Director and Officer Insurance. The Association may cause all members of the Board of Trustees, officers, or employees having fiscal responsibilities to be bonded, as it may deem appropriate. In addition, the Association may procure director and officer liability insurance in such amounts and upon such terms and conditions as reasonably determined by the Board of Trustees in its sole and absolute discretion.

6.8 Ownership of Property. The Association may from time to time own real and personal property, including property deeded to it by Declarant for use as a Common Element for the use and enjoyment by the Owners of the Lots. Title to any portion of the Reserve Areas (as shown on any Plat) or other common areas or facilities located within the Property or in future sections of the Subdivision, if any, that is to be owned by the Association will be so conveyed from Declarant to the Association. However, Declarant shall have the right from time to time to reserve for the purpose of development of the Property all or any portion of the Property for various easements and rights of way, together with the right to dedicate the same where applicable and customary and the right of ingress and egress across the Reserve Areas in connection with the development of the Property. The Association will accept all property in the Subdivision or adjacent or appurtenant thereto, including fee and easement interests, deeded to it by Declarant for such purposes and the Association will accept all responsibility for such property and with respect to such easements upon acceptance of the same.

6.9 Expandability. As set forth in **Section 2.2**, Declarant, in its sole discretion, may add portions or all of any Additional Property to the Property and also may incorporate property as additional phases into the Subdivision and it may subdivide such property into additional Lots as well as reserve areas and common areas. If it so chooses, Declarant may make the Owners of Lots in additional phases members of the Association with the same rights and responsibilities as the Owners in this initial phase have, and may add reserve areas and common areas, landscape easements, drainage easements, and utility easements, including without limitation, entrance monumentation and landscaped area surrounding the same, to the areas to be maintained by the Association. If Owners of Lots in additional phases are made members of the Association, the Owners in such new section will be obligated to pay Assessments to the Association in the same manner as the Owners in the initial phase.

6.10 Bylaws. The Association may make whatever Bylaws it may choose to govern the organization, provided that the same are not in conflict with the terms and provisions hereof. A copy of the initial Bylaws for the Association are attached hereto as **Exhibit B**.

6.11 Transfer Fee. The Association may levy a reasonable transfer fee against new owners and their Lots to reimburse the Association for the administrative cost of transferring the membership to the new owners on the records of the Association as determined by the Board.

6.12 Managing Agent. The Board and/or Declarant may retain and employ on behalf of the Association a manager (the "Manager"), which may be Declarant, and may delegate to the manager such duties as the Board and/or officers of the Association might otherwise be authorized or obligated to perform. The compensation of the Manager shall be included in the General Assessment of the Association. The term of any management agreement shall not exceed three (3) years and shall allow for termination by either party, without cause, and without penalty, upon no more than ninety (90) days' prior written notice.

6.13. Delegation of Duties. In the event the Association or Board shall delegate any or all of its duties, powers or functions, to any person, corporation or firm acting as a Manager, neither the

Association or the Board shall be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

7. **Assessments.**

7.1 **Definition of Assessments.** The term “Assessment” as used herein means any and all assessments, fees and costs that are levied pursuant to any provisions of this **Section 7** of the Declaration.

7.2 **General Assessments.** Each year, the Association, or Declarant, if Declarant has yet to relinquish its rights and responsibilities in connection with the Association pursuant to **Section 9**, will establish the amount of the General Assessment. The Association shall levy and collect the same. General Assessments may be billed on a monthly, quarterly, semi-annual or annual basis, as determined by the Association or Declarant, and shall be due and payable to the Association from the Owner of each Lot as and when directed by the Association. The amount of the General Assessment will be that amount that is sufficient to discharge anticipated costs and expenses of the maintenance, operation, and management of the Association during the year as set forth herein as reasonably determined by the Association or Declarant plus a reserve amount not to exceed twenty-five percent (25%) of such amount as determined by Board.

7.3 **Special Assessments.** The Association may establish, levy, and collect Special Assessments at any time for the purpose of defraying, in whole or in part, the cost of any construction, renovation, repair, replacement, or addition of any improvements located in any Common Element in the Subdivision, which cost has not otherwise been provided for in the General Assessments and provided that Special Assessments are approved by a two-thirds (2/3) of the Members of the Association.

7.4 **Individual Lot Assessments.** The Board may establish and levy one or more Individual Lot Assessments against a Lot and the Owner of the same to reimburse the Association for costs and expenses incurred by the Association arising from or related to the failure of the Owner and/or any of the Owner’s residents or occupants to comply with any of the terms and conditions of this Declaration, the Bylaws and/or any rules and regulations adopted by the Association from time to time, including, but not limited to, costs associated with making repairs that are the responsibility of the Owner, costs of enforcement (including reasonably attorneys’ fees) of the terms and conditions of this Declaration, the Bylaws as well as such rules and regulations and costs of additional insurance premiums, and/or costs and fines against an Owner of a Lot and/or the Lot set forth in any other provision of this Declaration, along with a penalty assessment to prevent future violation by the Owner and/or any of the Owner’s residents or occupants, as reasonably determined by the Board. Upon the Board’s determination to levy any Individual Lot Assessment, the Board shall give the affected Owner written notice and the right to be heard by the Board or an appointed committee at least ten (10) days prior to the effective date of an Individual Lot Assessment.

7.5 **Non-Payment of Assessments and Penalty Assessments.** Any Assessments levied pursuant to this Declaration, which are not paid on the date when due shall be delinquent and shall, together with interest thereon at the rate of ten percent (10.0%) per annum compound on a monthly basis and the cost of the collection thereof including, but not limited to, reasonable attorneys’ fees.

7.6 **Liens.** Any delinquent Assessments and interest due thereon shall automatically be a lien upon the applicable Lot or said Owner (including improvements thereon). If any Assessment remain unpaid for thirty (30) days after it becomes due and payable, the Association may file a certificate of lien, signed by a member of the Board or the Manager, with the _____ County, Ohio

Recorder's Office pursuant to the authorization given by the Board. A certificate of lien shall contain a description of the Lot, the name or names of the Owner(s) and the amount of the unpaid portion of the Assessments and late charges accrued as of the date of the certificate. Any such lien shall remain valid for a period of five (5) years and any renewals thereof, from the time of the filing thereof, unless sooner released or satisfied in the manner allowed by law for the release and satisfaction of mortgages in real property or discharged by the final judgment or order of a court of competent jurisdiction in any action brought to discharge such lien. If the Association employs counsel to collect any such lien or to otherwise collect any Assessments, the Owner of such Lot or Lots shall pay all costs incurred in connection with the same, including a reasonable fee for counsel. Notwithstanding the foregoing, any lien by the Association upon a Lot shall be subordinate to the first mortgage on said property. Sale or transfer of any Lot shall not affect the attachment of the lien to the Lot.

7.7 Personal Liability. In addition, each Owner shall be personally liable for all amounts due under the provisions of this **Section 7** for any Lot(s) owned by said Owner while an Owner.

7.8 Properties Exempt from Assessments. Assessments and any other fees of the Association shall only be assessed against Owners of Lots on which homes are fully constructed and initially occupied for residential purposes. The Association shall not assess or collect Assessments or fees from Declarant or any other homebuilder during such period as Declarant or any other homebuilder owns any Lot within the Subdivision that has not been fully completed or occupied.

7.9 Declarant's Payment of Assessments. Declarant may elect to pay some or none of the "deficit", which is the difference between the amount of Assessments assessed and the amount of actual expenditures of the Association during the fiscal year. Declarant shall have no obligation to pay or fund any deficit of or to subsidize the Association. Declarant's subsidy to the Association may be made in the form of cash and/or "in kind" contributions of services or materials, or a combination of these. Those amounts paid or contributed by Declarant to subsidize the Association shall be credited first against current Assessments owed by Declarant, if any, and then toward future Assessments that become owed by Declarant to the Association. This Section shall not be subject to amendment during the Development Period.

8. Rights Reserved During Development Period. During the Development Period, Declarant and any other homebuilder, approved by Declarant, shall have the right to use of any of the reserve areas and common areas of the Subdivision as well as other Lots owned by Declarant as necessary for development and construction. Without limiting the generality of the foregoing, Declarant may erect and maintain marketing or directional signs, temporary buildings, and any other structures and improvements as Declarant may reasonably deem necessary on the Property for the promotion, development, construction and marketing of the Property during the Development Period.

9. Assignment of Rights and Responsibilities of Declarant. During the Development Period, Declarant shall have the unilateral right to transfer to any one or more other persons or entities its right, privilege, and option set forth in this Declaration, provided any transferee or assignee shall be expressly designated by Declarant in writing to be successor to all or any part of Declarant's rights hereunder. On a surrender in writing from Declarant to the Association, any or all of the rights of Declarant under this Declaration, the Articles of Incorporation or Bylaws are and will conclusively be deemed to have been relinquished; PROVIDED, HOWEVER, that in no event will Declarant be required to obtain the consent of the Association, of any Owner or Owners, or of any other party, for any of the improvements that Declarant intends to make to any Lots or portions of the Property then owned by Declarant. In addition, nothing hereunder will be construed as to interfere with (i) Declarant's right to

expand the Property pursuant to **Section 2.2**, above, and (ii) Declarant's membership voting rights unless expressly set forth in such surrender.

10. **Term and Amendment.**

10.1 **Amendments by the Association.** After Declarant surrenders all of its rights in relation to the Association, this Declaration may be terminated or amended at any time, as to any or all of the covenants, conditions, restrictions, and easements, upon the execution and recording of a written instrument, signed by the Owners of two-thirds (2/3) of the Lots in the Subdivision, or a certification signed by an officer of the Association that two-thirds (2/3) of all Owners voted in favor of such amendment, except that (i) no such amendment may impair any of the rights of Declarant hereunder or shall affect the Lots owned by Declarant, unless Declarant consents, in writing, to such amendments or termination.

10.2 **Amendments by Declarant.** Declarant shall have and reserves the right and power, and each Owner of a Lot by acceptance of a deed to a Lot is deemed to and does grant to Declarant a Power of Attorney coupled with an interest which shall run with the title to the Lot, and shall be irrevocable except by Declarant for a period of fifteen (15) years from the date hereof, to amend this Declaration to the extent reasonably necessary to conform to any requirements imposed or requested by any governmental agency, planning or zoning body, public authority or financial institution, including but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage corporation, or similar agency, without the approval of any other party, or to the extent reasonably necessary to enable Declarant to meet any other reasonable need or requirement in order to complete the development of the Property and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall take effect only upon recording.

11. **Covenants Running with Land And Enforcement.** Enforcement of this Declaration shall be by proceedings at law or in equity, and the foregoing covenants, conditions, restrictions and easements shall run with the land and inure to the benefit of each present and future Owner of any Lot. The breach of any of these covenants, conditions, restrictions, or easements may be enjoined or remedied by only the following: an Owner of any interest in any part of the Property, any heirs, executors, administrators, successors or assigns of any such party, or Declarant. Declarant, each grantee or other interest holder, by the acceptance of a deed of conveyance or other interest in any of the Property, accepts the same subject to all covenants, conditions, restrictions, easements, liens, charges, rights and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants, conditions, restrictions, and easements running with the land, and shall bind any party having at any time any interest or estate in any of the Property, and shall inure to the benefit of such party in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed or other conveyance. Each grantee accepting a deed for any portion of the Property, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto. If Declarant or the Association employs counsel to enforce any of the foregoing covenants, conditions, restrictions, or easements against an Owner of a Lot or Lots, the Owner of such Lot or Lots will pay all costs incurred in any enforcement, including a reasonable fee for counsel. Any enforcement of this Declaration by any Owner shall be at the Owner's sole cost and expense. No delay or omission on the part of Declarant, the Association or the Owners of the Lots in the subdivision in exercising any rights, power, or remedy herein provided in the event of any breach of the covenants, conditions, restrictions, or easements herein contained shall be construed as a

waiver thereof or acquiescence therein, and no right of action shall accrue or action shall be brought or maintained by anyone whomsoever against Declarant for or on account of Declarant's failure to bring any action on account of any breach of these covenants, conditions, restrictions, or easements or for imposing any such covenants, conditions, restrictions, or easements herein which may be unenforceable.

12. **Declarant's Right to Replat.** Declarant reserves the right, at any time and from time to time, to amend, alter or replat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Declarant and Owners of Lots consenting to such amendment, alteration or replatting shall be the subject of any such amendment, alteration or replatting. Each Owner of a Lot and the Association whose Lot is not altered by such amendment, alteration, or replatting, for themselves and their successors and assigns, hereby consents to and approves any such amendment, alteration or replatting and shall be deemed to have joined in the same.

13. **Mortgagee Rights.** A holder or insurer of a first mortgage upon any Lot, upon written request to the Association, which request shall state the name and address of such holder or insurer and a description of the Lot and the Owner of the same, shall be entitled to timely written notice of: (a) any proposed amendment of this Declaration, other than an amendment by the Declarant, (b) any proposed termination of the Association, and (c) any Default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the Default has not been cured in sixty (60) days. Notwithstanding, the Association shall not be liable for any damages experienced by a holder or insurer of a first mortgage upon a Lot for the failure of the Association to provide such notice. Each holder and insurer of a first mortgage on any Lot shall be entitled, upon request and at such party's expense, to inspect the books and records of the Association during normal business hours.

14. **Nonliability Of Declarant.** Declarant, the Board, the officers, and their successors or assigns shall not be liable for any claim whatsoever arising out of or by reason of the exercise of discretion or authority (or its decision not to exercise such discretion or authority) pursuant to this Declaration, the Bylaws or any additional rules and regulations promulgated or adopted by the Association or the Board, whether or not the claims shall be asserted by any Owner or the Association, or any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused.

15. **Conflict.** In the case of any conflict between this Declaration and the Articles of Incorporation; this Declaration and the Bylaws; this Declaration and the Plat; or this Declaration and any rules and regulations promulgated or adopted by the Association or the Board; this Declaration shall control.

16. **Severability.** Invalidation of any one or more of these covenants, conditions, restrictions, easements and/or provisions of this Declaration shall have no effect on other covenants, conditions, restrictions, easements and provisions contained in this Declaration.

17. **Incorporation of Recitals.** The recitations and defined terms set forth above are made a part of this Declaration as though fully set forth herein.

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EXHIBIT A

(Legal Description for the Property)

Exhibit B

(Bylaws of the Association)