

This easement has been examined and the Grantor has complied with Section 319.202 of the Revised Code.  
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EXEMPT     D 9/17/2007      
Mark R. Stewart, County Auditor

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR  
GARDENS AT HIGHLAND SUBDIVISION

This instrument prepared by:

*EW*

James W. Moennich, Esq.  
Wickens, Herzer, Panza, Cook & Batista Co.  
35765 Chester Road  
Avon, OH 44011-1262  
(440) 930-8000



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**EXHIBITS**

- A - Legal Description
- B - Articles of Incorporation
- C - By-Laws
- D - Wetland Areas



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John A Donofrio, Summit Fiscal Officer

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
GARDENS AT HIGHLAND SUBDIVISION**

THIS DECLARATION, is made this 12th day of September, 2007, by The Drees Company, a Kentucky corporation d/b/a Drees Homes ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property (the "Property") described in Exhibit "A" attached hereto and incorporated by this reference and desires to create thereon a residential community consisting of single family detached homes with permanent common areas for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas; and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed the "Gardens at Highland Homeowners Association, Inc." as a non-profit Ohio corporation for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the Property and such other property as may be subjected to the provisions hereof pursuant to Article II, shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I — 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 same meanings as the definitions of those words in this Article I.



**1.1 Articles**

"Articles" shall mean those Articles, filed with the Ohio Secretary of State, incorporating the Association as a corporation not for profit under the provisions of Chapter 1702 of the Ohio Non-Profit Corporation Act, as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "B" is attached hereto and made a part hereof.

**1.2 Association**

"Association" shall mean and refer to Gardens at Highland Homeowners Association, Inc., its successors and assigns.

**1.3 Board**

"Board" shall mean the Board of Directors of the Association, which shall also be known as the "Board of Directors".

**1.4 Builder**

"Builder" shall mean The Drees Company, a Kentucky corporation d/b/a Drees Homes, and their respective successors, assigns or designees designated in writing as a builder by Declarant and refer to any party who acquires one or more developed Lots from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.

**1.5 By-Laws**

"By-Laws" shall mean the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time, pursuant to the Ohio Non-Profit Corporation Act. A true copy of the By-Laws as shown on Exhibit "C" is attached hereto and made a part hereof.

**1.6 City**

"City" shall mean and refer to the City of Macedonia, Ohio.

**1.7 Common Areas**

"Common Areas" shall mean and refer to subdivision entrance walls, boulevards and identification monuments, gazebo, green spaces, signs, detention ponds, corner parks, street lights, landscape mounds, fences, Storm Water Facilities, a pathway system, preservation easements and landscaping constructed for the common use and enjoyment of the Owners, and such areas designated as either "common areas", "open-space/landscape easements", "open-space lots" or "natural buffer easements" on the record plat or plats for the Property and such real estate and personal property not owned by the Association but determined by the Directors to be the responsibility of the Association, all areas (if any) which by contract, the Association is responsible to repair, replace or maintain and all other real property (including the improvements thereto) owned or leased by the Association for the common use and enjoyment of the Owners.

**1.8 Common Driveway**

"Common Driveway" shall mean and refer to any private road or passageway which is built or installed as part of the original construction on the Property to serve more than one Lot, and



which is situated on a dividing line between Lots or partly on one Lot and partly on another Lot, which road or passageway may be specifically designated by the Declarant on the record plat as "Common Driveway".

### **1.9 Declarant**

"Declarant" for the purpose of this Declaration and the powers, rights, and authorities granted to the Declarant herein, shall mean and refer to not only The Drees Company, a Kentucky corporation d/b/a Drees Homes, but also to any successor, alternate, or additional Declarant appointed by The Drees Company, a Kentucky corporation d/b/a Drees Homes as a successor, alternate, or additional Declarant, by an instrument in writing, specifically setting forth that such successor, alternate, or additional Declarant is to have together with or in lieu of The Drees Company, a Kentucky corporation d/b/a Drees Homes the Declarant's rights, duties, obligations, and responsibilities, in whole or in part, for all or any portion of the "Properties".

### **1.10 Developer**

"Developer" shall mean and refer to The Drees Company. Developer shall mean Declarant, its successors and assigns, and an individual or entity to whom or to which Declarant or its successor Developer at any time or from time to time assigns or conveys all or any portion of the rights and/or obligations of the Developer hereunder.

### **1.11 Development Period**

"Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of: (a) December 31, 2020, or (b) the day next following the day on which the Declarant or a Builder own no part of the Property.

### **1.12 Director and Directors**

"Director" and "Directors" shall mean that person or those persons serving, at the time pertinent, as a Director and Directors of the Association, and shall mean that same person or those persons serving in the capacity of a member of the Board of Directors of the Association.

### **1.13 Living Unit**

"Living Unit" shall mean and refer to any single-family residence designated and intended for use and occupancy as a residence by a single family.

### **1.14 Lot**

"Lot" shall mean and refer to any parcel of land upon any recorded subdivision plat of the Property or re-recorded re-subdivision thereof with the exception of the Common Areas.

### **1.15 Member**

"Member" shall mean any one of those Owners who are Members of the Association as provided in Article IV hereof.





**1.16 Owner**

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**1.17 Properties or Property**

"Properties" or "Property" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**1.18 Storm Water Facilities**

"Storm Water Facilities" shall mean and refer to those storm water retention/detention facilities constructed for the common use and enjoyment of the Owners and which are not maintained by a governmental authority.

**ARTICLE II — PROPERTY DEVELOPMENT - ANNEXATION**

**2.1 Property Subject to Declaration.**

The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in the County of Summit, State of Ohio, and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

**2.2 Additional Common Areas.**

Declarant shall have the right, from time to time, for a period of twenty (20) years from the date this Declaration is filed for record, to convey to the Association for nominal or other appropriate consideration, and the Association shall accept conveyance of any property or interest in property owned by Declarant along with any structure, improvement, or other facility including related fixtures, equipment and furnishings located thereon. Upon conveyance of such property, the property shall constitute Common Areas.

Notwithstanding any other provision of this Declaration, Declarant does not warrant or represent that any recreational facilities will be constructed by or on behalf of Declarant. In determining whether to construct any recreational facilities, Declarant may consider whether the construction at the time of making the decision would be economically feasible in light of the then-existing economic conditions, whether Declarant has sufficient funds available for the construction, whether the operation, maintenance and repair of the recreational facilities as constructed will be adequately funded by the assessments, including any increase to the assessment as provided in this Declaration. Declarant may also consider other factors.



## ARTICLE III — PROPERTY RIGHTS

### 3.1 Owner's Right of Enjoyment.

Every Owner and, in the case of rented Lots, such Owner's tenants, shall have a right to an easement for the enjoyment of, in, and to the Common Areas, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas.

(b) The right of the Association, with approval of the City, to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration.

(c) Easements and restrictions of record.

(d) The right of the Association or the Declarant to grant additional easements over the Common Areas and Lots as provided in Section 3.5.

### 3.2 Delegation of Use.

Any Owner may delegate, in accordance with the applicable By-Laws of the Association, his right of enjoyment in and use of the Common Areas to the members of his family, guests, and his tenants or contract purchasers who reside on the Property.

### 3.3 Title to Common Areas.

The title to any portion of the Common Areas that is to be owned by the Association in fee simple, if any, shall be conveyed to the Association, prior to the expiration of the Development Period, in "AS IS" condition, free and clear of all liens and encumbrances; provided, however, that the Declarant shall have the right, subject to review and approval by the City, 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 same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. The Declarant's rights hereunder shall not unreasonably interfere with the Owner's easement of enjoyment.

### 3.4 Right to Grant Easements.

Declarant hereby reserves the right to grant, on behalf of the Association and/or the Owners and without the consent of the Association, or any Owner, easements, across, through or under the Common Areas. Such easements, which shall be exclusive or non-exclusive, shall be limited to utility easements (including cable television), green belt easements, sign easements, drainage easements, access easements or roadway easements. Declarant's rights under this Section shall terminate upon expiration of the Development Period.

The Association, without the consent of any Owner, shall have the right at any time to grant easements as set forth in this Section.



### 3.5 Declaration of Covenants.

The owners of the Lots shall be subject to and benefited by this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Gardens at Highland as recorded in the Summit County Recorder's Office.

### 3.6 Emergency and Service Easements.

Fire, police, health, sanitation, medical, ambulance, school buses, utility companies, mail service and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across the Association roads and any other roads or drives within the Property for the performance of their respective duties.

## ARTICLE IV — MEMBERSHIP AND VOTING RIGHTS

### 4.1 Membership.

Every Owner of a Lot which is subject to assessment shall be a Member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, Rules and Regulations, and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as specified above, shall be the sole qualification for membership. When any Lot is owned of record by two (2) or more persons or other legal entities, all such persons or entities shall be Members, but multiple ownership shall not result in additional voting rights. An Owner of more than one (1) Lot shall be entitled to one (1) membership for each Lot owned. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot. The Declarant shall also be a Member so long as it owns one (1) or more Lots.

### 4.2 Classes.

The Association shall have two (2) classes of voting membership: Class A and Class B. All votes shall be cast in the manner provided in the By-Laws. When more than one (1) person or entity holds an interest in any Lot, the vote for such Lot shall be exercised as such persons or entities determine, but in no event shall more than the number of votes hereinafter designated be cast with respect to any such Lot, nor shall any split vote be permitted with respect to such Lot. The two classes of voting membership and voting rights related thereto, are as follows:

(a) Class A. The Class A Members shall be all Owners of Lots subject to assessment provided, however, so long and there is Class B Membership, the Declarant shall not be a Class A Member.

- (i) Lots. Owners of Class A Lots shall be entitled to one (1) vote for each Lot owned.
- (ii) Common Area. Neither the Association nor its members shall be entitled to any vote relating to the Association's ownership of any Common Area.



(b) Class B. The Class B Member shall be the Declarant and/or Builder. The Class B Members shall be entitled to five (5) votes for each Lot owned, provided, however, that each Class B membership shall terminate after the Class A Members are entitled to elect all of the Board. At such time as Class B membership shall terminate, the Declarant, for any lot owned, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member.

## ARTICLE V — ASSESSMENTS

### 5.1 Obligation of Assessments.

Each Class A Member, by acceptance of a deed for such Member's Lot, is deemed to covenant and agree to pay to the Association, such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments shall be a charge on and a continuing lien on each Lot of the Owner responsible for the payment of such assessment. Each such assessment shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, and such personal obligation shall automatically pass to the successors in title of such person or persons upon transfer of ownership of the Lot.

### 5.2 Purpose.

The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation, and welfare of the residents and Owners in the Subdivision, and for the improvement, maintenance, preservation, repair and replacement of the Common Area, and for purposes incidental or related thereto.

### 5.3 Initial Assessment.

A. Unless the initial assessment fee is increased or decreased pursuant to Section 5.3(B) of this Article V, the initial assessment fee with respect to any Lot owned by a Class A member shall be \$250.00 per Lot per year. All assessment fees must be fixed at a uniform rate for all Lots.

B. The initial assessment fee may be increased or decreased only by the affirmative vote of a Majority of the Voting Power of the Board.

### 5.4 Commencement and Method of Assessment.

The Assessment fees shall commence upon transfer of title to that Lot prorated on the calendar year basis to the date of transfer. The initial assessment shall be adjusted according to the number of days remaining in the calendar year, and such assessments shall thereafter be on a full calendar-year basis. The Board shall fix the amount of subsequent assessments at least thirty (30) days in advance of each annual assessment period. The due date for such assessment shall be established by the Board. Each Member shall pay such Member's assessment in one annual payment commencing on the date designated by the Board. Separate due dates may be established by the Board for partial annual assessments and special assessments, as long as made thirty (30) days in advance thereof. Written notice of the assessments shall be sent to each member. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments payable with respect to a specific Lot have been paid.

## **5.5 Effect of Non-Payment of Assessment.**

Any assessment not paid within thirty (30) days after the due date shall be deemed in default and delinquent. Members may not waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot. A delinquent assessment shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum, and the Association shall have the right to prohibit the use of the Common Area by Members who are delinquent in the payment of their assessments. The Association may bring an action against the Member, and upon obtaining a judgment, such judgment shall include interest on the assessment at the rate of fifteen percent (15%) and reasonable attorney's fees, together with the cost of the action.

In addition to the fifteen percent (15%) per annum interest provided above, the Board of Directors, in its discretion, may establish a reasonable late charge to be paid in the event of any assessment that is not paid within ten days after due date, provided that such late charge shall not exceed a sum equal to ten percent (10%) of the amount of the assessment which is delinquent by ten days.

## **5.6 Lien for Delinquent Assessment.**

The Association shall have the right to file a lien against the Lot of the Owner that has not paid an assessment. The lien shall be perfected by filing an affidavit with the Summit County Recorder. The Association has the right to foreclose upon such lien in the same manner as a foreclosure upon a mortgage.

## **5.7 Association's Maintenance Responsibilities.**

The Association shall be responsible for keeping the Common Area and all improvements thereon, in good order and repair, including, but not limited to, poles, standards, fixtures of the street lighting system which is installed by or at the direction of the Developer or the Association and to maintain the same in good order and condition, to make all replacements and removals if necessary to so maintain the same, and to operate and to pay all costs of operating the same which shall be a Common Expense, and also including the seeding, watering, and mowing of all grounds, the pruning and replacing of dead trees and shrubbery, leaf raking, upkeep and repair of improvements thereon, in a manner and with such frequency as is consistent with good property management.

In the event that the Association does not properly maintain any of the Common Areas and/or open space in the Gardens at Highland, the City, upon reasonable notification to the Association and its agents, shall be permitted to make any and all necessary repairs or maintenance to common elements and/or open space in the development, and shall be permitted to charge the Association for any time or expenses incurred during the repair or maintenance. The Association shall reimburse the City the full amount within thirty (30) days of receipt of any bill for services.

## **5.8 Special Assessments.**

The Association may levy in any Assessment year, a special Assessment for the purpose of deferring, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Area. The Association shall only make capital improvements exceeding Two Hundred Fifty Dollars (\$250.00) per Lot upon obtaining the written consent of fifty percent (50%) Owners of the Lots. A special Assessment may also be assessed against the Member violating the Declaration, the Bylaws, or the rules and regulations of the Association, if such violation causes damages or special expenses to the Association or the Property, and after notice and hearing pursuant to the Bylaws.



## 5.9 Assessment of Builder and Declarant

(a) Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association notwithstanding, a Builder shall be required to pay an assessment for any recorded Lots or Living Units only in an amount of a one time fee equal to twenty-five percent of the assessments which the Association levies for purposes set forth in Section 5.3. Such limited assessment shall be due and payable at the time a Lot is transferred by the Declarant to a Builder. A Builder shall be completely exempt from the obligation to pay the Special Assessments which the Association levies for the purposes set forth in Section 5.8.

(b) Any provision of this Declaration or the Articles of Incorporation or By-Laws of the Association notwithstanding, the Declarant shall be required to pay an assessment for any recorded Lots or Living Units only in an amount equal to ten percent (10%) of the Assessments provided for in Section 5.3. Such reduced assessment shall be calculated annually each year for the upcoming year and shall be based on the number of Lots owned by the Declarant as of December 31 of such year. The Declarant shall be completely exempt from the obligation to pay the Special Assessments which the Association levies for the purposes set forth in Section 5.8.

(c) The provisions of this Section 5.9 shall not apply to the assessment of any Lot and Living Unit held by a Builder or the Declarant for: (i) rental purposes and which is or has been occupied as a Living Unit; or (ii) model home purposes in which event such Builder or the Declarant shall be required to pay the full amount of the assessments levied thereon, commencing on the issuance of a certificate of occupancy for such unit.

(d) Notwithstanding any other provision of this Declaration to the contrary, the Declarant and each Builder shall have no obligation to fund reserves for the Association or otherwise subsidize the Association.

## 5.10 Assessment Certificates.

The Association shall, upon demand, at any reasonable time, furnish to the Owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

## 5.11 Subordination of Lien to Mortgage.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or through foreclosure shall not be liable for more than six months of the Lot's unpaid assessments or charges accrued before the acquisition of title to the Lot by the mortgagee.

## 5.12 Capital Contribution and Assessment at Closing.

Upon closing or within thirty (30) days after the closing on the purchase of a Lot from a Builder, the purchaser of such Lot shall be required to pay the sum of Two Hundred Fifty Dollars (\$250.00) as such purchaser's initial capital contribution to the working capital of the Association. This assessment shall be used by the Association for its operating expenses. Such assessment is not an



advance payment of assessments, and it will not be held in any sort of trust or reserve account. Additionally, upon closing or within thirty (30) days after such closing with a Builder, each purchaser of a Lot shall be required to pay a pro-rata share of the Annual General Assessment, if applicable, for the balance of the current year to the extent that such assessment is not otherwise being collected by the Association. The Declarant and each Builder shall be exempt from the assessments collected pursuant to this Section.

## ARTICLE VI — INSURANCE

### 6.1 Liability Insurance.

The Association shall obtain and maintain a Comprehensive policy of public liability insurance covering all of the Common Areas, insuring the Association, Directors, and Owners and members of their respective families, tenants and occupants in an amount of not less than \$1,000,000 per occurrence for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. The insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants or occupants.

### 6.2 Casualty Insurance.

The Association shall obtain and maintain fire, lightning and extended coverage or similar insurance in an amount not less than one hundred percent (100%) of the replacement cost thereof on all Common Areas and other improvements owned by the Association. This insurance shall include protection against the risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. Said insurance shall be payable to the Association and the proceeds from which shall be used to restore or replace any Common Area or other improvement damaged or destroyed by any peril covered by said insurance.

### 6.3 Other Insurance.

In addition, the Association shall obtain and maintain contractual liability insurance, Directors' and Officers' liability insurance and such other insurance as the Board may deem desirable from time to time.

### 6.4 Owner's Insurance.

Any Owner, tenant, or occupant may carry such insurance in addition to that provided by the Association pursuant to this Declaration, as that Owner, tenant, or occupant may determine. Each Owner of a Living Unit shall be responsible for obtaining casualty and liability insurance for his Lot.

### 6.5 Insufficient Insurance.

In the event the improvements forming a part of the Common Areas shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots for which whose benefit the amount was so advanced, and such assessment shall have the same force and effect, and if not



paid, may be enforced in the same manner as herein provided for the nonpayment of assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

## ARTICLE VII — ARCHITECTURAL CONTROL

### 7.1 General Requirements.

The following requirements shall be applicable to all Living Units and the Lots upon which such Living Units are located:

#### 7.1.1 General Conditions:

Except for Lots designated as Common Areas or open-space lots, no building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling with a private garage suitable for parking not less than two nor more than three motor vehicles which is to be attached to the principal dwelling.

Except for improvements constructed by the Declarant in connection with the development of the Property, no improvement of any kind shall be erected, altered, placed or permitted to remain on the Common Areas (including areas designated as "open-space/landscape easements", "open-space lots" or "natural buffer easements"). Additionally, no improvement constructed by the Declarant in connection with the development of the Property shall be removed from the Common Areas (including areas designated as "open-space/landscape easements", "open-space lots" or "natural buffer easements") without the prior written consent of the Declarant or the Association.

Notwithstanding anything contained herein all new construction and all modifications or improvements to any dwelling or improvements upon any Lot shall comply with the codified ordinances of the City of Macedonia, including but not limited to Chapter 1341 of the Building Code and Chapter 1172 of the Zoning Code as may be amended from time to time.

#### 7.1.2 House Placement and Yard Grading:

Living Units and Lots shall conform to existing grade and drainage patterns as set forth on the grading plan for the Property filed with the appropriate Summit County governmental authorities. Existing grades at Lot lines shall not be altered more than one foot without the written consent of the Declarant or the appropriate governmental authorities. All Living Units shall comply with the following set back requirements:

- (a) No Living Unit or any projection thereof shall be erected on any Lot nearer than 18.5 feet to the front of the property.
- (b) No Living Unit shall be erected on any Lot nearer than 20 feet to the rear of the property line.
- (c) No Living Unit shall be erected on any Lot nearer than 15 feet to the side of the Living Unit on the neighboring Lot(s).





### 7.1.3 Living Unit Type:

No Living Unit shall be erected, altered, placed or be permitted to remain on any Lot other than one single-family Living Unit with an attached /fully enclosed front- or side- load garage. A single-family dwelling shall meet the following requirements:

- (a) A one-story Living Unit, the living area being the first floor space only, constructed with a basement and a space between the first floor ceiling and the roof of adequate heights to permit its use as a dwelling place.
- (b) A story and a half or "Cape Cod" Living Unit, the living area of which is on two levels connected by a stairway and constructed with a basement. The upper level is constructed with the gable portion of the roof. Window penetrations are made by use of dormers.
- (c) A two-story Living Unit, the living area of which is on two levels connected by stairway, constructed with a basement.

### 7.1.4 Exterior Construction for Living Units:

Exterior material samples shall be submitted for review and approval. All exterior horizontal surface construction shall be covered with wood, vinyl, aluminum siding which shall be approved by the Declarant or Association. All cornice, soffit and fascia material shall also be approved by the Declarant or Association. All residences shall be constructed with a minimum of twenty percent (20%) of the front elevation covered with natural or synthetic masonry brick, stone, or stucco-type product which shall be approved by the Declarant or Association. All exposed areas of the foundation must be covered with a brick veneer or stone, no exposed concrete or concrete block shall be permitted.

### 7.1.5 Living Unit Size:

Dwelling Units must be at least 1,900 square feet for a one-story dwelling, 2,100 square feet for a one and a half story or "Cape Cod" dwelling, and 2,300 square feet for a two-story dwelling. Square footage for other types of dwellings (if permitted) shall be determined by the Declarant upon plan review.

### 7.1.6 Roof:

The portion of a main roof parallel to and facing the frontage street or on the rear of the dwelling shall have a roof pitch no less than 6-12. Gables and portions of a main roof perpendicular to and facing the frontage street shall have a roof pitch no less than 8-12. Porch and patio roofs shall have a roof pitch no less than 4-12. All shingles shall be of uniform style and color.

### 7.1.7 Out Buildings:

All efforts to meet storage needs should be addressed if possible within the confines of the main residential structure. No unattached garages are permitted. Nevertheless, out-buildings or detached structures (other than garages) for non-residential/non-commercial use may be permitted as long as the following conditions are met:

- (a) Submittal of drawings with elevations, colors, materials, and site plan to Declarant or Association for approval.



- (b) Building will be no bigger than 144 square feet total area and must not exceed 12' in height. Maximum door size shall be limited to 60" in width.
- (c) Building must be built with like exterior and roof materials as used on the Dwelling Unit.
- (d) Building must be placed in the rear yard only and at least 10' off any side or rear property line and placed as inconspicuously to adjoining neighbors as possible. Declarant or Association reserves the right to determine property placement of any out buildings.
- (e) Declarant or Association reserves the right to require additional landscape screening of out building visible to neighbors and/or from any street view.

**7.1.8 Lot landscaping, Driveways and Walks:**

Proposed landscape plans require approval by the Declarant or Association. Plans shall include planting lists with sizes and types of all plantings included and such other information as may be deemed necessary to assure the quality of the landscape installation. Lots shall be planted with grass and landscaped within ninety (90) days of completion of the Dwelling Unit weather permitting. All driveways shall be paved with asphalt, concrete, paver bricks or paving stone. Gravel, dirt, or aggregate driveways are prohibited. Hard surface walks shall be provided to the front entry door of the dwelling unit and the service door to the garage if any.

**7.1.9 Color Schemes:**

All dwellings shall be in conformance with the original color scheme as promulgated by the Declarant or Association. The following guidelines shall be followed when determining color scheme with respect to location.

- (a) In any group of five dwellings on the same side of a street, at least three siding colors must be used. Never use the same color on two consecutive dwellings.
- (b) On any cross-street intersection, at least two siding colors must be used.
- (c) Dwellings directly across the street from one another should have different siding colors.

**7.1.10 Underground Houses and Log Houses:**

Underground and log structures are prohibited.

**7.1.11 Water Discharge:**

Storm water must be disposed of in accordance with drainage plans established by the Declarant, the Association, or the County of Summit.



### **7.1.12 Radio and Television Antennas:**

No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart 5, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it is located within the residence located on the Lot, or: (i) is not located in the front yard of the Lot or attached to the front of the Living Unit; (ii) is not visible from any street (whether by location or screening); and (iii) is integrated with the Living Unit and surrounding landscape.

### **7.1.13 Air Conditioning and Heat Pump Equipment:**

Such equipment shall be located only in side or rear yards.

### **7.1.14 Awnings:**

No metal or plastic awnings for windows or doors may be erected or used. Canvas awnings may be used on any Lot subject to prior written approval of the Declarant or the Association.

### **7.1.15 Fences:**

- (a) No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, excepting a retaining wall, shall be erected, placed or suffered to remain upon (i) any landscape easement, (ii) open-space easement, (iii) greenbelt easement, or (iv) upon any Lot nearer to any street than the rear building line of the residence located on the Lot. Unless otherwise approved by the Board, fences shall not be of wire or chain link construction and no such fence shall exceed 3'6" in height. On a corner Lot, in addition to the restrictions set forth above, no fence or portion thereof shall be erected or placed or suffered to remain upon said corner Lot, closer to the side street than the building set back line for such residence. In order to comply with all applicable law, fences around swimming pools may be constructed of metal provided the specifications and location for such fences, as well as the location of the swimming pools, are approved by the Board in writing.
- (b) The term "fence" as used herein shall be liberally construed as to accomplish the purpose of these restrictions, and shall specifically include, but not be limited to, contrived barriers of any type including those of shrubs, hedges or walls. The term "side street" as used herein, shall refer to any street contiguous to any Lot which does not face the front door of the residence.



- (c) This Section shall not apply to: (i) underground invisible dog-type fences; or (ii) decorative fences or retaining walls installed by a Declarant or a Builder in connection with the development of the Property or original construction of a Living Unit.

**7.1.16 Exterior Carpeting:**

No exterior carpeting shall be allowed if it is visible from the street.

**7.1.17 Lighting Exterior:**

Mercury vapor yard lights in excess of 50 watts are prohibited, except for street lights installed in a right-of-way by the Declarant or a utility company. All Lots shall have an exterior post light located 10 feet behind the city sidewalk and 5 feet off the driveway and shall be controlled by a photocell which illuminates the lamp from dusk to dawn. This Section shall not apply to residences used by the Declarant or Builders as model homes or sales offices.

**7.1.18 Completion:**

Construction of a residential building on any tract shall be completed within one year from the date construction is started and the disturbed yard area must be sodded or seeded, provided, however, that the completion date shall be extended for stoppages caused by strike, lockout, labor disputes, fire, unusual delay in transportation, unavoidable casualty, weather and acts of God.

**7.1.19 Mailboxes:**

The United States Postal Service will be installing Central Distribution Units.

**7.1.20 Zoning:**

All improvements shall be constructed in accordance with and subject to all applicable zoning regulations and building codes.

**7.2 Variances:**

In order to avoid unnecessary hardship and/or to overcome practical difficulties in the application of certain provisions of the Declaration, the Board shall have the authority to grant reasonable variances from the provisions of Section 7.1. Additionally, so long as Declarant owns one or more Lots on the Property, the Declarant, or its designee, may grant reasonable variances from the provisions of Section 7.1. No variance shall materially injure or materially adversely affect any other part of the Property or any other Owner or occupant. No variance granted pursuant to the authority of this Section 7.2 shall constitute a waiver of any provision of the Declaration as applied to any other party or other part of the Property, and no variance may be granted to permit anything that is prohibited by applicable law. All provisions of the Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the Property.



### **7.3 Approval by Declarant.**

Until such time as Declarant has sold all lots, Developer shall maintain full control of the requirements for architectural improvement for the Property.

## **ARTICLE VIII — USE RESTRICTIONS AND MAINTENANCE**

### **8.1 Restrictions.**

All Living Units and the Lots upon which such Living Units are located shall be subject to the following restrictions:

#### **8.1.1 Purpose of Property:**

Except for Lots designated as Common Areas or open-space lots, the Property shall be used only for residential purposes and common recreational purposes auxiliary thereto. Garages shall be used only for the parking of vehicles and other customary uses and shall not be used for or converted into living area (e.g. family room, bedrooms, offices or recreational rooms). The Declarant or a Builder shall have the right to use unsold residences as model homes or sales offices.

#### **8.1.2 Nuisance:**

No obnoxious or offensive activity of any kind shall be engaged in on any Lot nor shall any Owner or occupant thereof engage in any activities that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent neighboring Lots. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.

#### **8.1.3 Animals and Pets:**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs (excluding vicious dogs), cats or other household pets (excluding pot-belly pigs) may be kept, provided that they do not exceed three in number and they are not kept, bred or maintained for any commercial purpose. Notwithstanding the above, in the event such household pets have a litter, the Owner shall have a period of one hundred twenty (120) days from the date of such birth to dispose of such excess pets. Additionally, an Owner shall be permitted to keep fish in a private pond provided such fish are not kept, bred or maintained for any commercial purpose.

No vicious dog is permitted anywhere on the Property. The term "vicious dog" shall have same meaning as in § 955.11 of the Ohio Revised Code. The Board shall have the authority summarily to remove any vicious dog upon three days written notice to the Owner.

#### **8.1.4 Signage:**

No sign of any kind shall be displayed to the public view on any Lot except: (a) not more than three (3) small signs or decals indicating security services installed on the Premises; (b) one professional sign of not more than two square feet temporarily placed indicating contractor services provided to the homeowner; or (c) one sign of not more than five square feet advertising the property for sale. Additionally, no Owner may install signs in the Common Areas. This paragraph shall not apply to signs used by a Declarant or a Builder to advertise the Property during the construction or sale period.



### **8.1.5 Trash:**

No burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any Lot. Trash and garbage shall be placed in sanitary containers and shall not be permitted to remain in the public view except on days of trash collection. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.

### **8.1.6 Prohibited Accessory Structures:**

No permanent or temporary accessory building, tent, storage shed, mobile home or free standing greenhouse shall be erected or permitted to remain upon a Lot. Decks are permitted provided they are located within the building set back area of the Lot and attached to the residence. Swimming Pools and related appurtenances are permitted on Lots provided they are in-ground type pools and they are not located within the prohibited rear or side yard setback areas. Hot tubs, spas and related appurtenances are also permitted on Lots.

Playsets shall be permitted on any Lot provided they are installed in compliance with the following criteria: (a) they are made primarily of wood; and (b) they are located in the rear yard area of the Lot and are not within the prohibited rear or side yard setback areas. Basketball goals shall be permitted on any Lot provided they are installed in compliance with the following criteria: (a) they are not attached to the residence on the Lot; (b) they shall have a clear backboard; and (c) the supporting poles shall be black. Except as otherwise provided above, trampolines, soccer goals and related recreational equipment shall be permitted on any Lot provided they are located in the rear yard area of the Lot and are not within the prohibited rear or side yard setback areas. This paragraph shall not apply to the Common Areas or any Lots owned by a Declarant or a Builder and held for sale.

### **8.1.7 Maintenance and Landscaping:**

Each and every Lot and house thereon shall be maintained by the Owner thereof in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All landscaping on the Lots including any street trees shall be maintained in good condition. In the event any Owner fails to replace a street tree that dies or is damaged, within sixty (60) days after notice from the Association (subject to a reasonable extension for appropriate planting seasons), the Association shall have the right to replace such street tree and assess the cost thereof against such Owner's Lot. Any such replacement tree shall be of a minimum 2" caliper. All Lots, including any areas designated as "open-space easements" on such Lots, shall be kept free of debris and clutter and shall be kept mowed. This paragraph shall not apply to any Lots owned by a Declarant or a Builder and held for sale.

### **8.1.8 Automobiles, Recreational Vehicles, Boats, Travel Trailers:**

No recreational vehicle, mobile home, boat or travel trailer shall be parked or stored on any Lot, for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in the garage and completely out of view. Commercial vehicles and trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view.



No vehicle in inoperable condition or unlicensed condition shall be stored on any Lot for a period in excess of five days unless the same is in the garage and completely out of view. This paragraph shall not apply to any Lots owned by a Declarant or a Builder and held for sale.

**8.1.9 Garage and Yard Sales and Christmas Lights:**

There shall be no more than two garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period.

Christmas lights and other holiday-type decorations may be erected no sooner than five weeks prior to and removed not later than two weeks after such holiday.

**8.1.10 Obstruction of Easements and Drainage:**

No structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

**8.1.11 Lakes:**

All lakes, ponds and streams within the Property shall be aesthetic amenities only and no other use thereof, including without limitation, swimming, boating, fishing, playing or use of personal floatation devices shall be permitted except in accordance with rules and regulations established by a Declarant or the Association. Neither a Declarant, a Builder nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, ponds or streams within the Property.

**8.1.12 Irrigation Systems:**

No irrigation system outlets shall be located in the public right-of-way, except as may be approved by the appropriate governmental authorities. This paragraph does not apply to irrigation systems installed by the Declarant.

**8.1.13 Commercial or Professional Uses:**

Except as expressly permitted in this Declaration, or by Rules adopted in accordance with this Declaration, no industry, business, trade or full-time occupation or profession of any kind, commercial, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property; provided, however, an Occupant may use a portion of his or her Living Unit for his office or studio, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Occupant and that such use does not result in the Living Unit becoming principally an office, school or studio as distinct from a Living Unit. Furthermore, no trade or business may be conducted in or from any Living Unit without the written approval of the Board being first obtained. Such approval shall be granted so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Living Unit; (b) the business activity conforms to all City zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property



except by appointment only; (d) the business activity does not involve door-to-door solicitation of occupants of the Property; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. No Living Unit shall be used as a group home. Nothing in this Section shall preclude the leasing of a Living Unit by the Developer or an Owner; the right of the Developer or the Board (or a firm or agent employed by the Developer or Board) to approve commercial activities such as charity events, temporary food and beverage operations, the right of the Developer to maintain brokerage offices for sales of Lots and for new sales of Living Units and resales of Living Units and the right of the Developer to utilize a Living Unit for office purposes.

#### **8.1.14 Additional Rules and Regulations:**

The Association, through the Board, may make and enforce reasonable rules and regulations governing the Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek injunctive relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association. An Owner shall be subject to the foregoing sanctions in the event of a violation by such Owner, his family, guests, tenants or by his co-Owners or the family, guests or tenants of such co-Owners. Furthermore, the Association, through the Board, may, by contract or other agreement, enforce City ordinances or permit the City or other governmental authority having jurisdiction to enforce ordinances on the Property for the benefit of the Association and its Members.

### **ARTICLE IX — EASEMENTS AND MAINTENANCE**

#### **9.1 Access Easements and Open-space/landscape Easements.**

All Lots shall be subject to an access easement in favor of the Declarant and the Association for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, replacing and otherwise dealing with the Common Areas, including all improvements thereon and for the purpose of inspecting the exterior of Living Units and Lots for compliance with the terms of this Declaration.

As set forth on the record plat or plats for the Property, certain Lots are subject to "open-space/landscape easements" or "natural buffer easements". Such open-space/landscape easements and natural buffer easements are in favor of the Declarant and the Association and are for the purposes of providing access to the Common Areas and for allowing the Declarant and the Association to maintain improvements constructed by the Declarant in such easement areas. Except as otherwise provided herein, no one other than the Declarant, the Association or the Owner on whose Lot is situated an open-space/landscape easement or natural buffer easement, shall be permitted to have access to, or enter onto, such easement area.

#### **9.2 Private Drainage Easements.**

Except as otherwise set forth on the record plat or plats for the Property, all Lots are subject to private drainage easements in favor of the Declarant, the Builder and the Association. Such private drainage easements shall be ten feet (10') in width (five feet (5') on each Lot) and shall exist along all common Lot lines, with the common Lot line being the center line of said easement. In those cases where the rear Lot line is not a common Lot line, the private drainage easement shall be ten feet (10') in





width along such rear Lot line. The Declarant and the Association shall have the right to enter upon a private drainage easement for the purpose of establishing or reestablishing drainage swales in order to control and direct storm water to collection facilities.

### **9.3 Common Driveway Easement.**

The Lots sharing a Common Driveway shall be subject to and benefited by a perpetual nonexclusive easement for ingress and egress over the Common Driveway. The Owners of such Lots shall use the Common Driveway situated on the easements with due regard for the rights of any other Owner and its use of such driveway. No Owner shall use or permit the use of the driveway in any manner which impairs the right of any other Owner to its use, nor shall any Owner park or store vehicles or personal property on, or obstruct or encroach upon, or permit the use of, or permit the obstruction of or encroachment upon, the Common Driveway in any manner whatsoever without the concurrence of all Owners entitled to use the Common Driveway.

The Owners using the Common Driveway shall share equally in the expense and cost of maintaining, improving and repairing the Common Driveway, except that any damage other than ordinary wear and tear caused by any Owner, or any party claiming through such Owner, whether by negligence or otherwise, shall be repaired at the expense of such Owner. The driveway shall be maintained in good repair and in a condition substantially similar to that of its original construction. Upon conveyance of a Lot, the Grantor of such Lot shall be, as of the closing date for such conveyance, relieved of the obligation to share in the expense and cost of future maintenance and repair imposed hereby, and those obligations shall bind thereafter the Grantee of said conveyance. The Grantor shall, however, be obligated personally during and after his period of ownership for expenses and costs incurred for maintenance and repair during his period of ownership of the Lot. The obligation of an Owner of a Common Driveway to share in the cost and expense of maintaining a Common Driveway, is separate and distinct from the obligation of such Owner to pay the assessments levied pursuant to Article V. As provided in Section 9.4 hereof, in the event an Owner fails to properly maintain a Common Driveway, the Association shall have the right to perform such maintenance and assess the Owner for such cost.

The Declarant, or its designee, shall have the right to enter onto the Common Driveway in order to make improvements to the Common Driveway, including the installation of the final course of asphalt. Such installation may occur prior to the completion of all Living Units situated on the Lots served by the Common Driveway. The assessment shall be a lien on the Owner's Lot to the same extent as other liens provided for herein.

### **9.4 Maintenance.**

The Association shall be responsible for the care and maintenance of the Common Areas of the subdivision. Such obligation of the Association shall include the care and maintenance of any improvements (other than landscaping) constructed by the Declarant or the Association in an open-space/landscape easement or natural buffer easement. The Association shall also be responsible for the care and maintenance of the Storm Water Facilities and related storm water improvements in a manner satisfactory to the appropriate governmental authority to the extent that such facilities are not being maintained by such governmental authority. The Owner of a Lot shall be responsible for the care and maintenance of all other portions of such Owner's Lot, including any landscaping situated in an open-space easement, natural buffer easement or detention basin areas. Should any Owner fail to maintain his Lot, or a Common Driveway, to the extent provided in this Declaration, the Association may do so, after notice, and assess such Owner for the cost. The assessment shall be a lien on the Owner's Lot to the same extent as other liens provided for herein.



The Association may obtain, employ, and pay for the services of an entity or person (hereinafter called the "Manager") to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are engaged, furnished, or employed directly by the Association or the Manager. The Association may enter into a Management Agreement for management services with any management entity as the Board of Directors deems appropriate or necessary.

## **9.5 Reservation of Easements.**

The Declarant shall have and hereby reserves easements in favor of itself, the Association and their successors and assigns, and such other persons or entities as it may designate as follows:

9.5.1 In, on and over that portion of the publicly dedicated rights of way outside of the actual roadway, as well as over a twenty foot (20') wide strip of land on either side of such publicly dedicated rights of way on the Property for the purposes of: (i) access to construct, use and maintain utilities (including, but not limited to, internet, telephone and cable television), sidewalks, signage, lighting, landscaping and recreational uses; (ii) removing any obstructions including landscaping from such areas; and (iii) such other uses deemed appropriate for or necessary to integrate the Property into other real estate.

9.5.2 In, on and over all utility and drainage easements set forth on the Property for the installation and maintenance of utility and drainage systems.

## **9.6 Right of Association to Remove or Correct a Violation of this Declaration.**

The Association may, in the interest or the general welfare of all of the Owners, enter upon any Lot or the exterior of any dwelling at reasonable hours on any day for the purpose of removing any roadway obstructions, including landscaping, or correcting any violation or breach of any attempted violation of any of the covenants and restrictions contained in this Declaration, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided however, that no such action shall be taken without a resolution of the Board of Directors of the Association authorizing access to such Lot or property covered under this Section and any charges incurred by the Association in correcting the violation hereunder, (including court costs and reasonable attorney's fees) shall constitute a charge against the subject property and a personal obligation of the Owner thereof, and the Association shall have a lien upon the property and Lot for such expenses, and including costs of collection of said lien amount, which lien shall be subordinate to first mortgages as provided in Section 5.11. The assessment shall be a lien on the Owner's Lot to the same extent as other liens provided for herein.

## **9.7 Declarant's Reservation of Entry Rights.**

The Declarant for itself and any Builder reserves the right during the Development Period to enter upon the Lot for purposes of correcting grade and drainage patterns for the benefit of the entire Properties, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.



## 9.8 Declarant's and Association's Right to Grant Easements.

Notwithstanding any other provisions herein, as long as there exists Class B membership, the Declarant, and thereafter the Association is authorized without consent of the Members to grant easements across, through or under any Lot, Common Area or any utility easement, including a Television Cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the Properties, provided no easement shall be granted across, through or under any Living Unit or building which restricts ingress or egress to such Living Unit or building.

## 9.9 Handicap Accessibility.

Notwithstanding any other provisions herein, an Owner of any Lot may, at his expense, have such reasonable modifications made to the interior and exterior of his Living Unit and Lot and the Common Areas as may be necessary to afford physically handicapped persons full enjoyment of his premises. Any modifications to be undertaken to the exterior of a Living Unit and Lot or the Common Areas shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract, the terms, conditions and specifications of which shall be approved by the Board of Directors. The approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members of the Association, the Board of Directors is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Living Unit and Lot, including the Common Areas.

## 9.10 Arbitration.

In the event of any dispute between Owners, other than the Declarant, regarding the application of these restrictions 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 and place for a hearing thereon within thirty (30) days thereafter, and give written notice to each party thereof not less than five days in advance of such hearing. The Board, after hearing such evidence and arguments as it deems proper, shall render a written decision on the matter to each party within thirty (30) days after such hearing. No legal action may be instituted by either party on such a dispute unless the arbitration provided for herein has occurred, or unless both parties have waived the requirement for arbitration.

# ARTICLE X — GENERAL PROVISIONS

## 10.1 Deed Restrictions.

A. Deed Restrictions. In addition to this Declaration, the Declarant may record for parts of the Properties specific deed restrictions, declaration of covenants, conditions, and restrictions, community association documents, applicable thereto either by master instrument or individually recorded instruments. Such documents may vary as to different parts of the Properties and the location, topography, and intended use of the land made subject thereto. To the extent that part of the Properties are made subject to such specific documents, such real estate shall be subject to such specific documents and this Declaration. The Association shall have the power to enforce all restrictions as expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained in this Article X, Section 1 shall require the Declarant to impose uniform restrictions, or to impose restrictions of any kind, other than this Declaration, on all or any part of the Properties.



B. Special Deed Restrictions Concerning Unimpacted Areas of Wetlands. Perpetual deed restrictions shall be placed on all Lots bordering or containing the unimpacted areas of Wetlands denoted as W-C, D, J, K, L, and any other unimpacted wetlands, to guarantee their preservation for wetland and wildlife resources. The unimpacted wetland areas are identified on Exhibit D attached hereto. The deed restrictions shall specifically state that the wetland area to remain is not to be adversely impacted, and that there shall be no removal, destruction, or cutting of vegetation, spraying with herbicides, grazing of domestic animals, disposal of trees, brush, or other debris, or other disturbance or manipulation of the deed-restricted area without first obtaining written authorization of the United States Department of the Army. Control of nuisance vegetation, or any other manipulation within the deed-restricted area, shall only occur after receiving United States Army Corps of Engineers' written approval that such management practices are necessary to ensure the long-term success of the deed-restricted area. An approved certified copy of the recorded deed restriction shall be provided to Pauline Thorndike, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, NY 14207-3199, or her successor or designee, before the completion of work, or no later than December 31, 2007, whichever occurs first.

## 10.2 Enforcement.

A. Persons Entitled to Enforce. The Declarant, Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Notwithstanding any contrary provision of this Declaration, the right of the Association or Owner to enforce the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration shall be effective at such time as there are no longer any Class B Members (as outlined in Article IV, Section 4.2(b)).

B. No Jury Trial. Each Owner, by acceptance of such Owner's deed, and the Association agrees that neither the Owner nor the Association nor any assignee, successor, heir, or legal representative of any of them (all of whom are hereinafter referred to as the "Parties") shall seek a jury trial in any lawsuit, proceeding, counterclaim, or any other litigation procedure, whether in contract or in tort or at law or in equity, based upon or arising out of this Declaration, or the obligations, benefits, dealings, or the relationships between or among the Association and the Owners, their successors and assigns, or any of them. Neither the Association nor any Owner will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived to the fullest extent formulated by law.

C. Mediation and Arbitration. In the event of a dispute, claim, or controversy arising out of or relating to the breach, termination, validity, interpretation, enforcement, or implementation of any term or provision of this Declaration ("Dispute"), the Owners and the Association agree to submit the Dispute first to mediation and then to voluntary, binding arbitration, as follows:

In the event the parties cannot successfully negotiate a resolution of the Dispute within thirty (30) days of its occurrence, any party to the Dispute can notify the other parties to the Dispute that the matter will be submitted to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association ("Mediation Rules") and that all parties to the Dispute shall bear equally the costs of the mediation or as otherwise directed by the mediator. The panel shall consist of one (1) mediator and shall be selected according to the Mediation Rules. The Parties agree to participate in good faith in the mediation and negotiations related thereto.



If the Dispute cannot be resolved through mediation, within ten (10) days after the failure to resolve the Dispute through mediation, any Party can notify the others that the matter will be submitted to voluntary, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The panel shall consist of one (1) arbitrator and shall be selected according to the Arbitration Rules.

The Parties agree to use the Regional Office of the Arbitration Association which is nearest to the Properties to administer the mediation and arbitration.

Nothing contained in this Article X, Section 10.2 shall in any way limit or affect the Association's right to immediately file an action in the appropriate court to collect any assessment or enforce any lien under Article V hereof.

If a person or Party is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, such person or Party shall bear all costs and expenses of the Dispute resolution, including court costs and reasonable attorneys' fees, for all mediation, arbitration, trial, and appellate proceedings incurred by the Party enforcing the provisions of this Declaration.

Declarant shall not be obligated to enforce this Declaration or any particular provision hereof and shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than itself.

### **10.3 Severability.**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

### **10.4 Amendment.**

The covenants and restrictions of this Declaration shall run with and bind all of the Properties (regardless of when any particular Block of land is added hereto), for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended by an instrument signed by not less than three-fourths (3/4) of the Lot Owners. Any amendment must be recorded. For so long as the Declarant owns any Lot in the Properties, any amendment of this Declaration must be approved in writing by the Declarant. At any time a Class B membership exists, this Declaration may be amended by recorded instrument executed solely by Declarant, without the necessity of the approval or joinder of any other Owner or the Association. Neither Declarant, nor the Association, shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the City as of the date of this Declaration.

### **10.5 Right to Amend Documents.**

Notwithstanding anything above to the contrary, this Declaration and the By-Laws may be amended at any time without the vote of Owners by a written instrument executed by the Declarant for the purpose of: eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; or other changes in the Declarant's opinion to serve the best interests of the community; clarifying Declarant's original intent; conforming to any



requirements imposed or requested by any governmental agency, public authority or financial institution; provided, however, that no such amendment shall materially affect any Owner's interest in the Association. Each Owner and his mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration and the By-Laws by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate the provisions of this paragraph.

#### **10.6 Personal Liability.**

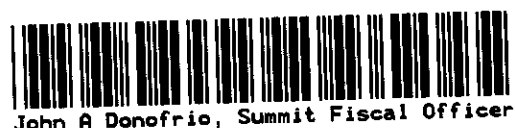
Nothing in this Declaration, the Articles or the regulations of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any member of the Board of Directors or any officer of the Association acting in his capacity as such, for the use, maintenance, repair or replacement of any Living Unit or of any part of the Common Areas or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and in such event the amount of recovery shall be limited in the amount of insurance.

#### **10.7 Non-Liability of Declarant.**

Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to them by or pursuant to this Declaration or the By-Laws, whether or not such claims shall be asserted by an Owner, occupant, the Association, or by 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. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof becoming out of repair or by reason of any act or neglect of any Owner, occupant, the Association and their representative agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, cable television, etc.), except as provided by any written warranty provided by the Declarant to an Owner or the Association. Except as set forth in this Declaration, the Declarant and the Builders shall have no financial obligation to the Association.

#### **10.8 Limitation of Liability.**

Each Owner covenants and agrees that no shareholder, partner, director or officer of Declarant or Builder, nor any employee or agent of Declarant and Builder shall have any liability personally for the performance and observance of any term, covenant, restriction, condition, or provision contained in this Declaration. Each Owner covenants and agrees that the Owner shall not commence or participate in any action, suit or proceeding against Declarant and Builder, nor against any shareholder, director, officer, employee or agent of Declarant and Builder, arising out of any claim or breach by Declarant and Builder of any term, covenant, restriction, condition or provision of this Declaration. The liability of Declarant and Builder shall be limited solely and exclusively to its interest in the Land as the same shall then be encumbered, and no other asset of Declarant shall be liable for any claim under or in connection with this Declaration.





3378 West Market Street Akron, OH 44333-3386  
 Phone 330-836-0228 Fax 330-836-5782  
 E-mail gbc@gbcdesign.com

Sy Cynerman, A.I.A.  
 Gary R. Rouse, P.E., P.S.  
 John E. Walsh, P.E., P.S.

May 22, 2006

**LEGAL DESCRIPTION**  
 Ohio Edison Company - Macedonia  
 New Parcel "C"  
 28.3728 Acres

Situated in the City of Macedonia, County of Summit and State of Ohio and known as being part of Middle Tract 1, Lots 4 and 5 of Twinsburg Township, also known as being lands now or formerly owned by Ohio Edison Company as recorded in Deed Volume 7512, Page 399 of the Summit County Records, also being part of the lands now or formerly owned by Robert C. Wismer as recorded in Official Record 313, Page 661 of the Summit County records and more fully described as follows:

Beginning at the center of a monument box (empty) found at the centerline intersection of Highland Road (C.H. 111, width varies) and Shepard Road (C.H. 23, 50 feet wide);

Thence S 77° 44' 30" E, along the centerline of said Highland Road, a distance of 846.60 feet to a point, said point being the True Place of Beginning for the parcel of land herein described;

Thence N 00° 13' 43" W, along the easterly line of 4 parcels as recorded in the Summit County Records, passing over a capped rebar (GBC Design, Inc.) to be set at 30.73 feet, also passing over a 1" bent pinched pipe found at 326.59 feet, also passing over a 2" iron pipe found at 1083.11 feet, also passing over a 3/4" iron pipe found at 1182.98 feet, a distance of 1382.95 feet to a point (witnessed by a 1/2" iron pipe found S 75° 03' 02" W, 0.59 feet);

Thence N 00° 35' 52" W, along the easterly line of lands now or formerly owned by Shannon and Michele L. Ferrara as recorded in Reception #54398163 of the Summit County Records, and along the easterly line of lands now or formerly owned by Ohio Edison Company as recorded in Deed Volume 3478, Page 159 of the Summit County Records, a distance of 214.91 feet to a 1" iron pipe found;

Thence S 89° 32' 15" E, along the southerly line of lands now or formerly owned by Ohio Edison Company as recorded in Deed Volume 3511, Page 179 of the Summit County Records, a distance of 1312.49 feet to a 5/8" rebar found;

Thence S 00° 21' 09" E, along the westerly line of lands now or formerly owned by the Cleveland Pittsburgh Railroad Company as recorded in Deed Volume 3965, Page 123 of the Summit County Records, a distance of 111.36 feet to a 5/8" rebar found;

Thence continuing along the westerly line of said Cleveland Pittsburgh Railroad Company lands, along the arc of a circle curving to the left, having a central angle of 38° 05' 15", a radius of 1045.37 feet, a tangent of 360.84 feet, a chord of 682.19 feet, a chord bearing of S 44° 56' 28" W, and an arc length of 694.91 feet to a capped rebar (Butterworth 5916) found;

Thence S 37° 36' 23" W, continuing along the westerly line of said Cleveland Pittsburgh Railroad Company lands, a distance of 148.75 feet to a point (witnessed by a capped rebar (Butterworth 5916) found S 37° 29' 02" W, 0.12 feet, also witnessed by a 1/2" iron pipe found S 74° 02' 33" E, 0.39 feet);



John A Donofrio, Summit Fiscal Officer

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 05/15/2006 11:11P  
 DE 44.00



**LEGAL DESCRIPTION**

Ohio Edison Company - Macedonia

New Parcel "C"

28.3728 Acres Page 2 of 2

Thence S 17° 22' 48" W, continuing along the westerly line of said Cleveland Pittsburgh Railroad Company lands, a distance of 752.50 feet to a point (witnessed by a capped rebar (Butterworth 5916) found S 32° 54' 32" W, 0.13 feet);

Thence S 43° 35' 45" W, along a line of new division, a distance of 107.56 feet to a 5/8" capped rebar (GBC Design, Inc.) to be set;

Thence N 77° 47' 05" W, along the northerly line of lands now or formerly owned by Robert C. Wismer as recorded in Official Record 313, Page 661 of the Summit County Records, a distance of 206.37 feet to a 5/8" capped rebar (GBC Design, Inc.) to be set;

Thence S 11° 50' 31" W, along a line of new division, passing over a 5/8" capped rebar (GBC Design, Inc.) to be set at 139.27 feet, a distance of 169.27 feet to a point;

Thence N 77° 44' 30" W, along the centerline of said Highland Road, a distance of 201.93 feet to the True Place of Beginning and containing 28.3728 Acres of land (14.8567 Acres in Lot 4 and 13.5161 Acres in Lot 5), more of less, as surveyed in May, 2006 by Joseph A. Burgoon, Registered Surveyor No. 8325, with GBC Design, Inc., but subject to all highway and any restrictions, reservations of record.

\*\*Basis of Bearing for this survey is Ohio State Plane Grid North as shown on the plat of Villa Lago Phase I as recorded in Reception #54206387 of the Summit County Records.

  
Joseph A. Burgoon - Reg. No. 8325



33-21696 }  
33-03582 } COMBINE

33-12697

TW-00021-A6-003.000



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MISC 420.00 DE 44.00

2-20, 2006  
Approved by the Planning Commission, City of  
Macedonia, Ohio. No Plat Required.

  
Signature

EXHIBIT B



Prescribed by: The Ohio Secretary of State, Central Ohio: (614) 466-3910, Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us, e-mail: busserv@sos.state.oh.us

Expedite this Form: (Select One)
Mail Form to one of the Following:
Yes PO Box 1390, Columbus, OH 43216
No PO Box 670, Columbus, OH 43216

INITIAL ARTICLES OF INCORPORATION
(For Domestic Profit or Nonprofit)
Filing Fee \$125.00

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

(CHECK ONLY ONE (1) BOX)

(1) Articles of Incorporation Profit (113-ARF) ORC 1701
(2) Articles of Incorporation Non-Profit (114-ARN) ORC 1702
(3) Articles of Incorporation Professional (170-ARP) Profession ORC 1785

Complete the general information in this section for the box checked above.
FIRST: Name of Corporation Gardens at Highland Homeowners Association, Inc.
SECOND: Location Macedonia Summit
Effective Date (Optional) date Articles filed
Check here if additional provisions are attached

Complete the information in this section if box (2) or (3) is checked. Completing this section is optional if box (1) is checked.
THIRD: Purpose for which corporation is formed
See Additional Provisions, attached.

Complete the information in this section if box (1) or (3) is checked.
FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)
(Refer to instructions if needed)

Barcode, 55484463, Pg: 34 of 51, 10/01/2007 02:50P, MISC 420.00, John A Donofrio, Summit Fiscal Officer

**Completing the information in this section is optional**

FIFTH: The following are the names and addresses of the individuals who are to serve as initial Directors.

See Additional Provisions, attached.

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

**REQUIRED**  
Must be authenticated  
(signed) by an authorized  
representative  
(See Instructions)

Authorized Representative

Date

Richard Bancroft

(Print Name)

Authorized Representative

Date

(Print Name)

Authorized Representative

Date

(Print Name)



John A Donofrio, Summit Fiscal Officer

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MISC 420.00

Complete the information in this section if box (1) (2) or (3) is checked.

## ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of Gardens at Highland Homeowners Association, Inc. hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is

Richard Bancroft  
(Name)  
6650 W. Snowville Road, Suite J  
(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

Brecksville, Ohio 44141  
(City) (Zip Code)

Must be authenticated by an authorized representative

[Signature Box]

Authorized Representative  
Richard Bancroft

[Date Box]

Date

[Signature Box]

Authorized Representative

[Date Box]

Date

[Signature Box]

Authorized Representative

[Date Box]

Date

### ACCEPTANCE OF APPOINTMENT

The Undersigned, Richard Bancroft, named herein as the Statutory agent for, Gardens at Highland Homeowners Association, Inc., hereby acknowledges and accepts the appointment of statutory agent for said entity.

Signature: \_\_\_\_\_  
(Statutory Agent)  
Richard Bancroft



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John A Donofrio, Summit Fiscal Officer

**ADDITIONAL PROVISIONS TO THE  
ARTICLES OF INCORPORATION**

**OF**

**GARDENS AT HIGHLAND HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE THIRD  
PURPOSE AND POWER**

This non-profit Corporation does not contemplate pecuniary gain or profit to the Members thereof, and the Corporation is formed for the purpose of acting as the homeowners association with regard to the real estate specifically described in the Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Gardens at Highland Subdivision (the "Declaration") said Declaration being recorded or to be recorded in the Records of Summit County, Ohio. In addition, the specific purposes for which this Corporation is formed are to provide for the maintenance, preservation and control of certain community facilities created for the benefit of the aforesaid real estate in accordance with the terms of said Declaration, and to promote the health, safety and welfare of the residents and Owners of the aforesaid real estate and to act in the same manner with regarding to any other property which may hereafter be brought within the jurisdiction of this Corporation as part of the same plan.

The Corporation shall also possess and have the following purposes and wherever necessary or convenient such purposes shall also be deemed as powers:

- (1) To have and exercise all of the powers and duties set forth in the Declaration and the By-Laws of Gardens at Highland Homeowners Association, Inc. (the "By-Laws");
- (2) Fix, levy and collect all charges or assessments pursuant to the terms of the Declaration and By-Laws, enforce payment of such charges and assessments by any lawful means, and pay all expenses in connection therewith and in connection with the conduct of the affairs of the Corporation;
- (3) Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Corporation and subject to the terms of the Declaration and By-Laws;
- (4) Borrow money, and in accordance with the terms of the Declaration and By-Laws, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, all for the purposes of fulfilling the Corporation's responsibilities;
- (5) Fix, administer, enforce, alter, amend, extend, waive, release, and terminate, in whole or in part, the terms, conditions, covenants, restrictions, and regulations upon, under, and subject to which any part or all of the subject real estate may now or hereafter be used;



- (6) Operate, maintain, repair, and replace the Corporation's Common Areas in accordance with the terms of the Declaration and By-Laws;
- (7) Obtain, pay for, and maintain insurance to the extent provided in the Declaration and By-Laws;
- (8) Do any other thing necessary, expedient, incidental, appropriate, or convenient to the carrying out of the foregoing purposes which will promote the common benefit and enjoyment of the residents or Owners of the Living Units and Lots, in so far as not prohibited by law, the Declaration, and the By-Laws; and
- (9) Have and exercise any and all powers, rights, and privileges which a corporation organized under Chapter 1702 of the Ohio Non-Profit Corporation Act may now or hereafter have or exercise by law.

The Corporation shall not take any action or enter into any transaction or agreement in a manner that would violate any provision of these Articles, the Declaration, or the By-Laws.

#### ARTICLE FIFTH BOARD OF DIRECTORS

The names and address of the persons who are initially to act in the capacity of Directors, until the selection of their successors (as provided in the Bylaws) are:

<u>Name</u>	<u>Address</u>
Richard Bancroft	6650 W. Snowville Road, Suite J Brecksville, OH 44141
Steve Tuckerman	6650 W. Snowville Road, Suite J Brecksville, OH 44141
Mary Bohus	6650 W. Snowville Road, Suite J Brecksville, OH 44141

The number, qualifications, manner and time of selection of successor Directors, and their terms of office, shall be as set forth in the Declaration and Bylaws.

#### ARTICLE SIXTH MEMBERSHIP

Every person or entity who is a record owner of a fee simple interest in any Lot shall be a Member of the Corporation; however, persons or entities who hold an interest merely as security for the performance of an obligation shall not be Members of the Corporation. Membership shall be appurtenant to and shall not be separated from ownership of a Lot. The Corporation shall have Class A Members and Class B Members as set forth in the Declaration. Upon a Member's sale or other disposition of his or her Lot, the Member's membership shall terminate and the new Owner shall automatically become a Member of the Corporation. Voting rights of Members shall be set forth in the Declaration and By-Laws of the Corporation.



**ARTICLE SEVENTH  
NOTICE AND QUORUM**

Notice and quorum requirements shall be in accordance with the provisions of the Bylaws.

**ARTICLE EIGHTH  
INDEMNIFICATION**

(1) The corporation shall indemnify every person who is or has been a Director, Officer, agent or employee of the corporation and those persons' respective heirs, legal representatives, successors and assigns, against expenses, including attorney's fees and judgments, decrees, fines, penalties and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether in an action or proceeding by or in the right of the corporation or otherwise, and which such person was or is a party or is threatened to be made a party by reason of the fact that person was a Director, Officer, agent or employee of the corporation, or is or was serving in such capacity at the request of the corporation, provided that person: (a) acted in good faith and in a manner that person believed to be in or not opposed to the best interest of the corporation, and (b) in any matter the subject of a criminal action or proceeding, had no reasonable cause to believe the questioned conduct was unlawful, but provided that in the case of any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor against any such person by reason of that person serving in such capacity, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of a duty to the corporation unless and only to the extent that the court in which such action was brought shall determine upon application that in view of all the circumstances of the case, that person is fairly and reasonably entitled to be indemnified for such expenses as the court shall deem proper.

(2) Unless ordered by a court, the determination of indemnification pursuant to the foregoing criteria, shall be made: (a) by a majority vote of a quorum of Directors of the corporation who were not and are not parties to or threatened with any such action, suit or proceeding, or (b) if such a quorum is not obtainable, or if a majority of a quorum of disinterested Directors so direct, 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 corporation or any person to be indemnified within the past five years), or (c) by the membership of the corporation, or (d) by the court in which such action, suit or proceeding was brought.

(3) Any such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled under law, any agreement, or any insurance purchased by the corporation, or by vote of the membership, or otherwise.

**ARTICLE NINTH  
DURATION**

The Association shall exist until the Declaration is terminated in accordance with its terms.

**ARTICLE TENTH  
DISSOLUTION**

The Association may be dissolved only with the same consents as are required to terminate the Declaration, as provided in the Declaration.



**ARTICLE ELEVENTH  
DEFINITIONS**

All terms used herein shall have the same meanings as set forth in the Declaration.

**ARTICLE TWELFTH  
AMENDMENTS**

The Articles are to be amended only under the same terms and conditions, and with the same approvals, as are provided in the Bylaws for their amendment.

**[End of Additional Provisions]**





EXHIBIT C

BYLAWS OF

GARDENS AT HIGHLAND HOMEOWNERS ASSOCIATION, INC.

**ARTICLE 1: DEFINITIONS**

The words defined in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Gardens at Highland Subdivision recorded in Book \_\_\_, Page \_\_\_, of the Summit County, Ohio, Recorder's Office (hereinafter referred to as the "Declaration"), shall have the same meaning in these Bylaws.

**ARTICLE 2: OFFICES**

**2.01. Registered Office.** The registered office of the corporation shall be at 6650 West Snowville Road, Suite J, Brecksville, Ohio, 44141-3242, and the name of the registered agent of the corporation is Richard Bancroft.

**2.02. Other Offices.** The corporation may also have offices at such other places both within the State of Ohio as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE 3: MEMBERS AND MEMBERSHIP PRIVILEGES**

**3.01. Membership.** Each Owner shall be a Member of the corporation and no other person or entity shall automatically be entitled to membership. The Declarant reserves the right to afford membership privileges in the form of access to the common amenities to owners of other developments of Declarant in the vicinity of Gardens at Highland Subdivision in consideration of the payment of fees equal to the Assessments payable by an Owner. No person afforded such privileges shall be entitled to vote in the Association and shall not be considered a "Member" for any other purpose.

**3.02. Rights Subject to Payment of Assessment.** The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each Owner of and becomes a lien upon the property against which such assessments are made as provided by Article V of the Declaration to which the Properties are subject.

**3.03. Suspension of Membership Rights.** The membership rights of any person whose interest in the Properties is subject to assessments under Section 3.02 of this Article 3, whether or not he be personally obligated to pay such assessments, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the Common Areas, and the personal conduct of any person thereon, as provided in Article 7, Section 7.02, of these By-Laws, they may in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days.

**ARTICLE 4: MEETINGS OF MEMBERS**

**4.01. Place of Meetings.** Meetings of the Members of the corporation may be held at a place to be determined by the Board of Directors within Summit County, Ohio.



**4.02. Annual Meeting.** Unless otherwise specified in a written notice from the Board of Directors, an annual meeting of the Members of the corporation shall be held each year on the second Tuesday of the third month following the close of the fiscal year if not a legal holiday, and if a legal holiday, then on the next secular day following, at 7:00 p.m. at which time the Members shall elect a Board of Directors, and shall transact such other business as may properly be brought before the meeting. Provided, however, the annual meeting must be held no later than forty-five (45) days from the original scheduled date. The first regular annual meeting of the Members may be held, subject of the terms hereof, on any date, at the option of the Board of Directors; provided, however, that the first meeting may (if necessary to comply with Federal Regulations) be held no later than the earlier of the following events: (a) four months after all of the Lots have been sold by the Declarant; or (b) three years following conveyance of the first Lot by the Declarant.

**4.03. Special Meeting.** Special meetings of the Members, for any purpose or purposes, may be called by the president, the Board of Directors, or by Members having not less than five (5%) percent of the total percentage values of those votes entitled to be cast at such meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of such meeting.

**4.04. Notice.** Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than 15 nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each Member of the corporation entitled to vote at such meeting.

## ARTICLE 5: VOTING RIGHTS

**5.01. Classes of Membership.** The Association shall have two classes of voting Membership:

CLASS A: Class A Members shall be all Members with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Home Site owned by them.

CLASS B: The Class B Member shall be the Developer. The Developer shall be entitled to a majority of the votes prior to the end of the Development Period.

The Class B Member shall become a Class A Member at the end of the Development Period. Notwithstanding any provisions of these By-Laws to the contrary, the Association may take no action without the consent of the Developer. Not in limitation of the foregoing, the Developer may appoint and remove members of the Board of Directors at any time and from time to time prior to the end of the Development Period.

**5.02. Quorum.** The presence in person or by proxy of more than ten percent of the percentage values of those votes entitled to be cast at a meeting of the Members and at least ten percent of the percentage values of each class of Members shall constitute a quorum at all meetings of the Members for the transaction of business. If, however, the Members entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted at which might have been transacted at the meeting as originally notified.

**5.03. Majority Vote; Withdrawal of Quorum.** When a quorum is present at any meeting, the vote of the holders of more than fifty percent (50%) of the percentage of the number of those votes entitled to be cast of Members qualified to vote and present in person or by proxy, shall decide any



question brought before such meeting, unless the question is one upon which by express provision of the Declaration, the Articles of the corporation or these Bylaws, a different vote is required, in which case such express provision different vote is required, in which case such express provision shall govern and control the decision of such question. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**5.04. Method of Voting; Proxies.** Each Member shall be entitled to one vote for each Lot owned by such Member. No Member, other than the Declarant, shall be entitled to vote at any meeting of the corporation until such Member has presented evidence of ownership of a Lot in Gardens at Highland Subdivision to the Board of Directors, if requested. The vote of each Member may only be cast by such Member or by a proxy given by such Member to his duly authorized representative bearing a date not more than eleven months prior to such meeting. Such proxy shall be filed with the secretary of the corporation prior to or at the time of the meeting. If title to a Lot shall be in the name of two or more persons as Co-owners, all of such persons shall be Members of the corporation and are referred to herein as "Joint Co-owners". Any one of such Joint Co-owners may vote at any meeting of the Members of the corporation and such vote shall be binding upon such other Joint Co-owners who are not present at such meeting until written notice to the contrary has been received by the Board of Directors in which case the unanimous vote of all such Joint Co-owners (in person or by proxy) shall be required to cast their vote as Members. If two or more of such Joint Co-owners are present at any meeting, their unanimous action shall also be required to cast their vote as Members of the corporation.

**5.05. Cumulative Voting Denied.** Cumulative voting for Directors shall not be permitted.

## ARTICLE 6: PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

**6.01. Right of Enjoyment.** Each Member, for himself, his immediate household and guests, shall be entitled to the use and enjoyment of the Common Areas as provided by Article III of the Declaration applicable to the Properties.

**6.02. Delegation of Rights.** Any Member may delegate his rights of enjoyment in the Common Areas to any lessee who resides upon the Properties under a leasehold interest for a term of one (1) year or more, and the immediate household, and guests of such lessee. Such Member shall notify the Secretary in writing of the name of any such person and of the relationship of the Member to such person. The rights and privileges of such person are subject to suspension under Article 3, Section 3.03 hereof, to the same extent as those of the Member, and are further subject to the reasonable rules and regulations of the Association governing the use of the Common Areas.

## ARTICLE 7: GENERAL POWERS OF THE ASSOCIATION

**7.01. Assessments. Payments from Assessment Funds.** Assessments shall be levied and collected as provided in Article V of the Declaration. The Association shall pay out of the funds hereinafter provided for, the following:

(a) Care of Properties and Common Areas. Landscaping, gardening, snow removal, cleaning, maintenance, repair and replacements of the Common Areas and any of its facilities, including, but not limited to, streets and storm sewers, as provided by the Declaration, and such other common expenses as the Association shall determine are necessary and proper.

(b) Wages and Fees for Services. The services of any person or firm employed by the Association, including without limitation, the services of any person or persons required for the



maintenance or operation of the Common Areas and legal and/or accounting services, necessary and proper in the operation of the Common Areas or the enforcement of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association.

(c) Capital Additions and Improvements. The Association's powers herein enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any capital additions and improvements, having a total cost in excess of Ten Thousand Dollars (\$10,000.00), nor shall the Association authorize any structural alterations, capital additions to, or capital improvements of the Common Areas requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without in each case the prior approval of the Members of the Association entitled to exercise a majority of the voting power of the Association.

(d) Insurance. A policy or policies of insurance, as required or authorized by the Declaration, or as otherwise required in the opinion of the Board of Directors, for the operations of the Association, the Board of Directors, and the Properties.

(e) Worker's Compensation. Worker's Compensation Insurance to the extent necessary to comply with any application laws.

(f) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Common Areas or any part thereof which may in the opinion of the Association constitute a lien against the Common Areas rather than merely against the interests of particular Owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable, for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specifically assessed to said Owners.

(g) Interest and Loan Proceeds. Any interest with respect to loans made by the Association and amounts paid to repay loans.

(h) Additional Expenses. Any other materials, supplies, labor, services, maintenance, repairs, alterations, insurance or assessments which the Association is required to secure or pay for pursuant to the terms of the Declaration and these By-Laws or by law or which, in the opinion of the Directors, shall be necessary or proper for the maintenance and operation of the Properties or the enforcement of the Declaration or these By-Laws.

**7.02. Rules and Regulations.** The Association, by vote of the Members entitled to exercise a majority of the voting power of the Association, may adopt such reasonable rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Declaration and these By-Laws as it may deem advisable for the care, maintenance, operation and beautification of the Properties and for the health, comfort, safety and general welfare of the Owners and occupants of the Properties. Written notice of such rules and regulations shall be given to all Owners and the Properties shall at all times be maintained subject to such rules and regulations. In the event such supplemental rules and regulations shall conflict with any provisions of the Declaration and of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

**7.03. No Active Business to be Conducted for Profit.** Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Owners or any of them.

**7.04. Delegation of Duties.** Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating to persons, firms or corporations of its choice such duties and responsibilities of the Association as the Directors of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

## ARTICLE 8: DIRECTORS

**8.01. Management.** The business and affairs of the corporation shall be managed by its Board of Directors who may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute, the Declaration, the Articles, or these Bylaws, directed or required to be exercised or done by the Members.

**8.02. Number; Qualifications; Election; Term.** The Board of Directors shall consist of three Directors, each of whom shall be a Member of the Association or a partner or employee of the Declarant, or its subsidiaries or affiliates. The Members of the initial Board of Directors shall serve terms of two years until the annual meeting of Members following such election in the designated term of office of such Directors. Each Director elected to replace an original Director upon the expiration of his term of office shall serve for a term of office ending with the third annual meeting of Members following his election or until his successor shall be elected and shall qualify. Prior to conversion of the Class B Membership to a Class A Membership, the Directors shall be appointed by the Class B Member.

**8.03. Removal; Change in Number; Vacancies.** Any Director may be removed either for or without cause, at any special meeting of the Members of the corporation by the affirmative vote of a majority of the Members present in person or by proxy at such meeting and entitled to vote, if notice of the intention to act upon such matter shall have been given in the notice calling such meeting. If any vacancy occurs in the Board of Directors, caused by death, resignation, retirement, disqualification or removal from office of any Director or otherwise, a successor or successors may be chosen at a special meeting of Members called for that purpose, and each successor Director so chosen shall be elected for the unexpired term of his predecessor in office. Any Directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting of Members or at a special meeting of Members called for that purpose.

**8.04. Place of Meetings.** The Directors of the corporation shall hold their meetings, both regular and special, within Summit County, Ohio.

**8.05. Annual Meetings.** The annual meeting of each newly elected Board shall be held without further notice immediately following the annual meeting of Members of the corporation, and at the same place, unless by unanimous consent of the Directors then elected and serving such time or place shall be changed.

**8.06. Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

**8.07. Special Meetings.** Special meetings of the Board of Directors may be called by the president on three days notice to each Director, either personally or by mail or by facsimile. Special meetings shall be called by the president or secretary in like manner and like notice on the written request of two Directors. Except as may be otherwise expressly provided by statute, the Articles or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in a notice or waiver of notice.



**8.08. Quorum.** At all meetings of the Board of Directors, the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the Directors, when present at any meeting at which there is a quorum, shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

**8.09. Committees Having Board Authority.** The Board of Directors may, by resolution approved by vote or written consent by a majority of the whole Board, designate an Architectural Control Committee, a Nominating Committee for members of the Board of Directors and such other committees as deemed necessary to consist of two or more of the Directors of the corporation. Any such committee, to the extent provided in said resolution, shall and may exercise all of the authority of the Board of Directors in the management of the business and affairs of the corporation, except where action of the full Board of Directors is required by statute or the Articles.

**8.10. Other Committees.** Other committees not having and exercising the authority of the Board of Directors in the management of the affairs of the corporation may be designated and appointed by a resolution adopted by a majority of the Directors at a meeting at which a quorum is present, or by the president thereunto authorized by a like resolution of the Board of Directors. Membership on such committees may, but need not be, limited to Directors or Members of the corporation.

**8.11. Procedure.** All committees shall keep regular minutes of their proceedings and shall report the same to the Board when required.

**8.12. Managing Agents.** The Board of Directors may employ for the corporation a management agent at a compensation established by the Board of Directors and such management agent shall perform such duties and services with respect to Gardens at Highland Subdivision as the Board of Directors shall authorize, and the Board of Directors may delegate to such management agent such duties with respect to management, repair and maintenance of Gardens at Highland Subdivision which are not by statute, the Declaration, the Articles or these Bylaws, required to be performed by or have the approval of the Board of Directors or the Members of the corporation.

## ARTICLE 9: NOTICES

**9.01. Method.** Whenever notice is required to be given to any Director or Member, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, by mail, postage prepaid, addressed to such Director or Member at such address as appears on the records of the corporation. Any notice required or permitted to be given by mail shall be deemed to be given at the time when the same shall be thus deposited in the United States mail as aforesaid.

**9.02. Waiver.** Whenever any notice is required to be given to any Member or Director of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, shall be deemed equivalent to the giving of such notice.

## ARTICLE 10: OFFICERS

**10.01. Number; Titles.** The officers of the corporation shall be elected by the Directors from among the members of the Board of Directors and shall be a president, a secretary and a treasurer. Any two or more offices may be held by the same person except the offices of president and secretary shall not be held by the same person.

**10.02. Election.** The Board of Directors at its first meeting after each annual meeting of Members shall choose a president, a secretary, and a treasurer, all of whom shall be members of the Board.

**10.03. Other Officers.** The Board of Directors may appoint such other officers and agents as it shall deem necessary, who shall be appointed for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

**10.04. Salaries.** The salaries of all officers of the corporation, if any, shall be fixed by the Board of Directors.

**10.05. Term of Office; Removal.** Each officer of the corporation shall hold office until the annual meeting of the Board of Directors next following his election and thereafter until his successor is chosen and qualified in his stead or until his death or until his resignation or removal from office. Any officer or agent elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole prejudice to the contract rights, if any, of the person so removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

**10.06. President.** The president shall be the chief executive officer of the corporation; he shall preside at all meetings of the Members and the Board of Directors, shall have general and active management of the affairs of the corporation, shall see that all orders and resolutions of the Board are carried into effect, and shall perform such other duties as the Board of Directors shall prescribe.

**10.07. Secretary.** The secretary shall attend all sessions of the Board of Directors and all meetings of the Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for any committees when required. He shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or president, under whose supervision he shall be.

**10.08. Treasurer.** The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements of the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation, and shall perform such other duties as the Board of Directors may prescribe. If required by the Board of Directors, he shall give the corporation a bond in such form, in such sum, and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

**10.09. Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate Fidelity Bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense.



## ARTICLE 11 : MISCELLANEOUS PROVISIONS

**11.01. Reserves.** There may be created by resolution of the Board of Directors such reserve or reserves as the Directors from time to time, in their discretion, think proper to provide for contingencies, or to repair or maintain any portion of Gardens at Highland Subdivision or for such other purposes as the Directors shall think beneficial to the corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

**11.02. Checks.** All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

**11.03. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

**11.04. Seal.** The corporate seal, if any, shall be in such form as may be determined by the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

### **11.05. Indemnification.**

(1) The corporation shall indemnify every person who is or has been a Director, Officer, agent or employee of the corporation and those persons' respective heirs, legal representatives, successors and assigns, against expenses, including attorney's fees and judgments, decrees, fines, penalties and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether in an action or proceeding by or in the right of the corporation or otherwise, and which such person was or is a party or is threatened to be made a party by reason of the fact that person was a Director, Officer, agent or employee of the corporation, or is or was serving in such capacity at the request of the corporation, provided that person: (a) acted in good faith and in a manner that person believed to be in or not opposed to the best interest of the corporation, and (b) in any matter the subject of a criminal action or proceeding, had no reasonable cause to believe the questioned conduct was unlawful, but provided that in the case of any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor against any such person by reason of that person serving in such capacity, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of a duty to the corporation unless and only to the extent that the court in which such action was brought shall determine upon application that in view of all the circumstances of the case, that person is fairly and reasonably entitled to be indemnified for such expenses as the court shall deem proper.

(2) Unless ordered by a court, the determination of indemnification pursuant to the foregoing criteria, shall be made: (a) by a majority vote of a quorum of Directors of the corporation who were not and are not parties to or threatened with any such action, suit or proceeding, or (b) if such a quorum is not obtainable, or if a majority of a quorum of disinterested Directors so direct, in a written opinion by independent legal counsel or 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 corporation or any person to be indemnified within the past five years, or (c) by the membership of the corporation, or (d) by the court in which such action, suit or proceeding was brought.





(3) Any such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled under law, any agreement, or any insurance purchased by the corporation, or by vote of the membership, or otherwise.

**11.06. Inconsistencies.** In the event these Bylaws shall be inconsistent with the Declaration, then the Declaration shall be controlling.

**11.07. Amendments; Procedure.** These By-Laws may be amended, at a regular meeting or special meeting of the Members, by a vote of a majority of a quorum of each class of Members present in person or by proxy, provided that any matter stated herein to be or which is in fact governed by the Declaration of Covenants and Restrictions applicable to the Properties may not be amended except as provided in such Declaration. Notwithstanding any contrary provision of these By-Laws, the provisions of Article 5, Section 5.01 shall not be amended prior to one (1) year after the conversion of the Class B Membership to a Class A Membership. Notwithstanding any provision of these By-Laws to the contrary, Developer shall have the same rights to amend the By-Laws as they have to amend the Declaration.

**11.08. Conflicts.** In the case of any conflict between the Declaration applicable to the Properties and these By-Laws, the Declaration shall control.

**11.09. Rights Not Impaired.** No amendment shall be effective to impair or dilute any rights of Members that are governed by the recorded Declaration applicable to the Properties (as, for example, membership and voting rights) which are part of the property interests created thereby.

**11.10. Table of Contents; Headings.** The table of contents and headings used in these bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation.

**11.11. Copies of Notice to Mortgage Lenders.** Upon written request to the Board of Directors of any duly recorded mortgage or trust deed against any Home, the Board of Directors shall give such mortgage holder a copy of any and all notices permitted or required by the Declaration or these By-Laws to be given to the Owner or Owners whose Home ownership is subject to such mortgage or trust deed.

**11.12. Service of Notice on Devisees and Personal Representatives.** Notices required to be given any devisees or personal representatives, of a deceased Owner may be delivered either personally or by mail to such party at his, her or its address appearing on the records of the court wherein the estate of such deceased Owner is being administered.

**11.13. Disposition of Assets Upon Dissolution.** Upon dissolution of the Association, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. No such disposition of Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the recorded Declaration applicable to the Properties unless made in accordance with the provisions of the Declaration of such Covenants and Restrictions.

  
John A Donofrio, Summit Fiscal Officer

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**11.14. Non-Waiver of Covenants.** No covenants, restrictions, conditions, obligations or provisions contained in the Declaration applicable to the Properties or these By-Laws 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.

**11.15. Agreements Binding.** All agreements and determinations lawfully made by the Association in accordance with the procedure established in the Declaration and these By-Laws shall be deemed to be binding on all Owners, their successors, heirs and assigns.

**11.16. 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.

**11.17. Action Without a Meeting.** Any action which may be authorized or taken at a meeting of the Members or of the Directors, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, all of the Members or all of the Directors, as the case may be, who would be entitled to notice of a meeting for such purpose, or, in the case of Members, such other proportion or number of voting members, not less than a majority, as the Articles of Incorporation, Declaration, or By-Laws permit. Any such writings shall be filed with or entered upon the records of the corporation. Any certificate with respect to the authorization or taking of any such action which is required to be filed in the office of the Secretary of State shall recite that the authorization or taking of such action was in a writing or writings approved and signed as specified in this Section. This Section is pursuant to Section 1702.25 of the Ohio Revised Code.

THE DREES COMPANY

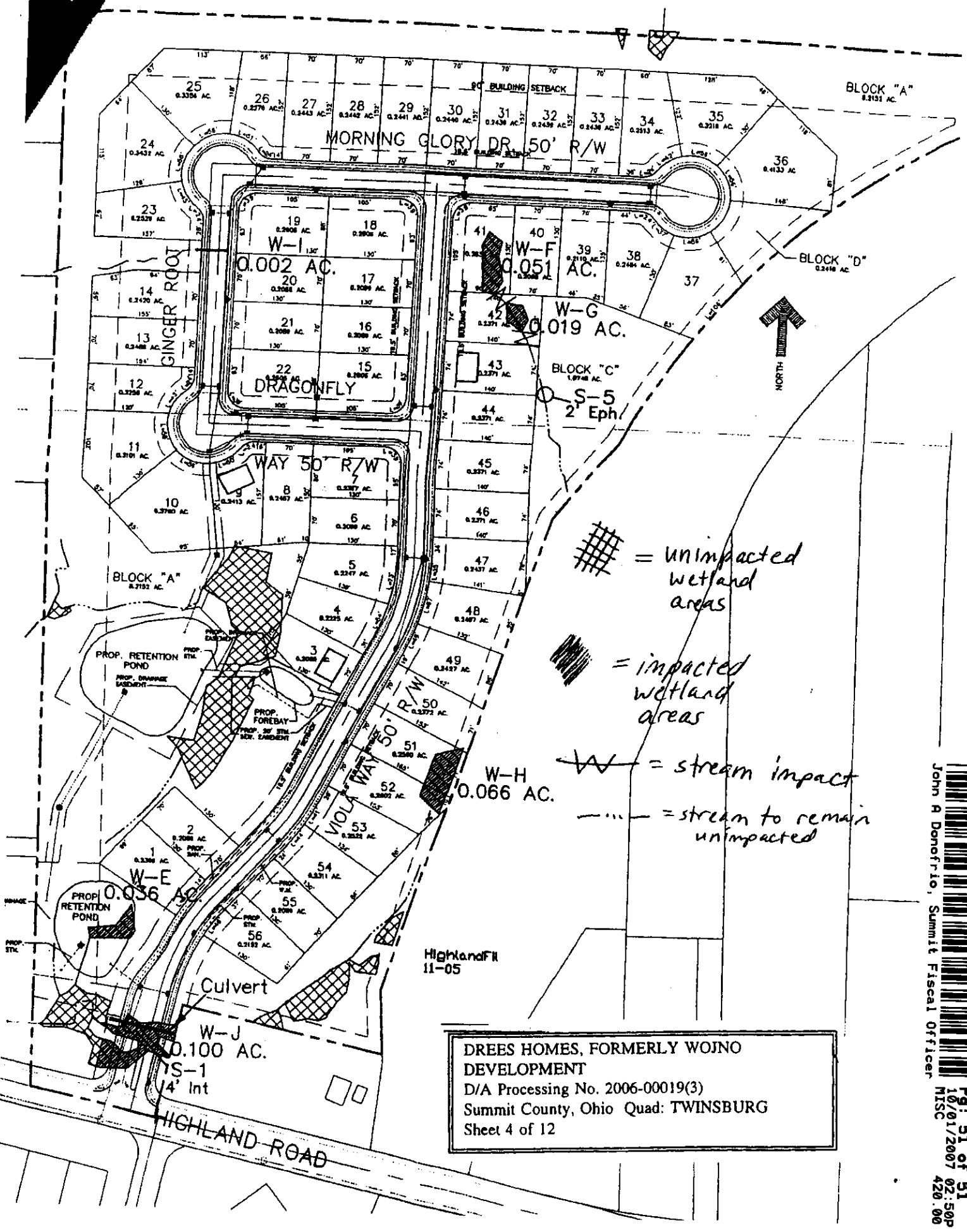
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Steve Tuckerman, Division President  
Cleveland Division



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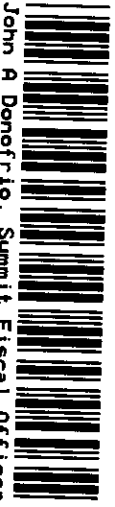
John A Donofrio, Summit Fiscal Officer

EXHIBIT D



DREES HOMES, FORMERLY WOJNO DEVELOPMENT  
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