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Montgomery County, OH
Stacey Benson-Taylor Recorder
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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
HEATHERMERE WOODS SUBDIVISION**

Declarant, **SMSD Heathermere LLC**, an Ohio limited liability company ("Declarant"), is the owner of certain real estate in Montgomery County, Ohio, described in Exhibit "A", attached hereto and incorporated herein (hereinafter referred to as "Property").

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and reservation of easements herein and to the provisions of Chapter 5312 of the Ohio Revised Code. This chapter is the Ohio Planned Community Law and will be referred to as "the Act." This Declaration is for the purpose of protecting the value and desirability of the Property and which shall run with the Property submitted hereunder or which may subsequently be added, and shall be binding on all parties having any right, title or interest in the Property, its successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1.1. Allocated Interests. "Allocated Interests" means the Common Expense Liability and votes in the Association as set forth in Article III.

1.2. Assessments. "Assessments" means those charges upon the Lots established by Article VII or otherwise of this Declaration.

1.3. Association. "Association" means Heathermere Woods Homeowners' Association, Inc., an Ohio nonprofit corporation, its successors and assigns. Except as the context otherwise requires "Association" shall mean the Board of Directors acting on behalf of the Association.

1.4. Association Documents. "Association Documents" means the formative documents of the Association, consisting of the Articles of Incorporation, Bylaws and all other procedures, rules, regulations or policies adopted by the Association, as amended from time to time.

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- 1.5. Board.** "Board" shall mean the Board of Directors or the executive board of the Association.
- 1.6. Builder.** "Builder" means any person or entity (including the Declarant) who acquires a Lot for the purpose of improving that Lot and erecting a Dwelling Unit thereon for resale to an Owner.
- 1.7. Bylaws.** "Bylaws" means the bylaws of the Association attached hereto and incorporated herein as Exhibit B, as the same may be amended from time to time.
- 1.8. Common Elements.** "Common Elements" shall mean any real estate or rights in real estate owned, leased or held under easement by the Association, including, without limitation, easements in favor of or which would naturally be in favor of the Association, subdivision entrances, retaining walls, signs, landscape, fences, mailboxes, private drives and other items ordinarily constructed for the common use and enjoyment of the Owners, and including those such items as may be shown on the Record Plat.
- 1.9. Common Expense Liability.** "Common Expense Liability" means the liability for Common Expenses allocated to each Lot (other than Lots owned by the Association or consisting solely of Common Elements) pursuant to this Declaration.
- 1.10. Common Expenses.** "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.
- 1.11. Declarant.** "Declarant" means SMSD Heathermere LLC, its successors and assigns.
- 1.12. Declarant Control Period.** "Declarant Control Period" means the period of time that the Declarant may appoint members of the Board of Directors and the officers of the Association as set forth in Article XIII.
- 1.13. Declaration.** "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Heathermere Woods Subdivision, including any amendments or supplements hereto.
- 1.14. Development Period.** "Development Period" means the period commencing on the date of recording of this Declaration and ending on the date twenty (20) years thereafter within which the Declarant has the right to exercise the Development Rights set forth in Article XII, provided, however, that the Declarant may extend or end the Development Period from the date specified above if a signed written instrument to that effect is filed of record prior to the end of the Development Period stating such to be the case.
- 1.15. Development Rights.** "Development Rights" means those rights reserved by the Declarant in Article XII.
- 1.16. Dwelling Unit or Unit.** "Dwelling Unit" or "Unit" means any residential structure designated and intended for use and occupancy as a residence by a single family. There shall be only one Dwelling Unit per Lot.
- 1.17. Lot.** "Lot" means the physical portion of the Property designated for separate ownership or occupancy, the boundaries of which are described pursuant to Article II, Section 2.1 and the Record Plan.

1.18. Member. "Member" means any person or entity entitled to membership in the Association as provided herein.

1.19. Occupant. "Occupant" means any person in possession of a Lot and/or Dwelling Unit whether or not such possession is lawful and shall include but not be limited to, an Owner's family members, guests, invitees, tenants and lessees.

1.20. Owner. "Owner" means the Declarant or other person or entity who owns a Lot, but does not include a person or entity having an interest in a Lot solely as security for an obligation.

1.21. Preservation Zone. "Preservation Zone" means those areas marked as preservation zone on the Record Plat.

1.22. Property. "Property" means the real estate described in Exhibit "A" attached hereto and any other property, which may be made subject to the terms of this Declaration, together with any improvements, made thereon.

1.23. Record Plan or Record Plat. "Record Plan" and/or "Record Plat" means the record plat for Heathermere Woods Subdivision as recorded in the Montgomery County, Ohio Plat Records, and any subsequent plats affecting the Property, along with any replats thereof. The Record Plan is hereby incorporated into this Declaration by reference as if fully attached hereto.

1.24. Single Family Structure. "Single Family Structure" means any building containing one or more Dwelling Units.

1.25. Special Declarant Rights. "Special Declarant Rights" means those rights reserved by the Declarant in Article XIII.

1.26. Surface Water Management System. "Surface Water Management System" shall mean the system designed for the Property by the Declarant for storm water, soil erosion, sediment control and related matters, as such may be further shown on the Record Plan. Such system shall include all existing watercourses, ditches, retention basins and swales located in the Property.

ARTICLE II

LOTS AND BOUNDARIES

2.1. Types of Lot. There shall be one type of Lot within the Property, which shall be single-family lots for the construction and occupation of an attached single-family Dwelling Unit as part of a Single Family Structure. Lots owned by the Association or consisting entirely of Common Elements are not considered "Lots" for purposes of voting rights, payment of Assessments and similar matters.

2.2. Description of Lot Boundaries. The boundaries of the Lots shall be those as set forth on the Record Plan.

ARTICLE III

ALLOCATION OF ALLOCATED INTERESTS

3.1. Common Expense Liability. The allocation of Allocated Interests for Common Expense Liability shall be determined in accordance with the allocation of the various assessments as set forth in Article VII, Section 7.10.

3.2. Votes in the Association. The allocation of Allocated Interests for voting purposes shall be one vote per Lot.

ARTICLE IV

COMMON ELEMENTS, EASEMENTS AND RESERVATIONS

4.1. Description. The Common Elements are defined in Article I above and shall include, without limitation, any portion of or rights to the Property owned by the Association in fee, by easement or leasehold and shall include any such items shown on the Record Plat (including, but not limited to, the lots designated as "Open Space" on the Record Plat).

4.2. Easements. The Property shall be subject to certain easements (as shown on the Record Plat or otherwise). These easements shall be appurtenant to and pass with the title to the Lots.

4.3. Enjoyment. The Common Elements shall be subject to an easement of enjoyment in favor of the Lots and Owners. Such easement shall be limited to the purposes for which the easement is created.

4.4. Access. The Common Elements shall be subject to permanent nonexclusive easements for ingress and egress in favor of the Lots and/or the Association, as applicable and appropriate. Such easements shall be limited to the purposes for which the easements were created. A non-exclusive easement is granted to the Owners of all Lots, Occupants, their guests and invitees, and to all police, fire and other emergency personnel, and to all similar persons, and to the local governmental authorities, but not to the public in general, to enter upon the Common Elements in the performance of their duties.

4.5. Drainage. The Lots shall be subject to easements in favor of the Lots and/or the Association (as applicable and appropriate) benefited for Surface Water Management as further defined in Article V. No Owner shall do anything on or within a Lot or Dwelling Unit that shall unreasonably increase the flow of surface water.

4.6. Utilities. The Lots shall be subject to easements as shown on the Record Plan, if any, for the purposes of installing, operating, maintaining and servicing pole lines, cables and conduits for utility services and cablevision franchise(s). In addition, whether or not shown on the Record Plan, there is hereby established an easement ten (10) feet wide adjacent to all buildings constructed on the Lots in order that utility lines may cross the Lot lines to serve more than one Lot. The character of the installation and structures which may be constructed, reconstructed, removed and maintained in, on and through these easements shall include, but not be limited to, all incidental appurtenances, such as, guys, conduits, poles, anchors, transformers, par mount transformers, handholds, etc. Said easements rights shall include the right, without liability therefore, to remove trees and landscaping, including lawns within said easement premises which may interfere with the installation, maintenance, repair or operation of the

electric or communication facilities, and with right of access, ingress to and from any of the within premises for exercising and of the purpose of this right of way and easement grant.

4.7. Private Roadways. The Owner of a Lot shall be responsible for the maintenance of the driveway serving the Dwelling Unit on such Lot. The Association shall have the responsibility for maintenance of the private drives, if any, which are part of the Common Elements and/or which are shown on the Record Plan.

4.8. Location Municipality. A non-exclusive easement is granted to Huber Heights, Ohio and any other applicable authority having appropriate jurisdiction over the Property, and to all police, fire and other emergency personnel, ambulance operators, delivery, garbage and trash removal personnel, and to all similar persons, and to the local governmental authorities, but not to the public in general, to enter upon the Common Elements and the Surface Water Management System in the performance of their duties.

4.9. Limited Common Elements. The Common Elements may also contain Limited Common Elements if so designated either in the Record Plan or in a Supplemental Declaration.

4.10. Owner's Delegation Rights. Any Owner may delegate his or her easement rights and rights of enjoyment to the Common Elements to any Occupants, and any guests, invitees, tenants or lessees thereof. Any Owner who has leased his or her Lot/Dwelling Unit shall be deemed to have delegated such rights. Any such delegation, however, shall be in accordance with and subject to reasonable rules, regulations and limitation as may be adopted by the Association in accordance with its Bylaws.

4.11. Limitation on Common Elements and Easements. All Common Elements, easements and rights granted herein are subject to:

4.11.1. Restrictions set forth in this Declaration.

4.11.2. Any rules and regulations adopted by the Declarant or the Association which are not inconsistent with the terms of this Declaration and the Record Plan and the right of the Association to enforce such rules and regulations.

4.11.3. The right of the Association to levy assessments for the Common Expenses, and other assessments as set forth herein.

4.11.4. The right of the Declarant and the Association to amend the Record Plan and to grant further rights and easements within, upon, over, under, and across the Common Elements for the benefit of the Owners, the Association and/or Declarant.

4.11.5. The Common Elements cannot be mortgaged or conveyed without the consent of two-thirds of the Owners, excluding the Declarant. A conveyance or encumbrance of the Common Elements shall not deprive any Lot or Dwelling Unit of its rights of access nor affect the priority of validity of pre-existing encumbrances.

4.11.6. If access to any residence is through the Common Elements, any conveyance or encumbrance of such area is subject to the Lot Owner's easement for such purposes.

4.11.7. All rights granted to the Association in this Declaration.

4.11.8. Development rights and Special Declarant Rights as set forth herein.

ARTICLE V

SURFACE WATER MANAGEMENT

5.1. Surface Water Management System. The Surface Water Management System shall consist of open space and other relevant water management areas and systems as shown on the Record Plan. The Association shall maintain and administer the Surface Water Management System in accordance with the guidelines as may be promulgated from time to time by City of Huber Heights, Ohio or other applicable authority.

5.2. Surface Water Management System Easements. Each Lot shall be subject to and shall be benefited by an easement for storm sewers, drainage and surface water management as more particularly shown on the Record Plan. Such easement shall be non-exclusive as to the Owners and shall run to the Association, which has control and responsibility for drainage and surface water management. Such easement, however, shall not run to the public at large.

5.3. Access to Lots. For the purpose solely of performing the maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon the Lot at reasonable hours on any day.

5.4. Individual Maintenance. Each Owner shall maintain that portion of the Surface Water Management System, which serves only that Owner's Lot, excluding grass-cutting and vegetation control within the drainage swales located on the Lot. Such responsibility shall include keeping these easements clean and unobstructed. The Association shall provide grass mowing under the terms of this Declaration, including responsibility for the drainage swale mowing. Maintenance of the Surface Water Management System shall at all times be in accordance with the guidelines and standards set forth by any governmental entity or any other agency having authority and, except as specifically provided herein, shall be maintained by the Association.

5.5. Retention/Detention Basin Maintenance. The Association shall have primary responsibility for the maintenance of all retention/detention basin(s) and stormwater management/water quality basin facility(ies) (collectively, the "Facility"), as such Facility may be more fully shown on the Record Plan. The Association will conduct regular maintenance of the Facility in accordance with the City of Huber Heights, Ohio and Montgomery County, Ohio requirements.

5.6. Restriction on Use. No Owner shall use or permit any other persons to use the Surface Water Management System in any manner which would constitute a nuisance, hazard or unsanitary condition or be in violation of any local, state, or federal law ordinance, rule, regulation or statute or in violation of the rules and regulations of the Association. No use of the retention basin(s) for swimming, boating, or use of personal flotation devices, shall be permitted. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the retention/detention basin(s).

ARTICLE VI

OWNERS ASSOCIATION

6.1. Formation. The Declarant has caused or will cause to be created a nonprofit corporation named Heathermere Woods Homeowners' Association, Inc and such shall be the "Owner's association" as defined in the Act. The purposes for the Association are to provide for the administrative governance, maintenance and upkeep of the Property, to be the "Association" as defined herein, and to promote the health, safety, and welfare of the Owners and Occupants of the Property.

6.2. Membership. The membership of the Association shall at all times consist exclusively of Owners of the Lots. All such Owners shall be members. Membership shall be appurtenant to and may not be separated from such ownership.

6.3. Powers of the Association. Subject to Special Declarant Rights hereinafter set forth, and in addition to any other power/duties provided to the Association hereunder or provided by applicable law, the Association shall (as applicable and appropriate, as determined by the Board) have the right, power and authority to:

6.3.1. Hire and fire managing agents, attorneys, accountants, and other independent professionals and employees that the Board determines are necessary or desirable in the management of the Property and the Association;

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

6.3.3. Enter into contracts and incur liabilities relating to the operation of the Property;

6.3.4. Enforce all provisions of the Declaration, Bylaws, covenants, conditions, restrictions and Articles of Incorporation governing the Lots and the Common Elements;

6.3.5. Adopt and enforce Rules and Regulations that regulate the maintenance, repair, replacement, modification, and appearance of the Common Elements, and any other rules the Declaration provides;

6.3.6. Acquire, encumber, and convey or otherwise transfer real and personal property, subject to Section 5312.10 of the Revised Code;

6.3.7. Hold in the name of the Association the real property and personal property;

6.3.8. Grant easements, leases, licenses, and concessions through or over the Common Elements;

6.3.9. Levy and collect fees or other charges for the use, rental or operation of the Common Elements or for services provided to Owners;

6.3.10. Pursuant to Section 5312.11 of the Ohio Revised Code, levy the following charges and assessments: interest and charges for the late payment of Assessments; returned check charges; enforcement assessments for violations of the Declaration, the Bylaws, and the Rules and Regulations of the Association; and charges for damage to the Common Elements or other property;

6.3.11. Adopt and amend Rules and Regulations that regulate the collection of delinquent Assessments and the application of payments of delinquent Assessments;

6.3.12. Impose reasonable charges for preparing, recording, or copying the Declaration, Bylaws, amendments to the Declaration and Bylaws, resale certificates, or statements of unpaid Assessments;

6.3.13. Authorize entry into any portion of the Property by designated individuals when conditions exist that involve an imminent risk of damage or harm to the Common Elements, another Dwelling Unit, or to the health and safety of the Occupant(s) of that Unit or another Dwelling Unit;

6.3.14. Subject to division (A)(1) of Section 5312.09 of the Ohio Revised Code and the terms of this Declaration, borrow money and assign the right to common assessments or other future income to a lender as security for a loan to the Association;

6.3.15. Suspend the voting privileges of an Owner who is delinquent in the payment of assessments for more than thirty (30) days;

6.3.16. Purchase insurance and fidelity bonds the Directors consider appropriate or necessary;

6.3.17. Invest excess funds in investments that meet standards for fiduciary investments under Ohio law; and

6.3.18. Exercise power that are:

- (i) Conferred by the Declaration or the Bylaws;
- (ii) Necessary to incorporate the Association as a nonprofit corporation;
- (iii) Permitted to be exercised in this state by a nonprofit corporation;
- (iv) Necessary and proper for the government and operation of the Association.

6.4. Duties. It shall be the duty of the Board to:

6.4.1. Cause to be kept a complete record of all its acts and corporate affairs, including the following:

- (i) Correct and complete books and records of account that specify the receipts and expenditures relating to the Common Elements and other common receipts and Common Expenses;
- (ii) Records showing the collection of Common Expenses from the Owners;
- (iii) Minutes of the meetings of the Association and the Board of Directors;

- (iv) Records of the names and addresses of the Owners.

6.4.2. Annually adopt and amend an estimated budget for revenues and expenditures. Any budget shall include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, unless the reserve requirement is waived annually by the Owners exercising not less than a majority of the voting power of the Association;

6.4.3. Collect Assessments for Common Expenses from Owners in accordance with Section 5312.10 of the Ohio Revised Code.

6.4.4. Maintain all of the following to the extent reasonably available and applicable:

- (i) Property insurance on the Common Elements;
- (ii) Liability insurance pertaining to the Common Elements;
- (iii) Directors and officers liability insurance;
- (iv) (a) Blanket fidelity, crime, or dishonesty insurance coverage for any person who controls or disburses Association funds. As used in this paragraph, "person who controls or disburses Association funds" means any individual with authority or access to sign checks, conduct electronic transfers, or otherwise withdraw funds from any Association account or deposit, including the following: (i) a management company's principals and employees; (ii) a bookkeeper; and (iii) the president, secretary, treasurer, any other board member, or employee of the Association.

6.4.5. All of the following apply to the insurance coverage required under paragraph 6.4.4(iv) above:

(i) Coverage shall be for the maximum amount of funds that will be in the custody of the Association or its designated agent at any time plus three months of operating expenses.

(ii) The insurance shall be the property of and for the sole benefit of the Association and shall protect against theft, embezzlement, misappropriation, or any other unauthorized taking or loss of Association funds.

(iii) The policy shall include in its definition of "employees" the manager and the managing agent of the Association's funds or provide for this inclusion by an endorsement to the policy.

(iv) The policy shall name the Association as the insured party and shall include a provision requiring the issuer of the policy to provide a ten-day written notice to the Association's president or manager in the event of cancellation or substantial modification of the policy. The manager or managing agent, if any, of the Association shall be the designated agent on the policy.

(v) If there is a change in the manager or the managing agent of the Association, then within ten days of the effective start date, the new manager or managing agent shall notify the insurer of such change.

6.5. Voting Rights. Subject to Special Declarant Rights as set forth in Article XIII, Owners shall be entitled to vote on matters properly before them in accordance with this Article, the Bylaws and the laws of the State of Ohio.

6.6. Number of Votes. Each Lot shall have one vote. If only one of several Owners for a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. The Association may adopt rules regarding deadlocks. No votes allocated to any Lots owned by the Association may be cast.

6.7. Proxies. A vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the Owners of a Lot through a duly executed proxy. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall terminate one year after its date, unless it specifies a shorter time. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering the Lot, its presentation to the Board of a copy of the mortgage shall be notice of the proxy designation, and if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of a revocation of a proxy designation shall not affect any vote or act previously taken. Each proxy shall automatically cease upon conveyance of the Lot. Unless expressly reserved and the Association is notified of such reservation, a land contract vendee shall be deemed the proxy of a land contract vendor for purposes of this section.

6.8. Annual Meeting. A meeting of the Members of the Association must be held at least once each year.

6.9. Management Agent. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, certain powers granted to the Board by this Declaration. The Declarant, or an affiliate of the Declarant, may be employed as a managing agent or manager. No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

6.10. Common Elements. Declarant may, from time to time, at Declarant's option, convey to the Association for the use and benefit of the Association and the Owners real or personal property, or any interest therein, as part of the Common Elements. The Association shall accept title to any interest in any real or personal property transferred to it by Declarant. The Association, subject to the rights of the Owners set forth in this Declaration and the Association Documents, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, in accordance with the terms and conditions of this Declaration and applicable law.

6.11. Personal Property and Real Property for Common Use. The Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Declarant.

6.12. Cost-Sharing Agreements. The Association may enter into cost-sharing agreements with other homeowners' associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, landscaping, storm sewer pipes, catch basins, headwalls, manholes, storm water detention/retention facilities, low flow gutters, mounding, fencing and any other improvements that benefit the Property.

6.13. Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the use of the Property, which such rules and regulations shall be consistent with this Declaration and the Association Documents. The Association shall have the power to impose sanctions on Owners for violation of such rules and regulations, including, without limitation: (i) reasonable monetary fines (which shall be considered individual assessments under Section 7.4), (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Common Elements. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Declaration, the Association Documents or the Rules against any Owner, tenant, guest or invitee of any Owner, the amount shall be due and payable by such Owner and shall be considered an individual assessments under Section 7.4 against such Owner's Lot.

6.14. Implied Rights. The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration, and every other right or privilege reasonably implied from the existence of any right or privilege granted in this Declaration, or reasonably necessary to effect any such right or privilege.

6.15. Books and Records. Subject to any limitations provided by the laws of the State, upon reasonable request of any Member, the Association shall be required to make available for inspection all books, records and financial statements of the Association.

6.16. Maintenance of Certain Areas of All Lots. In order to enhance the value of the Property and to provide and maintain the exterior harmony of the Lots located on the Property, the Association shall be solely responsible for the ordinary care and maintenance of the landscaping located within that portion of any Lot lying outside the foundation of any Dwelling Unit located thereon as set forth herein. Such maintenance shall include prudent lawn cutting; mulch; spring clean-up; lawn weed control and lawn fertilization. In order to protect utilities, Owners are prohibited from adding landscaping, mulch beds and other garden/landscaping improvements on their Lots, except as provided in Section 9.2.22 (planter boxes/raised bed gardens) or as approved pursuant to Section 9.2. The Association shall be responsible for snow removal on streets until the street maintenance is assumed by the City of Huber Heights. The Association is not responsible for the maintenance of public walks, sidewalks or parking areas. The Association shall only be responsible for those specific items of maintenance set forth herein and shall not be responsible for any maintenance not specifically enumerated herein. All other maintenance, repair and replacement of the landscaping of each Lot shall be the responsibility of the Owner. Notwithstanding the foregoing or anything contained herein to the contrary, each Owner shall be responsible for the trimming and maintenance of all landscape plants located on his/her Lot not specifically reserved to Association obligation above and shall be required to use the mulch color and texture selected by the Association

unless the Association approves otherwise. Owners are further responsible for edging and activation and winterization of any lawn irrigation system installed in accordance with Association requirements, if any.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT UNDER THE COMMON LAW OF THE STATE OF OHIO, NO OWNER OF REAL PROPERTY IS OBLIGATED TO REMOVE THE NATURAL ACCUMULATIONS OF ICE AND SNOW AND IS NOT LIABLE FOR INJURIES CAUSED AS A RESULT OF THE SNOW OR ICE. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND AGREES ON BEHALF OF THE OWNER, THE OWNERS' HEIRS, SUCCESSORS AND ASSIGNS AND ALL OCCUPANTS, THAT THE ASSOCIATION'S RESPONSIBILITY TO PLOW SNOW, IF ANY, SHALL NOT BE CONSTRUED AS AN ASSUMPTION OF THE OBLIGATION TO REMOVE ALL SNOW AND ICE. THE ASSOCIATION, IN ITS SOLE DISCRETION, SHALL DETERMINE THE NEED FOR SNOW PLOWING FOR AREAS FOR WHICH IT IS RESPONSIBLE. EACH OWNER AND OCCUPANT SHALL REPORT ANY UNNATURAL ACCUMULATIONS OF ICE AND SNOW TO THE ASSOCIATION. THE ASSOCIATION, ITS DIRECTORS, AGENTS, CONTRACTORS AND ASSIGNS, SHALL NOT BE LIABLE FOR ANY INJURY CAUSED AS A RESULT OF SNOW OR ICE, UNLESS IN BREACH OF THE DUTY AS SET FORTH HEREIN.

ARTICLE VII

ASSESSMENTS

7.1. Establishment of Assessments. There are hereby established for the benefit of the Association, its successors and assigns, as a charge on each Lot, certain Assessments for Common Expenses and other expenses as provided herein. Each Owner, by acceptance of a deed, covenants and agrees to pay such Assessments, with the exception of the Declarant, who shall not be responsible for paying any Assessments or Dues to the Association.

7.2. Purpose of the Assessments. The Assessments are established for the benefit and use of the Association and shall be used in covering the costs of its Common Expenses and for other such purposes as hereinafter set forth.

7.3. Annual General Assessment. There is hereby established an Annual General Assessment (the "Annual General Assessment" or "General Assessment") levied against all Lots for the purpose of the Common Expenses of the Association. The Common Expenses shall be for the purpose of, but not limited to, (1) operation, maintenance, repair and replacement as required by this Declaration; (2) the cost of any insurance required by this Declaration; (3) reasonable reserves for contingencies and replacement; (4) administrative, accounting, legal and management fees; and (5) all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration.

7.4. Individual Assessment. Subject to Section 7.5 below, the Association after approval by two-thirds (2/3) vote of all members of the Board shall have the right to assess an individual Lot for any of the following (an "Individual Assessment"):

7.4.1. any costs incurred by the Association in the performance of any maintenance that is the responsibility of the Owner, as more fully provided in Section 8.5.

7.4.2. any charges or fines imposed or levied in accordance with Section 9.3.1.1.

7.4.3. any costs incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, tenants, guests or invitees, including attorney fees, court costs and other expenses incurred.

7.4.4. any costs associated with the enforcement of this Declaration (including restrictions and easements) or any rules and regulations of the Association, including, but not limited to attorney's fees, witness fees and costs, and court costs.

7.4.5. any costs or charges permitted by this Declaration, amendments, or the Bylaws to be charged or assessed as an individual assessment.

7.5. Procedures for Imposing an Individual Assessment for Damages or Enforcement.

7.5.1. Notice. Prior to imposing an Individual Assessment, the Board shall give the Owner written notice containing:

7.5.1.1. A description of the property damaged, the required maintenance or the violation;

7.5.1.2. The amount of the proposed charge or Individual Assessment;

7.5.1.3. A statement that the Owner has a right to a hearing before the Board to contest the Individual Assessment;

7.5.1.4. A statement setting forth the procedures to request a hearing pursuant to this Declaration; and

7.5.1.5. A reasonable date by which the Owner must cure the violation to avoid the Individual Assessment, if such opportunity to cure is applicable

7.5.2. Hearing. An Owner may request a hearing by delivering written notice of such request no later than the tenth day after receiving the notice provided in Section 7.5.1 above. If the Owner fails to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose the Individual Assessment referenced in the notice provided above, or may allow a reasonable time to cure the violation before imposing an Individual Assessment. If an Owner requests a hearing, the Board shall not levy the Individual Assessment before holding a hearing, and will, at least seven days prior to the hearing, provide the Owner with a written notice of the date, time and location of the hearing. Within thirty days following a hearing at which the Board imposes an Individual Assessment, the Board shall deliver a written notice of the Individual Assessment to the Owner.

7.5.3. Manner of Notice. Any notice required under this Section 7.5 to be served:

7.5.3.1. Upon the Owner shall be delivered personally to the Owner and Occupants at the Lot or Dwelling Unit, or mailed (by certified mail, return receipt requested) to the Owner at the address of the Lot, provided that if the Owner has provided the Association with an

alternative address, all such notices shall be mailed (by certified mail, return receipt requested) to the Owner at such alternative address.

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

7.6. Working Capital Fund; Initial Assessment. At the time of closing of a Lot from the Declarant or a Builder, the new Owner of such Lot shall be assessed (a) the sum of \$500 for each Dwelling Unit to be considered as initial capital contribution to the working capital fund of the Association and (b) the sum of \$1,000 to Declarant as a one-time assessment for utility installation. Assessments payable to the Association shall be used by the Association for its operating expenses. Such Assessment is not an advance payment of the Annual General Assessment, and it will not be held in any sort of trust or reserve account. Neither the Declarant nor the Builder shall be obligated to pay such capital contribution or any other assessment levied pursuant to this Declaration.

7.7. Special Assessment. There may be established a Special Assessment for the purpose of repairing or restoring damage or destruction to the Common Elements as further set forth in Article X or for any other lawful purpose as determined by the Association.

7.8. [Reserved.]

7.9. Computation and Payment of Annual General Assessment. The Annual General Assessment shall be computed and levied in accordance with the budget adopted by the Board pursuant to the Bylaws. The initial Annual General Assessment will be \$85 per month per Dwelling Unit. Except as provided below, this General Assessment shall be effective as to each Lot on the first day of the Association's fiscal year. Notwithstanding anything to the contrary contained herein, the Annual General Assessment as to each Lot shall commence on the first day of the month following the earlier of (i) its conveyance to an Owner other than a Builder or Declarant; or (ii) occupation of the Dwelling Unit. The initial Annual General Assessment shall be prorated on a monthly basis to the end of the Association's fiscal year, and shall be collected at closing of the conveyance of the Lot from the Builder. The Builder will be responsible for all utility charges for the Lot up to the date of closing with a residential Owner. So long as there has been no default in payment of the Assessment, it shall be payable in annual installments due on the first day of each fiscal year. The Board shall have the power from time to time to adopt such billing, collection and payment procedures, charges and other payment time schedules, as it deems appropriate. Notwithstanding anything to the contrary contained herein, no Builder shall be responsible for any application fees and costs, review fees or any other fees, costs, assessments or capital contributions to the Declarant or the Association.

7.10. Allocation of Assessments. The Common Expense Liability of each Lot shall be its portion of the Common Expense. The Common Expense Liability and the Annual General Assessment, as well as any Special Assessments, shall be allocated to the Lots on an equal basis.

7.11. Lien for Assessments. The Association has a lien upon the estate or interest in any Lot for the payment of any Assessment or charge levied in accordance with Section 5312.11 of the Revised Code, as well as any related interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees, that are chargeable against the Lot and that remain unpaid ten (10) days after any

portion has become due and payable. All of the following apply to a lien charged against a Lot pursuant to this section:

7.11.1. Certificate of Lien. The lien is effective on the date a certificate of lien is filed for record in the office of the recorder of the county in which the Lot is situated, pursuant to authorization by the Board.

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

7.11.3. Period of Lien. The lien is valid for a period of five (5) years from the date of filing, unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or unless it is discharged by the final judgment or order of a court in an action brought to discharge the lien.

7.11.4. Priority of Lien. The lien is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record of the lien, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association.

7.11.5. Subordination and Mortgage Protection. Notwithstanding any of the provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration (and any late charges, interest, costs and attorney fees) shall be subordinate to, and shall in no way affect the rights of the holder of a first mortgage made in good faith for value received; provided, however, that such subordination shall apply only to Assessments, or installments thereof, which have become due and payable prior to the date of sale of such Lot pursuant to a foreclosure or the date of a deed in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagee or the purchaser of a Lot at such sale from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment. Mortgagees are not required to collect Assessments on behalf of the Association. Failure to pay Assessments shall not constitute a default under any mortgage insured by FHA/VA.

7.11.6. Estoppel Certificate. Upon request of any mortgagee or Owner and upon payment in full of all Assessments and other charges permitted by this Declaration that are due to the Association, the Association shall execute and deliver to such mortgagee or Owner an Estoppel Certificate. Such certificate shall note the payment of the outstanding Assessments and charges and that the Association is estopped from the enforcement of its lien with respect to Assessment and charges becoming due and payable prior to the date of the Certificate. The Association may charge a reasonable fee for the preparation of such certificate.

7.12. Delinquency and Acceleration. Any installment of an Assessment provided for by this Declaration shall become delinquent if not paid on the due date as established by this Declaration or by the Board. With respect to each installment of an Assessment not paid within five (5) days of its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, costs of collection, reasonable attorney fees and interest as reasonably determined by the Association, but not to exceed that permitted by applicable law. Interest shall be calculated from the date of delinquency to the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30)

days of its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment immediately due and payable without further notice or demand to the Owner. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law or this Declaration. The filing of any petition for relief pursuant to the United States Bankruptcy Code by an Owner whose Assessment has been accelerated shall operate as a restoration of the Assessment to its prior status as if it has not been accelerated.

7.13. Remedies Cumulative. A suit to recover money judgment for unpaid Assessments and charges may be maintained without foreclosing or waiving the right to enforce the lien. A foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

7.14. Personal Obligation. The Assessments, including fines, if any, payable by each Owner, together with any penalty, interest, costs and reasonable attorney fees shall be the personal obligation of the Owner of the Lot at the time incurred. The personal obligation shall not pass to any successors in title unless expressly assumed by them.

7.15. Statement of Unpaid Assessments. The Association shall upon written request of the Owner, contract purchaser, or first mortgagee, furnish a statement setting forth the amount of unpaid Assessments against the Lot. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and every Owner. The Association may charge a reasonable amount for this statement.

7.16. No Waiver of Liability for Common Expenses. No Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Assessments are made.

7.17. Declarant Subsidies. It is the intent of the Declarant that the assessments collected pursuant to this Article be sufficient to pay the cost to maintain, repair and replace the Common Elements of the Association. In the event that the capital of the Association is insufficient to cover the cost as set forth in its yearly budget and the Declarant determines in its sole and absolute discretion that it is in the best interests of the Association to subsidize said budget, then any subsidy paid by the Declarant shall be considered a loan to the Association and repaid to the Declarant at such time as the Association has sufficient funds or is turned over to the Owners of the Lots.

ARTICLE VIII

UPKEEP OF THE PROPERTY

8.1. Lots. Except as specifically provided herein, each and every Lot, its Dwelling Unit and any improvement erected thereon shall be maintained by the Owner in a reasonable manner in accordance with the standard generally prevailing throughout the Property and generally in Montgomery County, Ohio for developments of this nature.

8.2. Roof Repairs. If an Owner determines that the roof covering their Dwelling Unit is in need of a repair ("repair") which also affects areas of the roof over the Dwelling Unit on an adjoining Lot, such Owner shall notify the adjoining Owner of the same. If such Owners agree to the roof repair, the cost of such roof repair shall be shared by both Owners in proportion to the repairs done to the portion of the roof that is located on each Lot. If such Owners are unable to agree as to the necessary repairs and/or the

allocation of the cost of such repairs, the Owner requesting the repair shall submit a written request to the Board, which shall then issue a determination as to whether the repair is necessary, along with two firm estimates of the cost of such repair from third party contractors. The Board's determination shall be issued in written form within thirty (30) days of receiving the request and shall state (a) whether such repair is necessary and/or, if applicable, whether such repair affects only one or both Lots; (b) if necessary, which contractor should be awarded the work or whether additional bids are required; and (c) the allocation of the cost of the repair among the Owners. The allocated cost as determined by the Board shall be paid by each Owner to the Board within thirty (30) days of the Board issuing the above determination. If any Owner shall fail to pay its allocated share of the repair cost in a timely manner, such Owner's share of the repair cost shall constitute an Individual Assessment upon the Lot owned by such Owner. Within sixty (60) days of the Board issuing the above determination, the Board shall contract for the repair work in the name of the Association. Notwithstanding the foregoing, if the Board determines that the repair affects only one Lot, the Owner of that Lot may contract for the repair at its sole cost.

8.3. Common Elements. The Association shall maintain the Common Elements. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and other flora, structures, pathways and improvements situated upon the Common Elements and all personal property used in connection with the operation of the Common Elements.

8.4. Maintenance of Lots by Association. To provide and maintain the exterior harmony of the Lots located on the Property, the Association shall maintain the landscaping located within that portion of the Lot in accordance with Section 6.16 herein and an easement to do so is hereby created. The Association also is responsible for removal of ice and snow from driveways as provided in Section 4.7. All other Lot maintenance or repair shall be the sole responsibility of, and at the sole expense of, the Owner of such Lot. Notwithstanding anything contained herein to the contrary, the Association shall have no maintenance and repair obligations with respect to any Lot containing a market or model home of a Builder.

8.5. Association's Easement for Maintenance. The Association is hereby granted an easement over the Lots and the Common Elements for the purpose of providing the maintenance and to perform its duties required by this Declaration.

8.6. Association's Right to Maintain. In the event that an Owner shall fail to provide maintenance as required by this Declaration in a manner satisfactory to the Association, and such Owner has failed to comply for ten (10) days after being so notified of such failure and upon being provided an opportunity to be heard concerning such failure, then the Association shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and repair, maintain and restore the Lot. In the event that such failure poses a health, safety or security risk, then no notice or hearing need be given. The cost of such maintenance and repair shall be assessed against the subject Lot in accordance with Section 7.4.

8.7. Access to Lots. For the purpose solely of performing the maintenance required or authorized herein, the Association through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day. Such notice shall not be required for ordinary exterior maintenance such as yard care.

ARTICLE IX

RESTRICTIONS

9.1. Use and Occupancy. The following restrictions are applicable to all Lots with respect to the use and occupancy thereof and of the Property (as applicable and appropriate).

9.1.1. Compliance with Laws. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner.

9.1.2. Harmful Discharges. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (other than normal residential chimney emissions), no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emission, production, storage or discharge may adversely affect the use or intended use of any portion of the Property or may adversely affect the health, safety or comfort of any person. No waste nor any substance or materials of any kind shall be discharged into any public sewer or the Surface Water Management System serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer, or Surface Water Management System.

9.1.3. Noise. No person shall cause any unreasonably loud noise (except for security devices) anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.

9.1.4. Signs. No signs of any character shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by the Declarant or any Builder while actively marketing the Lots or Dwelling Units for sale; (ii) street and identification signs installed by the Association or the Declarant; (iii) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is on the market; and (iv) political signs in accordance with the rules and regulations established by the Association and in accordance with applicable law. A flagpole for display of the American Flag or other banners shall be permitted, providing they are attached to a building, subject to approval by the Board of the size, placement, color, finish and design. Placement of a flag pole in the front or rear yard of a Lot is prohibited.

9.1.5. No Trade or Business. No trade or business of any kind may be conducted in or from any Lot or Dwelling Unit except that an Owner or Occupant of a Lot or Dwelling Unit may conduct such business activity within the Lot or Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming on to the Lot who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property. The terms "business" and "trade" as used in this provision shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for

which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full-time or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required thereof. The term "trade" or "business" for purposes of this restriction shall not include the construction, operation and maintenance of any model home or homes and sales offices by any Builder during reasonable hours.

9.1.6. Trash. Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Trash containers (except during construction) shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any Lot.

9.1.7. Parking; Vehicle Repairs. Except in connection with construction activities, trucks, trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if in garages. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any portion of the Property. Vehicle repairs and storage of vehicles are permitted on the Property only if in garages. Recreational vehicles and boats may be parked in the driveways for a period not to exceed seventy-two (72) hours for the purpose of cleaning, loading or unloading. It is the intent of this restriction to limit parking in the driveways to personal non-commercial vehicles. However, commercial vehicles may be permitted to park in driveways and on permitted parking areas in the Heathermere Woods Subdivision as long as they contain only two axels and have no more than four wheels. Vehicles with dump beds, or that have more than two axels or four wheels, or excessive rust or damage, are prohibited. For purposes of this Section 9.1.7, the word "truck" shall include and mean every type of motor vehicle other than passenger cars, pick-up trucks which do not exceed 3/4 tons (provided said trucks do not have any type of commercial logo on the exterior; however, specifically excluding municipal lettered vehicles and commercial vehicles that meet the maximum two axle/four wheel requirement as set forth above), and mini-vans which are used as a principal vehicle by an Owner of a Dwelling Unit or his/her family.

9.1.8. Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot. The keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) is permitted. No pets shall be kept or maintained for commercial purposes or for breeding. No external compound cages, kennels or hutches shall be permitted. Any pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board. Pets shall not be permitted on the Common Elements unless accompanied by someone who can control the pet and unless carried or leashed. Any Owner or Occupant who keeps or maintains any pet on any portion of the Property shall be deemed to have indemnified and agreed to hold the Association harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Property. All pets which may leave the Dwelling Unit or Lot must be inoculated as required by law.

9.1.9. Outdoor Fires. No outside burning of wood, leaves, trash, garbage or other refuse shall be permitted on any Lot, except that an outdoor fireplace or temporary or permanent outdoor firepit is permitted.

9.1.10. Clothes Drying. No outdoor clothes drying apparatus may be placed on any Lot.

9.1.11. Outdoor Wood Boilers. Outdoor wood boilers for heating purposes are not permitted on the Property.

9.1.12. Ponds. If ponds exist on the Record Plan (or otherwise), then the ponds shall be available for the use and enjoyment of the Owners, subject to the terms and conditions of this Declaration and rules and regulations of the Association, provided that access to the ponds shall only be permitted through the Common Elements. The use of the Ponds shall be subject to the following restrictions (in addition to other terms and conditions of this Declaration applicable thereto):

(a) No Owner shall use a pond in a manner that unreasonably interferes with (a) the use and enjoyment of such pond by another Owner or (b) the use and enjoyment of any Lot. The ponds shall not be used after dark.

(b) No Owner shall erect any structure, barrier or fence in a pond or unreasonably obstruct the flow of water to or through a pond. The prohibition against structures includes docks, rafts and other similar structures.

(c) No swimming shall be permitted in the ponds.

(d) No boats, rafts or homemade vessels shall be permitted in or on a pond.

(e) No commercial use of any kind may be made of a pond.

(f) No noxious, hazardous or offensive substance or trash or debris shall be discharged or permitted to be discharged in any Pond, stream or drainage swale.

(g) No water shall be withdrawn from a pond by any Owner so as to materially lower the level of the Pond.

(h) Declarant shall have no obligation to maintain, clean or repair the ponds nor any liability for personal injury or property damage arising by Declarants actions or omissions with respect to the ponds. The Ponds shall at all times be maintained by the Association.

(i) The use of the ponds, streams or drainage swales shall be subject to the laws, rules and regulations of all applicable governmental authorities.

9.1.13. Preservation Zones. Preservation Zones are to be retained as natural areas (such as woodlands, wetlands, ravines, flood plains, streams, lakes, ponds and/or steep slopes) that protect both aesthetic appearance and environmental significance and can prove effective buffers between different or same land uses. Preservation Zones are subject to the following restrictions:

(a) A Preservation Zone shall not be disturbed any time before, during or after construction except for necessary access as approved by Declarant.

(b) No permanent or temporary structure, building or fence shall be placed upon or in a Preservation Zone.

(c) Other than the detention basins, utilities and roadways in a Preservation Zone may only be installed consistent with an Environmental Plan and/or Mitigation Plan approved by the City of Huber Heights.

(d) No development, clearing, thinning, construction or work shall be performed in the Preservation Zone except for necessary construction as deemed necessary by Declarant (during the Development Period) or the Association. If a Preservation Zone is disturbed at any time (including but not limited to utility construction and/or easement, building or grading construction) by Declarant or a contractor, subcontractor, Builder, Owner or a representative, such disturbances that occur shall be restored to an approved condition. Diseased trees and/or diseased vegetation may be removed by the Association. Obnoxious weeds and/or brush of less than one inch caliper may be removed by the Association, without destroying the integrity of the Preservation Zone.

(e) No dirt or debris shall be placed within the Preservation Zone during construction.

(f) A utility company servicing and/or installing utilities in the Preservation Zone shall also be subject to these restrictions.

(g) Other than detention basins, drainage shall not be changed in a manner that will damage the Preservation Zone.

(h) By the recording of this Declaration, Declarant is notifying each Owner in the Heathermere Woods Subdivision of these Preservation Zone requirements.

(i) Declarant (during the Development Period) or the Association shall notify all contractors, utility companies and/or cable companies doing work in the Heathermere Woods Subdivision of the Preservation Zone requirements before construction begins.

9.2. Architectural Restrictions. The following architectural restrictions shall be applicable to all Lots, provided however, that (unless otherwise provided by applicable law), such architectural restrictions shall not apply to the Declarant or to its lender and the initial Builder, NVR, Inc. or its affiliates until such Lots are conveyed to an Owner (other than Declarant or NVR, Inc).

9.2.1. Plan Approval. No structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, shrubs or other landscaping shall take place until the requirements of this section have been fully met. Prior to any such activities, the Owner or Builder shall first submit to the Board (which for the terms of this section shall include its designee) in duplicate, plans and drawings, in a one-eighth (1/8) scale or larger, which shall contain, at a minimum:

- (a) front, rear and side elevations;
- (b) floor plans showing major dimensions and openings;
- (c) exterior building material to include color and type of material (vinyl, aluminum, cedar, etc.);
- (d) exterior trim color;

- (e) roofing material and color;
- (f) other materials necessary to illustrate the character of the proposed construction;
- (g) a statement of the estimated completion dates of all construction and improvements; and
- (h) other standards set forth within this Declaration (and any amendments hereto) or as may be published by the Architecture Review Committee.

These requirements also pertain to any alterations and/or additions. The Board shall approve, reject or modify such plans in a writing sent to the Owner or Builder in question not more than thirty (30) days after the plans are submitted to the Declarant. The thirty (30) day period shall commence upon execution of a written notice by the Board acknowledging receipt of plans and specifications and all information required therewith. The Board may review the plans as to the quality of workmanship and design and harmony of external structures with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation, provided, however, that the Board shall not unreasonably withhold approval of any plans that conform in every way with the Declaration and with the general character of the development on neighboring Lots within the Property. If the Board fails to approve, reject, or modify the plans within the thirty (30) day period, the Board's approval shall be deemed to have been given, and no further permission shall be needed before the improvements described in such plans may be constructed or installed. However, in no event shall any improvements be constructed or installed that violate any terms of this Declaration.

9.2.2. Declarant's Control of New Construction. The Declarant shall have exclusive control of new construction within the Property. No provision of this Declaration or the design guidelines, as the same relates to new construction, may be modified without Declarant's consent.

9.2.3. Association's Right of Plan Approval. After Declarant's right of plan approval has expired, the Association shall be responsible for plan approval. The Declarant may assign its right of plan approval or any portion thereof, to the Association. The Association may delegate such right of plan approval to an Architectural Review Committee.

9.2.4. No Liability. Each Owner and Builder is responsible to insure that all construction or any modifications, are in compliance with the design guidelines, this Declaration and applicable law. If the Declarant or the Association have acted in good faith on the basis of such information possessed by them, neither the Declarant, the Board, the Association or any Director shall have any liability for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications.

9.2.5. Dwelling Type. No building shall be erected, altered, placed or be permitted to remain on any Lot other than a Dwelling Unit and a garage for at least one car.

9.2.6. Set Back, Minimum Elevation and Yard Requirements. All Dwelling Units shall be located in accordance with the building set back lines, minimum basement elevation and yard requirements as shown on the Record Plan and as set required by Huber Heights, Ohio and any other applicable authority. The Owner or Builder shall be responsible for compliance with these standards. Declarant shall not be responsible for any failure to comply with these standards.

9.2.7. Front Yards and Driveways. Front yards shall be landscaped as soon after completion of the Dwelling Unit as is practical. All driveways shall be paved with concrete, asphalt, brick or paving stones within one (1) year after construction starts.

9.2.8. Construction Materials. No Dwelling Units shall be constructed of concrete block, cinder block or other similar materials unless the exterior of the Dwelling Unit is covered with brick, stone and / or siding. No underground Dwelling Units shall be permitted.

9.2.9. Exterior Siding. Any wooden sheeting materials must have prior approval by Declarant or the Association, as applicable.

9.2.10. Front Storage. No front porch shall be used for the storage of any items except normal porch furniture. No front yard shall be used for storage of any kind of items. This restriction shall not apply to building materials and/or equipment stored on the Lot during construction of the Dwelling Unit.

9.2.11. Radio and Television Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Dwelling Unit, without the prior written approval as provided in Section 9.2.1, and in accordance with the Guidelines established by the Declarant or the Association. Nothing herein shall be construed so as to be in conflict with current Federal Communications Commission's rules and regulations for antennas and satellite dishes.

9.2.12. Air Conditioning and Heat Pump Equipment. Air-conditioning and heating equipment should be located on the side or the rear of the Lot.

9.2.13. Awnings. No metal or plastic awnings for windows, doors or patios may be erected or used.

9.2.14. Exterior Carpeting. No exterior carpeting shall be permitted if it is visible from the street or any neighboring Lot.

9.2.15. Mailboxes. Cluster mailboxes will be located within the community.

9.2.16. Foundations. All Dwelling Unit foundations shall be poured wall.

9.2.17. Chimneys. All chimneys with metal flues must be enclosed within a chase that may be sided. Any direct vent chimney and / or furnace flues, hot water heater or any other flues shall be vented only to the rear or side of the Dwelling Unit.

9.2.18. Fences. No fence of any sort may be erected on a Lot.

9.2.19. Other Structures. Storage sheds and accessory buildings are not permitted.

9.2.20. Pools and Spas. No above ground or inground pools shall be permitted. Spas may be permitted with prior approval in accordance with Section 9.2 of the Declaration and located in the rear of the Dwelling Unit.

9.2.21. Play Equipment, Lawn Accessories. Stationary or installed play equipment, such as swing sets, jungle gyms, and sandboxes shall be permitted only with prior approval from the Association.

Clotheslines and portable basketball goals shall not be allowed. No bird baths bird houses, frog ponds, lawn sculptures or similar types of accessories and lawn furnishings, sand boxes or other children's play equipment shall be permitted in the front or side yards of any Lot.

9.2.22. Gardens. Small vegetable and fruit gardens shall be permitted in the rear yard but only in planter boxes/raised bed gardens so as to avoid digging into the ground. No agricultural or farming activity for commercial purposes shall be permitted. Additional landscaping may be installed with prior approval in accordance with Section 9.2 of the Declaration.

9.2.23. Completion. Construction of a Dwelling Unit on any Lot shall be completed within one (1) year from the date construction is started.

9.2.24. Lot Maintenance. Except as specifically provided herein, it shall be the responsibility of each Owner of a Lot to prevent the accumulation of litter, trash, packing crates, or any other accumulations which shall create an unkempt condition of the buildings or grounds on a Lot and/or which shall otherwise tend to substantially decrease the beauty of the Property as a whole or the specific area. No loose trash will be permitted to be strewn about the Property at any time. Except during garbage collection hours, garbage containers shall be kept at the side of a Dwelling Unit or out of sight from the street. All personal use items shall be stored inside when not in use. These items include, but are not limited to, yard tools, sprinklers, wheel barrows and children's toys which would create a nuisance for the community. All improvements on the Lot shall be kept within reasonable neighborhood standards as determined by the Declarant or the Association. During construction, each Owner and Builder shall be responsible for keeping the streets and adjacent Lots clean and free of debris. Except as provided herein, the Declarant shall have the right to assess an Owner or Builder for the cost of mowing or clean up in the event that the Owner or Builder fails to do so.

9.2.25. Leasing of Units. No more than 15% of the total Units located on the Property may be rented from the Owner to a third-party tenant at any time. Prior to leasing a Unit to a third-party tenant, Owner must make written request to the Association, which request shall not be unreasonably withheld. Furthermore, at the expiration of the lease with the third-party tenant, Owner shall inform the Association of the termination of the lease. The Association has the right to request a copy of the lease between Owner and the third-party tenant. In no event shall the term of the lease be less than thirty (30) days. Notwithstanding the foregoing, Builder shall have the right to lease the model home unit from Owner during the Development Period.

9.2.26. Solar Panels. The installation of solar panels/solar energy collection devices on any Lot or Dwelling Unit is specifically prohibited.

9.3. Remedies for Breach of Covenants and Restrictions. The violation of any covenant, easement or restriction contained in the Declaration or violation of any rule or regulation duly adopted by the Board shall give the Board the authority to enforce the covenants, restrictions, rules and regulations in accordance with this Section.

9.3.1. Actions. The Board may take any or all of the following actions:

9.3.1.1. levy a fine against the Builder, Owner or Occupant, which shall also be an Individual Assessment under Section 7.4.

9.3.1.2. to enter upon a Lot or portion thereof upon which or, as to which, such violation or breach exists and to summarily abate and remove at the expense of the Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, and the Board, or its agents shall not be thereby deemed guilty in any manner of trespass or wrongful act.

9.3.1.3. to institute appropriate legal proceedings to enjoin, abate or remedy the continuance of any breach.

9.3.1.4. undertake such dispute resolution methods such as mediation and arbitration, except that this provision shall not be construed as any requirement to do so as a condition precedent to legal proceedings.

9.3.2. Notice and Opportunity to be Heard. Prior to any action, the Board shall give the Builder, Owner and/or Occupant reasonable notice of the violation and an opportunity to be heard in accordance with the notice provisions set forth in Article VII and the Bylaws. Such notice and opportunity shall not be required in emergency situations or for repeated or continuing violations.

9.3.3. Individual Actions. Each Owner is empowered to enforce the covenants by appropriate legal proceedings or alternative dispute resolution methods.

ARTICLE X

INSURANCE AND CASUALTY LOSSES

10.1. Casualty Insurance. The Association's Board of Directors, or its duly authorized agent shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Elements and such other property as the Association is obligated to maintain and insure. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

10.2. Liability Insurance. The Board shall also obtain a public liability policy covering the Common Elements, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, employees or agents, or any other person who has a right to occupy a Dwelling Unit. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a One Million (\$1,000,000.00) Dollar limit per occurrence, if reasonably available, and a Three Hundred Thousand (\$300,000.00) Dollar minimum property damage limit.

10.3. Premiums. Premiums for all insurance on the Common Elements shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

10.4. Specifications. All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

10.4.1. All policies shall be written with a company authorized to do business in Ohio which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

10.4.2. All policies on the Common Elements shall be for the benefit of the Association and its Members, and their Mortgagees, as their interests may appear.

10.4.3. Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

10.4.4. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

10.4.5. All property insurance policies shall have an inflation guard endorsement, if reasonably available, and, if the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Montgomery County, Ohio area.

10.5. Additional Specifications. The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

10.5.1. a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees and manager, the Owners and Occupants of Units, and their respective tenants, servants, agents, and guests;

10.5.2. a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

10.5.3. a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of any one or more individual Owners;

10.5.4. a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

10.5.5. a statement that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

10.5.6. a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

10.6. Other Insurance. In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation coverage, if and to the extent required by law, Directors' and officers' liability coverage, if reasonably available, fidelity coverage on Directors, officers, employees, and other Persons handling or responsible for the Association's funds, and flood insurance, if reasonably available. The amount of fidelity coverage shall be determined in the Directors' best business judgment but, if reasonably available, shall meet the criteria set forth in Sections 6.4.4 and 6.4.5. Such coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

10.7. Individual Insurance. Each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk property insurance on the Lot; the Dwelling Unit and structures associated therewith. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. Unless otherwise agreed by the Association and the Owners of all Dwelling Units in a Single Family Structure damaged or destroyed by fire or other casualty, such structure shall be rebuilt and all insurance proceeds available therefor shall be used to restore the structure. In the event that the structure is totally destroyed, and the Association and the other Owners of Dwelling Units in the same Single Family Structure consent thereto, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and ruins and thereafter the Owner shall maintain the Lot in a neat and attractive, landscaped condition consistent with the standard prevailing in the neighborhood. Each Owner shall be required to provide evidence of such insurance upon request of the Association.

10.8. Repairs Due to Negligence, Etc. Except to the extent covered by insurance for which there is a waiver of subrogation in favor of an Owner, each Owner agrees to repair and/or replace at his or her own expense any damage to that Owner's Lot or to any other portions of the Property caused by the negligent or wrongful acts of that Owner or any Occupant or other person claiming under that Owner. The Association may perform those repairs and/or replacements and assess the cost as an Individual Assessment against that Owner and the Owner's Lot.

10.9. Damage and Destruction of Common Elements.

10.9.1. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Elements covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Elements to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

10.9.2. Any damage or destruction to the Common Elements shall be repaired or reconstructed unless the Owners representing at least seventy-five (75%) percent of the total votes of the Association,

shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Elements shall be repaired or reconstructed.

10.9.3. In the event that it should be determined in the manner described above that the damage or destruction to the Common Elements shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Property shall be cleared of all debris and ruins and maintained by the Association, or the Owners, as applicable, in a neat and attractive, landscaped condition consistent with the standards prevailing in the neighborhood.

10.10. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s), as their Interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

10.11. Repair and Reconstruction. If the damage or destruction to the Common Elements for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Owners, levy a special assessment against the Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

10.12. Additional Insurance Provisions. The Declarant or Board, without a vote of the Unit Owners, may amend the provisions of this Article if such amendment is necessary to comply with secondary mortgage market guidelines or is necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other agency which may insure or purchase loans on a Unit.

ARTICLE XI

CONDEMNATION

11.1. Condemnation Proceedings. Whenever all or any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. No Owner, however, shall have the right to participate in the proceedings incident thereto, unless otherwise required by law. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed as follows:

11.1.1. Restoration. If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements, to be extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article X hereof regarding the disbursement of funds in respect to casualty damage or destruction, which is to be repaired, shall apply.

11.1.2. Excess Funds. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XII

DEVELOPMENT RIGHTS

12.1. Completion of Development. The Declarant reserves the rights to take any action reasonably necessary to complete the development without consent of the Owners at any time during the Development Period.

12.2. Easements Reserved. The Declarant reserves for itself, its successors and assigns and any Builder, the following easements:

12.2.1. Easements for drainage and all utilities as shown on the Record Plan.

12.2.2. Easements for ingress, egress, drainage and all utilities over the Common Elements provided that such easements do not unreasonably interfere with any Owner's rights of enjoyment.

12.2.3. An easement over the Common Elements as may be reasonably necessary for the purpose of discharging its obligations or exercising any rights under the Declaration.

12.2.4. An easement for ingress, egress, drainage and all utilities over the Common Elements and the right to convey those easements to others.

12.3. Assignment of Development Rights. The Declarant reserves the right to assign any or all of its Development Rights to any person or entity for the purpose of further development and improvement of the Property.

12.4. Transfer of Development Rights by Foreclosure. Unless otherwise provided in any mortgage securing the Property granted by Declarant, in the case of foreclosure of such mortgage, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, of any portion of the Property held by the Declarant subject to the Development Rights herein reserved (including the Special Declarant Rights), a person acquiring title to such property, but only upon his request, succeeds to all such Development Rights. The judgment or instrument conveying title must provide for the transfer of such rights. Upon foreclosure sale, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, the Declarant ceases to have any of the rights herein reserved. A successor to the Development Rights held by a transferee that acquired

such rights pursuant to this Section, may declare by a recorded instrument the intention to hold such rights solely for transfer to another person. Thereafter, until transferring such Development Rights to any person acquiring title to the Property subject to the Development Rights, or until recording an instrument permitting exercise of such rights, that successor may not exercise any of those rights, and any attempted exercise is void. So long as a successor declarant may not exercise any Development Rights under this section, such declarant is not subject to any liability as a declarant.

ARTICLE XIII

SPECIAL DECLARANT RIGHTS

13.1. Use for Sale Purposes. Declarant reserve for itself, its successors and assigns, and any Builder the right to maintain sales offices and models on the Lots.

13.2. Signs and Marketing. The Declarant reserve the right for itself and any Builder to post signs and displays in the Property to promote sales of Lots, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Owners.

13.3. Control of the Association.

13.3.1. Appointment of Directors and Officers. The Declarant reserve the right to appoint and remove the members of the Board and the Officers of the Association during the Declarant Control Period which period will commence upon the recording of this Declaration and shall terminate no later than the earlier of:

13.3.1.1. The time at which one hundred percent (100%) of the Lots have been conveyed to Owners other than Declarant;

13.3.1.2. such other date as Declarant, in its sole and absolute discretion, determines.

13.3.2. Early Termination of Control. The Declarant may voluntarily surrender the right to appoint and remove Directors and officers before the termination of the period set forth above. In that event, the Declarant may require, for the duration of that period, that specified actions of the Association or the Board, be approved by Declarant before they become effective. Such voluntary termination shall be evidenced by a recorded instrument executed by the Declarant setting forth the termination of right to appoint and the actions which require Declarant's approval.

13.4. Declarant's Personal Property. The Declarant and any Builder reserve the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant and Builder reserve the right to remove, within one (1) year after the sale of the last Lot, from the Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

13.5. Right to Amend Documents. Notwithstanding anything above to the contrary, this Declaration 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; clarifying Declarant's original intent; making any change necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other agency which may insure or purchase loans on a Lot. No such amendment, however, shall materially affect any Owner's interest in the Association or the Common Elements. 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 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 a Declarant to be necessary or proper to effectuate the provisions of this paragraph.

13.6. Declarant's Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Nothing in this Declaration shall be construed to require the Declarant or any transferee to develop any of the property adjacent to or contiguous with the Property.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sales of Lots and/or Dwelling Units shall continue, it shall be expressly permissible for the Declarant and Builders to maintain and carry on upon portions of the Common Elements and public or private streets such facilities and activities as, in the sole option of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots and/or Dwelling Units, including, but not limited to business offices, signs, model units, sales offices, and rental units. The Declarant and Builders authorized by Declarant shall have easements for access to and use of such facilities as well as vehicular access for construction along public streets. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to Lots and/or Dwelling Units owned by the Declarant and any common area or other facilities which may be owned by the Association, as models, sales offices, or rental units.

In addition, notwithstanding any contrary provision of this Declaration, the Bylaws, or any Association rules, the Declarant shall have the right to replat or revise the recorded plats relating to any portion of the Property without the consent of any Owner other than the Owner(s) of the Lots in which the boundaries are altered.

So long as Declarant owns any land within the Property, Declarant may, without the express written consent of any Owner, the Board, the Association or any design review committee, include in any contract or deed hereafter executed covering all or any portion of the Property, any additional covenants or restrictions applicable to such lands, so long as they are consistent with and do not lower the standards set forth in this Declaration and do not violate any covenants or restrictions then in effect and recorded against the Property. Further, the Declarant may make any amendments to the Declaration which are necessary to comply with the guidelines established by, or the requirements of, any governmental authority, title insurer or institutional lender without the express written consent of any Owner, the Association, the Board of Directors, or any design review committee.

So long as the Declarant continues to have rights under this Article, no person or entity shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation

without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the public records.

ARTICLE XIV

DURATION, AMENDMENT AND TERMINATION

14.1. Duration. This Declaration, and its provisions, shall be covenants running with the land and shall bind the property and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by Declarant, the Association, and each Owner, Occupant and their legal representatives, heirs, devisees, successors and assigns and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded. Thereafter this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article.

14.2. Amendment. Except as provided in Sections 12.2 and 13.5, prior to the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument executed by Declarant, approved by the Owners of at least 75% of all Lots.

14.2.1. Except as provided in this Section 14.2, after the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument approved by the Owners of at least seventy-five (75%) percent of all Lots.

14.2.2. All Amendments shall be executed by the Declarant, and any Builder, if required, and shall be executed by the President and Secretary of the Association. Such Amendment shall certify that the proper notices were sent and that the requisite vote was obtained. Amendments need not be signed by the Owners.

14.3. Termination. This Declaration and the regime created thereby may be terminated only in accordance with this Section.

14.3.1. Consent Required. This Declaration may be terminated only upon consent of the Owners of one hundred percent (100%) Percent of the Lots, and if during the Declarant Control Period, by consent the Declarant.

14.3.2. Agreement to Terminate. No termination shall be effective unless an agreement to terminate is filed for record with the land records of the Montgomery County, Ohio Recorder's Office. This agreement shall be executed in the same manner as an amendment. The agreement shall provide for disposition of the Common Elements, disposition of Association funds and other resolutions and provisions necessary to terminate the regime and wind up the affairs of the Association.

ARTICLE XV

PARTY WALLS AND ATTACHED SINGLE-FAMILY STRUCTURES

15.1. Party Walls. Each wall which is built as part of the original construction of Dwelling Units in a Single Family Structure containing more than one (1) Dwelling Unit and placed on the dividing line

between Lots or dwellings shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

15.2. Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

15.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damages by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution for the others under any rule of law regarding liability for negligent or willful acts or omissions. Unless otherwise agreed by the Association and the Owners of all Dwelling Units in a Single Family Structure damaged or destroyed by fire or other casualty, such structure shall be rebuilt and all proceeds of insurance available therefor shall be used to restore the structure.

15.4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

15.5. Right of Entry. For purposes of making inspections and repairs under this Article XV, an Owner, his agents or contractors shall have the right to enter upon the premises of the other Owners of a party wall upon the giving of reasonable notice.

15.6. Easements/Encroachments. In the event that a Single-Family Structure is erected on more than one Lot, each such Lot shall have the benefit of mutual easements across the other Lots upon which said structure is located and through the structure, and each such Lot shall be subject to easements across it and through the structure erected thereon for the benefit of the other Lots upon which said structure is located, for the maintenance, continuation and upkeep of utility wires and lines serving the individual Lots and Dwelling Units located thereon. Without limiting the foregoing, each Single-Family Structure will be subject to the 10' utility easement around its perimeter as provided in Section 4.6. The Owner(s) of each Lot shall maintain, repair and replace all wires and lines serving such Lots and Dwelling Units, and for such purpose may enter upon the other Lots or Dwelling Units, but shall at all times be responsible for repairing and restoring to its former condition any Lot of Dwelling Unit which is damaged or disturbed by reason of the performance of any maintenance, repair or replacement of such wires and lines, or by reason of the exercise of any right of easement, ingress and egress herein provided. The cost of repair and maintenance of wires and lines used jointly for the benefit of two or more Lots shall be shared by the Owners who make use of the same in equal amounts, unless such repair and maintenance is provided by the Association through assessment. If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of Single Family Structure or other building or improvements constituting a part of the Property, any part of the Common Elements shall encroach upon any part of a Dwelling Unit, or any part of a Dwelling Unit shall encroach upon any part of the Common Elements, or any part of a Dwelling Unit shall encroach upon any part of any other Dwelling Unit, or if by reason of the design or construction or rebuilding of the utility systems comprised within the Property any pipes, ducts or conduits serving a Dwelling Unit shall encroach upon any other Dwelling Unit, easements in favor of the Owner or Association, as the case may be, for the existence and maintenance of any such encroachment are hereby established; provided, however, in no event shall a

valid easement for any encroachment be created in favor of an Owner if such encroachment occurred due to such Owner's willful conduct.

15.7. Right to Contribution Runs with Land. The Right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

15.8. Rights Not Subject to Suspension. The rights and easement created in this Article XV, Section 15.1 through 15.7 inclusive shall not be suspended by the Association for any reason.

ARTICLE XVI

MISCELLANEOUS

16.1. No Reverter. No covenant, condition, restriction or reservation of easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

16.2. Notices. Any notice required or permitted to be given to an Owner or resident by the Board pursuant to the provisions of this Declaration shall be deemed given when transmitted pursuant to the notice provisions set forth in the Bylaws to such person's last address as it appears on the records of the Association.

16.3. Construction. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

16.4. Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

16.5. Discrimination. No action shall at any time be taken by the Association or its Board that in any manner would discriminate against any Unit Owner in favor of another.

16.6. Headings. The headings of the Articles and Sections are for conveyance only and shall not affect the meaning or construction of the contents of this Declaration.

16.7. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural and vice versa.

16.8. Conflict. In the event of a conflict between the Restrictions or any one or more of them and the restrictions of any Declaration which may be recorded subsequent to this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

SIGNATURE PAGE(S) TO FOLLOW

IN WITNESS WHEREOF, the SMSD Heathermere LLC has caused this Declaration to be signed this 22 day of April, 2024.

SMSD Heathermere LLC

By: Scott Dorsten
Scott Dorsten, Member

STATE OF OHIO)
COUNTY OF Montgomery) ss:

The foregoing instrument was acknowledged before me, this 22nd day of April, 2024, by Scott Dorsten, Member of SMSD Heathermere LLC, an Ohio limited liability company, on behalf of the company. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to this notarial act.

Melinda S King
Notary Public

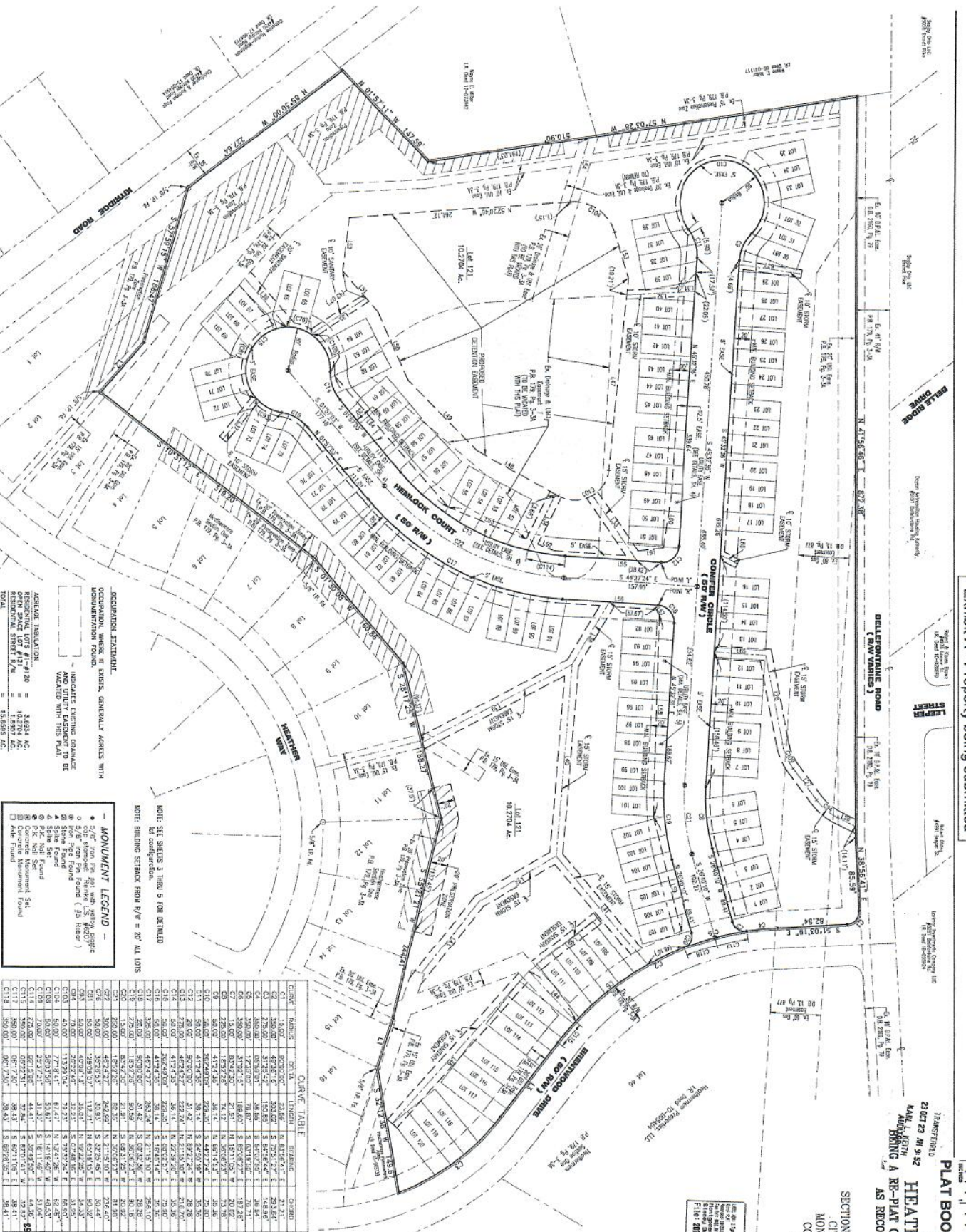
This instrument was prepared by:

Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Dr., Suite 400
Miamisburg, Ohio 45342



MELINDA S KING
Notary Public, State of Ohio
My Commission Expires:
May 26, 2026

Exhibit A - Property being submitted



ACQUISITION STATEMENT
ACQUISITION OF LOT 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

MONUMENT LEGEND -
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NOTICE: SET POINTS 1 THRU 5 FOR DETAIL
BY CONSTRUCTION
NOTE: BUILDING SETBACK FROM R/W = 30' ALL LOTS

ENGINEER: REINKE GROUP
10000 N. 100th Ave., Suite 100
Omaha, NE 68164
(402) 441-4110

PLAT BOOK 242 PAGE:
RECORD PLAN
HEATHERMERE WOODS
22nd 23rd 24th 25th
MAY 1, 2023
AS RECORDED IN P.B. 179, PG. 3-34

LOCATED IN:
SECTION 21 TOWN 2 RANGE 8 M.R.
CITY OF HUBER HEIGHTS
MONTGOMERY COUNTY, OHIO
CONVEYING: 15.6596 AC.
OCTOBER 16, 2023
442 P5A

GRAPHIC SCALE
1" = 100.00 FT.
1" = 100.00 FT.
1" = 100.00 FT.

DATE OF SURVEY: 10/16/23
FILED: 10/16/23
FILED: 10/16/23

REINKE GROUP
10000 N. 100th Ave., Suite 100
Omaha, NE 68164
(402) 441-4110

EXHIBIT B
CODE OF REGULATIONS/BYLAWS
FOR
HEATHERMERE WOODS HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I
GENERAL

SECTION 1. Name and Nature of the Association. The name of the Association shall be Heathermere Woods Homeowners' Association, Inc., and shall be an Ohio nonprofit corporation.

SECTION 2. Membership. Each owner upon acquisition of title to a Lot shall automatically become a member of the Association (a "Member"). Such Membership shall terminate upon the sale or other disposition by such Member of his or her Lot ownership, at which time the new Owner of such Lot shall automatically become a Member of the Association.

SECTION 3. Definitions. The terms used in this Bylaws shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements recorded with the public records of Montgomery County, Ohio (the "Declaration"), unless the context shall prohibit.

ARTICLE II
MEETINGS OF MEMBERS

SECTION 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either in Montgomery County, Ohio or as convenient thereto as possible and practical. As directed by the Board, meetings of the Members may be held by any method of communication, provided that each Member can hear or read in real time and participate and respond to every other Member.

SECTION 2. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no later than thirty (30) days before the close of the Association's fiscal year. Subsequent annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. The annual meeting of the Members shall be held at a date and time as set by the Board.

SECTION 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call special meetings of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or a written petition signed by at least twenty-five (25%) percent of the total votes of the Association. The notice of special meetings shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at special meetings except as stated in the notice.

SECTION 4. Notice of Meetings. It shall be the duty of the Secretary to mail or cause to be delivered to the Owner of record of each Lot a notice of each annual or special meetings of the Association stating the purpose of the special meetings, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall designate such address by written notice to the Secretary. The mailing or delivering of a notice of a meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than sixty (60) days before a meeting.

SECTION 5. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after the holding of such meeting. Attendance of any Member at any meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him or her of such meeting.

SECTION 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place of the adjourned meeting are not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

Those present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken shall be approved by at least a majority of Members required to constitute a quorum.

SECTION 7. Voting Rights. Each Lot shall have one vote. If only one of several Owners for a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts a vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. The Association may adopt rules regarding deadlocks. No votes allocated to a Lot owned by the Association may be cast. Voting at elections and votes on other matters may be conducted by mail.

SECTION 8. Proxies. A vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the Owners of a Lot through a duly executed proxy. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall terminate one year after its date, unless it specifies a shorter time. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering the Lot, its presentation to the Board of a copy of the mortgage shall be notice of the proxy designation, and if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of a revocation of a proxy designation shall not affect any vote or act previously taken. Each proxy shall automatically cease upon conveyance of the Lot.

Exhibit B

Page 2

SECTION 9. Majority of Owners. As used in this Bylaws, the term majority shall mean those votes, Owners, Members or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

SECTION 10. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, those Members present in person or by proxy shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

SECTION 11. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in the minute book all resolutions adopted, as well as a record of all transactions occurring thereat.

SECTION 12. Action Without A Meeting. Any action which may be authorized or taken at a meeting of the members, except the election of Board members, may be authorized or taken without a meeting with the affirmative vote or approval, and in writing or writings signed by not less than a majority of the Members. Any such writing shall be entered into the minute book of the Association.

ARTICLE III BOARD OF DIRECTORS

SECTION 1. Governing Body. Except as otherwise provided by law, the Articles of Incorporation, the Declaration or these Bylaws, all of the authority of the Association shall be exercised by or under the direction of the Board of Directors.

SECTION 2. Number and Qualification of Directors. The initial Board of Directors in the Association shall consist of three (3) persons and shall be those named in the Articles of Incorporation or other such person or persons as may be substituted by the Declarant pursuant to Article XIII, Section 13.3 of the Declaration. Except those appointed by the Declarant, all Directors must be Owners. The spouse of an Owner is qualified to act as a Director if both the Owner and the spouse occupy the Lot. No person and his or her spouse may serve on the Board at the same time.

SECTION 3. Nomination of Directors. Except for Directors selected by the Declarant, nominations for election of the Board of Directors may be made by any Member of the Association. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

SECTION 4. Election of Directors. The Directors shall be elected at each annual meeting of the Members of the Association or at a special meeting called for the purpose of electing Directors. At a meeting of Members of the Association at which Directors are to be elected, only persons nominated as candidates shall be eligible for election as Directors and the candidates receiving the greatest number of votes shall be elected. The Board may adopt rules regarding nominations and procedure for elections. Election to the Board shall be by secret written ballot and at such elections, the Members or their proxies may cast, in respect to each vacancy, such voting power as they are entitled to exercise under the provisions of the Declaration.

SECTION 5. Term of Office; Resignations. Except for those Directors appointed by the Declarant, each Director shall hold office for a term of two (2) years and until his or her successor is elected, or until his or her earlier resignation, removal from office, or death. It is intended by these

Bylaws that the terms of the Directors shall be staggered with two (2) Directors being elected in odd numbered years and one (1) Director being elected in even numbered years. The initial terms of the Directors elected by the Owners shall be adjusted to carry out this intent. Unless otherwise agreed by the Directors at the time of the initial meeting, the Directors with the most votes shall serve for the larger initial terms.

Any Director may resign at any time by oral statement to that effect made at a meeting of the Board of Directors or in writing to that effect delivered to the Secretary of the Association, such resignation to take effect immediately or at such other time as the Director may specify. In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

SECTION 6. Compensation. Members of the Board of Directors shall serve without compensation, except that they may be reimbursed for actual expenses incurred on behalf of the Association.

SECTION 7. Removal of Directors. Except for those appointed by the Declarant, at any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by a majority vote of the Members, and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed shall be given at least ten (10) days' notice of the calling of the meeting and the purposes thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) unexcused absences from Board meetings or who is delinquent in payment of an Assessment for more than twenty (20) days may be removed by a majority vote of the Directors at meeting, a quorum being present. In such case the successor to the Director shall be selected by the remaining Directors and shall serve for the unexpired term of the predecessor.

SECTION 8. Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the Members shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

SECTION 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meetings shall be held during each fiscal year.

SECTION 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

SECTION 11. Notice of Meetings; Waiver. Notice of the time and place of each meeting of the Directors, whether regular or special, shall be given to each Director at least seventy-two (72) hours before the time set for the meeting.

Waiver of notice of meetings of the Directors shall be deemed the equivalent of proper notice. Any Director may, in writing, waive notice of any meeting of the Board, either before or after the holding of such meeting. Such writing shall be entered into the minutes of the meeting. Attendance of

any Director at any meeting without protesting, prior to or at the commencement of at the meeting, the lack of proper notice shall be deemed to be a waiver by him or her of notice of such meeting.

SECTION 12. Quorum of the Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of the Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at such meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted.

SECTION 13. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep the minutes of the meeting and record in the minute book all resolutions adopted, as well as a record of all transaction occurring thereat.

SECTION 14. Method of Meeting. The Board may hold a meeting by any method of communication, including electronic or telephonic communication, provided that each member of the Board can hear or read in real time and participate and respond to every other member of the Board.

SECTION 15. Open Meetings. All meetings of the Board of Directors shall be open to all Members of the Association, but Members other than the Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

SECTION 16. Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, or orders of business of similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

SECTION 17. Action Without A Meeting. Any action which may be authorized or taken at a meeting of the Board of Directors may be authorized or taken without a meeting with the affirmative vote or approval, and in writing or writings signed by all the Directors. Any such writing shall be entered into the minute book of the Association. An explanation of the action taken shall be posted at a prominent place or places within the Property within three (3) days after written consents of all the Board members have been obtained.

SECTION 18. Voting By Directors. A Director who is present at a meeting of the Board or any committee meeting when corporate action is taken shall be deemed to have assented to the action taken unless:

- a) He or she objects at the beginning of the meeting (or promptly upon arrival) to holding it or transacting business at the meeting;
- b) His or her dissent or abstention from the action taken is entered in the minutes of the meeting; or

c) He or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association immediately after adjournment of the meeting. This right of dissent or abstention shall not be available to a Director who votes in favor of the action taken.

ARTICLE IV OFFICERS

SECTION 1. Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among members of the Board of Directors.

SECTION 2. Election; Term of Office; Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

SECTION 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby.

SECTION 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have the primary responsibility for the preparation of the budget and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

SECTION 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V COMMITTEES

SECTION 1. General. Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and operate in accordance with the terms of the resolution of the Board designating such committee or with rules adopted by the Board and to the full extent permitted by law.

SECTION 2. Executive Committee. The Board of Directors may, by resolution adopted or signed by all of the Directors, appoint an Executive Committee to consist of three (3) Directors. The Board may delegate any or all of its duties to such committee. Any resolution or writing appointing such

committee must acknowledge the responsibility of all of the Directors for the operation and administration of the Association.

SECTION 3. Design Review Committee. The Board of Directors may appoint a Design Review Committee which shall be responsible for any plan approval delegated to the Board in accordance with Article IX of the Declaration. In addition, the committee shall develop and promulgate architectural standards and guidelines with respect to those matters that are within the Association's authority to regulate.

ARTICLE VI DETERMINATION AND PAYMENT OF ASSESSMENTS

SECTION 1. Adoption of Budget. It shall be the duty of the Board to prepare and adopt a budget covering the estimated Common Expenses and the various neighborhood expenses of the Association for the coming fiscal year. The budget shall also include a capital contribution or reserve in accordance with a capital budget separately prepared. After adoption of the budget, the Board shall cause the summary of the budget and the Assessments to be levied against each Lot for the following year to be delivered to each Owner. Such summary shall be delivered at least thirty (30) days prior to the start of the fiscal year. The budget and Assessments shall take effect on the first day of the fiscal year.

SECTION 2. Capital Budget and Contribution. The Board shall annually prepare a capital budget, which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 1 of this Article. A copy of the capital budget shall be distributed to each Owner in the same manner as the operating budget.

SECTION 3. Failure to Adopt Budget. The failure or delay of the Board to adopt a budget as provided herein shall not constitute a waiver or release of the obligation of an Owner to pay the Assessments. In such event, the Assessments based upon the budget last adopted shall continue until such time as the Board adopts a new budget.

SECTION 4. Computation of Assessments. The Assessments for Common Expenses for each Lot shall be determined in accordance with the operating budget and the capital contribution budget as they apply to the various Lots. Assessments are not chargeable to Lots owned by the Association or that consist entirely of Common Elements. Unless otherwise determined by the Board, all Assessments shall be charged on an annual basis.

SECTION 5. Payment, Delinquency and Acceleration. Unless otherwise determined by the Board, all Assessments shall be payable annually. Any installment of an Assessment shall become delinquent if not paid on the due date as established by the Board. With respect to each installment of an Assessment not paid within five (5) days after its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, together with interest at the rate as reasonably determined by the Board calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment for the then current fiscal

year, attributable to that Lot, to be immediately due and payable without further demand and may enforce collection of the full Assessment and all charges thereon in any manner authorized by law, the Declaration and these Bylaws.

SECTION 6. Remedies for Default. If an Owner is in default of payment of an Assessment, the Board may authorize collection through any lawful means, including foreclosure of the lien. Interest and all costs of such collection, including but not limited to court costs, lien fees, attorney fees shall be included in the amount due from the Owner and may be collected. The Board may authorize the Association to bid its interest at any foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot.

ARTICLE VII INDEMNIFICATION PROVISIONS

In addition to any other right or remedy to which the persons hereinafter described may be entitled, under the Articles of Incorporation, Bylaws, Declaration, any other agreement, or by vote of the Members or otherwise, the Association shall indemnify any Director or Officer of the Association or former Director or Officer of the Association, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a Director or Officer of the Association, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except as to matters as to which the Director or Officer shall be finally adjudged in this action, suit or proceeding to be liable for willful misconduct or bad faith. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase insurance in the amount it deems appropriate to provide this indemnification, and the cost of this insurance shall be a Common Expense. In the event of a settlement, indemnification shall be provided only in connection with those matters covered by the settlement as to which the Association is advised by counsel that the Director or Officer has not been guilty of willful misconduct or bad faith as a Director or Officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which a Director or Officer may be entitled. All liability, loss, damage, cost and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as Common Expenses. Nothing in this Section shall be deemed to obligate the Association to indemnify any Member, who is or who has been a Director or Officer, with respect to any duties or obligations assumed or liabilities incurred by the Member as a Member rather than as a Director or Officer.

ARTICLE VIII MISCELLANEOUS

SECTION 1. Fiscal Year. The Association may adopt any fiscal year as determined by the Board.

SECTION 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Ohio law, the Articles of Incorporation, the Declaration, or this Bylaws.

SECTION 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Ohio law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Ohio law, the Declaration, the Articles of Incorporation, and this Bylaws (in that order) shall prevail.

SECTION 4. Books and Records.

a. Required Records. The Association shall keep all of the following:

i. Correct and complete books and records of account that specify the receipts and expenditures relating to the Common Elements and other common receipts and expenses;

ii. Records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the Lot Owners;

iii. Minutes of the meetings of the Association and the Board; and

iv. Records of the names and addresses of the Lot Owners and their respective interests.

b. Inspection by Members. The records of the Association, the Board, and any committee shall be made available for inspection and copying by any Member or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at such place within Montgomery County, Ohio, as the Board shall prescribe.

c. Rules for Inspection. The Board shall establish reasonable rules with respect to:

i. notice to be given to the custodian of the records by the Members desiring to make the inspection;

ii. hours and days of the week when such inspection may be made; and

iii. payment of the cost of reproducing copies requested by a Member.

d. Withholding of Books and Records. Unless approved by the Board, an Owner may not examine or copy books, records or minutes that date back more than five (5) years prior to the date of the request or that concern any of the following:

i. information that pertains to Property-related personnel matters;

ii. communications with legal counsel or attorney work product that pertains to pending litigation or other Property-related matters;

iii. information that pertains to contracts or transactions currently under negotiation or information that is contained in a contract or other agreement containing confidentiality requirements and which is subject to those requirements;

iv. information that relates to matters involving enforcement of Association documents or rules and regulations; or

v. disclosure of information in violation of law.

SECTION 5. Notices. Unless otherwise provided in this Bylaws, all notices, demands, bills, statements, or other communications under this Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by telegram, telecopy, or electronic mail transmission or by United States mail, express mail, or courier service, with postage or fees prepaid:

a. if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if not such address has been designated, at the address of the residence of such Owner; or

b. if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by the Board with written notice to the Owners.

In computing the period of time for the giving of a notice required or permitted under the articles, the regulations, or the bylaws of the Association, or a resolution of its Members or Directors, the day on which the notice is given shall be excluded, and the day when the act for which notice is given is to be done shall be included, unless the instrument calling for the notice otherwise provides. If notice is given by personal delivery or transmitted by telegram, telecopy, or electronic mail, the notice shall be deemed to have been given when delivered or transmitted. If notice is sent by United States mail, express mail, or courier service, the notice shall be deemed to have been given when deposited in the mail or with the courier service.

A written notice or report delivered as part of a newsletter or other publication regularly sent to the Members shall constitute a written notice or report if addressed or delivered to the Member's address shown in the Association's current list of members, or, in the case of Members who are residents of the same household and who have the same address in the Association's current list of Members, if addressed or delivered to one of such Members at the address appearing on the Association's current list of Members.

SECTION 6. Amendment. Except as otherwise provided by law or the Declaration, this Bylaws may be amended by a majority of the Members. During such time as the Declarant has the right to appoint Directors of the Association pursuant to Article XIII, Section 13.3 of the Declaration, the Declarant shall have the right to veto any amendment to this Bylaws which unreasonably impact Declarant's ability to sell Lots. Likewise, during such period, the Federal Housing Administration or the Veterans Administration shall have the right to veto any amendment, if either such agency is insuring or guaranteeing the mortgage on any Lot.

SECTION 7. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide, provided, however, after having received

the Board's report at the annual meeting, the Owners, by majority vote, may require the accounts of the Association to be audited as a Common Expense by a public accountant.

Adopted as of the date that the Declaration is recorded in Montgomery County, Ohio Recorder's Office.