

**DECLARATION OF RESTRICTIONS
EASEMENTS, COVENANTS, AND ASSESSMENTS
FOR
HARPERS POINTE – RESIDENTIAL SUBDIVISION**

This is a declaration of restrictions, easements, covenants and assessment liens made this 1st day of August, 2020, by **Harpers Pointe Land Company LLC**, an Ohio Limited Liability Company (hereinafter referred to as “Declarant”).

Background

A. Declarant is the owner in fee simple of certain real estate (the “Property”) more particularly described on the attached “Exhibit A” which is incorporated herein by reference, situated in the City of Powell, County of Delaware, and State of Ohio, and

B. Declarant intends to develop the Property into a residential subdivision and build single-family patio-style homes for sale on the open market as described herein and as depicted in the attached approved Final Development Plan and approved Final Plat, Exhibits B and C respectively. The subdivision is hereafter referred to as Harpers Pointe, which shall contain certain Common Improvements for the benefit of Declarant, as well as for the owners of all of the Lots.

C. Declarant desires to create a plan of restrictions, easements, covenants, and assessments liens concerning the Lots in Harpers Pointe under the administration of a homeowners’ association (the “Harpers Pointe Homeowners’ Association, Inc.”) and to retain in Developer through its designee, Design Committee, a plan for approval of the design and architecture of all dwelling units and other Improvements (defined below) to be constructed on the

Lots in the Harpers Pointe Subdivision, and the restrictions, easements, covenants, assessments and rules shall also relate to overall development for the benefit of and to protect property values and the interest of the Declarant, each Lot Owner, and their respective heirs, successors, and assigns.

D. Declarant states that all of the Property shall be held, developed, encumbered, leased, occupied, improved, used, and conveyed subject to the following restrictions, easements, covenants, assessment liens and rules (the "Deed Restrictions" and/or "Restrictive Covenants"), which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties acquiring any portion of such real estate and having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of any portion of the Property.

This Declaration is hereby declared to inure to the benefit of all future owners of any Lot (as hereinafter defined) and all others claiming under or through them ("Home Owners" or "owners"); the Developer, its successors and assigns; and all utility companies or agencies or instrumentalities of local government providing utility services.

It is hereby declared that irreparable harm will result to the Declarant and other beneficiaries of this Declaration by reason of violation of the provisions hereof or default in the observance thereof, and therefore, Declarant, Developer and lot owners, and their respective successors and assigns, shall be entitled to relief by way of injunction, damages or specific performance to enforce the provisions of this Declaration as well as any other relief available at law or in equity.

APPLICABILITY OF RESTRICTIONS

EASEMENTS, COVENANTS, AND ASSESSMENT LIENS

NOW, THEREFORE, Declarant hereby declares that this Declaration shall apply to the entire Property as described on the attached Exhibit A and all the Lots (as defined below) shall be held, sold, conveyed and occupied subject to the following restrictions, easements, covenants, assessments liens and rules, and the Zoning Text (as the term is defined below), which are for the purpose of protecting the values and desirability of the Property, and which shall run with the title to the land and each part thereof, and shall inure to the benefit of and be enforceable by Declarant, its successors and assign, each Lot or Home Owner in the Subdivision, their respective heirs, successors and assigns, The Harpers Pointe Homeowners' Association, Inc., an Ohio not-for-profit corporation (the "Association), pursuant to Ohio law and Chapter 5312 of the Ohio Revised Code ("O.R.C."), whose members shall be all Lot and Home Owners of the Subdivision. The Association is formed to maintain and administer certain Common Improvements which have

been, or will be, transferred to them by Declarant, its successors and assigns, and administer and enforce the deed restrictions created hereunder.

Article 1.

DEFINITIONS

As used herein, the following terms shall have the following definitions:

Section 1.01 **“Articles” and “Articles of Incorporation”** shall mean the articles of incorporation, filed with the Secretary of State of Ohio, incorporating The Harpers Pointe Homeowners’ Association, Inc. as a not-for-profit corporation pursuant to the provisions of Ohio Revised Code Chapter 1702, as the same may be lawfully amended from time to time (the State of Ohio’s not-for-profit corporation statutory act).

Section 1.02 **“Annual Assessment”**- amount to be paid to the Association by each Owner annually.

Section 1.03 **“Assessments”** - collectively referring to Annual Assessments, Lot Assessments, Special Assessments and Private Utility Services Costs, as further defined herein.

Section 1.04 **“Association”** shall mean The Harpers Pointe Homeowners’ Association, Inc., an Ohio not-for-profit corporation complying with O.R.C. 5312, the Ohio Planned Community Law, created by filing the Articles, and its successors and assigns. The Association shall own, maintain and administer all common improvements, private utility facilities such as water lines, metering equipment, and storm water management systems, private streets, access and security gates, signs, common area landscaping and fencing and tree preservation areas as defined herein.

Section 1.05 **“Board,” “Directors” and “Board of Directors”** mean those persons who, as a group, serve as the Board of Directors of the Association, with its numbers, composition, rights, authority, and responsibilities as provided in the Association Bylaws.

Section 1.06 **“Builder”** shall mean Len Pivar Builder, Inc. d/b/a Arlington Homes, and its successors or assigns.

Section 1.07 **“Bylaws”** means the Bylaws or Code of Regulations of the Association, as may be amended or restated from time to time, the original of which being appended hereto.

Section 1.08 **“Common Property” or “Common Open Space”** shall mean all real property, now or hereafter acquired by Declarant or Association for the common use and enjoyment of all Lot owners, or areas that are to be preserved as natural or for the common benefit of all Lot owners.

Section 1.09 **“Common Improvements”** shall mean those areas owned by the Association, or designated by the Declarant or Developer, which the Association and its respective Lot or Home

Owners are required to construct, maintain and administer, including private streets, landscaped areas,, street islands, entrance features, walls, fences and structures, security gates, gate houses, walking paths, common open spaces and reserves, drainage and storm water detention areas or ponds, easement areas and other improvements owned, maintained, or administered by the Association or which are designated by the Declarant/Developer or government authorities as the responsibility of the Association, or Lot or Home Owners.

Section 1.10 “**Declarant**” and “**Developer**” shall mean Harpers Pointe Land Company LLC, an Ohio Limited Liability Company (“HP Land Co”), and its successors and assigns, as defined herein and under the Bylaws.

Section 1.11 “**Declaration**” shall mean this instrument and all of its provisions and attachments, through which this Property is submitted to the deed restrictions for recordation, and as this instrument may be lawfully amended from time to time.

Section 1.12 “**Design Committee**” shall mean a committee appointed by the Board of Directors consisting of at least three members to perform architectural control, landscaping and design review as outlined within this declaration.

Section 1.13 “**Improvement**” shall mean any change of any kind in any Lot or Common Area and anything located thereon.

Section 1.14 “**Lot**” shall mean a discrete parcel of real property identified upon the recorded Final Plat of the Property, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Developer, excluding the Common Elements and any portion of the Property dedicated for public use. Developer has and reserves the right to split and/or combine currently platted Lots into new platted Lots and to combine Additional Property with currently platted Lots to create a larger Lot, in each case without the consent or approval of Owners of other Lots in the Subdivision, as Developer may deem such split or combination to be beneficial to the Property from time to time. Any and all references herein to a "Lot" shall include any such re-platted or reconfigured Lots. Once a split/combination of currently platted Lots is completed, the former lots shall cease to be "Lots" for any and all purposes hereunder.

Section 1.15 “**Home Owner**” or “**Lot Owner**” shall mean the holder of record title to the fee simple interest in any Lot, and/or constructed single-family dwelling whether or not such title holder actually resides on or in any part of the Subdivision, and his, her or its heirs, successors and assigns.

Section 1.16 “**Property**” A legal description of the land constituting the property making up the entire subdivision and covered by this Declaration and governed by the Association, located in Powell, Ohio, in Delaware County, Ohio, as is attached as Exhibit A.

Section 1.17 “**Restrictions**” shall mean these restrictions, easements, covenants, assessment liens and rules and conditions adopted hereunder, together with all of the provisions contained

herein as they now appear or as they may hereafter be amended.

Section 1.18 “**Rules**” - the rules and regulations governing use of the Property and the Common Property, as may be established by the Board from time to time pursuant to Declaration.

Section 1.19 “**Subdivision**” shall mean Harpers Pointe Subdivision as platted in the City of Powell, Delaware County, Ohio, and such additional areas as may be added in accordance with this Declaration.

Section 1.20 “**Turnover Date**” - the date described in this Declaration.

Section 1.21 “**Zoning Text**” shall mean the approved Zoning Text for Harpers Pointe, (Harpers Pointe Subdivision) as approved with modifications by the Planning and Zoning Commission, City of Powell, Delaware County and Franklin County, Ohio, on June 6, 2017, or as amended in the future by the Declarant and Developer and in effect. See Exhibit D.

Article 2.

ARCHITECTURAL CONTROL

Section 2.01 Architectural Standards.

- (a) Architectural standards and design review procedures as administered and enforced by the Association shall be consistent with the Final Development Plan and Zoning Text, including the text modifications and conditions for approval as adopted by the City of Powell Planning and Zoning Commission, on June 6, 2017 and this Article.
- (b) Design Review: All homes shall be held to a high quality of design and construction. No improvements, change, clearing, staking, grading, construction, addition, excavation, landscaping, planting, tree removal, installation of recreational equipment, patios, pools, spas, decking or other work or action that in any way alters the exterior appearance of the lots or common open space shall be commenced or continued without review and written approval from the Design Committee. The committee shall be appointed by the Board of the Association and shall consist of at least three members. Each lot owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause his/her Lot and any occupant thereof to fully comply with this Article II and rules and standards promulgated by the Design Committee.
- (c) Architectural Design:
 - (i) Four-sided architecture shall be required on all homes; all elevations on a home shall be architecturally consistent.
 - (ii) Front façade: The front elevations will be stucco and stone. Soffit and fascia shall be wood or a composite material. Windows will be trimmed in EIFS or wood.

- (iii) Side façades: Siding materials shall be masonry (stone, stucco, or composite exterior siding) and/or wood. Windows will be trimmed in wood or composite material. Façade colors shall not be of excessively high chroma or intensity.
 - (iv) Rear façades: Rear facades shall be masonry (stone or stucco). Soffit and fascia shall be wood or a composite material. Facia colors shall not be of excessively high chroma or intensity. Rears of units adjacent to existing single-family and commercial properties will be well landscaped to help to provide privacy for both Lot Owner and adjacent property owners.
 - (v) Principal building setbacks from private interior streets are 10', projects into the setback are limited to 5' for stoops, porches, bay/bow windows, and chimneys, and shall be consistent with all applicable zoning and utility easements.
 - (vi) A change in materials must occur in architecturally appropriate locations.
 - (vii) Trim materials:
 - 1) EIFS, wood and composite wood products; and for gutters and downspouts only, aluminum or copper.
 - 2) Windows and doors on the front and sides of the house shall incorporate trim that is architecturally appropriate.
 - (viii) Windows and doors on the front and sides of the house shall incorporate trim that is architecturally appropriate.
 - (ix) Colors shall be earth-tone, or mimic natural materials. High-chroma colors are not permitted, and colors shall be consistent with the color material guidelines herein.
 - (x) Roofs: Major roof elements shall have a minimum 14:12 pitch. Permitted Thunderstorm gray or similar color dimensional shingles, wood or slate (including manufactured slate products).
 - (xi) Chimney Materials: Stone, stucco or EIFS, with fiberglass chimney pots.
 - (xii) Lighting: No post lamps shall be permitted; exterior lighting shall be limited to lighting fixtures attached to home and Common Area street lighting. No changes to existing exterior lighting is permitted without the approval of the Design Committee.
 - (xiii) Front porches shall not be required. However, when included, the style of the porch must support the style of the house. Glass and screens shall be prohibited from front porches.
 - (xiv) Garage Doors shall be a maximum 18 feet wide opening.
- (d) Architectural Style: The intended architectural style and theme of this community is "Cotswold." Appendix 1 Architectural Guidelines is included as part of this Declaration

and was approved under the approved Zoning Text as a guide to illustrate common characteristics of that style. Homes shall be designed based on interpretation from these guidelines, and also to meet the minimum requirements in this section.

(e) Buffering, Landscaping, Open Space and/or Screening Commitments:

- (i) All residential landscaping shall meet the landscape requirements of the City of Powell Zoning Code, unless specified within the development text.
- (ii) Open Space: The subdivision shall contain approximately 2.72 acres of Common Open Space, inclusive of the private roadway. Common Open Space shall be maintained by the Association.
 - 1) Common Open Spaces may incorporate utility easements and facilities including storm water management facilities, such as detention ponds, conveyance swales, or rain gardens.
 - 2) All existing trees in fair or good condition shall be preserved within the common open space, except in locations of necessary common access and utility easements or storm water management facilities. Any area not occupied by trees shall be maintained as lawn, landscaping and entry feature plantings, area for screening purposes, or as natural vegetation.

(f) Lot Landscaping:

- (i) Lot Trees: In the event that the required number of lot trees (as determined by the City of Powell Code) do not fit within the front yard space of a Lot due to space limitations, then those trees shall be relocated either on the rear of the lot or elsewhere in the subarea as indicated on the Final Development Plan.

(ii) Yard Landscaping

- 1) All lots shall incorporate landscaping between any street-facing building elevation and the private street back-of-curb. Courtyard driveways shall be screened from the adjoining lot or from the backside of the adjacent lot as needed and as approved by the Design Committee. This requirement shall be applied with flexibility and used primarily when the space and views to the space are open and or when the views from front doors of adjoining homes would have a direct line of sight to the Courtyard driveway.
- 2) Landscaping shall be ornamental in nature consisting of any combination of shade trees, ornamental trees, shrubs, perennials, annuals, and lawn and designed to enhance the character of the streetscape, and house.

- 3) Plantings shall not obstruct sight visibility, triangles of driveways or street intersections.
- 4) Rears of units that are adjacent to existing single-family homes not a part of the Property and commercial properties will be landscaped to help to provide privacy for both Lot Owners and adjacent property owners. All material shall be sized, installed and maintained to City of Powell Code requirements. Maintenance, other than flower gardens, shall be the responsibility of the Association.

(g) Garages:

- (i) Garages shall adhere to the minimum side yard and rear yard setbacks.
- (ii) Garage elevations shall be detailed consistently with the main building façade.
- (iii) Front load garages shall be setback a minimum of fifteen (15) feet from the access easement line.

(h) Driveways:

- (i) Driveway materials shall be decorative unit pavers.
- (ii) Driveway curb-cuts shall not exceed twenty (20) feet in width.

Section 2.02 **Approval Required.** Architectural design and landscaping, for both initial construction and subsequent alterations, shall be compliant and consistent with the approved Zoning Text and Final Development Plan as amended by the City of Powell, Planning and Zoning Commission on June 6, 2017, and this Article II. No Improvements or change of any kind shall be made without the prior written consent of the Design Committee, including without limitation any of the following:

- (a) building, construction, placement of or addition to or alteration of any structure (whether temporary or permanent);
- (b) changes in color, material finish, or appearance of any Improvement, including siding, roofing, windows, trim and painting;
- (c) excavation, alteration of grade;
- (d) landscaping, tree, or shrubbery removal or plantings; or landscaping plan (landscape plans will be reviewed by the Design Committee for a fee of \$250.00 per submittal).
- (e) construction, placement of or addition to or alteration of any:
 - (i) fencing, walls, screening;
 - (ii) walkways, driveways, parking area;
 - (iii) patio, deck, porch;
 - (iv) spas or hot tubs;

- (v) recreational equipment, athletic facilities or structures;
- (vi) flag pole, exterior lighting, ornamentation, or sign; or
- (vii) any other change which in any way alters the exterior appearance of the Lot from its theretofore natural or improved state, including a change, alteration or other modification of any of the foregoing previously approved hereunder shall be commenced or permitted to remain on any Lot or Common Area unless such improvement or change has the prior written approval of the Design Committee. No excavation shall be made, no tree removal or clearing, no construction shall begin, and no materials shall be stored on the Lot, until the receipt of written approval from the Design Committee.

Section 2.03 **Method to Request Approval**. All approvals shall be requested by submission to the Design Committee under its procedures of plans and specifications in duplicate, showing the following:

- (a) The arrangement of the interior portions of the home visible from the street, and exterior of the residential structure, including:
 - (i) Color and texture of building materials;
 - (ii) Type and character of all exterior windows, doors and lighting fixtures;
 - (iii) Type and character of chimneys;
 - (iv) Location of the structure and orientation of the structure to the topography;
 - (v) Any deviation from Master Grading Plan (defined below);
 - (vi) All buildings and other Improvements including walkways, access drives and parking areas, and other improved areas, and the locations thereof on the site, existing or proposed;
 - (vii) All landscaping, including existing and proposed tree locations and planting areas (and specie thereof), and exterior ornamentation (a detailed landscape plan meeting the requirements of the Zoning Text and these Restrictions must be submitted and the Design Committee will review the plan for a \$250.00 fee per submittal);
 - (viii) Building elevations, including projections and wing walls;
 - (ix) Exterior lighting plans;
 - (x) Plans and specifications for all outdoor changes, additions or removals, whether on a seasonal or permanent basis, including, but not limited to the addition of any equipment or structures;
 - (xi) Plans and specifications for walls, fencing, and screening;

- (xii) Plans and specifications for patios, decks, and porches, or any other exterior changes or improvements; and
- (xiii) Such additional information, data, specifications and drawings as may be reasonably requested by the Developer or Design Committee.

Specifications provided shall describe the types of construction and exterior materials and finishes to be used, including, without limitation, the colors and manufacturers thereof, and shall otherwise be prepared according to standards established from time to time by the Developer.

Section 2.04 **Basis and Timing of Approval.** Approval shall be based, among other things, upon conformity and harmony of the proposed plans and specifications with the design, theme and quality of the Subdivision, other structures in the Subdivision and neighboring property as to external design, appearance and type of construction, materials, colors, setting, height, grade, finished grade elevation, and landscaping and tree removal; and conformity of the plans and specifications to the purpose and general intent of this Declaration and, as applicable, the Design Guidelines and final Zoning Text, as modified and approved by the City of Powell Planning and Zoning Commission on June 6, 2017. Approval by Design Committee does not guarantee or constitute approval by the City of Powell, or allow the commencement of construction, which is separate submission and legal requirement under City of Powell building and zoning ordinances. Approval shall be within the sole discretion of the Developer or the Design Committee. The Design Committee (exclusive of any vote by a Committee Member who is also the applicant) shall endeavor to approve, disapprove or request additional information on all applications within sixty (60) days of receipt of a complete written submission, or within any reasonable period thereafter. If the Design Committee fails to approve, disapprove or request additional information within a reasonable time period of no less than sixty (60) days, the applicant may deliver a written demand for action to the Chairperson of the Design Committee, and if the Design Committee fails to approve or disapprove of the application within sixty (60) days of receipt of the written demand, approval shall be deemed granted. Nevertheless, no such “deemed approval” shall limit the right of any other Lot Owner that may exist under this Declaration, or otherwise, with respect to the proposed alteration.

Section 2.05 **Building Actions.** If Design Committee disapproves the plans and specifications, the Home Owner may revise and resubmit the plans and specifications until approval is received. The actions of the Design Committee’s approval or disapproval of plans and other information submitted pursuant hereto shall be conclusive and binding.

Section 2.06 **No Liability.** Neither the Declarant, Developer, the Design Committee, nor any agent or employee, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, nonfeasance

or misfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom or any other effect on other Lots and Home Owners in the Subdivision or elsewhere. Every person and entity who submits plans to the Design Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Declarant, Developer and Design Committee to recover any damages or to require the Declarant, Developer or Design Committee to take, or refrain from taking, any action whatsoever in regard to such plans or in regard to any building or structure. Each Owner shall be responsible for ensuring that any Improvements constructed on their Lot comply with any zoning ordinances and any easements, covenants and conditions of record.

Section 2.07 **No Reliance.** No Lot or Home Owner may rely upon the submission and/or approval of any such plans or the buildings or structures described therein, or upon the Declarant, Developer or Design Committee, to meet applicable building and zoning codes, other health and safety codes and requirements, maintain the quality of a design or construction plan, or other governmental requirements for their respective homes, or the Subdivision.

Section 2.08 **Requirement of Completion; Notice of Completion, Non-completion or Non-compliance.** A Home Owner shall cause any Improvement to be diligently pursued to completion within twelve (12) months after the date construction is commenced. Any Improvement which has been partially or totally destroyed by fire or otherwise shall be repaired or removed within three (3) months after the time of such destruction. Notice of non-compliance or non-completion will be considered to be delivered when it is posted on or about the Improvements in question or delivered by certified mail or in person to the Home Owner.

Section 2.09 **Variances.** To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Design Committee shall have the authority to grant reasonable variances from the provisions of Article II, from the architectural standards established pursuant to this Article, provided that the activity or condition is not prohibited by the Zoning Text, and applicable law; and provided further, that in its judgment, the variance is in the best interest of the community and is within the spirit of the standards of the Design Committee and Zoning Text. No variance granted pursuant to this section shall constitute a waiver of any provision of this Declaration or Article II as applied to any other person or any other part of the Property.

Article 3.

GENERAL USES AND RESTRICTIONS

Section 3.01 **Development & Use Restrictions.** The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Developer and every Lot Owner, Home Owner or occupant, their respective heirs, successors and

assigns, as well as their family members, guests, and invitees, for the benefit of the property values in the community.

- (a) Use of Lots. Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a residence. No Improvements may be constructed on any Lot until and unless the plans therefore have been approved by the Design Committee as provided herein. All improvements shall be constructed in accordance with the approved Zoning Text and the Powell City ordinances, where applicable.
- (b) Use of Common Property. Any Common Property may be used only in accordance with the purposes for which it is intended and for any reasonable purposes incidental to the residential use of a Lot. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the owners and occupants, and shall comply with the provisions of this Declaration, the ordinances of the City of Powell, the laws of Ohio, and the Rules as adopted by the Developer and/or Board.

Section 3.02 **Business Use Barred.** No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on the Property, without the prior written approval of the Board and only as permitted under the City of Powell Code. This provision shall not prohibit (i) a "home office" use, in connection with which no non-resident employees are working on the Property, and no customers, employees, subcontractors or other third parties park on the Property, or (ii) during the construction and initial sales period, the use of Lots, including dwellings and other Improvements constructed thereon, and Common Elements for construction and sales purposes, including the construction and operation of sales models and/or trailers by Developer and/or by builders as approved by Developer, in its sole discretion.

Section 3.03 **Maintenance of Lots and Improvements.** The Lots, including any land which has been altered from its natural state existing at the time of this Declaration, shall be landscaped according to plans approved in writing by the Design Committee. All shrubs, trees, grass, gardens, and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material, with the Board to maintain all such Landscaping other than personal flower garden areas. Landscaping approved by the Design Committee shall be installed no later than one-hundred twenty (120) days following occupancy of, or completion of, any building/Improvement, whichever occurs first. Vegetable or other produce gardens are not permitted. All Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Design Committee and Board.

Section 3.04 **Home Site Placement.** Locations of homes on Lots shall be consistent with the requirements of the Zoning Text, Master Grading Plan and approved final engineering, the approved Final Development Plan and plans and specifications approved by Design Committee.

Section 3.05 **Garage.** No dwelling may be constructed on any Lot unless a garage for at least two automobiles is also constructed thereon in accordance with these Deed Restrictions and the approved Zoning Text.

Section 3.06 **Service, Screening, Storage Areas.** All garbage, trash and other waste shall be placed in containers which shall be concealed and contained within buildings or garage. Unless specifically approved by the Design Committee, no materials, supplies or equipment shall be stored on the Lot except inside a closed building. Trash containers shall be taken out for collection no earlier than 3:00 PM on the day prior to collection, and no empty trash containers shall be allowed to remain visible for more than twelve (12) hours following the trash pick-up.

Section 3.07 **Drives, Curbs, and Walks.** Drives, curbs, parking areas and walks shall be constructed, altered and maintained only in accordance with plans and specifications submitted to and approved in writing by the Design Committee and the approved Zoning Text and Final Development Plan.

Section 3.08 **Storage Tanks.** No storage tanks, including, but not limited to, those used for storage of water, gasoline, oil, other liquid or any gas, shall be permitted on a Lot outside of a building except as approved in writing by the Design Committee.

Section 3.09 **Building Exterior.** All windows, porches, balconies and the exterior of buildings shall at all times be maintained in a neat and orderly manner. Draperies and other window treatment and other interior decorations visible from outside shall be harmonious with the outside of each building. No clothing or any other household fabrics shall be hung in the open on any Lot and no clotheslines or other outside drying or airing facilities shall be permitted.

Section 3.10 **Pools and Hot Tubs.** No swimming pools shall be permitted. No hot tub or spa may be placed or maintained on any Lot without proper screening and without prior written approval of the Design Committee.

Section 3.11 **Playground Equipment/Tennis Courts.** No playground equipment or basketball or tennis or similar court shall be placed or maintained on any Lot without the prior written approval of the Design Committee.

Section 3.12 **Mailboxes.** Mailbox design specifications shall be specified by the Design Committee. All mailboxes shall be located within a community gatehouse, and not on individual Lots.

Section 3.13 **Hobbies.** Hobbies or activities that tend to distract from the aesthetic character of the Lot, and Improvements used in connection with such hobbies or activities, shall not be permitted unless carried out or conducted within a building and not visible from either the street or adjoining property. This section includes but is not limited to, such activities as automotive and boat repair, and sports activities.

Section 3.14 **Temporary Residences.** No structure of a temporary character, nor trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all-terrain vehicle (ATV), camper or camping trailer, basement, tent, or shack shall be used as a residence on any Lot either temporarily or permanently.

Section 3.15 **Mineral Exploration.** The Lot shall not be used in any manner to explore for, use, or commercially exploit any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other substance located in or under the ground. No wells may be located on the Lot and no water may be removed from any pond, lake, or other body of water located on, adjacent to, or near the Lot, unless otherwise approved by Developer and Design Committee.

Section 3.16 **Machinery and Equipment.** No commercial machinery or equipment of any kind shall be placed, operated or maintained upon the Lot except such machinery or equipment reasonably necessary for use in connection with maintenance or construction of Improvements as approved by the Developer or Design Committee or in enclosed barns.

Section 3.17 **Signs.** No signs of any kind shall be displayed on any Lot, except one temporary sign of not more than two feet by two feet (2' x 2') advertising the property for sale or rent, used by the builder or Developer to advertise the property during the construction sales period, signs the restriction of which is prohibited by law, or signs approved under the zoning text. For sale signs installed by Lot or Home Owners, other than the initial builder or Developer, shall be uniform in design consistent with specifications established by Design Committee.

Section 3.18 **Antennas and Satellite Dishes.** No television or radio antennas or satellite dishes may be installed on the exterior of any house or Lot, except dishes that do not exceed one meter in diameter and television antennas are permitted if they are located, if possible, in a place not visible from the street, are of a color that blends with the background, and are screened by landscaping or other means so that it is difficult to see them from other Lots. Such location and appearance must be approved by Design Committee; provided, however, that the location must be such that it does not interfere with reception. No towers of any kind, including but not limited to, television, radio and/or microwave towers, shall be erected, placed, or maintained anywhere in the Subdivision.

Section 3.19 **Solar Panels.** Except with the prior, written approval of Design Committee, no solar panels, attached or detached, shall be permitted on any Lot.

Section 3.20 **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighboring property, including but not limited to, failure to maintain healthful and sanitary conditions, and recurring vehicle repair in public view. Nuisance may include, by way of example, barking dogs, amplified sound systems, a visual blight, loud, noxious, odorous, destructive or offensive activity or anything which causes significant embarrassment, disturbance or annoyance

to others. Some activity in inappropriate times may constitute a Nuisance. Because a Nuisance is largely subjective, the Board has complete discretion as to what action is appropriate in the event of a Nuisance. The Association has the authority to elaborate with examples and to pass rules addressing additional activities that may constitute a Nuisance. These provisions shall not be construed so as to prohibit Declarant or Builder's construction activities consistent with reasonable or customary residential construction practices.

Section 3.21 **Temporary Improvements.** No temporary building or structures shall be permitted on any Lot; provided, however, trailers, temporary buildings, barricades and the like shall be permitted during construction of initial Improvements on a Lot, provided the design, appearance, and location has the prior written approval of the Developer. Such Improvements shall be removed not later than fourteen (14) days after the date of completion of the Improvements for which the temporary structure was used, and shall be permitted to remain for no longer than one (1) year, unless a greater period is approved in writing by the Developer. Notwithstanding the foregoing, temporary structures such as tents, for the purpose of events, such as graduation or wedding parties, may be erected for a period not exceeding 7 days.

Section 3.22 **Animals.** No animals, birds, insects, reptiles, or livestock of any kind shall be raised, bred, or kept on any Lot, except dogs, cats, or other common household pets of no more than three in number which are kept for domestic purposes only, and are not kept, bred or maintained for any commercial purpose. Notwithstanding, no reptiles more than 12" in length permitted. The Board may determine, in its sole discretion, what other animals may constitute "household pets" for purposes of this Section. No animal shall be kept or live outside on a regular or continuous basis, provided that: (a) maintenance shall be subject to any rules and regulations as the Board may promulgate at any time, including, without limitation, the right to place limitations on the size, number, and type of such pets and the right to levy enforcement charges against Persons who do not clean up after their pets and (b) the right of an Occupant or Home Owner to maintain an animal in a Home shall be subject to termination if the Board, in its sole discretion, determines that maintenance of the particular animal constitutes a nuisance or creates a detrimental effect on the Home, other Homes, or other Home Owners or Occupants. Proper Lot maintenance as required elsewhere herein shall include the obligation to regularly remove pet waste from an Owner's Lot. Outdoor dog houses, animal cages, dog runs and other similar objects, whether or not affixed to the ground, are prohibited without the express prior review and approval of the Design Committee, which may be withheld in the Design Committee's sole discretion. Any animal defined as "vicious" or "dangerous" pursuant to the provisions of Ohio Revised Code Chapter 955, as the same may be amended from time to time, is specifically prohibited.

Section 3.23 **Vehicle Parking and Storage.** The Board shall be entitled to create and enforce reasonable rules concerning the parking of any vehicle permitted on the Property in addition to its authority to levy Individual Lot Assessments as penalties for the violation of such rules, the Board

shall be authorized to cause the removal of any vehicle violating such rules, including on Lots, and less such vehicles are located in permitted, enclosed structures shielded from view.

No automobiles, trailers, boats, buses, campers, recreational vehicles, boat trailers, commercial vehicles, inoperative or unlicensed vehicles, or other motor driven vehicles shall be parked or stored on any Lot unless it is in a garage, except that; such vehicles, if operable, may be parked outside the garage for an occasional, nonrecurring, temporary parking not to exceed 72 hours in a period of thirty (30) days; and automobiles in good condition and driven regularly by a person residing on the Lot may be parked outside the garage on a regular basis. On street parking shall be allowed for guests and invitees in areas designated by signage or on the Final Development Plat, not to exceed 72 hours. Parking on any landscaped area is not permitted, nor shall there be any repairs or restorations of any motor vehicle except wholly within a garage, unless approved by the Board. Nothing contained herein shall prohibit the reasonable use of commercial vehicles and equipment as may be necessary during the construction of residences on the Lots.

Section 3.24 **Lot Split.** No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, so as to create a new building lot.

Section 3.25 **Renting & Leasing.** It is the intent of this section to protect, enhance and maintain the residential atmosphere which exists Subdivision and to avoid occupancy of Homes for short periods of time or by an unreasonable number of individuals. No “timeshare” or transient use arrangements are permitted, whether by rental, lease or sale. (This includes uses related to companies such as AirBnB or VRBO.) No Home, Lot, or part thereof, unless the same is owned by the Association, shall be rented or used for transient or hotel purposes, including, without limitation, uses such as: (a) rental under which Occupants are provided customary hotel serves such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (b) rental to roomers or boarders, namely, rental to one or more persons of only a portion of a Home or Lot. No lease may be of less than an entire Home or Lot.

Any lease agreement shall be in writing and include a term of no less than 90 consecutive days, and shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the rules and regulations promulgated by the Board, and shall provide that the failure by the tenant to comply with the terms of this Declaration, all rules and regulations promulgates by the Board, and all other lawful rules and regulations shall be a default under the lease. Prior to the commencement of the term of a lease, the Home Owner shall notify the Board, in writing, of the names of all Occupants as well as the lease duration.

The Board may restrict or limit the number of Homes in the Subdivision that may be rented out, provided that no such rule shall limit or restrict the right of: (a) an institutional first mortgagee, insurer, or guarantor which takes title to a Home by deed in lieu of foreclosure, a purchaser at a foreclosure sale, the immediate successor in title to the Home of an institutional first mortgagee,

insurer, guarantor, or purchaser, to rent the Home so acquired; or (b) Developer to rent a Home or Homes owned by Developer.

Any Home Owner who is renting out that Home Owner's Home when the Board decides to limit or restrict renting may continue to rent out that Home for the remainder of the term of the current lease, up to one year beyond the Board's decision. However, if the Board's restriction or limitation on renting is for purpose (a) below, then the Board need not grandfather any Homes under its restriction. Any restriction or limitation on the right to rent out Homes shall not discriminate against any Home Owner over any other. The Board's right to restrict or limit the ability to rent out Homes shall be limited to the purpose of either: (a) assuring that the Development meets the requirements of institutional first mortgagees and institutional and governmental agency guarantors and mortgage insurers necessary to qualify buyers and owners for owner-occupant residential financing; or (b) to maintain the character of the Subdivision as primarily being a housing community for owner-occupants.

Article 4.

EASEMENTS AND LICENSES

Section 4.01 **Easement of Access and Enjoyment Over Common Property.** Every owner shall have a right and easement (in common with all other owners) of enjoyment in, over, and upon the Common Property other than the storm retention pond, and a right of access to and from his/her Lot over and on the private streets as shown on the Final Plat, which rights shall be appurtenant to, and shall pass with the title to, his/her Lot, subject to the terms and limitations set forth in this Declaration, Final Plat and subject to the Rules. An owner may delegate his/her rights of access and enjoyment to family members, occupants, guests and invitees. All such easements are limited by such restrictions as may apply to the Common Property affected thereby, and no person shall have the right by virtue of such easements to engage in activities on the Common Property which are not permitted according to this Declaration, pursuant to the provisions of any applicable plat or under agreements with or laws adopted by any governmental entities or other third parties.

Section 4.02 **Right of Entry for Repair.** The duly authorized agents, officers, contractors, and employees of the Developer and/or Association shall have a right of entry and access to the Property, including without limitation the Lots, for the purpose of performing the Association's rights or obligations set forth in this Declaration. The Developer and/or Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Property, but only during reasonable hours and after providing seventy-two (72) hours advance notice to the Owner, except in cases of emergency.

Section 4.03 **Easement for Utilities and Other Purposes.** The Association or Developer may convey easements over the Common Property to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, meter pits, swales, land contours, ducts, cables, and other equipment or conditions necessary to furnish electrical, gas,

sanitary or storm sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Property and to any entity for such other purposes as the Board or Developer deems appropriate; provided that such equipment or condition(s), or the exercise of such easement rights shall not unreasonably interfere with the Owners' use and enjoyment of the Property. The Association or Developer may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board or Developer deems appropriate; provided that the grant of such easements imposes no undue, unreasonable, or material burden or cost upon the Property; and further provided that the Association or Developer may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably delayed or withheld).

Location of easements for the installation of utilities and for surface drainage are reserved as shown on the final approved engineering plans and the recorded plat of the Subdivision or other instruments of record within the Delaware County Recorder's Offices. No lines, wires or other devices for communication purposes, including telephone, television, data and radio signals, or for transmission of electrical current or energy, shall be constructed, placed, or maintained anywhere in or upon the Subdivision unless they are placed and maintained underground or concealed in, under or on buildings or other Improvements; provided that above-ground electrical transformers and other equipment may be permitted if properly screened with the prior written approval of the Developer and Design Committee. All gas, water, sewer, oil and other pipes for gas or liquid transmission shall be placed underground or within or under buildings or other Improvements. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone service incident to the construction of Improvements. Developer shall have the absolute right within (i) areas designated as drainage courses on the recorded plat of the Subdivision, (ii) all areas encumbered by general utility or specific storm drainage easements, and (iii) areas determined by sound engineering practice to be necessary to the proper drainage of all or part of the Subdivision, to enter upon Lots and perform grading and other construction activities deemed appropriate in the exercise of Developer's judgment to install, modify, alter, remove or otherwise work on storm water drainage facilities and conditions (including both surface grading and subsurface structures). If any such entry and/or work performed by Developer results in damage to other portions of a Lot, or to any Improvements thereon, Developer shall be responsible for the restoration of such portions or Improvements at Developer's sole cost.

Section 4.04 **Easement for Services.** A non-exclusive easement is hereby granted to all police, fire-fighters, ambulance operators, mail carriers, delivery persons, garbage removal personnel, and all similar persons, and to the local governmental authorities, Developer and the Association (but not to the public in general) to enter upon the Common Property to perform their duties.

Section 4.05 **Use of Other Easements.** In addition to the utility easements herein designated, easements in the private streets are hereby reserved and granted to the Developer, and any utility

company or governmental unit engaged in supplying one or more utility services to the Subdivision to install, lay, erect, construct, renew, operate, repair, replace, maintain or remove all and every type of gas, water, sanitary or storm sewer or other utility facilities.

Section 4.06 **Drainage and Grading.** No drainage ditches, cuts, swales, streams, impoundments, ponds, or lakes; no mounds, knobs, dams or hills, and no other physical Improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be destroyed, altered or modified without the prior written approval of the Developer. No Improvements to a Lot shall be made in any manner whatsoever that are inconsistent with the master grading plans ("Master Grading Plan") established by the Developer for the Lots, as the plans now exist or may hereafter be modified from time to time, without the prior written approval of the Developer. All Lot and Home Owners shall obtain certification from a licensed engineer after completing any Improvement that the Master Grading Plan has been observed. Whenever the possibility exists for the silt run-off, because of construction of Improvements on a Lot, or for some other reason, the Home Owner of the Lot shall be obligated to provide a means of siltation control to prevent such run off. Roof drains, foundation drains, and other clean water connections to the sanitary sewer system are prohibited.

Section 4.07 **Water Access.** No Home Owner, or any other person, shall have access to, or the right to use, any pond, stream or other body of water through, in or adjacent to the Subdivision for boating, fishing, swimming, or ice skating.

Section 4.08 **Open Space.** The retention pond as identified on the Final Plat ("Pond") shall be a common open space, owned and maintained by the Association for the purpose of passive open space/storm water detention and any other uses allowed by the final plat or the then current zoning. However, access to the Pond shall be limited to the Home Owners of Lots contiguous to (having direct access to) the Pond. No other person or Home Owner shall have rights to access the Pond other than agents of the Developer or Association responsible for maintenance of same.

Section 4.09 **Entrance, Features, Gates, Gate Houses, Fencing, Subdivision Identification Signs, Earth Mounds and Landscaping.** The walls, gates, gate houses, fencing, subdivision identification signs, earth mounds, electrical facilities, irrigation systems and landscaping placed on any of the Lots, streets, or Common Property in the Subdivision by Developer shall not be removed or changed except by the Developer who shall have the right to enter the Lots to do so. They shall be maintained in good condition by the Association, or, if not, by the Home Owners of Lots on which such features are located.

Section 4.10 **Private Streets.** All of the streets in the Subdivision are identified in on the Final Plat as private streets having a posted speed limit of 15 m.p.h. The responsibility for maintenance, erection of appropriate street signage, repair, plowing and replacement of those streets at least to current standards shall be that of, and equally allocated to, all Lot and Home Owners in the Subdivision. The maintenance and repair of the street, and the costs collected for such purposes,

shall be administered through the Association. In the event that the streets are to be dedicated for public road purposes in the future, the Lot or Home Owners and the Association shall grant other required easements therefore.

All of the streets shall be maintained in a clean, safe, and aesthetically attractive condition at all times so that at a minimum the condition would comply with the standards imposed by the City and/or County in which each is located. The Association shall have an easement over each Lot for the purpose of maintaining, repairing and replacing the streets and all of the Common Improvements. The Association shall use such easement rights in a manner designed to minimize interference with the Lot and Home Owner's use and enjoyment of his/her Lot. Parking in areas designated for on-street parking located on the Final Development Plan is for the use of guests and visitors of the Home Owners and shall be considered temporary parking only, and is not to exceed 72 hours in a period of thirty (30) days. No street parking in areas other than those specifically designated for parking shall be permitted.

Section 4.11 **Ingress and Egress.** Each Lot Home Owner and his or her invitees shall have a permanent appurtenance, non-exclusive easement over the private streets in the Subdivision as identified on the Final Plat.

Section 4.12 **Maintenance of Common Improvements.** In addition to maintenance and repair of the streets, the Association shall be responsible for maintaining the other Common Improvements, including Common Open Spaces subsequently added to the Subdivision, all common landscaped areas, water meters and water lines, storm water facilities and equipment and otherwise any irrigation system on the common spaces and areas, fences, entrance walls, gate houses, security gates and other Common Improvements designated by the Developer or government authorities or assumed by the Association. The Association shall have an easement over each Lot for the purpose of maintaining and repairing the Common Improvements and Lot landscaping. The Association will be responsible for contracting snow removal on shared roadways. The Association shall use such easement rights in a manner designed to minimize interference with the Lot or Home Owner's use and enjoyment of his/her Lot.

Section 4.13 **Governmental Regulations Statement.** Each building site is subject to all present and future, applicable laws, ordinances, rules, regulations and orders of the United States Government, the State of Ohio, Delaware County, City of Powell and any other political subdivision and any administrative agency of any of the foregoing, including, but not limited to the Zoning Text, Final Development Plan and Final Plat. Nothing herein shall be construed as permitting any action or condition prohibited by such applicable laws, ordinances, rules, regulations and orders. In the event of any conflict between any such applicable laws, ordinances, rules, regulations and orders and this Declaration, the most restrictive provision shall govern and control.

Section 4.14 **Power of Attorney.** Each Lot Owner, by acceptance of a deed to a Lot appoints the Association (or its designated representative) as that Lot Owner's attorney-in-fact, to execute, deliver, acknowledge, and record, for an in the name of such Lot Owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board (or its authorized representative) to further establish or effectuate the foregoing easement and rights. This power is for the benefit of every Lot Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

Article 5.

ASSESSMENTS

Section 5.01 **Operating Fund.** The Board may establish an Operating Fund for financing the operation of the Association and for assessments and charges to the Home Owners, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Improvements and Property.

Section 5.02 **Types of Assessments.** Each Home Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the following assessments: (i) Annual Assessments; (ii) Special Assessments; (iii) Lot Assessments; and (iv) Private Utility Services costs administered by the Association. No Home Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Property or by abandoning his/her Lot. Annual and Special Assessments shall be fixed at a uniform rate for all Lots, except that certain Lots located contiguous to (having direct access to) the Pond shall be assessed an extra Annual Assessment, as determined by, and in the sole discretion of, the Board, for purposes of maintenance of the Pond. Initially, such Lots shall be assessed an extra Annual Assessment of \$240.00.

Section 5.03 **Annual Assessments.** The Board shall estimate the Common Expenses and the expenses it expects the Association to incur for the maintenance, operation and management of the Association, (which may include amounts, if any, for a Reserve Fund -- as may be determined by the Board) and shall assess each Home owner of a Lot an Annual Assessment, payable in equal monthly installments, equal to such estimated expenses divided by the total number of Lots. The Annual Assessments shall be paid in accordance with the procedures set forth in rules established by the Board. Notwithstanding the foregoing, prior to the Turnover Date, Declarant or Developer may elect to pay the Annual Assessments applicable to Lots owned by Declarant or Developer or in lieu thereof, not pay such Annual Assessments and pay any deficit incurred in operating the Association. There shall be an initial assessment from each lot or Home Owner at the date of purchase from Developer of approximately \$300.00 per month or such greater amount as shall be determined by the Association, for each month of anticipated construction. Assessments for private utilities, water and storm water service calculated on a per unit basis shall be billed separately, collected and administered by the Association on a monthly or other interval as

determined by the Board. Declarant or Developer may elect to pay assessments on any Lot owned by Declarant or Developer within the Subdivision or pay any deficit in the operating budget of the Association and have such payment treated as a loan to the Association ("Declarant or Developer Loan"). The rate of interest and term of the Declarant or Developer Loan shall be set forth on the note evidencing the indebtedness of the Association.

Section 5.04 **Special Assessments.** The Board may levy against any Lot(s) a Special Assessment to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Operating Fund; provided that any such assessment enacted beyond the Turnover Date shall have the assent of two-thirds (2/3) of Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. A quorum must be present at any such meeting.

Section 5.05 **Lot Assessments.** The Board may levy a Lot Assessment against any Lot(s) and the Home Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Home Owner; costs of enforcement (including court costs and the Association's legal fees, if applicable) relative to any violation of the Deed Restrictions or Covenants which exists on such Lot(s); costs of additional insurance premiums specifically allocable to a Home Owner; costs of any utility expenses chargeable to a Home Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. Upon its determination to levy a Lot Assessment, the Board shall give the affected Home Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, ten (10) days prior to the effective date of the levy of any Lot Assessment. The Board may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Home Owner, who violates the Rules, the Association Documents or any provision of this Declaration, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules, the Association Documents, or provisions of this Declaration.

Section 5.06 **Private Utility Assessments.** Each lot and/or home purchaser by acceptance of a deed to a lot and/or home agrees to pay for utility services separately metered or separately charged by a utility company or the Association to that home, including, but not limited to, public sewer, electricity, gas, telephone and cable television/internet service, and to reimburse the Association for that Home Owner's share of any utility cost that the Board, or its designee, reasonably determines is attributable to use by that Home Owner. All other utility costs shall be shared common expenses and paid by the Association based on assessments collected. In addition, water service to the Property will be supplied as a private utility service and administered by the

Association through a master meter system with each home being sub-metered for such service and its costs. Each Home Owner by acceptance of a deed to a lot and/or home agrees to pay monthly for water services separately metered or separately charged by the Association or its designee to that home, and to reimburse the Association for that Home Owner's share of any water services costs on a monthly basis that the Association board, or its designee, reasonably determines is attributable to use by that Home Owner. Such costs shall include any required maintenance of the master meter, sub-meters, water lines or related equipment attributable to each home. Separate charges for reasonable ongoing storm water management and maintenance of storm water facilities costs may also be established by the Board and with proportionate costs attributed to each Home Owner in the subdivision.

Section 5.07 **Remedies.**

- (a) **Interest; Late Charge.** If any Assessment remains unpaid for 10 days after all or any part thereof shall become due and payable, the Board may charge interest at rate up to the lesser of 12% per annum or the highest rate permitted by law, and the Board, or the Manager, if applicable, may collect an administrative collection charge of \$35.00, or such other amount set by the Board.
- (b) **Liability for Unpaid Assessments.** Each Assessment, utility payment due or installment of an Assessment, together with interest thereon and any costs of collection, including interest, late fees and reasonable attorneys' fees, shall become the personal obligation of the Home Owner(s) beginning on the date the Assessment, utility or installment thereof becomes due and payable. The Board may authorize the Association to institute an action at law on behalf of the Association against the Home Owner(s) personally obligated to pay any delinquent assessment. A Home Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment or utility payment becomes due and payable and both such Home Owner and his/her successor in title shall be jointly and severally liable therefore. Except as otherwise provided herein, the transfer of an interest in a Lot shall neither impair the Association's lien against that Lot for any delinquent Assessment or payment nor prohibit the Association from foreclosing that lien.
- (c) **Termination of Utility Services.** Notwithstanding any other remedy provided herein, Association shall take all reasonable and lawful steps, including the service of non-payment and termination notices, to Home Owners who are delinquent in the payment for applicable private utility services to their respective Lot. Subject to applicable law, Association may terminate applicable utility service to any such Lot so long as Association gives not less than seven (7) days written notice to the Home Owner prior to terminating such services. Home Owner shall be responsible for all unpaid charges and fees, including all disconnection/reconnection charges, late payment charges and other related fees.

- (d) Liens. All unpaid Assessments or utility charges due, together with any interest and charges thereon and costs of collection, including without limitation, reasonable attorney fees, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment or utility charge remains unpaid for 10 days after it is due, then the Board may authorize any officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment or utility charge, together with interest, charges and costs of collection as aforementioned, with the appropriate governmental office containing a description of the Lot which the lien encumbers, the name(s) of the Home Owner(s) of that Lot, the amount of the unpaid portion of the Assessment or utility charge, and such other information as the laws of the State may require. The certificate may be signed by any officer, authorized agent or Manager of the Association. Upon the filing of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. To the extent permitted by law, the Assessment or utility charge lien shall remain valid, until and unless the lien is released or satisfied in the same manner provided by the law of the State for the release and satisfaction of mortgages on real property, or unless the lien is discharged by the final judgment or order of any court having jurisdiction. In any action at law or in equity, including a foreclosure action, to enforce such lien the amount of unpaid Assessments or utility charges plus charges, interests, costs and reasonable attorney fees of such action shall be recoverable, to the extent permitted by law. Notwithstanding the foregoing, the lien for Assessments or utility charges provided for in this section shall be subordinate to the lien of any bona fide first mortgage on a Lot.
- (e) Vote on Association Matters; Use of Common Property. If any Assessment or utility charge remains unpaid for 30 days after it becomes due, then the delinquent Home owner's voting rights upon Association matters and privileges to use the Common Property, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment or utility charge is paid.

Article 6.

MEMBERSHIP AND VOTING RIGHTS

Section 6.01 **Membership.** Every Lot Owner shall be deemed to have a membership in the Association, and by acceptance of a deed to property in the Subdivision such Owner agrees to and acknowledges being a member of the Association having an obligation to pay assessments and utility charges as described herein. Membership is a right appurtenant to and inseparable from an Owner's fee simple title in a Lot, and such right of membership shall automatically transfer to any transferee of fee simple title to a Lot at the time such title is conveyed or at such time as a land installment contract is entered for the conveyance of fee simple title. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation,

and the giving of a security interest or mortgage shall not terminate an Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event an Owner consists of more than one person, such persons collectively shall have one membership in the Association in common.

Section 6.02 **Governance.** The Association shall be governed by a Board of Trustees, consisting of three (3) persons. Prior to the date that the Developer elects to transfer control of the Association to the Lot Owners (the "Turnover Date"), the members of the Board shall be appointed by the Developer, or the Developer may elect to act as the Board, or it may appoint a managing agent to act as the Board on its behalf. No members, other than the Developer, shall have voting rights in Association matters until the Turnover Date. The transfer of control on the Turnover Date shall take place at a meeting which shall occur within six months of the end of the year in which the Developer ceases to own at least one Lot at the Subdivision. Voting and all other matters regarding the governance and operation of the Association prior to the Turnover Date shall be as set forth herein, and following the Turnover Date shall be as set forth herein and in the Bylaws.

Article 7.

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 7.01 **Common Property.** Developer may, from time to time, at Developer's option, obligate the Association to maintain property not owned by the Association, and may convey to the Association for the use and benefit of the Association and the Members, real or personal property, or any interest therein, as part of the Common Property in the nature of an easement appurtenant to the Property. The Association shall accept title to any interest in any real or personal property transferred to it by Developer. 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 Property, if any, and all improvements thereon, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, in accordance with the terms and conditions of this Declaration. The Developer and Association shall each have the right to grant easements to third parties over, across, under and/or through the Common Property, including but not limited to easements for the construction, extension and/or expansion of utilities, and conservation easements, all as the Developer and/or Association may be legally obligated or voluntarily disposed to grant. Regardless of whether Developer expressly conveys or assigns entry feature maintenance responsibilities to the Association, and irrespective of whether the final development plan and/or final plat discloses the reservation of one or more easements over the entry(ies) to the Subdivision, the Association shall have the continuing right to maintain, modify and/or improve any and all entry features constructed by the Developer, and for such purpose all relevant easements that may be deemed necessary at any time for the Association's performance of work on or around the entry features are hereby deemed granted to the Association.

Section 7.02 **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 Developer.

Section 7.03 **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 water retention facilities, mounding, fencing and any other improvements that benefit the Property.

Section 7.04 **Rules and Regulations.** The Association may make and enforce reasonable rules and regulations governing the use of the Property, which shall be consistent with this Declaration and the Association Documents. The Association shall have the power to impose sanctions on Owners for violations of the Restrictive Covenants, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Common Property. 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 a Lot Assessment against such Owner's Lot.

Section 7.05 **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by the laws of the State, its Bylaws 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.

Section 7.06 **Managing Agent.** The Board may retain and employ on behalf of the Association a Manager, which may be the Developer, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The term of any management agreement shall not exceed three years and shall allow for termination by either party, without cause, and without penalty, upon no more than 90 days' prior written notice. Part of the Manager's compensation may include any miscellaneous fees payable in the event of transfers or other transactions involving the Lots.

Section 7.07 **Insurance.**

- (a) The Association may obtain and maintain property insurance, liability insurance and/or flood insurance covering all or any portion(s) of the Common Property as deemed advisable by the Board, in amounts as is commonly required by prudent insured mortgage investors, but not less than \$1,000,000.00, and subject to a \$1,000.00 deductible per occurrence, as applicable. The cost of any such insurance shall be included as a Common Expense for Association budgeting purposes.

- (b) The Association may, in the Board's discretion, obtain and maintain the following additional insurance: (a) fidelity bond coverage and workers' compensation insurance for all officers, directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers' and trustees' liability insurance, (d) additional insurance against such other hazards and casualties as is required by law, and (e) any other insurance the Association deems necessary.
- (c) In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Association may levy a Special Assessment pursuant to Article V to cover the additional costs.
- (d) Home Owner's Fire and Extended Coverage Insurance. The Home Owners shall bear the risk of loss of, and shall obtain and continuously maintain (and shall be responsible for providing the Association with evidence of currently effective) fire and extended coverage insurance with respect to, their respective Home and appurtenant lot improvements. Such insurance shall cover all portions of the Home, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "Special Form" (formerly known as "all risk") endorsement, where such is available in the locale of the Development. Unless the Board determines that any of the following is not available at reasonable rates, this insurance shall also:
 - (i) provide for coverage for all improvements, alterations, fixtures and equipment located within Home and on and appurtenant to the exterior of Home and lot, and any other items of personal property for which coverage is required by The Mortgage Corporation, Federal National Mortgage Association, Department of Housing and Urban Development, Veterans' Administration, or any similar holder, insurer or guarantor of first mortgage loans upon lots and homes;
 - (ii) provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, or against any designee of the foregoing, and that any assessment under such policy made against others may not become a lien on a Home and its appurtenant interests superior to a first mortgage. The carrier's charter, by-laws or policy may not make loss payments contingent upon action by the carrier's board of directors, policyholders or members, nor may the policy include any limiting clause (other than

insurance conditions) which could prevent any Home Owner or holder, insurer, or guarantor of a first mortgage on a home, from collecting insurance proceeds.

- (iii) be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a current rating of Class A/VIII, or better, as determined by the then latest edition of *Best's Insurance Reports*, or its successor guide, or comparable rating by a nationally recognized rating agency, or such higher rating as may, from time to time, be required by The Mortgage Corporation, Federal National Mortgage Association, Department of Housing and Urban Development, Veterans' Administrator, or any similar holder, insurer or guarantor of first mortgage loans upon Homes in the Development; or, if the insurer does not satisfy these rating requirements, that insurer is reinsured by a company that has an A/VIII or comparable rating, or better rating;
- (iv) provide that its coverage is primary, and include the Association as a loss payee (as trustee for the use and benefit of the individual Home Owners and their mortgage holders) or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Home Owners and their mortgage holders as their interests may appear.
- (v) contain or have attached the standard mortgagee clause commonly accepted by institutional mortgage investors in the area in which the Development is located, naming the holder, insurer, guarantor or servicer (or their respective successors or assigns) of first mortgages on Homes, which must provide that the insurance carrier shall notify the Association and all holders of first mortgages named at least ten (10) days in advance of the effective date of any reduction in, cancellation or lapse of, or substantial change in the policy, and which standard mortgagee clause must further be endorsed to include the Association as a loss payee (as trustee for the use and benefit of the individual Home Owners and their mortgage holders) or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Home Owners and their mortgage holders as their interests may appear;
- (vi) contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Home Owners, and the rights of the various parties to collect pursuant to such insurance shall not be prejudiced by the acts or failure to act of any Home Owner, Director or Officer of the Association, or any person under the control of the Association; and

- (vii) contain such other endorsements and meet such other requirements as are standard for similar projects in the area, including, without limitation and where available without excessive cost, inflation guard endorsement, building ordinance and law endorsement, and boiler and machinery endorsement where applicable, and such other endorsement, and boiler and machinery endorsement where applicable, and such other endorsements as are from time to time, required by The Mortgage Corporation, Federal National Mortgage Association, Department of Housing and Urban Development, Veterans' Administration, or any similar holder, insurer or guarantor of first mortgage loans upon Homes in the Development.

The cost of this insurance shall be paid by the respective Home Owners. In the event that the Owners of a Home fail to obtain such insurance, or fail to provide the Association with evidence of such continuing insurance prior to the expirations of any previous policy on their Home, the Association may, but shall not be obligated to, obtain such insurance charge the costs thereof (plus \$100.00 as an administrative fee) against the individual Home and the Owners of such Home as a Special Individual Home Assessment.

- (e) Home Owners' Insurance. Any Home Owner or Occupant may carry such insurance in addition to that required by or provided by the Association pursuant hereto as that Home Owner or Occupant may determine, subject to the provisions hereof, and provided that no Home Owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried by the Association. In the event any Home Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Home Owner who acquired, or whose Occupant acquired, such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Directors, and all other Home Owners or Occupants.
- (f) Insurance Representative: Power of Attorney. Under any insurance policy obtained by the Association, the Association may name an authorized representative as the insured, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy and to perform such other functions as are necessary to accomplish this purpose. Each Lot Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds of insurance; the negotiation of losses and

execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or the designated representative, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for Lot/Home Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of the Association, the Subdivision, each Lot Owner/Home Owner, and their respective first mortgage holders, runs with the land and is coupled with an interest.

- (g) Condemnation. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property, or any portion thereof. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Owners.
- (h) Books, Records. Upon reasonable request of any Member, or as otherwise provided in the Bylaws, the Association shall be required to make available for inspection all books, records and financial statements of the Association. A reasonable fee may be charged to cover the costs of handling, copying and/or delivering such books and records to a Member who requests the same.

Article 8.

ENFORCEMENT AND MAINTENANCE

Section 8.01 **Enforcement**. Except as hereinafter provided, Declarant or Developer, the governmental units in which the Subdivision is located, each Lot or Home Owner, the Association, where applicable, jointly and severally, shall have the right to enforce, by proceedings at law or, in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration, provided, the Association shall have the right to assess reasonable charges against a Home Owner who fails to comply with the Declaration, including the right to assess charges for the costs of enforcement and arbitration, including, without limitation, attorneys' fees and costs; and provided, further, that neither the Association nor its Directors, officers, or other representatives, shall be liable to any Home Owner or Occupant, or their invitees, for damage to any Home or any part thereof, or any personal property of such Home Owner, Occupant, or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or intentional tortious act of the Association, Director, officer or other representative.

Notwithstanding the foregoing, in the event of any dispute between Lot or Home Owners or between the Association and any Lot or Home Owner or Home Owners not including the Declarant or Developer, as to any matter provided for herein, other than with regard to the obligation for levy, collection or enforcement, or assessments (including, without limitation the

generality of the foregoing, the creation, filing and enforcement of liens), the matter shall be submitted to a single independent arbitrator selected by the Association, as the case may be, who shall decide the dispute in accordance with and pursuant to the arbitration laws of Ohio and the arbitrator's decision shall be final and enforceable as provided above.

Section 8.02 **Joint and Several Obligation.** Each and every obligation with respect to a Lot hereunder shall be the joint and several personal obligation of each Home Owner of a fee simple interest in the Lot at the time the obligation arose or thereafter until paid, and any demand or notice hereunder or pursuant hereto to one of such joint Home Owners shall be deemed given, taken or received by all such joint Home Owners.

Section 8.03 **Maintenance by Association.** The Association shall maintain and keep in good repair the Common Property and all landscaping on individual Lots other than areas of owner flower planting. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures, and Improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property, and the lawn and landscaping as originally installed on all other Lots.

Section 8.04 **Maintenance by Owner.** Each Owner or occupant shall repair, replace, and maintain in good order and safe and sanitary condition, at his/her expense, his/her Lot, and all portions of, Improvements to, structures on, and, equipment and components used in connection with, his/her Lot other than the lawn and landscaping that the Association as agreed to maintain. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at his/her own expense all maintenance, repairs and replacements within such Lot that, if omitted, would adversely affect the value, safety and usefulness of the Common Property or other homes in the community. Each Owner shall maintain those portions of his/her Lot that are adjacent to any portion of the Common Property in accordance with the Rules and the requirements set forth in this Declaration.

In the event (a) a Home Owner shall fail to repair or perform maintenance as required of that Home Owner, (b) the need for maintenance or repair of any part of any Home or part of any of exterior improvements is caused by the negligent or intentional act of any Home Owner or Occupant, (c) the need for maintenance or repair results from the failure of any Home Owner or his, her, or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same. If the cost of any such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, its cost, plus any other fees and penalties assessed pursuant to the rules and regulations of the Board in connection therewith, shall constitute a special individual assessment on the home owned by that Home Owner and on that Home Owner. The determination that a particular maintenance or repair is necessary or has been caused in the prescribed manner, shall be made by the Board in its sole discretion.

Section 7.05 **Right of Association to Repair Lot.** If any Owner fails to maintain his/her Lot in the manner required herein, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Property by Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of this Declaration, then the Board may authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred.

Section 7.06 **Damage to Common Property By Owner or Occupant.** If the Common Property is damaged by any Owner or occupant, his/her family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

Article 8.

MISCELLANEOUS

Section 8.01 **Term.** This Declaration shall bind and run with the land for a term of thirty (30) years from and after the date that this Declaration is filed for recording with the appropriate governmental office and thereafter shall automatically renew forever for successive periods of 10 years each, unless earlier terminated by a majority of the Members.

Section 8.02 **Amendments.** Until the Turnover Date, Developer or Declarant may, in its sole and absolute discretion, unilaterally amend this Declaration or the Bylaws at any time and from time to time, without the consent of any other Owners. Any such amendment may modify the provisions hereof, and/or impose covenants, conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, Developer may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) necessary to conform to the requirements of United States Federal Housing Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing. After the Turnover Date, this Declaration may be amended in whole or in part with the approval of the Members entitled to exercise not less than 2/3 of the voting power of all Members in the Association. Unless amended by the Developer, any such amendment shall contain a certificate by the Secretary of the Association that the Members signing the amendment possess and constitute not less than the 2/3 voting power of all Members in the Association. No amendment may remove, revoke, or modify any right or privilege of Developer without the written

consent of Developer or the assignee of such right or privilege. At any time, Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. An amendment to this Declaration to subject additional property to this Declaration shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Developer, to reflect and address the different character or intended development of any such additional property. Any amendment, including an amendment by the Developer, shall become effective upon recordation thereof in the appropriate public record office.

Section 8.03 Developer's Rights to Complete Development. Subject to any Agreement with the Declarant, the Developer shall have the right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter Improvements on any property owned by Developer; (c) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Developer or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Developer or its assignee shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of Developer or require Developer or its assignee to obtain approval to: (i) excavate, cut, fill or grade any property owned by Developer, or (ii) construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (iii) require Developer to seek or obtain the approval of the Association or the Design Committee for any such activity or Improvement on any Common Property or any property owned by Developer. Nothing in this section shall limit or impair the reserved rights of Developer as elsewhere provided in this Declaration.

Section 8.04 Declarant's and Developer's Rights to Replat Developer's Property. Declarant and Developer reserve the right, at any time and from time to time, to amend, alter or replat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Declarant or Developer and Owners consenting to such amendment, alteration or replatting shall be the subject of any such amendment, alteration or replatting. Each Owner and Member and the Association whose Lot is not altered by such amendment, alteration or replatting, for themselves and their successors and

assigns, hereby consents to and approves any such amendment, alteration or replatting and shall be deemed to have joined in the same.

Section 8.05 **Mortgagee Rights**. A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

- (a) Any proposed amendment of this Declaration;
- (b) Any proposed termination of the Association; and
- (c) Any default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in 60 days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

Section 8.06 **TIF Disclosure**. The Property and its lot owners are subject to a tax increment financing agreement (the "TIF Agreement") between the City of Powell and the Developer that was passed as City of Powell Ordinance 2019-60. The TIF Agreement provides for the payment of annual service payments in lieu of certain property taxes ("Service Payments") by the current and future owners of the Property and Lots pursuant to Ohio Revised Code §5709.42. Lot Owners agree, for itself and for all successors, to timely comply in all respects with the TIF Agreement so long as it is in effect by making required Service Payments due with respect to the Property in lieu of real estate taxes. As provided in ORC §5709.42, the Lot Owner of any portion of the Property, is required to, and shall make, Service Payments to the Treasurer of Delaware County or its designated agent on or before the final dates for payment of real property taxes without penalty or interest. Each Service Payment shall be in the same amount as the real property taxes that would have been charged and payable against the Property had an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the TIF Ordinance. Any late Service Payments shall be subject to penalty and bear interest at the then current rate established under ORC §323.121(B)(1) and ORC §5703.47 or any successor provisions thereto, as the same may be amended from time to time. The TIF Agreement shall run with the Property and shall bind the Developer and any successors to any portion of the Property as a Lot Owner.

Section 8.07 **Indemnification**. The Association shall indemnify every Board member, Design Committee Member, officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The Board members, Design Committee members, officers and trustees

shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The Board members, Design Committee members, officers and trustees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Board members, Design Committee members, officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such Board member, Design Committee member, officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any Board member, Design Committee member, officer or trustee, or former Board member, Design Committee member, officer or trustee, may be entitled.

Section 8.08 **Severability**. If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law of the State, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

Section 8.09 **Captions**. The caption of each Article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.

Section 8.10 **Notices**. Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.

Article 9.

ACCEPTANCE

Section 9.01 **Acceptance**. By accepting a deed to any lot within the above described real estate, the lot owner and/or Home Owner accepts the same subject to the foregoing restrictions, easements, covenants, assessments and rules concerning the Lots in Harpers Pointe Subdivision under the administration of a homeowners' association ("The Harpers Pointe Homeowners' Association, Inc.") and the plan for approval of the design and architecture and all other

improvements and agrees for him or herself, her or her heirs, successors and assigns to be bound by the same.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf on or as of the 1st day of August, 2020.

DECLARANT:

HARPERS POINTE LAND COMPANY LLC, an
Ohio limited liability company

By 

LEN PIVAR, MEMBER

Print Name and Title

DEVELOPER:

HARPERS POINTE LAND COMPANY LLC, an
Ohio corporation

By: 

LEN PIVAR, MEMBER

Print Name and Title

STATE OF OHIO

COUNTY OF Franklin **ss:**

Before me, the subscriber, a Notary Public in and for said County and State, personally appeared Developer by and through its authorized agent, Len Pivar, a Member of **Harpers Pointe Land Company LLC**, an Ohio limited liability company, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of Developer for the uses and purposes set

forth therein, and that such person is authorized to execute this instrument and to so bind Developer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3rd day of August, 2000



Kevin M. Maloney
Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
Sec. 147.03 R.C. Notary Public

Kevin M. Maloney

This document prepared by:

Kevin M. Maloney, Esq.
LAW OFFICE OF KEVIN M. MALONEY
71 E. Wilson Bridge Rd., STE A-4
Worthington, OH 43085-2358
Phone (614) 243-0400
Kevin@Columbus-Law.com

EXHIBIT "A"

Situated in the City of Powell, County of Delaware and State of Ohio, bounded and described as follows:

PARCEL I: Being part of Farm Lot Number Thirty-two (32), Section 4, Township 3, Range 19, U.S. Military Lands, and being 3.750 acres of the Charles Hess 34.2 acre tract, of record in Deed Book 350, Page 177, Recorder's Office, Delaware County, Ohio, and bounded and described as follows:

Beginning at an iron pin in a westerly line of the said Charles Hess 34.2 acre tract, being also the easterly line of the Louis V. and Doris E. Huffman 18 acre tract, of record in Deed Book 342, Page 57, said iron pin being located South 5° 47' 04" West, 783.39 feet from an iron pin at the northwesterly corner of the said 34.2 acre tract and in the northerly line of Farm Lot 33; thence South 84° 34' 10" East 528.08 feet to an iron pin; thence South 6° 00' West, 309.71 feet to an iron pin; thence North 84° 34' 10" West, 528.82 feet to an iron pin in the said westerly line of the Charles Hess 34.2 acre tract; thence along the said westerly line, North 5° 46' 04" East, 309.70 feet to the place of beginning, containing 3.750 acres, more or less.

Subject, however, to all easements and/or rights-of-way, if any, of previous record,

PARCEL II: Being part of Farm Lots 31 and 32 of Section 4, Township 3, Range 19, U.S. Military Lands, and being five (5) acres of the Charles H. Hess tract of record in Deed Book 350, Page 177, Recorder's Office, Delaware County, Ohio, and bounded and described as follows:

Beginning at a point in the centerline of Olentangy Street (State Route 50) at the southeasterly corner of a 0.775 acre tract that is North 84° 00' 29" West, 251.69 feet from the southeasterly corner of the said Charles E. Hess tract; thence along the easterly line of the said 0.775 acre tract, North 6° 12' 04" East, 235.03 feet to an iron pin at the north-easterly corner of the said 0.775 acre tract, being the true place of beginning and the southeasterly corner of the tract herein described; thence along the northerly line of the said 0.775 acre tract, North 84° 00' 24" West, 228.17 feet to an iron pin at the northwesterly corner of the said tract; thence along a westerly line of the said Charles E. Hess tract, North 6° 00' East, (passing Farm Lots 31 and 32 at 431.43 feet), 557.14 feet to an iron pin; thence along a southerly line of the said Charles E. Hess tract, North 84° 34' 10" West, 346.01 feet to an iron pin; thence along a westerly line of the said Charles E. Hess tract North 5° 46' 04" East, 211.74 feet to an iron pin; thence South 84° 34' 10" East, 528.82 feet to an iron pin; thence South 6° 00' West, 525.35 feet to an iron pin; thence South 5° 07' 20" East, 250.00 feet to the place of beginning. Containing 5 acres more or less.

Subject, however, to all easements of record

TOGETHER WITH the use of a thirty (30) foot roadway easement for ingress and egress to the above described 5 acre tract and 3.750 acre tract and bounded and described as follows: Beginning at a point in the centerline of Olentangy Street (State Route No. 50), at the southeasterly corner of a 0.775 acre tract that is North 84° 00' 29" West, 251.69 feet from the southeasterly corner of the Charles H. Hess tract; thence along the easterly line of said 0.775 acre tract, North 6° 12' 04" East, 235.03 feet to an iron pin at the southeasterly corner of said 5 acre tract; thence along the easterly line of said 5 acre tract, North 5° 07' 20" West, 30.58 feet to a point; thence South 84° 00' 24" East, 36.0 feet to a point; thence South 6° 12' 04" West, 265.03 feet to a point in the centerline of said Olentangy Street; thence along centerline of Olentangy St., North 84° 00' 29" West, 30.0 feet to place of beginning.

Parcel Number: 319-425-13-046-000

DESCRIPTION APPROVED
FOR TRANSFER
Chris Bauserman
Delaware County Engineer



City of Powell, Ohio

ORDINANCE 2017-14

Adopted June 6, 2017

AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR HARPER'S POINTE, TO CONSTRUCT 47 SINGLE-FAMILY FEE SIMPLE PATIO HOMES ON 8.75 ACRES AT 2470 WEST POWELL ROAD.

WHEREAS, the Planning and Zoning Commission of the City of Powell has recommended approval of the Final Development Plan for the development of 47 single family fee simple patio homes on 8.75 acres at 2470 West Powell Road; and

WHEREAS, the Final Development Plan has been submitted to City Council by the Planning and Zoning Commission pursuant to the provisions of Section 1143.11 of the Codified Ordinances of Powell; and

WHEREAS, City Council has determined that the implementation and approval of the Final Development Plan, which is attached hereto as Exhibit "A" and incorporated herein by reference, is in the best interest of the residents of the City of Powell;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

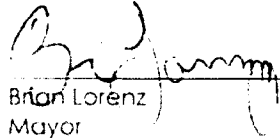
Section 1: That the Final Development Plan for the development of 47 single family fee simple patio homes on property 8.75 acres off at 2470 West Powell Road, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is accepted and approved by the Council of the City of Powell, subject to and contingent upon the following conditions as recommended by the Planning and Zoning Commission:

1. That all engineering requirements, easements and utility provisions shall be approved by the City Engineer through the final engineering review process, and
2. That the applicant shall remove the main entrance area of the proposed development from Beech Ridge Drive and shall create a new, stubbed public road to the west, substantially in accordance with Illustrative Plan – Public R.O.W. (Exhibit C-1.1), and
3. That Staff shall continue to help the applicant work with the owners of the shopping center to the west to promote connection of the newly created stubbed, public access road, and
4. That the applicant shall come before the Planning & Zoning Commission in the future, to obtain approval of the initial group of home plans in the first phase of development, via a Certificate of Appropriateness, and
5. That, given the custom build nature of this development, Staff shall determine whether custom variations are significant enough to merit further review by Planning & Zoning. Staff shall have the ability to make the same determination for subsequent phases, and
6. That the applicant shall work with the Architectural Advisor and Staff to finalize the external finish materials, and
7. That the developer shall coordinate the requirements of all environmental studies and recommendations with Staff as these requirements are being met, and
8. That the developer shall provide a schedule for when any pond or catch basin work will be completed which will impact the Olentangy Ridge pond. Said schedule and periodic updates shall be provided to the Olentangy Ridge residents whose property abuts the pond in the Olentangy Ridge neighborhood.

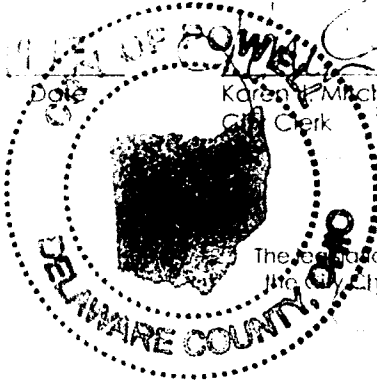
Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 3: That this Ordinance shall take effect on the earliest period allowed by law.

VOTE ON ORDINANCE 2017-14: Y 6 N 1 (Newcomb)



Brian Lorenz
Mayor



Date Karen V. Mitchell 6/12/2017 Date
City Clerk

The resolution has been posted in accordance with
the City Charter on this date 6/13/2017

City Clerk

EFFECTIVE DATE: July 6, 2017

City Council

Brian Lorenz, Mayor

Jon Bennehoof

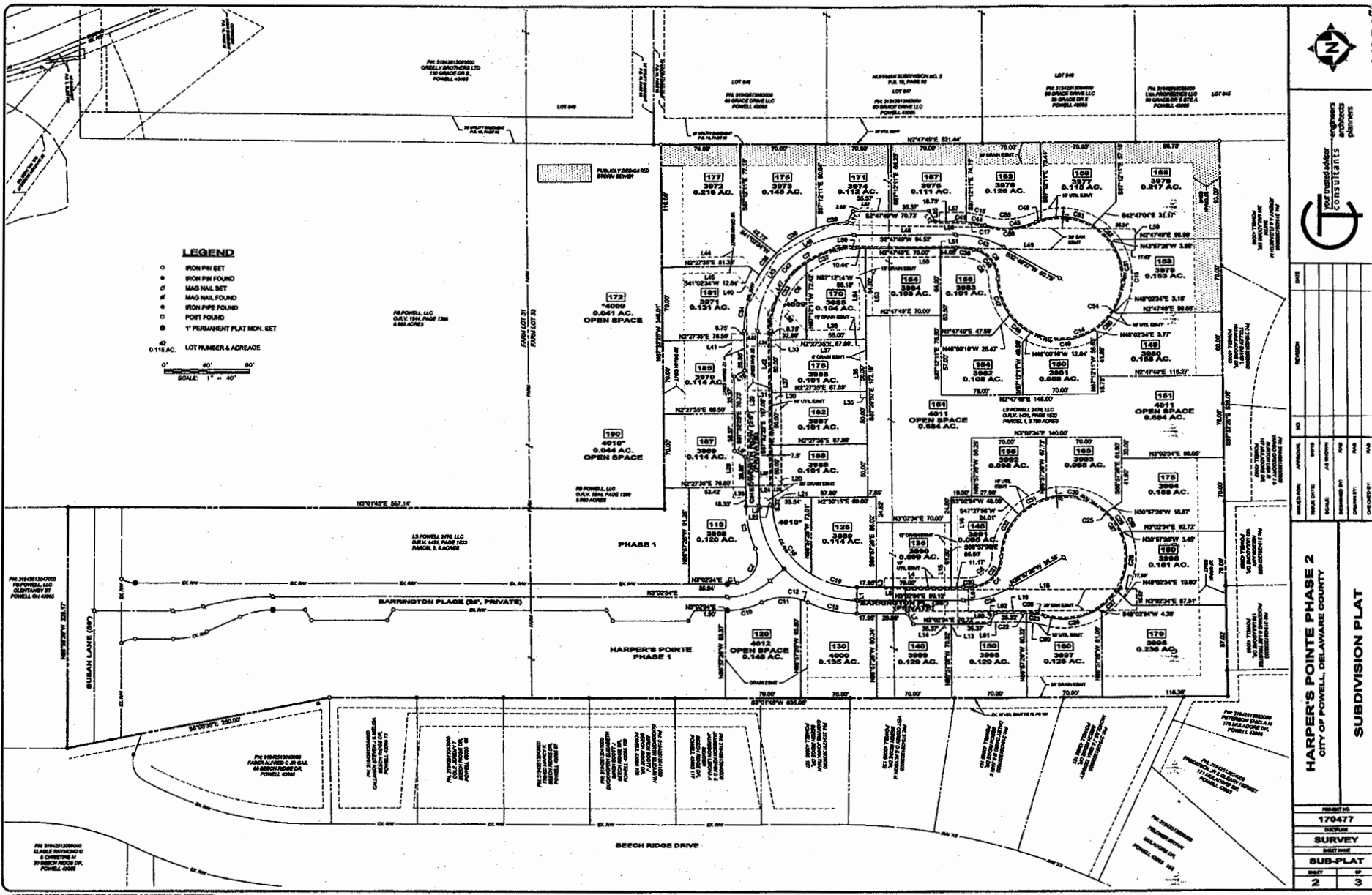
Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout



CURVE AND LINE TABLES

CURVE TABLE				
CURVE #	LENGTH	RADIUS	DELTA	CHD BEARING
C1	9.42	47.80	172°12'	N2°30'10"W
C2	41.80	23.00	102°10'00"	N82°27'30"E
C3	41.28	102.50	23°03'30"	N82°55'45"E
C4	42.80	30.00	81°10'00"	N42°33'50"W
C5	24.32	20.00	81°10'00"	N42°33'50"W
C6	104.30	88.00	87°20'14"	S42°22'18"E
C7	124.50	78.00	87°20'14"	S42°22'18"E
C8	27.11	28.00	77°40'00"	S42°10'11"W
C9	46.87	50.00	77°40'00"	S42°10'11"W
C10	23.29	72.50	39°18'30"	N10°05'14"W
C11	37.02	44.50	4°44'12"	N10°05'14"W
C12	6.44	44.50	7°38'18"	N42°18'32"W
C13	48.87	102.00	20°10'00"	N42°07'45"E
C14	294.12	67.00	202°30'00"	N42°18'32"W
C15	342.32	67.00	202°30'00"	N42°18'32"W
C16	36.19	111.00	10°45'01"	S10°35'15"W
C17	27.47	91.00	10°45'01"	S10°35'15"W
C18	76.81	71.00	87°20'00"	N42°18'32"E
C19	44.44	71.00	87°20'00"	N42°18'32"E
C20	10.80	71.00	87°20'00"	N42°18'32"E

CURVE TABLE				
CURVE #	LENGTH	RADIUS	DELTA	CHD BEARING
C21	43.37	26.00	81°10'00"	N42°33'50"W
C22	3.54	24.00	24°30'00"	S42°25'10"W
C23	18.27	71.00	81°10'00"	S12°45'30"W
C24	41.22	86.00	50°00'00"	N12°45'30"W
C25	282.19	65.00	200°00'00"	S22°58'00"W
C26	51.18	65.00	200°00'00"	N12°45'30"W
C27	24.17	58.00	24°30'00"	N42°25'10"W
C28	58.00	58.00	90°00'00"	N42°25'10"W
C29	24.00	58.00	90°00'00"	S22°25'10"W
C30	65.37	58.00	90°00'00"	S12°45'11"W
C31	95.31	58.00	29°40'00"	S22°11'00"E
C32	44.32	58.00	42°00'00"	N42°30'45"E
C33	74.72	71.50	81°10'00"	S22°59'45"E
C34	65.80	102.00	31°11'00"	S22°59'45"E
C35	26.07	102.00	14°32'22"	S42°57'30"E
C36	42.46	102.00	24°12'00"	S22°57'30"E
C37	42.47	71.50	24°12'00"	S14°45'00"E
C38	26.47	102.00	14°32'22"	S22°59'45"E
C39	18.87	71.50	14°32'22"	S22°59'45"E
C40	38.87	28.00	77°40'00"	S42°10'11"W

CURVE TABLE				
CURVE #	LENGTH	RADIUS	DELTA	CHD BEARING
C41	13.18	102.00	8°42'17"	S42°27'45"W
C42	141.80	86.00	87°20'14"	S42°27'45"E
C43	41.17	86.00	87°20'14"	S12°25'20"W
C44	12.27	86.00	87°20'14"	S12°25'20"W
C45	48.78	73.50	30°00'00"	S22°25'20"E
C46	31.2	58.00	20°00'00"	S12°45'12"E
C47	24.00	58.00	20°00'00"	N42°18'32"E
C48	24.22	58.00	20°00'00"	N42°18'32"E
C49	62.37	58.00	81°10'18"	N42°18'32"E
C50	35.18	58.00	24°10'04"	N42°18'32"E
C51	88.14	58.00	87°19'57"	N42°18'32"E
C52	24.14	58.00	23°00'00"	S42°18'32"W
C53	58.07	58.00	48°00'00"	S42°18'32"W
C54	284.79	58.00	202°30'00"	N22°18'32"W
C55	31.64	58.00	27°40'00"	N42°25'00"E
C56	42.78	71.50	27°40'00"	N42°25'00"E
C57	204.89	57.00	200°00'00"	S22°58'00"W
C58	22.22	71.50	10°20'00"	S12°45'11"W
C59	34.87	67.00	20°00'00"	S22°58'00"W
C60	12.28	67.00	10°20'00"	S12°45'11"W

PARCEL LINE TABLE	
LINE #	BEARING DISTANCE
L44	S22°59'45" 50.00
L45	N22°59'45" 48.87
L46	N27°41'00"W 51.80
L47	S27°41'00"E 48.17
L48	N42°33'50"E 277.80
L49	N42°33'50"E 277.80
L50	S22°59'45" 50.00
L51	N42°33'50"E 48.87
L52	S22°59'45" 102.00
L53	N42°33'50"E 112.27
L54	S22°59'45" 102.00
L55	N42°33'50"E 14.80
L56	S22°59'45" 20.00
L57	S22°59'45" 277.80
L58	S22°59'45" 50.00
L59	N42°33'50"E 48.87
L60	S22°59'45" 50.00
L61	N42°33'50"E 48.87
L62	S22°59'45" 50.00

PARCEL LINE TABLE	
LINE #	BEARING DISTANCE
L33	N22°59'45" 30.00
L34	N22°59'45" 19.80
L35	S22°59'45" 27.42
L36	N22°59'45" 10.00
L37	N42°33'50"E 147.00
L38	S22°59'45" 155.00
L39	N42°33'50"E 188.37
L40	N42°33'50"E 20.00
L41	N42°33'50"E 20.00
L42	S22°59'45" 48.87
L43	N42°33'50"E 12.00
L44	N42°33'50"E 34.87
L45	N42°33'50"E 6.00
L46	S22°59'45" 50.00
L47	N42°33'50"E 67.48
L48	S22°59'45" 52.30
L49	S22°59'45" 50.00
L50	N42°33'50"E 48.87
L51	S22°59'45" 102.00
L52	N42°33'50"E 102.00
L53	S22°59'45" 102.00
L54	N42°33'50"E 102.00
L55	S22°59'45" 102.00
L56	N42°33'50"E 102.00
L57	S22°59'45" 102.00
L58	N42°33'50"E 102.00
L59	S22°59'45" 102.00
L60	N42°33'50"E 102.00
L61	S22°59'45" 102.00
L62	N42°33'50"E 102.00
L63	S22°59'45" 102.00

PARCEL LINE TABLE	
LINE #	BEARING DISTANCE
L1	N42°33'50"E 20.00
L2	N42°33'50"E 20.00
L3	S42°33'50"E 10.00
L4	S42°33'50"E 10.00
L5	N42°33'50"E 20.00
L6	N42°33'50"E 20.00
L7	N42°33'50"E 11.00
L8	N42°33'50"E 11.00
L9	N42°33'50"E 11.00
L10	S22°59'45" 11.00
L11	S22°59'45" 11.00
L12	S22°59'45" 11.00
L13	N42°33'50"E 11.00
L14	N42°33'50"E 11.00
L15	N42°33'50"E 11.00
L16	N42°33'50"E 11.00
L17	N42°33'50"E 11.00
L18	N42°33'50"E 11.00
L19	N42°33'50"E 11.00
L20	N42°33'50"E 11.00
L21	N42°33'50"E 11.00
L22	N42°33'50"E 11.00

PARCEL LINE TABLE		
LINE #	BEARING	DISTANCE
1.1	N 89°25'00"E	26.00
1.2	N 07°25'00"E	26.00
1.3	N 07°25'00"E	10.00
1.4	S 82°25'00"E	73.62
1.5	N 07°25'00"E	66.30
1.6	N 07°25'00"E	22.10
1.7	N 07°25'00"E	11.50
1.8	N 07°25'00"E	11.50
1.9	N 07°25'00"E	11.50
1.10	N 07°25'00"E	11.50
1.11	N 07°25'00"E	11.50
1.12	N 07°25'00"E	12.00
1.13	N 07°25'00"E	2.00
1.14	N 07°25'00"E	100.00
1.15	N 07°25'00"E	100.00
1.16	N 07°25'00"E	211.50
1.17	N 07°25'00"E	211.50
1.18	N 07°25'00"E	94.50
1.19	N 07°25'00"E	20.00
1.20	N 07°25'00"E	0.75

PARCEL LINE TABLE		
LINE #	BEARING	DISTANCE
1.21	N 07°25'00"E	20.00
1.22	N 07°25'00"E	100.00
1.23	N 07°25'00"E	100.00
1.24	N 07°25'00"E	100.00
1.25	N 07°25'00"E	100.00
1.26	N 07°25'00"E	100.00
1.27	N 07°25'00"E	100.00
1.28	N 07°25'00"E	100.00
1.29	N 07°25'00"E	100.00
1.30	N 07°25'00"E	100.00
1.31	N 07°25'00"E	100.00
1.32	N 07°25'00"E	100.00
1.33	N 07°25'00"E	100.00
1.34	N 07°25'00"E	100.00
1.35	N 07°25'00"E	100.00
1.36	N 07°25'00"E	100.00
1.37	N 07°25'00"E	100.00
1.38	N 07°25'00"E	100.00
1.39	N 07°25'00"E	100.00
1.40	N 07°25'00"E	100.00
1.41	N 07°25'00"E	100.00
1.42	N 07°25'00"E	100.00
1.43	N 07°25'00"E	100.00

PARCEL LINE TABLE		
LINE #	BEARING	DISTANCE
1.44	N 07°25'00"E	60.00
1.45	N 07°25'00"E	48.00
1.46	N 07°25'00"E	57.00
1.47	S 89°13'15"E	46.17
1.48	N 07°25'00"E	263.00
1.49	N 07°25'00"E	277.00
1.50	S 2°25'00"E	94.00
1.51	N 07°25'00"E	94.00
1.52	S 2°25'00"E	12.00
1.53	N 07°25'00"E	102.00
1.54	N 07°11'15"E	115.72
1.55	N 07°12'15"E	10.00
1.56	S 2°25'00"E	14.00
1.57	N 07°25'00"E	14.00
1.58	N 07°25'00"E	20.00
1.59	N 07°25'00"E	277.00
1.60	S 2°25'00"E	50.00
1.61	N 07°25'00"E	60.00
1.62	S 2°25'00"E	80.00



Exhibit 4

City of Powell, Ohio

ORDINANCE 2017-14

Adopted June 6, 2017

AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR HARPER'S POINTE, TO CONSTRUCT 47 SINGLE-FAMILY FEE SIMPLE PATIO HOMES ON 8.75 ACRES AT 2470 WEST POWELL ROAD.

WHEREAS, the Planning and Zoning Commission of the City of Powell has recommended approval of the Final Development Plan for the development of 47 single family fee simple patio homes on 8.75 acres at 2470 West Powell Road; and

WHEREAS, the Final Development Plan has been submitted to City Council by the Planning and Zoning Commission pursuant to the provisions of Section 1143.11 of the Codified Ordinances of Powell; and

WHEREAS, City Council has determined that the implementation and approval of the Final Development Plan, which is attached hereto as Exhibit "A" and incorporated herein by reference, is in the best interest of the residents of the City of Powell;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

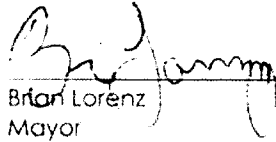
Section 1: That the Final Development Plan for the development of 47 single family fee simple patio homes on property 8.75 acres off at 2470 West Powell Road, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is accepted and approved by the Council of the City of Powell, subject to and contingent upon the following conditions as recommended by the Planning and Zoning Commission:

1. That all engineering requirements, easements and utility provisions shall be approved by the City Engineer through the final engineering review process, and
2. That the applicant shall remove the main entrance area of the proposed development from Beech Ridge Drive and shall create a new, stubbed public road to the west, substantially in accordance with Illustrative Plan – Public R.O.W. (Exhibit C-1.1), and
3. That Staff shall continue to help the applicant work with the owners of the shopping center to the west to promote connection of the newly created stubbed, public access road, and
4. That the applicant shall come before the Planning & Zoning Commission in the future, to obtain approval of the initial group of home plans in the first phase of development, via a Certificate of Appropriateness, and
5. That, given the custom build nature of this development, Staff shall determine whether custom variations are significant enough to merit further review by Planning & Zoning. Staff shall have the ability to make the same determination for subsequent phases, and
6. That the applicant shall work with the Architectural Advisor and Staff to finalize the external finish materials, and
7. That the developer shall coordinate the requirements of all environmental studies and recommendations with Staff as these requirements are being met, and
8. That the developer shall provide a schedule for when any pond or catch basin work will be completed which will impact the Olentangy Ridge pond. Said schedule and periodic updates shall be provided to the Olentangy Ridge residents whose property abuts the pond in the Olentangy Ridge neighborhood.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 3: That this Ordinance shall take effect on the earliest period allowed by law.

VOTE ON ORDINANCE 2017-14: Y 6 N 1 (Newcomb)

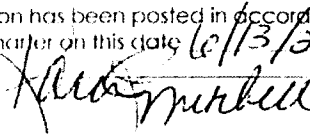

Brian Lorenz
Mayor


Date Karen V. Mitchell
City Clerk


Date 6/12/2017

EFFECTIVE DATE: July 6, 2017

The Ordinance has been posted in accordance with
the City Charter on this date 6/13/2017
City Clerk



City Council

Brian Lorenz, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout

CITY OF POWELL
Ordinance 2017-14
Exhibit A

HARPERS POINTE

FINAL DEVELOPMENT PLAN

Beech Ridge Drive
Powell, Ohio
March 28, 2017



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- Text

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- Exhibit B-1 : Parcel Description
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Tab 4:

- Exhibit C-1 : Final Development and Phasing Plan
- Exhibit C-1.1 : Final Development and Phasing Plan – Public ROW
- Exhibit C-2 : Vicinity Map

Tab 5:

- Exhibit D-1 : Site Landscape Plan
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- Exhibit D-3 : Tree Removal Plan
- Exhibit D-4 : Detailed Planting Plans and Signage
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- Exhibit E-7 : Traffic Study
- Exhibit E-8 : Trip Generation Comparison Summary

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Tab 8:

- Exhibit G-1 : Lighting Plan
- Exhibit G-1.1 : Lighting Plan – Public ROW
- Exhibit G-2 : Lighting Fixtures

Tab 9:

- Exhibit H : Sample Declaration and Bylaws

APPLICATION FOR DOWNTOWN RESIDENCE DISTRICT
DEVELOPMENT TEXT

(1) Name, address, and phone number of applicant.

LS POWELL 2470 LLC (Len Pivar) 1020 Dennison Avenue, Columbus Ohio 43201 614-847-9110

(2) Name, address, and phone number of registered surveyor, registered engineer and/or urban planner assisting in the preparation of the preliminary development plan.

Land Planner/Landscape Architect

Todd Faris, Faris Planning & Design, LLC, 243 N. Fifth Street, Suite 401, Columbus, OH 43215; Phone 614-487-1964

Civil Engineer

Tom Warner, Advanced Civil Design, 422 Beecher Road, Gahanna, OH 43220; Phone 614-944-5088

(3) A list containing the names and mailing addresses of all owners of property contiguous to, directly across the street from and within 250 feet of the property in question.

See Exhibit A for adjacent property owners.

(4) Legal description of the property.

See Exhibit B-1 for Parcel Description, See Exhibit B-2 for Parcel Exhibit.

(5) A description of present use(s) on and of the land.

Property currently has one vacant single family residence, a vacant shooting range and gun shop, and a vacant commercial building

(6) Draft of a proposed Ordinance, prepared with the advice and counsel of the Director of Law, establishing this specific Development Plan as an additional effective zoning control over the land in question, consistent with the continuing authorities of the current Planned District zoning in these areas provided for elsewhere in this Zoning Ordinance.

Will be submitted by City of Powell.

(7) A vicinity map at a scale approved by the Zoning Inspector showing all property lines, existing streets and alleys, approved future streets and land uses on adjacent Planned District areas, transportation and land use elements of the Municipality's adopted Comprehensive Plan, current zoning classifications and boundaries, and current land uses on the site of the proposed Planned District development and in the surrounding areas to the physical extent deemed

necessary by the Zoning Inspector, but no less than 250 feet beyond the limits of the proposed Planned District Development Plan.

See Exhibit C-2 for Vicinity Map.

(8) A preliminary development plan at a scale approved by the Zoning Administrator illustrating:

See Exhibit C-1 for Final Development Plan.

A. The property line definition and dimensions of the perimeter of the site;

See Exhibit C-1 for Final Development Plan.

B. Right-of-ways and paving widths of all existing, currently platted, and previously approved Planned District streets and alleys adjacent to, on, or abutting the site;

See Exhibit C-1 for Final Development Plan

C. The area of the site and its subareas in acres;

Total site is 8.748 +/- acres. There are no subareas.

D. The topography of the site and abutting areas at no more than five (5) foot contour intervals;

See Exhibit C-1 for Final Development Plan.

E. Existing surface drainageways and surface sheet flow patterns;

See Exhibit C-1 for Final Development Plan.

F. Flood plain areas, ravine-bottom areas, and areas of ground slope in excess of six (6) percent;

None on site

G. Existing vegetation on the site with the specific tree spots for all trees six (6) inches in diameter or greater, measured twenty-four (24) inches from the ground;

See Exhibit D-2 for Tree Inventory, and Exhibit D-3 for Tree Removal Plan

H. Existing easements on the site with notations as to their type, extent, and nature;

See Exhibit C-1 for Final Development Plan. Exhibit C-1.1 denotes Final Development Plan if Public Road option is exercised.

I. The location and dimensions of existing utilities on and adjacent to the site, including the nearest sanitary sewer, with manhole invert elevations;

See Exhibit C-1 for Final Development Plan. Also see Utility Service Letters and Utility Plan attached as Exhibits E-1 through E-7.

J. Calculation of the maximum residential units permitted on the site under the terms of the Zoning Ordinance, including delineation of the subdistricts of the site upon which these calculations have been made;

The proposed residential density is maximum 5.49 du/ gross ac. See Exhibit C-1 for Final Development Plan.

K. A preliminary plan for the first, or next, phase of site development illustrating;

1. New street centerlines, right-of-ways, and street classification types;
See Exhibit C-1 for Final Development Plan.

2. Names of existing and proposed streets;
See Exhibit C-1 for Final Development Plan.

3. Generalized lot and block layouts, indicating and illustrating property lines, minimum lot areas, minimum building setbacks and yards, location and extent of major off-street parking areas, etc.;
See Exhibit C-1 for Final Development Plan.

4. Subareas of the site to be developed, by land use type, housing types, and housing densities, including subarea statistics;
There are no subareas identified.

5. All proposed structures shall be located showing square footage, tenant or user types, and expected entranceways and service or loading areas;
See Exhibit C-1 for Final Development Plan.

6. Common open areas, public lands, and natural scenic easements, including the area of each;

Open spaces are identified on the Final Development Plan. There are +/- 2.04 acres of common open areas and scenic easements areas shown. The open spaces shall be maintained by the Homes Association.

7. Proposed landscape treatment of the site;
See Exhibit D-1 for Site Landscape Plan, Exhibit D-4 for Detailed Landscape Planting Plans, and Exhibit D-5 for Landscape Details and Plant List.

8. Proposed utility patterns and provisions, including sanitary sewer, individual waste disposal systems, storm sewer, trash collection systems, outdoor lighting, and water supply, including relevant easements and engineering feasibility studies or other evidences of reasonableness;

See Utility Service Letters and Utility Plan attached as Exhibits E-1 through E-7. See Exhibit G for Light Fixtures. All engineering requirements, easements and utility provisions shall be approved by the City Engineer through the final engineering process.

9. Provisions for accommodating surface drainage runoff;

See Exhibit E-1 for Final Development Plan for location of storm water detention basins.

The developer shall provide a schedule for any pond or catch basin work which would impact the Olentangy Ridge pond. Said schedule and periodic updates shall be provided to Olentangy Ridge Residents whose property abuts the pond in the Olentangy Ridge neighborhood.

10. Proposed architectural design criteria;

The front elevations will be detailed with stone and/or brick accents. Siding materials shall be masonry (stone, brick, stucco, or fiber cement exterior siding) and/or wood. Facade colors shall not be of excessively high chroma or intensity. Major roof elements shall have a minimum 7:12 pitch. Roof materials shall be of a medium or dark color. Garage doors shall be paneled, and of one color and material (windows shall be allowed if consistent with architectural character and theme). See Exhibit F for conceptual architectural elevations and site features. Additional modifications to home elevations may be made as this is a custom building project, but the character and materiality of homes shall be consistent. Plans that are different than approved with this application will be submitted for review by City staff to ensure conformance prior to any building permits being issued.

11. Proposed pedestrian/jogging/bicycle pathways and equestrian paths, including locations, dimensions, landscape and construction, including relationships of such pathways to existing and proposed future pathways on surrounding property;

See Exhibit C-1 for Final Development Plan. This property connects to sidewalks located on Beech Ridge Drive, and the sidewalks will be extended into the property past the entry feature/gates as shown on the development plan. In the case that the public Roadway is extended across the southern frontage, these sidewalks will link to sidewalks on the new public street.

12. Overall site development statistics comparing this plan for development with requirements of this Zoning Ordinance and with the comprehensive plan and indicating that all requirements of this Zoning Ordinance and the comprehensive plan have been met in this preliminary plan and will be met in final development.

The plan incorporates the direction given to the applicant by the planning and zoning director, as well as comments and suggestions by the Planning and Zoning Commission.

The site is currently zoned Downtown Residence District and conforms to the comprehensive plan.

Single Family dwellings are an approved use in the Downtown Residence District.

Minimum lot size requirements do not pertain as this is a homes association and not typical fee simple single family homes.

The proposed residential density is maximum 5.49 du/ gross ac, the code allows for projects with density of up to 7 du/ac

Principal building setbacks from private interior streets are 10', projections into the setbacks are limited to 5' and pertain to stoops, porches, bay/bow windows, and chimneys.

Setbacks from public streets are 20' min. to 25' maximum per code. In the C-1 plan, the setback is 30' min. from Beecher Road ROW to maintain setback against adjacent single family. In plan C-1.1, this setback is 40'-60' from the potential east west public road to allow for entry gates and separation from the new public connection road between Beech Ridge Drive and Grace Avenue.

The minimum building setback for principal structures from project perimeter is 25' long the western boundary, versus 30' as required by code. 30' minimum will be adhered to along the eastern and northern site boundaries adjacent existing single family homes. Projections into the setbacks are limited to 15' and pertain to patios, porches, bay/bow windows, and chimneys.

The maximum overall lot coverage is 50% per code. As this is a homes association with common open space, the lot coverage is calculated over the entire 8.748 acres

The minimum building separation between structures shall be 10' as required by code. (5' side yards). Roof overhangs may encroach into this setback but must meet Residential Building Code fire ratings and construction requirements in those instances.

Common Open space and scenic easements shall be designated and arranged as shown on the Final Development Plan attached as Exhibit C-1, or C-1.1 if public Roadway is extended.

The minimum floor area required for residential units is 1,500 square feet for ranches, exclusive of unfinished basements and garages. The minimum floor area of 1-½ and 2 story homes shall be 2000 square feet, exclusive of unfinished basements or garages.

This project will be developed in phases, which shall be smaller than 5 acres per phase which is required by code.

L. Projected development schedule by subareas of the entire planned development site, and for the first, or next phase of development, including land uses, public areas, natural and scenic reserves, streets, building, utilities, and other facilities, indicating the relationship of the proposed

development to existing and probable uses of surrounding areas during the development timetable.

The First Phase shall consist of 17 units (16 units if public road option is exercised) and associated roadways and utilities, which will be completed in 12 to 18 months. The Second Phase shall include 12 units, which will be completed in 12 to 18 months. Phase 3 shall include 19 units and be completed in 12 to 18 months. Separate Phases of construction may occur simultaneously. See Exhibit C-1 for phasing plan.

The site is bordered on the east and north by existing single family homes, to the west by offices and other facilities located off Grace Drive, and to the southwest and south by existing commercial uses and undeveloped commercial outlots.

M. An overall traffic scheme, illustrating points of access, parking areas, including the number of parking spaces and indicating visitor, employee and service traffic flow, illustrating calculated peak hour traffic use for residents and employees as well as deliveries and other transport and the effect of this traffic on the community traffic ways.

See Exhibit C-1 for traffic and parking for this site. See Exhibit E-7 for Traffic Study

N. If to be developed in phases, the entire site development shall be described in outline and diagrammatic plan form, and in a complementing detailed text in a manner calculated to assure City officials that Planned Development requirements and other requirements of this Zoning Ordinance shall be met in the detailed development of the phases to follow, and that the entire Planned Development area will meet all of the requirements of this Zoning Ordinance, such diagrams and descriptive texts being accepted with, and becoming a part of the extended zoning plan for the entire site.

The First Phase shall consist of 17 units (16 units if public road option is exercised) and associated roadways and utilities, which will be completed in 12 to 18 months. The Second Phase shall include 12 units, which will be completed in 12 to 18 months. Phase 3 shall include 19 units and be completed in 12 to 18 months. Separate Phases of construction may occur simultaneously. See Exhibit C-1 for phasing plan.

(9) Evidences of the ability of the applicant to carry forth its plan by control of the land and the engineering feasibility of the plan, and that the applicant has sufficient control over the land and financing to initiate the proposed development plan phase within two (2) years.

The Applicant owns the subject land. The applicant is an established custom home builder.

(10) Evidence of the applicant's ability to post a bond if the plan is approved assuring completion of public service facilities to be constructed within the project area by the developer.

The Applicant shall provide evidence that it has it has the ability to post a bond for the City of Powell Council prior to Final Development Plan approval.

(11) Verification by the owner of the property that all the information in the application is true and correct to the best of his knowledge.

The applicant has reviewed the included information in the Final Development Plan submittal and believes it to be true and correct to the best of the applicant's knowledge.

(12) A statement of the character and nature of the development including the cost range or rent levels for housing in residential development and the general types of business or industrial and commercial developments.

The development will be a Homes Association. Each home owner owns a lot. Open space and roadways are in separate lots, and are owned by the Homes Association. Individual homes- single family detached, shall be constructed. There will be 48 home sites available (47 if public roadway is constructed along the southern boundary). The floor plans and elevations of the units are shown, and many custom options will be available to the buyer, but will be a mixture of ranch, 1 ½ story and 2 story homes. Square footage of the units is anticipated to be from 1,500 sf. (ranches only) up to 3,000 sf, exclusive of unfinished basements or garages. Building materials shall be all natural, and will offer several floor plans and elevations. The front elevations will be detailed with stone and/or brick accents. Additional modifications to homes elevations may be made as this is a custom building project, but the character and materiality of homes shall be consistent. Plans that are different than approved with this application will be submitted for review by City staff to ensure conformance prior to any building permits being issued.

Anticipated cost range will be \$450,000-\$750,000

Special attention shall be focused on site details involving the streetscape, utilizing landscape, street/yard lights, special pavement types at driveways and walks to units, as well as the overall streetscape character.

A central pond will be constructed to provide an interior amenity for the homes, and small greens and islands of open space with the development will be available for community use.

Rears of unit's adjacent existing single family and commercial will be well screened to provide privacy for both buyers and adjacent property owners. Existing vegetation on the periphery of the site will be preserved to the best extent possible to give the property maturity from the first day of development.

(13) A statement of the general impact the development will have on the infrastructure, municipality and schools including projected demographics, a traffic impact study and a fiscal impact analysis may be required by the Planning and Zoning Commission.

Complete Ordinance 2017-14 with all exhibits can be found at the offices of the City of Powell or downloaded from the following City of Powell records here; ftp://powellftp.us/Clerk/2017%20Packets/06.06.2017%20Council%20Packet/2017-14_ord.pdf

ARCHITECTURAL GUIDELINES

Color & Material Guidelines

Harpers Pointe Colors and Material Selections:

Revised 03/13/2020

Stone: The manufactured stone selections are to mimic the colors and characteristics of the oolithic you limestone found in England. With the golden rich honey color found in the north and the creamer and greyer color found in southern England.

Accent Stone: The manufactured corner stone or EIFS and window surrounds will be of a different shade matching the style found in the Cotswold.

Stucco: To be of natural colors matching or complementing the stone color selections.

Shingles: Are to match as close in style and shape to the natural aged stone slates found in the Cotswold area. These will range in medium grey of color.

Wood Trim: To be light or dark natural colors offered complementing the siding selections. No White.

Natural Wood Accents:

Rough natural wood headers and sills may be offered as an alternative to a finite selection of windows and doors on the home exteriors.

Windows: Casement windows with an authentic grill patten are to be used. With a color selection of Buttermilk (BS16C37), Hopsack (bs10B17), Willow (BS12B17) or Flake Grey (BS12B25) to match as closely as possible. Color matching the Musket Brown Gutters may also be a selection.

Front Door: This is where the homes become individualized with a selection of vibrant colors (see color chart) or natural wood may be used.

Gutters: Gutters, Round Downspouts and Scuppers (Collectors) are to be one of three colors. Musket Brown matching aged copper in color. Rustic Bronze highlighting the greyer tones of southern England. Or a Cream which will complement the stone and stucco. These may be mixed to add character to the home.

Chimney: All homes to have (false) chimneys with decorative chimney pots. The traditional style chimneys themselves will be composed of manufactured stone, stucco or EIFS.

Pavers: Concrete Pavers are to be used on all driveway, turn-a-rounds, walkways and patios. (No stamped concrete allowed) Natural stone is also offered for walkways and patios. Earth tone colors (Earth Blend) are to be used in all applications with no accent edger's.

**CODE OF REGULATIONS
(BYLAWS)

OF

HARPERS POINTE HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE I.

NAME AND PURPOSE

Section 1.01 The name of this Ohio non-profit corporation shall be Harpers Pointe Homeowners' Association, Inc. (the "Association").

Section 1.02 The purposes for which the corporation is formed are set forth in the Articles of Incorporation for Harpers Pointe Homeowners' Association, Inc., filed with the Ohio Secretary of State, and include being and acting as an association of the owners of residential Lots in a development known as and referred to herein as "Harpers Pointe." The Association shall also serve as the "owners association" as that term is defined in Chapter 5312 of the Ohio Revised Code. The Association is an organization established under the laws of Ohio as a non-profit corporation, and hereby adopts these By-Laws to govern its corporate and affairs as a not-for-profit corporation, and to conform its conduct with the Federal tax laws regulating non-profit corporations exempt from Federal corporate tax under Section 501(c)(3) of the Internal Revenue Code, and under Ohio state laws.

ARTICLE II.

MEMBERS AND VOTING

Section 2.01 Every person or entity who is a record owner of a fee or undivided *fee* simple interest in a Lot that has been subjected to the provisions of the Declaration of Covenants, Easements, Restrictions, Assessments, and Assessment Liens for Harpers Pointe to which this document is attached, and any amendments thereto (hereinafter the "Declaration"), except, in the case of a recorded land installment sales contract, the vendee or vendees and not the owner or owners of a *fee* simple interest, from and after the time that the same has been developed and platted and whose property has been subjected to the Declaration or other restrictions (whether by plat, deed restriction, declaration of restriction, or amendments thereto) which require such owners to be and become members of the Association, shall be a "Member" of the Association. "Owner", as used herein, as well as in the Declaration, means and includes the record Owner of a fee simple interest in a Lot subject to the provisions of the Declaration, except the owner of the fee simple interest in a Lot subject to a recorded land installment contract, in which case the vendee is referred to herein as the "Owner." The membership of each Owner shall terminate when the Owner ceases to own an undivided fee simple interest or interests or vendee interest in a Lot, and upon the sale, transfer or other disposition of each undivided fee simple interest or vendee interest in a Lot, the membership in the Association which is appurtenant to that interest shall

automatically be transferred to the new Owner(s) of the interest. No Member may otherwise terminate membership in the Association or sever that membership interest.

Section 2.02 Except as provided herein, on any question for which the vote of Members is permitted or required, the Owner or Owners of each Lot in Harpers Pointe shall be entitled to exercise one vote for each such Lot that he or she or they own. If two or more persons own undivided interests in a Lot as fiduciaries, tenants in common or otherwise, such persons shall only be entitled to one vote with respect to the Lot, which vote shall be exercised, if at all, as a single Lot and not by percentage of interest.

Notwithstanding anything herein to the contrary, Harpers Pointe Land Company LLC, an Ohio limited liability company and the developer of Harpers Pointe (hereinafter, the "Developer"), or its successor or its designee, shall be entitled to exercise one hundred percent (100%) of the total voting power of the Members of the Association on each matter properly submitted to the Members for their vote, consent, waiver, release or action until such time as the Developer elects to relinquish the voting right, which relinquishment shall take place no later than the time Harpers Pointe has been developed to its fullest extent, all improvements have been completed, and all Lots have been sold and conveyed to bona fide residential home purchasers. At such time as Developer elects to relinquish the voting right, each Lot shall be entitled to one vote on each matter properly submitted to the Members for their vote, consent, waiver, release or other action. In addition to the indemnification provided herein, Developer, including Directors appointed by and employed by the Developer, shall have no liability and shall be indemnified and held harmless by the Association for events occurring after the relinquishment of voting control. Assessments shall be paid by each Member when due without regard to the right of a Member to vote.

Section 2.03 Fiduciaries and minors who are Owners of record of a Lot or Lots may vote their respective interests as Members. If two or more persons or entities own undivided interests in a Lot as fiduciaries, tenants in common or otherwise, such persons or entities shall be entitled to one vote with respect to a Lot, which vote shall be exercised, if at all, as a single Lot and not by percentages of interest. If more than one of such Owners attends a meeting, acts in voting by mail or executing consents, a majority of those voting may act for the Owners of the Lot. If only one such person or entity attends a meeting, votes or executes a consent, then that person or entity may act for all.

Section 2.04 An entity which is a Member of the Association may exercise its right to vote by any officer, director, principal, member of a limited liability company, partner, trustee or employee and any such person shall conclusively be deemed to have authority to vote and to execute any proxies and written waivers and consents relative thereto, unless, before a vote is taken or a consent or waiver is acted upon, it shall be made to appear by a certified copy of the regulations or bylaws or of a resolution adopted by the entity that such authority does not exist or is vested in some other officer or person.

Section 2.05 At meetings of the Members or otherwise, any Member entitled to vote or take action may be represented and may vote or take action by a proxy or

proxies appointed by an instrument in writing. Each such instrument shall be filed with the secretary of the meeting before the person holding the proxy shall be allowed to vote under the proxy at the meeting or with the Secretary of the Association before the person holding the proxy may take action under the proxy without a meeting. No proxy shall be valid after the expiration of eleven (11) months from its date of execution unless the Member executing it shall have specified therein the length of time that it is to continue in effect.

ARTICLE III

MEETINGS OF MEMBERS

Section 3.01. After the relinquishment of control of the Association by the Developer, an annual meeting of the voting Members for the election of Directors, for the consideration of reports to be made at the meeting and for the transaction of such other business as may properly come before the meeting shall be held during the first quarter of each calendar year, on a date established by the Board of Directors of the Association (the "Board of Directors"). No annual meetings shall be required or held prior to the Developer's relinquishment of control of the Association.

Section 3.02. Special meetings of the Members may be called by the President, by a majority of the Directors acting with or without a meeting, or following the relinquishment of control of the Association by the Developer, by Members entitled to exercise not less than twenty-five percent (25%) of the total voting power of the Members. Upon delivery of a request in writing to the President or Secretary of the Association by Member entitled to call such a meeting, it shall be the duty of the President or Secretary to give notice to the Members in accordance with this Code of Regulations, but if such request is refused, then the Members making the request may call a meeting by giving the notice.

Section 3.03. All meetings of Members shall be held at such places as may be specified by the Board of Directors or the persons calling the meeting.

Section 3.04. A written or printed notice of every meeting of Members, whether annual or special, stating the time, place and purpose or purposes for which the meeting is called shall be given by, or at the direction of, the President or Secretary of the Association by personal delivery or by mail not more than sixty (60) nor less than five (5) days before the meeting to each Member entitled to notice thereof. If mailed, such notice shall be addressed to the Member at the Member's address as it appears on the records of the Association. The Association shall have no obligation to perform research or investigations beyond its records to ascertain the identity or the address of any Member. If a meeting is adjourned to another time or place, no further notice of the adjourned meeting need be given if the time and place to which it is adjourned are fixed and announced at the meeting. In the event of a transfer of ownership of a Member's Lot after notice has been given and prior to the holding of the meeting, it shall not be necessary to serve notice on the transferee. The Board of Directors may set a record date for the determination of the Members who are entitled to receive

notice of or to vote at any meeting of Members, which record date shall not be earlier than forty-five (45) days preceding the meeting. If no record date is fixed by the Directors, the record date for determining the Members who are entitled to receive notice of or who are entitled to vote at a meeting of Members shall be the business day next preceding the day on which notice is given or the meeting is held, as the case may be. In any case where a person's or entity's right to vote is questioned or disputed, the person wishing to vote shall have the burden of proving his, her or its right to vote.

Section 3.05. Notice of the time, place and purpose or purposes of any meeting of Members may be waived in writing either before or after the holding of the meeting by any Member, which writing shall be filed with or entered upon the records of the meeting. The attendance of a Member at any meeting in person or by proxy without protesting the lack of proper notice prior to or at the commencement of the meeting shall be deemed to be a waiver by that Member of notice of the meeting.

Section 3.06. A quorum for any meeting of Members shall be that number of Members who are entitled to vote who are present in person or represented by proxy at a duly called and noticed meeting, and except as hereinafter provided, all actions shall be taken upon the majority vote of all Members present, in person or by proxy, provided that no action required by law, the Declaration, the Articles of Incorporation, or this Code of Regulations that must be authorized or taken by those Members exercising not less than a designated percentage of the total voting power may be authorized or taken by a lesser percentage. Those Members entitled to vote who are present in person and represented by proxy at a meeting may adjourn the meeting from time to time. Any business may be transacted at the reconvened meeting as if the meeting had been held as originally called.

Section 3.07. The order of business of any meeting of Members shall be determined by the presiding officer, unless otherwise determined by a vote of those Members entitled to exercise not less than a majority of the voting power of the Members present in person or represented by proxy at the meeting.

Section 3.08. At all elections of Members of the Board of Directors the candidates receiving the greatest percentage of the votes cast for their respective positions shall be elected. All other questions shall be determined by the vote of those Members entitled to exercise not less than a majority of the voting power of the Members present in person and represented by proxy at a meeting, unless for the particular purpose the vote of a greater percentage of this voting power of all Members is required by law, the Articles of Incorporation, this Code of Regulations, the Declaration or otherwise.

Section 3.09. Any action which may be authorized or taken at a meeting of Members may be authorized or taken without a meeting in a writing or writings signed by Members exercising not less than seventy-five percent (75%) of the voting power of all Members or such greater proportion thereof as the Articles of Incorporation, this Code of Regulations, the Declaration or any other provision of law may otherwise require. Said writing or writings shall be filed with or entered upon the records of the Association. Any vote that can be taken at a meeting of Members may also be taken by mail. In that event ballots shall be mailed to all persons and entities

who are Members of the Association at the time of the mailing and approval shall be required from a majority of the voting power of all Members or from such greater (or lesser, in the case of electing members of the Board of Directors) proportion thereof as the Articles of Incorporation, this Code of Regulations, the Declaration or any provision of law may otherwise require. Adequate records of the manner and results of each vote conducted by mail shall be filed with or entered upon the records of the Association.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.01. Subject to such limitations as have been or may hereafter be imposed by the Declaration, the Articles of Incorporation or this Code of Regulations, as any of the same may be lawfully amended from time to time, all power and authority of the Association shall be vested in and exercised by a Board of Directors. Said persons shall manage and conduct the business and affairs of the Association and exercise the powers and duties established by the Declaration, the Articles of Incorporation and this Code of Regulations (collectively, the "Association Governing Documents") until they resign, or until their successors are elected and qualified. Except for members of the Board of Directors appointed by the Developer, members of the Board of Directors must be a Lot Owner, the spouse of a Lot Owner, or a principal, member of a limited liability company, partner, director, officer, trustee, or employee of an entity that is a Lot Owner in the Association. Before the relinquishment of control of the Association by the Developer, the Developer shall appoint all Directors, which shall consist of three individuals named in the Articles of Incorporation, or such replacements thereof as Developer shall from time to time appoint in its sole and unfettered discretion.

Subsequent to the relinquishment of control of the Association by the Developer, the Board of Directors shall consist of three individuals. Directors elected at the meeting of Members in which Developer relinquishes control of the Association shall serve until the end of the next following annual meeting of Members. Directors elected thereafter shall serve one-year terms, terminating at the end of the next annual meeting thereafter. Following the turnover of Developer control, any Director may be removed by the affirmative vote of those Members entitled to exercise not less than seventy-five percent (75%) of the voting power of all Members of the Association. A vote to remove any Director shall be conducted at a special meeting of the Members called for that purpose.

Section 4.02. Candidates for election as Directors may be selected by a Nominating Committee formed in accordance with Section 5.05 of Article V hereof. Candidates may also be nominated from the floor of any meeting held for the purpose of electing a Director or Directors. The Nominating Committee may nominate as many candidates as it wishes, provided that if the Nominating Committee nominates a candidate, it shall nominate not less than the number of Directors to be elected.

Section 4.03. If any member of the Board of Directors, other than a member of the Board of Directors appointed by the Developer, vacates membership on the Board of Directors as a result of death, resignation or any other act or reason, a replacement

Director shall be appointed by the remaining Directors. If the remaining Directors cannot agree upon a person to fill the vacancy within thirty (30) days after the vacancy is created, said remaining Directors shall call a special meeting of Members of the Association to fill the vacancy, such meeting to be held within sixty (60) days after the vacancy is created. Any Director appointed or elected to fill a vacancy shall hold office for the unexpired term of the Director he or she succeeds and until his or her successor is elected and qualified, or until he or she resigns.

Section 4.04. The Board of Directors shall hold such meetings from time to time as it deems necessary and such meetings may be called by the President of the Association from time to time, provided that the Board of Directors shall be required to meet at least once in each calendar quarter. Meetings shall be held at such place as the President or a majority of the Directors may determine, or by electronic or telephonic communication provided that each Director can hear or read in real time and participate and respond to every other Director.

Section 4.05. The President or Secretary shall cause electronic, telegraphic or written notice of the time and place of all meetings of the Board of Directors, both regular meetings and special meetings, to be duly served upon or sent to each Director not less than two (2) nor more than twenty (20) days before the meeting, except that a regular meeting of the Board of Directors may be held without notice immediately after the annual meeting of the Members of the Association at the same place as the annual meeting was held for the purpose of electing or appointing officers for the ensuing year and the transaction of such other business as may properly come before said meeting. No notice of adjourned meetings need be given. Notice of the time and place of any meeting of the Board of Directors may be waived by any Director in writing either before or after the holding of the meeting, which writing shall be filed with or entered upon the records of the meeting. The attendance of any Director at any Board of Directors meeting without protesting the lack of proper notice prior to or at the commencement of the meeting shall be deemed to be a waiver by that person of notice of the meeting.

Section 4.06. At all meetings of the Board of Directors a majority of the members thereof shall constitute a quorum, but less than a quorum may adjourn a meeting from time to time, and at adjourned meetings any business may be transacted as if the meeting had been held as originally called. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as otherwise required by law, the Declaration, the Articles of Incorporation or this Code of Regulations. No Lot Owner, other than a Director, may attend or participate in any discussion or deliberation of a meeting of the Board of Directors unless the Board of Directors expressly authorizes that Owner to attend or participate.

Section 4.07. Members of the Board of Directors shall not receive any compensation for their services rendered to the Association as a Director. However, any Director may be reimbursed for actual expenses incurred in the performance of duties as a Director, if approved by the Board of Directors, and any Director may serve the Association in any other capacity and may receive compensation therefore, subject to the requirements and limitations of this Code of Regulations and the Articles of Incorporation.

Section 4.08. Any action which may be authorized or taken at a meeting of the Board of Directors may be authorized or taken without a meeting in a writing or writings signed by all of the Directors, which writing or writings shall be filed with or entered upon the records of the Association.

Section 4.09. The Board of Directors may employ or engage the services of a manager or managing agent and such other persons, firms or corporations as it deems necessary or advisable in order to perform the duties imposed upon it, and may pay such compensation as it determines. The Board of Directors may delegate to any such manager, Managing Agent, person, firm or corporation such administrative and ministerial duties as it determines.

Section 4.10. The Board of Directors shall exercise all powers and have all authority, under law, and under the provisions of the Declaration, Articles of Incorporation, and this Code of Regulations, that are not specifically and exclusively reserved to the Members by law or by other provisions of the Declaration, Code of Regulations or Articles of Incorporation, and without limiting the generality of the foregoing, the Board of Directors shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with or to cause compliance with all requirements of law, and the Declarations, Code of Regulations and Articles of Incorporation;
- (b) obtain insurance coverage and bonds the Directors consider appropriate or necessary; provided that insurance coverage and bonds required pursuant to the provisions of the Declaration and in amounts no less than that required pursuant to the provisions of the Declaration shall be obtained and maintained;
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (d) repair, maintain and improve the Common Elements;
- (e) establish, enforce, levy and collect Assessments, late fees, delinquent interest and such other charges as are provided for in the Declarations and adopt, publish, and enforce rules and regulations concerning the same;
- (f) adopt and publish rules and regulations governing the use of the Common Elements and the personal conduct of Owners, Occupants and their guests thereon;
- (g) suspend the voting rights of an Owner during any period in which such Owner shall be in default in the payment of any charge levied by the Association (such rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days for each

infraction of published rules and regulations or of any provisions of the Declaration);

(h) declare the office of a member of the Board of Directors to be vacant in the event such Director shall be absent from three consecutive regular meetings of the Board of Directors;

(i) subject to such approvals, if any, as may be required pursuant to the provisions of Declaration, authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association, including, without limitation, management agreements, purchase agreements and loan documents, all on such terms and conditions as the Board of Directors in its sole and absolute discretion may determine;

(j) cause excess funds of the Association to be invested in such reasonable investments that meet standards for fiduciary investments under Ohio law as the Board of Directors may from time to time determine;

(k) subject to the provisions of the Declaration, borrow funds, as needed, and pledge and assign such security and rights of the Association, including rights to levy and collect Association Assessments of every type or nature, or other future income, and to file liens therefore and enforce collection thereof, as might be necessary or desirable in the judgment of the Board of Directors, to obtain any such loan; take such actions and expend the Association funds and Assessments as the Board of Directors deems appropriate, in its sole discretion, to satisfy the requirements of institutional mortgagees, and guarantors and insurers of first mortgage loans for the financing or refinancing of Lots a part of Harpers Pointe;

(l) purchase and cause the Association to hold title to real property; and,

(m) do all things and take all actions permitted to be taken by the Association by law or the Declaration not specifically reserved thereby to others.

Section 4.11. It shall be the duty of the Board of Directors to:

(n) cause to be kept a complete record of all its acts and corporate affairs, including correct and complete books and records of account that specify receipts and expenditures relating to Community Common Elements and other common receipts and expenses, records showing the allocation, distribution, and collection of common profits, losses, and expenses among and from Owners, minutes of meetings of the Members and meetings of the Board of Directors, and records of the names and addresses of Owners;

(o) present the latest available financial statement of the Association to the Owners at each annual meeting of Owners, or at any special meeting when requested in writing by Owners representing not less than a majority of the voting power of Owners;

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

(q) cause an annual budget to be prepared, and amendments thereto as needed;

(r) as more fully provided in the Declaration, establish, levy, enforce and collect Assessments;

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

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

(u) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration; and,

(v) take all other actions required to comply with all requirements of the Declarations, Articles of Incorporation and this Code of Regulations.

ARTICLE V

OFFICERS AND COMMITTEES

Section 5.01. The officers of the Association shall be a President, a Secretary, a Treasurer and such other officers as may be determined by the Board of Directors. All officers shall be elected by the Board of Directors from among the members of the Board of Directors. Officers shall hold office at the pleasure of the Board of Directors and any two or more offices may be held by the same person. No Officer shall receive any compensation for their services rendered to the Association as a Director; provided that an Officer may be reimbursed for actual expenses incurred in the performance of duties as an Officer, if approved by the Board of Directors, and any Officer may serve the Association in any other capacity and may receive compensation therefore, subject to the requirements and limitations of this Code of Regulations and the Articles of Incorporation.

Section 5.02. It shall be the duty of the President to preside at all meetings of Members of the Association and the Board of Directors, to exercise general supervision

over the affairs of the Association and in general to perform all duties incident to the office or which may be required by the members of the Board of Directors.

Section 5.03. It shall be the duty of the Secretary to keep or cause to be kept under his or her supervision an accurate record of the acts and proceedings of the Members and the Board of Directors, including records of the names and addresses of the Members. The Secretary shall further perform all duties incident to the office and such other duties as may be required by the Members or the Board of Directors. Upon expiration or termination of his or her term of office, the Secretary shall deliver all books, records, documents and other property of the Association in his or her possession or control to his or her successor or to the President.

Section 5.04. The Treasurer shall receive and safely keep all money, securities and other intangible property belonging to the Association, or evidence thereof, and shall disburse the same under the direction of the Board of Directors; shall keep or cause to be kept under his or her supervision correct and complete books and records of account specifying the receipts and expenditures of the Association, together with records showing the allocation, distribution and collection of assessments, fees, revenues and expenses among and from the Members, shall hold the same open for inspection and examination by the Board of Directors and the Members, and shall present abstracts of the same at annual meetings of the Members or at any other meeting when requested; shall give bond in such sum with such surety or sureties as the Board of Directors may require for the faithful performance of his or her duties; shall perform any other duties which may be required of him or her by the members of the Board of Directors; and, upon the expiration or termination of his or her term of office, shall deliver all money and other property of the Association in his or her possession or control to his or her successor or to the President.

Section 5.05. The Board of Directors may create a committee or committees. Each committee shall serve at the pleasure of the Board of Directors and shall be subject to the control and direction of the Board of Directors. Any committee may act pursuant to the vote of a majority of its members at a meeting of the committee or by a writing or writings signed by all of its members. Any act or authorization by any such committee within the authority delegated to it shall be as effective for all purposes as the act or authorization of the Board of Directors. Each committee shall establish its own procedures for scheduling and giving notice of its meetings, establishing agendas, maintaining records of its meetings and actions, and other administrative matters, subject to any such procedures which may be established for that committee or all committees by the Board of Directors.

ARTICLE VI

INDEMNIFICATION

Section 6.01. The Association shall indemnify any officer or Director 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 (including, without limitation, any action threatened or instituted by or in the right of the Association), by reason of the fact that that individual is or was a Director, officer, employee, agent or volunteer of the

Association, or is or was serving at the request of the Association as a Director, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, suit or proceeding if that individual acted in good faith and in a manner that individual reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, that individual had no reasonable cause to believe that individual's conduct was unlawful. An individual claiming indemnification under this Section 6.01 shall be presumed, in respect of any act or omission giving rise to such claim for indemnification, to have acted in good faith and in a manner that individual reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal matter, to have had no reasonable cause to believe that individual's conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, rebut such presumption.

Section 6.02. Anything contained in this Code of Regulations or elsewhere to the contrary notwithstanding:

(a) the Association shall not indemnify any officer or Director of the Association who was a party to any completed action or suit instituted by or in the right of the Association to procure a judgment in its favor by reason of the fact that that individual is or was a Director, officer, employee, agent or volunteer of the Association, or is or was serving at the request of the Association as a Director, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, in respect of any claim, issue or matter asserted in such action or suit as to which that individual shall have been adjudged to be liable for acting with reckless disregard for the best interests of the Association or misconduct (other than negligence) in the performance of that individual's duty to the Association, unless and only to the extent that the Court of Common Pleas of Delaware County or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, that individual is fairly and reasonably entitled to such indemnity as such Court of Common Pleas or such other court shall deem proper; and

(b) the Association shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Section 6.02.

Section 6.03. Anything contained in this Code of Regulations or elsewhere to the contrary notwithstanding, to the extent that an officer or Director of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.01, or in defense of any claim, issue or

matter therein, that individual shall be promptly indemnified by the Association against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) actually and reasonably incurred in connection therewith.

Section 6.04. Any indemnification required under Section 6.01 and not precluded under Section 6.02 shall be made by the Association only upon a determination that such indemnification of the officer or Director is proper in the circumstances because that individual has met the applicable standard of conduct set forth in Section 6.01. Such determination may be made only (a) by a majority vote of a quorum consisting of Directors of the Association who were not and are not parties to, or threatened with, any such action, suit or proceeding, or (b) if such a quorum is not obtainable or if a majority of a quorum of disinterested Directors so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the Association, or any individual to be indemnified, within the past five (5) years, or (c) by the Members, or (d) by the Court of Common Pleas of Delaware County or (if the Association is a party thereto) the court in which such action, suit or proceeding was brought, if any; and such determination may be made by a court under division (d) of this section 6.04 at any time [including, without limitation, any time before, during or after the time when any such determination may be requested of, be under consideration by or have been denied or disregarded by the disinterested Directors under division (a) or by independent legal counsel under division (b) or by the Members under division (c) of this Section 6.04; and no decision for any reason to make any such determination, and no decision for any reason to deny such determination, by the disinterested Directors under division (a) or by independent legal counsel under division (b) or by the Members under division (c) of this Section 6.04 shall be evidenced in rebuttal of the presumption recited in Section 6.01. Any determination made by the disinterested Directors under division (a) or by independent legal counsel under division (b) or by the Members under division (c) of this Section 6.04 to make indemnification in respect of any claim, issue or matter asserted in an action or suit threatened or brought by or in the right of the Association shall be promptly communicated to the individual who threatened or brought such action or suit, and within ten days after receipt of such notification such individual shall have the right to petition the Court of Common Pleas of Delaware County or the court in which such action or suit was brought, if any, to review the reasonableness of such determination.

Section 6.05. Expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in Section 6.01 shall be paid by the Association in advance of the final disposition of such action, suit or proceeding to or on behalf of the officer or Director promptly as such expenses are incurred by that individual, but only if such officer or Director shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which that individual shall not have been successful on the merits or otherwise:

- (c) if it shall ultimately be determined as provided in Section 6.04 that that individual is not entitled to be indemnified by the Association as provided under Section 6.01; or

(d) if, in respect of any claim, issue or other matter asserted by or in the right of the Association in such action or suit, that individual shall have been adjudged to be liable for acting with reckless disregard for the best interests of the Association or misconduct (other than negligence) in the performance of that individual's duty to the Association, unless and only to the extent that the Court of Common Pleas of Delaware County or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances, that individual is fairly and reasonably entitled to all or part of such indemnification.

Section 6.06. The indemnification provided by this Article VI shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled under the Articles or this Code of Regulations or any agreement, vote of Members or disinterested Directors, or otherwise, both as to action in that individual's official capacity and as to action in another capacity while holding such office, and shall continue as to an individual who has ceased to be an officer or Director of the Association and shall inure to the benefit of the heirs, executors, and administrators of such individual.

Section 6.07. The Association may purchase and maintain insurance or furnish similar protection, including but not limited to trust funds, letters of credit, or self-insurance, on behalf of any Person who is or was a Director, officer, employee, agent or volunteer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), limited liability company, partnership, joint venture, trust or other enterprise, against any liability asserted against that Person and incurred by that Person in any such capacity, or arising out of that Person's status as such, whether or not the Association would have the obligation or the power to indemnify that Person against such liability under the provisions of this Article VI. Insurance may be purchased from or maintained with a Person in which the Association has a financial interest.

Section 6.08. For purposes of this Article VI, and as examples and not by way of limitation:

(a) An individual claiming indemnification under this Article VI shall be deemed to have been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.01, or in defense of any claim, issue or other matter therein, if such action, suit or proceeding referred to Section 6.01, or in defense of any claim, issue or other matter therein, if such action, suit or proceeding shall be terminated as to such person, with or without prejudice, without the entry of a judgment or order against that individual, without a conviction of that individual, without the imposition of a fine upon that individual and without that individual's payment or agreement to pay any amount in settlement thereof (whether or not any such termination is based upon a judicial or other determination of the lack of merit of the claims made against that individual or otherwise results in a vindication of that individual);

(b) References to an "other enterprise" shall include employee benefit plans; references to a "fine" shall include any excise taxes assessed on an individual with respect to an employee benefit plan; and references to "serving at the request of the Association" shall include any service as a Director, officer, employee, agent or volunteer of the Association which imposes duties on, or involves services by, such Director, officer, employee, agent or volunteer with respect to an employee benefit plan, its participants or beneficiaries; and an individual who acted in good faith and in a manner that individual reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Association" within the meaning of that term as used in this Article VI; and

(c) The term "volunteer" shall mean a Director, officer, committee member or other agent of the Association, or another Person associated with the Association, who (i) performs services for or on behalf of, and under the authority or auspices of, the Association, and (ii) does not receive compensation, either directly or indirectly, for performing those services. Compensation does not include (i) actual and necessary expenses that are incurred by the volunteer in connection with the services performed for the Association and that are reimbursed to the volunteer or otherwise paid; (ii) insurance premiums paid on behalf of the volunteer and amounts paid, advanced or reimbursed pursuant to this Article VI, Section 1702.12(E) of the Ohio Revised Code or any indemnification agreement, resolution or similar arrangement; or (iii) modest prerequisites.

Section 6.09. Any action, suit or proceeding to determine a claim for indemnification under this Article VI may be maintained by the person claiming such indemnification, or by the Association, in the Court of Common Pleas of Delaware County. The Association and (by claiming such indemnification) each such Person consent to the exercise of jurisdiction over its or that Person by the Court of Common Pleas of Delaware County in any such action, suit or proceeding.

ARTICLE VII

NOTICES AND DEMANDS

Section 7.01. Any notice or demand which is required to be given or delivered to or served upon a Member of the Association shall be in writing and shall be deemed to have been given, delivered or served when delivered personally to him or her or mailed to him or her at his or her address as it appears on the records of the Association.

Section 7.02. In computing the period of time for the giving of a notice required or permitted under the Articles of Incorporation, this Code of Regulations or a resolution of the 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 permitted to be given by mail, the notice shall be deemed to have been given when deposited in the mail.

ARTICLE VIII

AMENDMENTS

Section 8.01. This Code of Regulations may be amended or a new Code of Regulations may be adopted at a meeting of voting Members held for that purpose or in a vote conducted by mail by the affirmative vote of those Members entitled to exercise not less than seventy-five percent (75%) of the total voting power of Members. The foregoing notwithstanding, any amendment terminating and dissolving the Association shall require the unanimous consent of all Owners.

Section 8.02. This Code of Regulations shall also be deemed to be Bylaws as the same is defined in Chapter 5312 of the Ohio Revised Code.

ARTICLE IX

DURATION

Section 9.01. The Association shall exist so long as the provisions of the Declaration are applicable to Harpers Pointe.

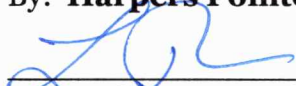
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IN WITNESS WHEREOF, the undersigned has caused this Code of Regulations to be adopted and executed as of the Date indicated.

ADOPTED this 25th day of July, 2020:

HARPERS POINTE HOMEOWNERS' ASSOCIATION, INC.

By: **Harpers Pointe Land Company LLC, Developer**



Leonard Pivar, Member

This document prepared by:

Kevin M. Maloney, Esq.
LAW OFFICE OF KEVIN M. MALONEY
71 E. Wilson Bridge Rd., STE A-4
Worthington, OH 43085-2358
Phone (614) 243-0400
Kevin@Columbus-Law.com

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS
EASEMENTS, COVENANTS, AND ASSESSMENTS
FOR
HARPERS POINTE – RESIDENTIAL SUBDIVISION**

THIS FIRST AMENDMENT OF DECLARATION is made by the Developer in collaboration with the Harpers Pointe Homeowners' Association, acting through its Board of Directors, for purposes of making a necessary amendment to the provisions concerning maintenance of the irrigation system serving the Lots in Harpers Pointe set forth in Sections 8.03 and 8.04 of the Declaration, for the purposes and intent noted herein.

WHEREAS, a Declaration of Restrictions Easements, Covenants, And Assessments For Harpers Pointe – Residential Subdivision exists and is recorded in Book 1753, Pages 1673-1745, of the Recorder's Office in Delaware County, Ohio; and,

WHEREAS, the Declarations apply to that certain real estate (the "Property-") more particularly described on the attached "Exhibit A" which is incorporated herein by reference, situated in the City of Powell, County of Delaware, and State of Ohio; and

WHEREAS, the said Declaration contains provisions allowing the amendment of same by the Developer until the occurrence of certain conditions which have not yet been met; and,

WHEREAS, the experiences to date during the construction and operating phases of the homes on the Lots have made it clear that it is impractical and uneconomical to maintain the irrigation system as originally planned due to excessive ongoing and projected future maintenance and repair needs, such that it is prudent and practical to make changes in the irrigation system so that Lots are separately served and metered; and,

WHEREAS, it is the considered and unanimous opinion of the Developer and the Board of Directors that an amendment of the Declaration provisions concerning maintenance of the irrigation system is required so as to permit the necessary configuration changes to take place and be implemented; and,

WHEREAS, the terms and conditions of this First Amendment of Declaration shall supersede and govern over any conflicting or inconsistent terms and conditions in the Declaration.

NOW, THEREFORE, pursuant to Section 8.02 of the Declaration, the following amendments are hereby made to the Declaration.

- I. Article 8, Section 8.03, is hereby deleted in its entirety and replaced with the following:

Section 8.03 Maintenance by Association. The Association shall maintain and keep in good repair the Common Property and all landscaping on individual Lots other than areas of owner flower planting. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures, and Improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property, and the lawn and landscaping as originally installed on all other Lots. This includes the maintenance, repair, replacement and control of the in-ground irrigation system that will be installed at each individual home. The Association's landscaping contractor shall be afforded access to the irrigation system Control Panel to be mounted at each home to set appropriate times to activate the irrigation system for watering the landscaping, and such settings shall not be altered or changed otherwise.

- II. Article 8, Section 8.04, is hereby deleted in its entirety and replaced with the following:

Section 8.04 Maintenance by Owner. Each Owner or occupant shall repair, replace, and maintain in good order and safe and sanitary condition, at his/her expense, his/her Lot, and all portions of, Improvements to, structures on, and, equipment and components used in connection with, his/her Lot other than the lawn and landscaping that the Association has agreed to maintain. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at his/her own expense all maintenance, repairs and replacements within such Lot that, if omitted, would adversely affect the value, safety and usefulness of the Common Property or other homes in the community. Each Owner shall maintain those portions of his/her Lot that are adjacent to any portion of the Common Property in accordance with the Rules and the requirements set forth in this Declaration. Each Owner also agrees not to change the irrigation controls on its Lot, and to afford the Association's landscape contractor access to the irrigation controls during business hours.

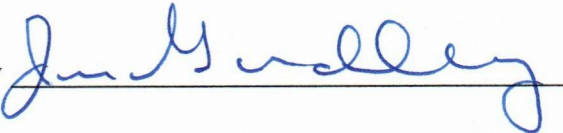
In the event (a) a Home Owner shall fail to repair or perform maintenance as required of that Home Owner, (b) the need for maintenance or repair of any part of any Home or part of any of exterior improvements is caused by the negligent or intentional act of any Home Owner or Occupant, (c) the need for maintenance or repair results from the failure of any Home Owner or his, her, or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same. If the cost of any such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, its cost, plus any other fees and penalties assessed pursuant to the rules and regulations of the Board in connection therewith, shall constitute a special individual assessment on the home owned by that Home Owner and on that Home Owner. The determination that a particular maintenance or repair is necessary or has been caused in the prescribed manner, shall be made by the Board in its sole discretion.

Except as expressly modified or superseded herein, all of the terms and conditions of the Declaration shall remain unaffected, are in full force and effect and are hereby ratified and confirmed.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf on or as of the ____ day of March, 2024.

**HARPERS POINTE
HOMEOWNERS' ASSOCIATION, INC.,**
an Ohio Non-Profit Corporation

By 
Jim Gundling, Agent
Print Name and Title

STATE OF OHIO

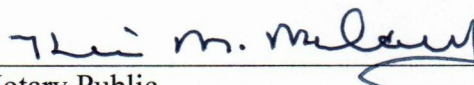
COUNTY OF Delaware ss:

Before me, the subscriber, a Notary Public in and for said County and State, personally appeared Developer by and through its authorized agent, James P. Gundling a Member of the Board of Directors of **Harpers Pointe Homeowners' Association, Inc.**, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of the Board of Directors for the uses and purposes set forth therein, and that such person is authorized to execute this instrument and to so bind **Harpers Pointe Homeowners' Association, Inc.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 6th day of March, 2024.

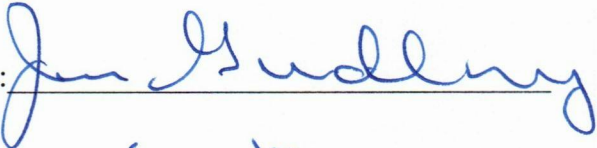


Kevin M. Maloney
Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
Sec. 147.09 R.C.


Notary Public

DEVELOPER:

HARPERS POINTE LAND COMPANY LLC, an
Ohio corporation

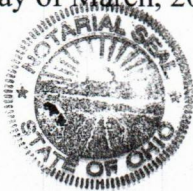
By: 
Jim Gundling, Member
Print Name and Title

STATE OF OHIO

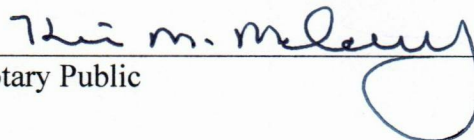
COUNTY OF Delaware **ss:**

Before me, the subscriber, a Notary Public in and for said County and State, personally appeared Developer by and through its authorized agent, James P. Gundling, a Member of **Harpers Pointe Land Company LLC**, an Ohio limited liability company, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of Developer for the uses and purposes set forth therein, and that such person is authorized to execute this instrument and to so bind Developer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 6th day of March, 2024.



Kevin M. Maloney
Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
Sec. 147.03 R.C.


Notary Public

This document prepared by:

Kevin M. Maloney, Esq.
LAW OFFICE OF KEVIN M. MALONEY
71 E. Wilson Bridge Rd., STE A-4
Worthington, OH 43085-2358
Phone (614) 243-0400
Kevin@Columbus-Law.com

EXHIBIT "A"

Situated in the City of Powell, County of Delaware and State of Ohio, bounded and described as follows:

PARCEL I: Being part of Farm Lot Number Thirty-two (32), Section 4, Township 3, Range 19, U.S. Military Lands, and being 3.750 acres of the Charles Hess 34.2 acre tract, of record in Deed Book 350, Page 177, Recorder's Office, Delaware County, Ohio, and bounded and described as follows:

Beginning at an iron pin in a westerly line of the said Charles Hess 34.2 acre tract, being also the easterly line of the Louis V. and Doris E. Huffman 18 acre tract, of record in Deed Book 342, Page 57, said iron pin being located South 5° 47' 04" West, 783.39 feet from an iron pin at the northwesterly corner of the said 34.2 acre tract and in the northerly line of Farm Lot 33; thence South 84° 34' 10" East 528.08 feet to an iron pin; thence South 8° 00' West, 309.71 feet to an iron pin; thence North 84° 34' 10" West, 528.82 feet to an iron pin in the said westerly line of the Charles Hess 34.2 acre tract; thence along the said westerly line, North 5° 46' 04" East, 309.70 feet to the place of beginning, containing 3.750 acres, more or less.

Subject, however, to all easements and/or rights-of-way, if any, of previous record,

PARCEL II: Being part of Farm Lots 31 and 32 of Section 4, Township 3, Range 19, U.S. Military Lands, and being five (5) acres of the Charles H. Hess tract of record in Deed Book 350, Page 177, Recorder's Office, Delaware County, Ohio, and bounded and described as follows;

Beginning at a point in the centerline of Olentangy Street (State Route 50) at the southeasterly corner of a 0.775 acre tract that is North 84° 00' 29" West, 251.69 feet from the southeasterly corner of the said Charles E. Hess tract; thence along the easterly line of the said 0.775 acre tract, North 6° 12' 04" East, 235.03 feet to an iron pin at the northeasterly corner of the said 0.775 acre tract, being the true place of beginning and the southeasterly corner of the tract herein described; thence along the northerly line of the said 0.775 acre tract, North 84° 00' 24" West, 228.17 feet to an iron pin at the northwesterly corner of the said tract; thence along a westerly line of the said Charles E. Hess tract, North 6° 00' East, (passing Farm Lots 31 and 32 at 431.43 feet), 557.14 feet to an iron pin; thence along a southerly line of the said Charles E. Hess tract, North 84° 34' 10" West, 346.01 feet to an iron pin; thence along a westerly line of the said Charles E. Hess tract North 5° 46' 04" East, 211.74 feet to an iron pin; thence South 84° 34' 10" East, 528.82 feet to an iron pin; thence South 6° 00' West, 525.35 feet to an iron pin; thence South 5° 07' 20" East, 250.00 feet to the place of beginning. Containing 5 acres more or less.

Subject, however, to all easements of record.

TOGETHER WITH the use of a thirty (30) foot roadway easement for ingress and egress to the above described 5 acre tract and 3.750 acre tract and bounded and described as follows: Beginning at a point in the centerline of Olentangy Street (State Route No. 50), at the southeasterly corner of a 0.775 acre tract that is North 84° 00' 29" West, 251.69 feet from the southeasterly corner of the Charles H. Hess tract; thence along the easterly line of said 0.775 acre tract, North 6° 12' 04" East, 235.03 feet to an iron pin at the southeasterly corner of said 5 acre tract; thence along the easterly line of said 5 acre tract, North 5° 07' 20" West, 30.58 feet to a point; thence South 84° 00' 24" East, 36.0 feet to a point; thence South 6° 12' 04" West, 265.03 feet to a point in the centerline of said Olentangy Street; thence along centerline of Olentangy St., North 84° 00' 29" West, 30.0 feet to place of beginning.

Parcel Number: 319-425-13-046-000

DESCRIPTION APPROVED
FOR TRANSFER
Chris Bauserman
Delaware County Engineer