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BK **1480** PG **2429-2471**

**DECLARATION OF COVENANTS,  
 EASEMENTS, CONDITIONS, RESTRICTIONS AND ASSESSMENTS**

**FOR**

**MILLBROOK SECTION 2  
 (WILLOWBROOK)**

**(A Planned Community Under  
 Chapter 5312 of the Ohio Revised Code)**

BROSIUS JOHNSON & GRIGGS  
 (BOX)  
 50 W BROAD STE 3300  
 COLUMBUS, OH 43215

Cross Reference: Official Record Volume 1476, Page 1930, et seq.

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EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY  
EXHIBIT B – CODE OF REGULATIONS  
EXHIBIT C – APPROVED FENCE DETAIL

**DECLARATION OF COVENANTS, EASEMENTS,  
CONDITIONS, RESTRICTIONS AND ASSESSMENTS**

**FOR**

**MILLBROOK SECTION 2  
(WILLOWBROOK)**

THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS, RESTRICTIONS AND ASSESSMENTS (the "Declaration") is made as of the \_\_\_\_ day of January, 2017, by Medrock, LLC, an Ohio limited liability company, of 3895 Stoneridge Lane, Dublin, Ohio 43017 (the "Declarant").

A. Declarant is the owner of the real property more fully described in Exhibit A to this Declaration and by this reference incorporated herein (the "Property" as defined hereinafter).

B. Declarant desires to develop the Property into a residential community to be known as Willowbrook (hereinafter the "Subdivision"), and to restrict the use and occupancy of the Property for the protection of the Property and the future owners of the Property and to provide for the preservation of the values of and amenities in the Subdivision for the benefit of the present and future Owners of the Lots and the Improvements constructed on them.

C. Declarant desires that all of the Property be encumbered with the covenants, easements, restrictions and conditions set forth herein which shall run with the land and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, including the future Owners of any Lot, the Declarant, the Declarant's successors and assigns, and any utility companies, whether public or private, who are granted rights herein.

D. Located contiguous to or generally near the Subdivision is property that has been or in the future may be developed as an extension of the Subdivision with subdivision lots for single-family homes to be built on them, and additional landscaped, green areas and/or other amenities and improvements, and subjected to the plan and restrictions created hereby. This property is referred to herein as the "**Additional Property.**"

E. Declarant deems it desirable for the accomplishment of these objectives to create an association to which is delegated and assigned the non-exclusive right and obligation to administer and enforce the provisions hereof, to own and/or maintain certain property, to have easement rights with respect to certain property, to administer such property, and to collect and disburse funds necessary to accomplish these objectives. Accordingly, Declarant shall cause to be incorporated a homeowners' association as a nonprofit corporation under and pursuant to the laws of Ohio, whose Members are and will be all of the Owners of a Lot or Lots in the Subdivision.

**COVENANTS, EASEMENTS, CONDITIONS,  
RESTRICTIONS AND ASSESSMENTS**

NOW THEREFORE, in pursuance of a general plan for the protection, benefit and mutual advantages of the property in the Subdivision, Declarant, with respect to the property described on Exhibit A of this Declaration, hereby declares that all of the Property (currently being all of the property described on Exhibit A to this Declaration) shall be held, sold, conveyed and occupied subject to the following covenants, easements, conditions and restrictions, which are for the purpose of protecting the values and desirability of, and which shall run with the title to, each part of the Subdivision, and be binding on all parties having any right, title or interest therein, and each part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of and be

enforceable by Declarant, each owner of property in the Subdivision, the homeowners association, and the respective personal representatives, heirs, successors and assigns of each:

## **GENERAL PROVISIONS**

### **I. APPLICABILITY**

A. This Declaration shall initially apply to the entire Property as described on the attached Exhibit A. If Declarant owns, and/or acquires additional parcels adjacent to or generally near the Property, intended by Declarant for future development, generally consistent with the development of the Property, Declarant may annex said additional parcels to, and declare them to be, subsequent phases of the Subdivision. Upon such annexation, Declarant shall have the right, but not the obligation, to subject such annexed parcels to the terms and conditions of this Declaration. Declarant may subject annexed parcels to this Declaration without modification, or Declarant may supplement and amend this Declaration as it applies to such additional phases of development. As to each development phase of the Subdivision, Declarant may re-record this Declaration with an attached exhibit which modifies and/or supplements this Declaration with respect to such phase, or Declarant may incorporate this Declaration by reference into a supplemental declaration or an amendment hereto which establishes the modifications and/or supplemental provisions desired by Declarant to be applicable to such phase. The modifications and/or supplemental provisions applicable to different phases of development at the Subdivision may be comparable to, more restrictive or less restrictive than the parallel provisions applicable to other development phases, as determined to be appropriate by Declarant in the exercise of its sole discretion. In the event of any inconsistency between the provisions of this Declaration and the provisions of any phase-specific modifications and/or supplements or amendments to this Declaration, the terms of the phase-specific document shall control.

### **II. DEFINITIONS**

The following terms used in this Declaration shall have these meanings, unless the context requires otherwise:

A. "Additional Property" -- property that may in the future be subjected to the plan for the Subdivision provided hereby, and consists of such other property as Declarant, in its sole discretion, may from time to time determine and designate as Additional Property.

B. "Articles" and "Articles of Incorporation" – the Articles, filed with the Secretary of State of Ohio, incorporating Willowbrook Homeowners' Association, Inc. (the "Association") as a nonprofit corporation under the provisions of Chapter 1702 of the Revised Code of Ohio ("Chapter 1702").

C. "Assessments" – charges levied by the Association on Lots and their Owners, consisting of Operating Assessments, Special Assessments and Individual Lot Assessments.

D. "Association" – an association of all of the Owners of Lots in the Subdivision, at any time, except Owners of Exempt Property with respect to that property. The Association is being incorporated as an Ohio nonprofit corporation named Willowbrook Homeowners' Association, Inc., or similar, and its successors and assigns, which Association is also an "Owners Association" as that term is defined in Chapter 5312 of the Revised Code of Ohio.

E. "Association Governing Documents" – the Association's Articles of Incorporation, Code of Regulations, its Rules and all amendments thereto, this

Declaration and all amendments and/or supplements thereto, applicable building and zoning laws and ordinances, and any recorded plats of property a part of the Subdivision.

F. “Board” and “Board of Directors” – the board of directors or other management body of the Association.

G. “Code of Regulations” and “Code” – the Code of Regulations of the Association (sometimes referred to as “bylaws”) created under and pursuant to the provisions of Chapter 1702, providing certain operating rules and procedures for the Association. A true copy of the Code of Regulations is attached to this Declaration as Exhibit B and made a part hereof by this reference.

H. “Common Elements” – all real and personal property now or hereafter acquired by the Association, or benefited by easement to it, pursuant to the provisions hereof, or otherwise, for the common use and the enjoyment of the Owners, or for the operation of the Association. The Common Elements may include open spaces, Reserve areas, entranceway and community border features, detention areas, private drives, and other property designated by Declarant or the Board (as the Board will be constituted following the Turnover Date) to be Common Elements, and benefiting the Owners and Occupants of the Lots and Improvements in the Subdivision. The Common Elements shall include not only real or personal property owned by the Association, but also shall include real or personal property for the maintenance of which the Association has responsibility under this Declaration, pursuant to applicable zoning regulations, approved plat(s) of property that is part of the Subdivision, and/or under any agreement entered into by the Declarant or by the Association, the terms of which are binding on the Association. The Common Elements initially include the ownership of and maintenance responsibilities for the approximately 0.891 acre of land designated as “Open Space” and/or Lot 11836 on the recorded plat of Millbrook Section 2 recorded in Official Record 1476, Pages 1930, records of the Recorder’s Office, Delaware County, Ohio, and any supplements and amendments thereto, any Improvements thereon, including, but not limited to, a bike path, as described in Exhibit A and may include additional areas in the future as Additional Property is made part of the Subdivision.

I. “Common Expenses” – expenses incurred in maintaining the Common Elements and shall mean the projected expense of maintaining all Common Elements at the time that the Subdivision is completely developed and all Lots are resident occupied.

J. “Declarant” – Medrock, LLC, and any manager, member, officer, successor or assignee thereof to which Declarant specifically assigns any of its rights under this Declaration by a written instrument.

K. “Design Review Board” – the board or committee appointed by the Board to review, approve or disapprove and oversee construction of, and all subsequent modifications, additions or alterations to Improvements.

L. “Exempt Property” -- means the portion of the real property comprising the Subdivision (1) now or hereafter dedicated to common public use or owned by the United States, the State of Ohio, the County, the City, any school board, or similar governmental body, or any instrumentality or agency or any such entity, for so long as any such entity or any such instrumentality or agency shall be the owner thereof, or (2) owned by the Association; including, but not limited to, the approximately 0.891 acre of land designated as “Open Space” and/or Lot 11836, as designated on the recorded plat of Millbrook Section 2 and any amendments and supplements thereto, provided in either such case, the same is not utilized as a residence.

M. “Improvements” – all man made or man installed alterations to the Property which cause the Property to deviate from its natural condition, including but not limited to single-family homes, dwellings, buildings, outbuildings, sheds, garages and other

structures; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools, hot tubs and spas; sport and recreational courts, fixtures and facilities, including basketball hoops, and lacrosse and soccer goals; children's recreational equipment or structures, including playground equipment, swing-sets, playhouses, tree houses and forts; pet houses, runs, and enclosures; changing of colors or materials; exterior ornamentations; exterior lighting; slope and drainage alterations; roads, driveways, bike paths, uncovered parking areas and other such areas; fences, mailboxes, trellises, walls, retaining walls, exterior stairs, decks, patios and porches and walkways; planted trees, hedges, shrubs and other forms of landscaping; and all other structures or improvements of every type.

N. "Individual Lot Assessment" – an Assessment that the Board may levy upon a Lot and its Owners to reimburse the Association for costs incurred solely on behalf of that Lot, or the Owners thereof, including without limitation, costs associated with making repairs that are the responsibility of the Owner of that Lot; costs of additional insurance premiums reasonably allocable to an Owner because of use of Improvements on that Lot; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; administrative charges for violations of the Association Governing Documents, late charges, and interest on delinquent Assessments, and costs of collection of delinquent obligations to the Association, including attorneys' fees and court costs, and all other charges reasonably determined to be chargeable solely to a Lot and its Owners.

O. "Lot" – a discrete parcel of real property identified upon a recorded plat of property subjected to this Declaration, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Declarant, excluding the Common Elements and any portion of the Property dedicated for public use. Declarant reserves the right to split and/or combine currently platted Lots into new platted Lots without the consent or approval of Owners of other Lots in the Subdivision, as Declarant 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 Lots. Once a split/combination is completed, the former lots shall cease to be "Lots" for any and all purposes hereunder.

P. "Manager" – the person or entity retained by the Board to assist in the management of the Association.

Q. "Member" – any person or entity entitled to membership in the Association, as provided for in Article VII.

R. "Occupant" – a Person residing in a dwelling on a Lot, regardless of whether that Person is an Owner.

S. "Operating Assessment" – an Assessment that the Board may levy from time to time upon all Lots, other than Exempt Property, and their Owners, pursuant to the terms of this Declaration, to provide funds to pay Common Expenses, that is, funds needed to meet cash requirements of the Association for its operations and reasonable reserves.

T. "Owner" – the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers and the Declarant, but excluding those having an interest merely as security for performance of an obligation.

U. "Person" – a natural individual, trustee, corporation, partnership, limited liability company, or other legal entity capable of holding title to real property.

V. "Planned Community Act" – Chapter 5312 of the Ohio Revised Code.

W. "Property" – all of the real property described in Exhibit A attached to this Declaration and such Additional Property as may be annexed by amendment to this

Declaration or otherwise added to the Subdivision by a supplemental declaration or amendment to this Declaration from and after such time as the Additional Property is subjected to the provisions hereof, and also includes real property that is owned in fee simple by the Association together with all easements and appurtenances.

X. "Reserve Fund" – the fund established pursuant to Article IX.

Y. "Rules" – the rules and regulations governing (1) use of the Property and the Common Elements and (2) the conduct of Members and their respective families, guests, licensees and invitees, as may be established by the Board from time to time, together with the architectural standards that may be adopted by the Design Review Board from time to time.

Z. "Special Assessment" – an Assessment that the Board may levy upon all Lots, except Exempt Property, to pay for unanticipated operating deficiencies, or to pay for capital expenditures not regularly budgeted and not to be paid out of monetary reserves, such as costs for major capital improvement replacements and for major new capital improvements, or any other similar purpose determined appropriate by the Board in furtherance of its functions hereunder.

AA. "State" – the State of Ohio, and, unless the context requires otherwise, any political subdivision thereof exercising jurisdiction over the Property.

BB. "Subdivision" – all property that at any time has been subjected to the provisions of this Declaration (which includes all of the Property) and the Common Elements and any subsequent additions thereto.

CC. "Turnover Date" – the date on which Declarant relinquishes its exclusive right to appoint all members of the Board, which date shall be no later than the date when the Subdivision has been fully developed and all Lots have been deeded to bona fide purchasers unrelated to Declarant; provided Declarant reserves the right, in its sole and unfettered discretion, to turn over control of the Association, or selected functions thereof, at such earlier time as it determines.

### **III. GOALS**

The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes:

- A. Compliance with all zoning and similar governmental regulations;
- B. Promotion of the health, safety and welfare of all Owners and residents of the Property;
- C. Preservation, beautification and maintenance of the Property and all Improvements;
- D. Establishment of requirements for the development and use of the Property;  
and
- E. Compliance with the provisions of the Planned Community Act.

### **DEVELOPMENT & USE RESTRICTIONS**

#### **IV. 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 Declarant and every Owner or Occupant, their respective heirs, successors and assigns, as well as their family members, guests, and invitees:

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 therefor have been approved by the Design Review Board (or Declarant if no Design Review Board has been established) as provided for hereinafter. All Improvements, excepting only landscaping, shall be constructed no nearer the street or streets on which a Lot fronts than the platted setback line(s) for such Lot, unless a variance to permit construction forward of a setback line has been approved by the appropriate governmental entity exercising jurisdiction over the Lot, and by the Design Review Board.

B. Use of Common Elements. Any Common Element 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 and shall be subject to the rules and regulations governing the use as promulgated by the owner or owner(s) of the property. All uses of the Common Elements owned by the Association 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 laws of the State, the Rules, and the other Association Governing Documents. The Association, acting through its Board of Directors, shall possess all power and authority vested in it pursuant to the Articles of Incorporation and Code of Regulations of the Association, the Declaration, the other Association Governing Documents, and the Planned Community Act, including, but not limited to, the right to (1) contract, lease, or assign interest in; (2) initiate, defend, negotiate and settle claims arising from casualty, condemnation or other actions with respect to; and (3) establish Rules governing conduct upon the Common Elements owned by the Association and all Improvements located thereon.

C. Hazardous Actions or Materials. Nothing shall be done or kept in or on any Lot or in or on any portion of the Common Elements that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Elements or that might unreasonably disturb the quiet occupancy of any Person occupying a dwelling on any other Lot. This paragraph shall not be construed so as to prohibit the Declarant from construction activities consistent with its residential construction practices.

D. Signs. No signs of any character shall be erected, posted or displayed upon the Property, except: (1) marketing signs installed by the Declarant while marketing the Lots and residences for sale; (2) street and identification signs installed by the Association, a local governmental body having jurisdiction over the streets within the Subdivision or the Declarant; (3) one temporary real estate sign on a Lot not to exceed six square feet in area advertising that such Lot is for sale or rent; and (4) for a reasonable period of time before, and not to exceed three days after, a public governmental election in which the Owners are permitted to vote, up to three temporary political signs of not more than six square feet each, expressing support for or opposition against an individual candidate or issue which is the subject of the current election. Political signs containing information or expressing opinions other than simple support for or opposition against a specific candidate or issue may be removed by the Association and not more than one sign for or against any specific candidate or issue may be posted or displayed on any one Lot. No such signs may be posted in or on any portions of the Common Elements owned by the Association except signs authorized and approved by the Board.

E. Animals. No Person may keep, breed, board or raise any animal, livestock, reptile, insect, or poultry of any kind for breeding or other commercial purpose on any Lot, or in or upon any part of the Common Elements, unless expressly permitted by the Rules. No more than four (4) domestic pets may be kept on any Lot except dogs or cats in excess of such numbers that are less than four (4) months of age. All domestic pets shall be properly restrained and shall not be permitted to roam free or loose on the Property, other than on the Lot of the owner of such pet(s). No animal, including a domestic pet, shall be kept on the Property if the size, type or characteristics of such animal constitute a nuisance.

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 Review Board, which may be withheld in the Design Review Board's sole and unfettered discretion.

F. Nuisances. No noxious or offensive trade shall be permitted on the Property or within any building or other structure located on the Property, nor shall any use be made nor condition allowed to exist on any Lot which unreasonably disturbs or interferes with the quiet occupancy of any person residing on any other Lot. No well, either temporary or permanent, for gas, water, oil or other substances shall be erected, placed or suffered to remain upon any Lot.

G. Business. 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. This provision shall not prohibit (1) 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 (2) during the construction and sales period, the use of Lots, including dwellings and other Improvements constructed thereon, and Common Elements for construction and sales purposes by Declarant and/or by builders approved by Declarant, including the construction and operation of sales models and/or trailers by Declarant and/or by builders as approved by Declarant, in its sole discretion.

H. Storage. Except for the reasonably necessary activities of the Declarant during the development of the Property (including the construction of dwellings or other Improvement by Declarant), no open storage of any kind is permitted. No metal storage building shall be erected, placed or suffered to remain on any Lot, notwithstanding any such metal storage container utilized by the Declarant and/or builders approved by Declarant, during the development of the Property. However, permanent outside buildings or sheds may be constructed with the same building materials and colors as the dwelling on the Lot only with the prior written approval of the Design Review Board and any necessary governmental entity.

I. Hotel/Transient Uses; Leases. No Lot may be used for hotel or transient uses, including without limitation, uses in which an Occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to this Declaration and the other Association Governing Documents.

J. Vehicles.

1. The Board shall be entitled to create and enforce reasonable Rules concerning the parking of any vehicle permitted in or on the Property. In addition to the Board's 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, unless such vehicles are located in permitted, enclosed structures shielded from view.

2. No commercial vehicles, snowmobiles, watercraft, trailers, campers, buses or mobile homes shall be parked or stored on a street in the Subdivision, or on any Lot (except in an enclosed permitted structure shielded from view). The Board may permit the occasional, non-recurring parking of vehicles otherwise prohibited by the foregoing sentence, and may require as a condition of such permission that the owner of the vehicle or Lot on which it is parked substantiate that such parking is limited to less than forty-eight consecutive hours, and not more than ninety-six cumulative hours in any thirty day period. Nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during

construction of residences on the Lots or the development of the Subdivision by Declarant or builders, employees and contractors approved by Declarant. In addition, no automobile or other motorized vehicle of any type or description which is not functionally or legally operable on public highways shall be kept, stored, operated or maintained on or in front of any Lot within the Subdivision for a period longer than seven days, unless the same is entirely contained and shielded from view within a permitted structure. Any vehicle so kept, stored, operated or maintained shall be considered a nuisance, and the Board shall have the right and authority to have the same removed at the owner's expense.

As used herein, the word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit occupancy thereof, or the storage or conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The term "commercial vehicle" shall include and mean every type of vehicle, whether or not motorized, which is designed and used exclusively or primarily for anything other than personal transportation of ten or fewer persons at one time. Vehicles larger than ten person passenger vans are conclusively presumed to be commercial vehicles, whereas passenger cars, passenger vans (full-sized or mini-vans), pickup trucks, sports-utility vehicles, and motorcycles are presumed to be designed and used for personal transportation. Vehicles which are not conclusively presumed to be commercial by virtue of their size, and which are used by the operator thereof for both business and personal purposes, shall not be considered "commercial vehicles" merely by virtue of advertising information painted or otherwise affixed thereto.

K. Trash. Except for the reasonably necessary activities of the Declarant during the original development of the Property, no burning or storage of trash of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers, screened from view and stored either inside of a permitted structure, or to the side or rear of the home constructed on the Lot.

L. Antennae. To the extent such prohibition is permitted by federal legislation, no radio, satellite dish, television or other electronic antennae or aerial may be erected or maintained on any Lot or on the exterior of any Improvement, without the prior written approval of the Design Review Board. Standard TV antennae and other over-the-air reception devices (including satellite dishes) of one meter (39.4 inches) in diameter or less shall be permitted provided, however, that no exterior antenna, satellite dish or similar exterior improvement shall be installed upon any Lot without first providing written notice to the Design Review Board. Installation of standard TV antennae and over-the-air reception devices shall comply with any and all rules and guidelines adopted by the Design Review Board or the Board concerning location and general screening requirements and reasonable color blending requirements in order to minimize visual disturbance; provided, however, that such rules or regulations do not unreasonably increase the cost of installing, maintaining, or using such devices, or otherwise unreasonably delay an Owner's right to receive acceptable over-the-air signals.

M. Utility Lines. All utility lines on the Property shall be underground, subject to the requirements of relevant governmental authorities and utility companies.

N. Drainage and Grading. No drainage ditches, cuts, swales, impoundments, mounds, knobs, 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 pattern, may be destroyed, altered or modified by or at the direction or with the consent of any Owner without the prior consent of the Design Review Board and, if required, the City of Delaware. No Improvement shall be made in any manner whatsoever that is inconsistent with the master grading plans established by Declarant for the Subdivision, or

any part thereof, without the prior written consent of the Design Review Board and, if required, the City of Delaware. The Association and its representatives and the City of Delaware and its representatives shall have the right to enter upon any Lot and any portion of the Subdivision and remedy or repair any such destruction, alteration, modification, or improvement without being guilty of trespass and without liability to any owner with respect to the same or the consequences thereof.

O. Tanks. No tanks for the storage of propane gas or fuel oil shall be permitted to be located above or beneath the ground of any Lot except that propane gas grills are permitted.

P. Street Trees. Declarant may designate one or more trees as deemed necessary by Declarant along the street(s) and alley(s) adjacent to each Lot as "street trees." If Declarant determines to designate street tree(s), then the Owners of the Lots agree to such uniform street trees and each Owner shall care for, and, if necessary, replace such tree or trees at the Owner's expense with a like type of tree.

Q. Mailbox. Declarant has designated a mailbox for each Lot with a design giving uniformity to the Subdivision. If the mailbox is damaged, destroyed or deteriorates, then each Owner, at such Owner's expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailbox.

R. Yard Lights and Lamp Posts. All yard lights and lamp posts, if any, shall conform to the standards set forth by the Declarant and the Design Review Board.

S. Fencing. The Design Review Board shall have the authority to establish standards according to which fencing and walls may be permitted in the Subdivision. Said authority shall include the power to prohibit fencing or walls, or both, entirely, to prohibit or require fencing or walls of certain types, and to prohibit or require fencing or walls of certain types (or entirely) in certain areas. All fencing and walls shall meet any applicable requirements (if any) in subpart T below, and shall conform to the standards set forth by the Design Review Board, and must be approved by the Board, in writing, prior to the installation thereof. By way of example, and not limitation, and subject to the provisions of subsection T below, compliance with the following standards shall be considered by the Design Review Board in reviewing fence applications:

1. No fence or wall shall be erected, placed or suffered to remain on any Lot closer to the street than the building setback line(s) as shown on the plat creating the Lot, nor shall any fence or wall be greater than four (4) feet in height;

2. No portion of any Lot nearer to any street than the building setback line(s) as shown on the plat creating the Lot shall be used for any purpose other than that of a lawn. Subject to subpart V below, nothing herein contained shall be construed to prevent the use of such portion of any Lot for walks, drives, planting of trees or shrubbery, growing of flowers or other ornamental plants;

3. Plastic and wire, chain link, or other non-decorative metal fences are specifically prohibited. Wood and/or vinyl fences may be permitted along property lines. Vinyl and/or wire mesh may be added to a fence for pet control. A specific fence standard may be imposed, either by the attachment of an exhibit to this Declaration, or by Design Review Board action following the recordation hereof;

4. Decorative wrought iron (or aluminum fences with the appearance of wrought iron) fencing will be permitted around in-ground swimming pools. Notwithstanding the foregoing, fences located immediately adjacent to a dwelling for the purpose of privacy screening and/or safety reasons may be greater in height than four (4) feet, but in no event greater than six (6) feet. Such fences in excess of four (4) feet in height shall be permitted in conjunction with any screening

requirements of a deck, whirlpool, hot tub or swimming pool Improvements, only to the extent necessary to meet the governmentally required minimum; and

5. Underground electric (“invisible fencing”) for the purpose of pet control shall be permitted on any Lot.

The Declarant has the right to mandate the use of one or more specific fence styles by publishing a detail containing the construction specifications therefor. Such an election may be made by the attachment hereto of such a detail as Exhibit C, or by the later filing of an amendment or supplement to this Declaration containing the fence detail(s). If no Exhibit C is attached to this Declaration, the Declarant has not elected to require specific fencing at this time. Nothing contained herein shall be interpreted or construed to permit the use of approved fencing materials to accomplish a purpose or use otherwise prohibited hereunder.

T. Swimming Pools. No above-ground swimming pool measuring more than sixty-four (64) square feet, and/or whirlpool, sauna, and/or hot tub greater than one hundred (100) square feet shall be permitted on any Lot.

U. Compliance with Zoning Requirements. Certain provisions of this Declaration may have been included herein as a result of governmental requirements established through the zoning and development plan approval processes in the State, County, City, Township and/or Village in which the Property is located. Compliance with all such governmental requirements, for so long as such requirements are effective and binding, is required by this Declaration. However, in the event the governmental entity(ies) change or agree to a modification of such underlying obligation(s), or if such obligations lapse or for any reason whatsoever become legally unenforceable, this Declaration shall be deemed modified, ipso facto and without the need for further action on the part of the Declarant or any Member, such that this Declaration requires compliance with the obligation as affected by such change or modification.

V. Sight Distance at Intersection. No fence, wall, hedge or other planting which obstructs sight lines at elevations of between two (2) and six (6) feet above the roadways shall be erected, placed or suffer to remain upon any corner Lot within the triangular areas formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the property lines so extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

W. Miscellaneous. The following structures, Improvements, and activities shall not be permitted on any Lot:

1. Clothes lines or other similar exterior handling devices;
2. Solar energy collector panels or attendant hardware or other energy conservation equipment unless it is an integral and harmonious part of the architecture or design of a dwelling, as determined by the Design Review Board;
3. Windmills, wind generators or other apparatus for generating power from the wind; and
4. The hanging in the open of any clothing or other household fabrics.

## V. ARCHITECTURAL STANDARDS

All Property at any time subject to this Declaration shall be governed and controlled by this Article.

A. Design Review Board. The Design Review Board shall be a board consisting of three persons. Until the Turnover Date, Declarant shall have the sole and exclusive right to appoint and remove all three members of the Design Review Board at will, and may elect in the exercise of its sole discretion, to act itself as the Design Review Board (or appoint an agent to act in its place) in lieu of appointing individuals. After the Turnover Date, the Board of Directors (as set forth in Article VII, Section B) shall have the right, in its discretion, to appoint all three members to the Design Review Board or to appoint an agent to act in the Design Review Board's place to serve at will, or the Board of Directors may serve as the Design Review Board.

The Design Review Board shall have the exclusive authority, at a private or public meeting by action of two or more of the members thereof (if Declarant has not elected to act itself or appoint an agent to act, in which case such authority shall be exercised by Declarant or its agent) to determine the architectural standards which shall govern the construction of Improvements on the Property. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause that Owner's Lot and any Occupant thereof to comply with the standards promulgated by the Design Review Board. No Improvement shall be placed, erected or installed on the Property, no construction (which term shall include in its definition staking, clearing, excavation, grading and other site work) and no plantings or removal of plants, trees or shrubs shall be permitted without, until and unless the Owner first obtains the written approval thereof of the Design Review Board and otherwise complies with the provisions of this Declaration.

B. Initial Improvements. Except for Improvements constructed by Declarant or its designee during the initial construction of Improvements on the Property, or as specifically permitted in this Declaration, no Improvement, including any buildings, dwellings, fences, walls, signs, or other structures shall be commenced, constructed, erected, installed, or maintained upon the Property, including, but not limited to, staking, clearing, excavation, grading, and other site work; and plantings or removal of plants, trees, or shrubs, until the plans and specifications, including a complete set of building plans for any proposed construction, showing the nature, kind, shape, height, materials, color and location of the same have been submitted to and approved in writing by the Declarant or its designated representative or representatives, in its sole and unfettered discretion. Builders, or any other Person and/or entity desiring to commence, construct, erect, or install an initial Improvement pursuant to this Section must submit a fee of Two Hundred Fifty and 00/100 Dollars (\$250.00) with the aforementioned plans and specifications in connection with the Declarant's processing and review of said plans and specifications. Nothing herein shall relieve the builder, person and/or entity from obtaining the required governmental permits for any Improvement.

C. Modifications. Except as otherwise provided in this Declaration, the Design Review Board shall have jurisdiction over all construction, modifications, additions or alterations of Improvements on or to a Lot made after a dwelling and other initial Improvements have been constructed on a Lot, as approved by the Declarant. No Person shall construct any subsequent Improvement on any Lot, including without limitation, alter surfaces of existing Improvements, change exterior paint colors or roofing materials, construct or modify fencing, or install any recreational device, without the prior written consent of the Design Review Board, unless such Improvements were previously approved by Declarant. Owners shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of Improvements and alterations to the Design Review Board for its approval. The Design Review Board may charge a nominal fee in connection with processing applications submitted pursuant to this Section. Nothing

contained herein shall be construed to limit the right of an Owner to remodel or decorate the interior of that Owner's residence.

D. Variances. To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Declarant or the Design Review Board, as appropriate shall have the authority to grant reasonable variances from the provisions of Article IV, and from the provisions of this Article and from the architectural standards established pursuant to this Article, provided that the activity or condition is not prohibited by applicable law; and provided further that, in its judgment, the variance is in the best interest of the Subdivision and is within the spirit of the standards of the Design Review Board. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Declaration and/or other Association Governing Documents, as applied to any other Person or any other part of the Property.

E. Improvements by Declarant. The foregoing to the contrary notwithstanding, all Improvements, including, but not limited to, dwellings, buildings and landscaping constructed by the Declarant, or its agents, or designated assignees, and Improvements approved by Declarant, shall be deemed to comply in all respects with the provisions of this Declaration, any design guidelines, and the requirements of the Design Review Board, and shall not require approval or additional approval of the Association, the Board, the Owners or the Design Review Board; provided that such Improvements comply with the provisions of this Declaration and the required architectural standards for the Subdivision adopted by the Declarant.

## VI. EASEMENTS AND LICENSES

A. Easement of Access and Enjoyment Over Common Elements. Every Owner shall have a right and easement (in common with all other Owners) of enjoyment in, over, and upon the Common Elements (if any) owned by the Association, and a right of access to and from that Owner's Lot, which rights shall be appurtenant to, and shall pass with the title to, that Owner's Lot, subject to the terms and limitations set forth in this Declaration and subject to the Rules and other Association Governing Documents. An Owner may delegate that Owner's 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 Elements affected thereby, and no Person shall have the right by virtue of such easements to engage in activities on the Common Elements which are not permitted according to the provisions of this Declaration and/or other Association Governing Documents, pursuant to the provisions of any applicable plat(s) of property that is part of the Subdivision or under agreements with any governmental entities or other third parties.

B. Right of Entry for Repair. The duly authorized agents, officers, contractors, and employees of the 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 or the other Association Governing Documents. The 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 Elements, but only during reasonable hours and after providing not less than seventy-two hours advance notice to the Owner, except in cases of emergency where advance notice shall not be required.

C. Easement of Access over Sidewalks. Non-exclusive perpetual easements are hereby reserved by the Declarant and by the Owner of each Lot, and also granted to the general public, in, over, and upon the sidewalks located within the Subdivision which lie within the boundaries of one or more of the Lots or Common Elements for purposes of pedestrian ingress and egress and pedestrian movement throughout the Subdivision. The easements shall run with the land and be binding on the Owners and their successors and assigns.

D. Easement for Utilities and Other Purposes. The Association or Declarant may convey easements over the Common Elements owned by the Association to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, 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 Declarant 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 Declarant may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board or Declarant 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 Declarant 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). Declarant shall have the absolute right within (1) areas designated as drainage courses on a recorded plat of property a part of the Subdivision, (2) all areas encumbered by general utility or specific storm drainage easements, and (3) 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 Declarant'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 Declarant results in damage to other portions of a Lot, or to any Improvements thereon, Declarant shall be responsible for the restoration of such portions or Improvements at Declarant's sole cost. Except as otherwise specifically permitted, no Owner shall install or permit to be installed any above grade structures, dams or other obstructions to the flow of storm water runoff within any area designated as being subject to a "Drainage Easement" on a recorded plat of property a part of the Subdivision.

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

F. Easement for Maintenance. A non-exclusive easement is hereby granted to the Association to enter upon, over or through the Property for the purpose of performing maintenance responsibilities reserved to the Association in the recorded plats for the Subdivision or in this Declaration.

## **HOMEOWNERS' ASSOCIATION**

### **VII. MEMBERSHIP AND VOTING RIGHTS**

A. Membership. Every Owner shall be a Member of the Association. In the case of a Lot that is the subject of a recorded land installment contract, the vendee or vendees under that installment contract and not the vendor shall, while holding such interest, be a Member of the Association. There shall only be one membership per Lot. In the event the fee simple interest in a Lot, or ownership of the vendee interest in a Lot if applicable, is held by more than one Person, the co-interest holders of such interests while holding such interests collectively shall have only one membership in the Association as tenants-in-common, with respect to that Lot. Such membership is appurtenant to and inseparable from such interests. Status as a Member shall automatically transfer to the transferee of that interest at the time the fee simple interest is transferred of record. Initially those Lots to which these membership provisions apply shall be those Lots that

are subjected hereby to the provisions of this Declaration, but as portions of the Additional Property are subdivided and platted into Lots, and the Lots therein subjected to the plan hereof by the recording of supplemental declarations or amendments to this Declaration, membership in the Association shall extend to and encompass the holders of fee simple interests in those Lots, and holders of vendee interests under recorded land installment contracts with respect to those Lots, on the same basis as set forth herein for membership. 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 the membership of any Owner, provided further, there shall not be a membership appurtenant to a Lot dedicated to common public use or owned by any governmental body, instrumentality or agency for so long as such body, instrumentality or agency owns that Lot and so long as it is not utilized as a residence, nor for a Lot, if any, that becomes a Common Element, for so long as it remains a Common Element. Voting and all other matters regarding the governance and operation of the Association shall be as set forth in the Association Governing Documents.

B. Governance. The Association shall be governed by a Board of Directors, initially consisting of three persons. Prior to the Turnover Date, the members of the Board shall be appointed by the Declarant, or the Declarant 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 Declarant, 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 no later than the date when the Subdivision has been fully developed and all Lots have been deeded to bona fide purchasers unrelated to Declarant. Voting and all other matters regarding the governance and operation of the Association following the Turnover Date shall be set forth in the Association Governing Documents.

## VIII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

A. Common Elements. Declarant may, from time to time, at Declarant'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 Elements 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 Declarant. The Association, subject to the rights of the Owners set forth in this Declaration and the Association Governing Documents, shall be responsible for the exclusive management and control of the Common Elements owned by the Association, 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 Declarant and Association shall each have the right to grant easements to third parties over, across, under and/or through the Common Elements owned by the Association, including but not limited to easements for the construction, extension and/or expansion of utilities, and conservation easements, all as the Declarant and/or Association may be legally obligated or voluntarily disposed to grant. Regardless of whether Declarant expressly conveys or assigns entry feature maintenance responsibilities to the Association, the Association shall have the continuing right to maintain, modify and/or improve any and all entry features constructed by the Declarant, 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.

B. Personal Property and Real Property for Common Use. Subject to the provisions of the Association Governing Documents and Ohio law (including specifically the Planned Community Act), the Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Declarant.

C. Cost-Sharing Agreements. The Association may enter into agreements with other community, subdivision and condominium associations and/or master associations pursuant to which the Association (1) agrees to share in the cost of maintaining, repairing and replacing landscaping, storm water retention facilities, mounding, fencing and any other improvements, including, but not limited to, a bike path, or services that benefit the Subdivision or the Members; and/or (2) grants reciprocal rights, licenses and/or easements to members of each such associations to use and enjoy each other's common elements, subject to such Rules and regulations, restrictions and fees as the Association may determine from time to time.

D. Rules and Regulations. The Board may make and enforce reasonable Rules and regulations governing the use of the Property, which shall be consistent with this Declaration and the Association Governing Documents. The Board shall have the power to impose sanctions on Owners for violations of the provisions of this Declaration, the Rules or the other Association Governing Documents, including without limitation: (1) reasonable monetary fines, charges or penalties, as may be permitted by law, which shall be considered Individual Lot Assessments, (2) suspension of the right to vote as a Member of the Association, and (3) suspension of the right to use the Common Elements owned by the Association. 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 the provisions of this Declaration, the Association Governing Documents or the Rules against any Owner, or any tenant, guest or invitee of an Owner, the amount shall be due and payable by such Owner and shall be an Individual Lot Assessment against such Owner's Lot.

E. Implied Rights. The Association may exercise any other right or privilege given to it by the laws of the State or any provision of the Association Governing Documents or given to it as an "owners association" by the Planned Community Act, 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, and unless otherwise expressly reserved to the membership or delegated to a Manager pursuant to Article VIII, Section F below, the Board shall have the power and authority to act on behalf of the Association.

F. Managing Agent. The Board may retain and employ on behalf of the Association a Manager, which may be the Declarant, 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 ninety 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.

G. Insurance.

1. Fire and Extended (Special Form) Coverage. The Association shall, with respect to insurable property or interests owned by it, obtain and maintain insurance for all buildings, structures, fixtures and equipment and common personal property, now or at any time hereafter constituting a part of the Common Elements owned or to be maintained by the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard coverage endorsements, with such limits, deductibles, and coverage as is deemed appropriate by the Board. This insurance:

i. shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on any Lot, or other

property, and its appurtenant interest, superior to the lien of a first mortgage;

ii. shall 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;

iii. shall be written in the name of the Association; and

iv. shall provide that the insurance carrier shall notify the Association and all first mortgagees named at least thirty days in advance of the effective date of any cancellation of the policy; provided that in the case of the Association's failure to pay the insurance premium when due, the carrier shall only be required to provide ten days' advance notice to the Association and all first mortgagees.

2. Liability Coverage. The Association shall obtain and maintain a Commercial General Liability policy of insurance covering all of the Common Elements and the functions of the Association insuring the Association, the officers and directors, and its Members, with such limits as the Board may determine, but no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of any Member because of negligent acts of the Association, the Board, or other Members, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and other legal liability, including liability under contractual indemnity clauses and liability arising out of lawsuits related to any employment contracts of the Association. Each such policy must provide that it may not be canceled by any party, without at least thirty days prior written notice to the Association and eligible holders of first mortgage liens on a Lot or Lots.

3. Directors' and Officers' Liability Insurance. To the extent reasonably available, the Board shall obtain, or cause to be obtained, directors' and officers' liability insurance in an amount of not less than \$1,000,000 for each claim and in the aggregate.

4. Other. The Association may, in the Board's discretion, obtain and maintain the following insurance: (i) fidelity bond coverage for all officers, directors, Board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (ii) workers' compensation insurance, (iii) additional insurance against such other hazards and casualties as is required by law, and (iv) any other insurance the Board deems necessary.

5. Use of Proceeds. In the event of damage or destruction of any portion of the Common Elements owned by the Association, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Member 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 Board may levy a Special Assessment pursuant to the provisions hereof to cover the additional costs.

H. 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 Elements, or any portion thereof. 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.

I. Books, Records. Upon reasonable request of any Owner, the Association shall be required to make reasonably available for inspection by any Owner all books, records and financial statements of the Association, except for those items deemed privileged, protected, or confidential in accordance with applicable law, rules or regulations, including but not limited to: (1) information that pertains to personnel matters; (2) communications with legal counsel or attorney work product pertaining to proposed or pending litigation; (3) information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements; (4) information that relates to the enforcement of the Association Governing Documents against Owners; and (5) information the disclosure of which is prohibited by state or federal law. The Association may charge a reasonable fee to cover the administrative costs of handling, copying, delivering, etc., the requested documents.

## IX. ASSESSMENTS

A. Operating Fund. The Board shall establish an Operating Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Elements. The Board may establish a Reserve Fund to which a portion of the Operating Assessments shall be credited to cover the costs of future capital expenditures and/or other non-recurring items not intended to be funded from the Operating Fund.

B. Types of Assessments. Each Owner, by accepting a deed to a Lot, is deemed to covenant and agrees to pay to the Association the following Assessments: (1) Operating Assessments; (2) Special Assessments; and (3) Individual Lot Assessments. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Elements or by abandoning his/her Lot. Operating and Special Assessments shall be fixed at a uniform rate for all Lots.

C. Operating Assessments.

1. For the purposes of providing funds to pay:
  - i. the cost of the maintenance, repair, replacement, and other services to be provided by the Association;
  - ii. the costs for insurance and bond premiums to be provided and paid for by the Association;
  - iii. the cost for utility services, if any, charged to or otherwise properly payable by the Association;
  - iv. the costs for construction of new capital improvements on Common Elements not replacing capital improvements installed by Declarant;
  - v. the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;
  - vi. an amount deemed adequate by the Board, in its sole and unfettered discretion, to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements, and for the repair and replacement of major improvements for which cash reserves over a period

of time in excess of one year ought to be maintained; and

vii. the costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, landscaping, mowing, planting, lighting, pavement maintenance, snow and ice removal and mitigation for the Common Elements and other Improvements as set forth herein, real estate taxes and assessments for the Common Elements (but not individual Owner Lots), fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs of operations of the Association not otherwise specifically excluded;

the Board shall establish, levy and collect Operating Assessments against each Lot and its Owners subject to the same, an equal pro rata share of such costs, in accordance with the provisions of Article IX, Section C.2 of this Declaration.

2. An equal pro rata share of the Operating Assessments shall be assessed and collected as follows:

i. Initial Period. Commencing on the date a Lot is conveyed to an Owner other than Declarant, such Lot and such Owner shall be subject to and obligated to pay to the Association an Operating Assessment for the remainder of the calendar year, as determined by the Board, prorated through the date of closing and based on a 365-day year. This amount may have been prepaid by the Declarant and if so, a credit back to the Declarant will be collected at the closing on the Lot.

ii. Subsequent Calendar Year. For each full year following the year in which a Lot is first conveyed to an Owner other than the Declarant, such Lot, and the Owner(s) of such Lot shall be obligated to pay to the Association the full Operating Assessment for each such year. For each calendar year, the Board shall establish an equal Operating Assessment amount, to be charged to each such Lot for such year. The Assessment amount shall be determined by dividing among all Lots in the Subdivision that have been conveyed to an Owner other than the Declarant, the projected gross expenses anticipated to be incurred by the Association to operate the Association during that calendar year (including the payment of all costs to be incurred in maintaining all Common Elements, and appropriate reserve funds).

The Declarant may pay, in the exercise of its sole and absolute discretion, (a) an amount equal to the per Lot Operating Assessment multiplied by the number of Lots owned by Declarant as of the first day of such year; or (b) an amount necessary to fund the actual difference between the Association's actual cost of operations for such year, and the amount of Operating Assessments assessed to Owners for the year. If and to the extent funds provided by the Declarant to the Association are necessary as a result of the failure of Owner(s) to pay all or any portion of duly levied Assessments to the Association, such amounts provided by Declarant may be characterized as non-interest bearing 'advances' or 'loans' by the Declarant to the Association, which the Association shall be obligated to repay to the Declarant upon demand, or which may be credited to the Declarant's payment of deficit(s) in any future year(s).

iii. Due Dates. The Operating Assessments issued to Owners shall be payable in full within ten days of the date on which such Assessment is issued; provided however that the Board may determine to

allow payment in monthly, quarterly or semi-annual installments. If payable in installments, the Assessment shall include a statement of the dates on which installments are due, and the Assessment shall be given to an Owner not less than ten days prior to the date the first installment thereof, is due. Unless the Operating Assessment states that it is payable in installments, payment in full within ten days shall be required.

D. Special Assessments. The Board may levy against all Lots subject to Operating Assessments, and their Owners, Special Assessments to pay for capital expenditures, interest expense on indebtedness incurred for the purpose of making capital expenditures and not to be paid out of reserves, unanticipated operating deficiencies or any other purpose determined appropriate by the Board in furtherance of its functions hereunder. Those Special Assessments shall be allocated among Lots on the same basis as Operating Assessments are to be allocated, and shall be due and payable on such basis and at such times as the Board directs, provided that no such Special Assessment shall be due and payable on fewer than thirty days' written notice.

E. Individual Lot Assessments. The Board may levy an Individual Lot Assessment against any Owner to reimburse the Association for costs incurred on behalf of that Lot, or as a consequence of any act or omission by any Owner, Occupant, or invitee thereof, including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other administrative and enforcement charges, including, but not limited to, attorneys' fees incurred by the Association reasonably determined to be an Individual Lot Assessment by the Board. By way of illustration, and not of limitation, the Board may levy an Individual Lot Assessment in the nature of an administrative charge reasonably determined by the Board against any Owner who violates any provision of the Association Governing Documents, or who suffers or permits the Members, guests, invitees or tenants of that Owner's Lot to violate the same or any provision of the Association Governing Documents, including the restrictions contained herein and in the Rules.

Except in the case of Individual Lot Assessments for utility charges, interest, late charges, returned check charges, court costs, arbitration costs, and/or attorney fees, prior to levying an Individual Lot Assessment, the Board shall give the Owner or Owners written notice of the proposed Individual Lot Assessment that includes:

1. a description of the property damaged or of the violation of the restriction, Rule or regulation allegedly violated;
2. the amount of the proposed Individual Lot Assessment;
3. a statement that the Owner has a right to a hearing before the Board to contest the proposed Individual Lot Assessment by delivering to the Board a written notice requesting a hearing within ten days after the Owner receives written notice of the proposed Individual Lot Assessment; and
4. in the case of a charge for violation of a restriction, Rule or regulation, a reasonable date by which the Owner must cure the alleged violation to avoid the proposed Individual Lot Assessment.

The notice by the Board given pursuant to the foregoing may be delivered personally to the Owner to whom an Individual Lot Assessment is proposed to be charged, personally to an Occupant of a dwelling on that Owner's Lot, by certified mail, return receipt requested, or by regular mail. In the event after such hearing the Board determines to levy the Individual Lot Assessment proposed, the Board shall deliver to the Owner written notice thereof within thirty days of the date of that hearing.

F. Remedies.

1. Acceleration. If any Assessment, installment of an Assessment, or portion thereof, is not paid within ten days after the same has become due, the Board, at its option, without demand or notice, may call the entire balance of the Assessment due.

2. Late Charge. If any Assessment or portion of any Assessment remains unpaid for ten days after all or any part thereof shall become due and payable, the Board may charge a reasonable uniform late fee in an amount determined by Board and/or interest on the entire unpaid balance of the Assessment from and after that date at the lesser of (i) twelve percent (12%), or (ii) the highest rate permitted by law. A reasonable administrative collection charge may also be assessed for any payment remaining unpaid for ten days after it is due, which charge may be payable to the Association, or its Manager, as determined by the Board.

3. Application of Payments. Payments made by an Owner for Assessments shall be applied in the following priority: (i) to interest accrued on the delinquent Assessment(s), or installments or portions of installments thereof; (ii) to administrative late fees charged with respect to the delinquency; (iii) to reimburse the Association for enforcement charges and collection costs, including, but not limited to, attorney fees and paralegal fees incurred by the Association in connection with the delinquency; and (iv) to the delinquent Assessment, or installment or portion thereof, applying to the oldest principal amounts first.

4. Liability for Unpaid Assessments. Each Assessment or installment of an Assessment, together with interest and late fees thereon, and any and all costs of collection, including reasonable attorneys' fees, shall become the joint and several personal obligations of the Owners of the Lot charged the same, beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute and prosecute to completion an action at law on behalf of the Association against the Owner or Owners personally obligated to pay any delinquent Assessment, and/or an action to foreclose the Association's lien or liens against a Lot or Lots for unpaid Assessments owed by that Lot and the Owner or Owners thereof. In any such action, interests and costs of such action, including reasonable attorneys' fees, shall be added to the amounts owed by the Owner or Owners and the Lot to the extent permitted by Ohio law. An Owner's personal obligation for a Lot's delinquent Assessments (including accrued interest, late fees and costs of collection [including attorneys' fees]) shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable, and both such Owner and his/her successor in title shall be jointly and severally liable therefor. 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 nor prohibit the Association from foreclosing that lien.

5. Liens. All unpaid Assessments, or portions thereof, together with any interest and charges thereon or costs of collection, including but not limited to attorneys' 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 portion thereof, remains unpaid for ten days after it is due, then the Board may authorize the filing of a certificate of lien with the Delaware County Recorder's Office for all or any part of the unpaid balance of that Assessment, together with interest and collection costs, including attorneys' fees. The certificate shall contain a description of the Lot which the lien encumbers, the name of the Owner or Owners of that Lot, and the amount of the unpaid portion of the Assessment. The certificate may be signed by the President of the Association or its designated

representative. Upon the filing of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall remain valid for a period of five years from the date such certificate is duly filed, unless the lien is released earlier or satisfied in the same manner provided by the law of the State of Ohio for the release and satisfaction of mortgages on real property, or until the lien is discharged by the final judgment or order of any court having jurisdiction.

6. Subordination of Lien. The lien of the Assessments provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association is perfected by the recording of a certificate of lien, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid Assessments against the mortgaged Lot which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner.

7. Contested Lien. Any Owner or Owners who believe that an Assessment chargeable to that Owner or Owner's Lot, and for which a certificate of lien has been filed by the Association has been improperly charged against that Lot or Unit, may bring an action in the Delaware County Court of Common Pleas for the discharge of that lien and/or for a declaratory judgment that such Assessment was unlawful. The filing of such action shall not be grounds for an offset or to withhold payment. In any such action, if it is finally determined that all or a portion of the Assessment has been improperly charged to that Lot, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien and a refund of an Assessment or portion thereof determined to be unlawful.

8. Estoppel Certificate. The Board shall, within a reasonable time following receipt of a written demand and for a reasonable charge, furnish a certificate signed by the President or other designated representative of the Association, setting forth whether the Assessments on a specified Lot have been paid. This certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

9. Vote on Association Matters; Use of Common Elements. If any Assessment, or portion thereof, remains unpaid for more than thirty days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Elements, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.

## X. MAINTENANCE

A. Maintenance by Association. The Association shall maintain and keep in good repair the Common Elements as provided herein. This maintenance shall include, without limitation, maintenance, repair, and replacement of (1) all landscaping and other flora, structures and Improvements, including, but not limited to, an existing bike path, on the approximately 0.891 acre of land designated as "Open Space", which may also be referred to as Lot 11836, identified on Exhibit A together with all personal property used in connection with the operation of "Open Space" and/or Lot 11836 as identified on Exhibit A, and all other Common Elements owned or to be maintained by the Association pursuant to the provisions of the Association Governing Documents, applicable zoning or other recorded instruments. Further, the Association may, in its discretion and to the extent determined by the Board, choose to maintain property that it does not own, the maintenance of which would, in the opinion of the Board, benefit the Subdivision.

B. Maintenance by Owner. Each Owner or Occupant shall repair, replace, and maintain in good order and safe and sanitary condition, at that Owner's expense, that Owner's Lot, and all portions of, Improvements to, structures on, and, equipment and components used in connection with, that Owner's Lot, except to the extent the maintenance responsibility is otherwise expressly assumed by the Association pursuant to the provisions of this Declaration or by a governmental authority. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at that Owner's expense all maintenance, repairs and replacements of Improvements (including, specifically, and without limitation, all buildings, sidewalks, driveways and landscaping) on such Lot. This maintenance responsibility also includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at that Owner's own expense all maintenance, repairs and replacements within such Lot that, if omitted, would adversely affect the safety and usefulness of the Common Elements. Each Owner shall maintain those portions of that Owner's Lot that are adjacent to any portion of the Common Elements in accordance with the Rules and the requirements set forth in this Declaration.

C. Right of Association to Repair Lot. If any Owner fails to maintain that Owner's 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 Elements by Owners, to prevent damage to or destruction of any other part of the Common Elements 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 an Individual Lot Assessment for all reasonable expenses incurred.

D. Damage to Common Elements By Owner or Occupant. If any portion of the Common Elements is damaged by any Owner or Occupant, his/her family, guests, or invitees, then the Board may levy an Individual 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 Elements adjacent to such Lot.

## **XI. MISCELLANEOUS**

A. Term. The provisions of this Declaration shall bind and run with the land for a term of sixty (60) years from and after the date that this Declaration is filed for recording with the Office of the Recorder of Delaware County, Ohio and thereafter shall automatically renew forever for successive periods of ten(10) years each, unless terminated after the expiration of the sixty (60) year period with the consent of Members exercising not less than one hundred percent (100%) of the voting power of all Members, the approval of all mortgagees and the approval of the City of Delaware.

B. Enforcement; Waiver. The provisions of this Declaration and the provisions of the other Association Governing Documents may be enforced by any proceeding at law or in equity by Declarant, any Owner, the Association, the Board, the Design Review Board and each of their respective heirs, successors and assigns, against any Person(s) violating, or attempting to violate, any covenant, restriction, Rule or the provisions of the other Association Governing Documents, to restrain and/or to enjoin any violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees) in connection with any violation. Failure of Declarant, the Association, the Board, or any Owner to enforce any provision of this Declaration, the Association Governing Documents or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement by the Association of the provisions hereof, the Rules, or any of the other Association Governing Documents.

C. Litigation. Other provisions of the Declaration, Code of Regulations (Bylaws), or the Articles notwithstanding, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Owners exercising not less than sixty-seven percent (67%) of the voting power of the Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Declaration, Code, Articles, Rules or other Association Governing Documents (including, without limitation, the enforcement of the restrictive covenants or Rules or the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IX of the Declaration, (c) proceedings involving challenges to ad valorem taxation, or (d) counter claims or cross claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made pursuant to the procedures set forth elsewhere in the Declaration.

D. Amendments. Until the Turnover Date, Declarant may, in its sole and absolute discretion, unilaterally amend the provisions hereof at any time and from time to time, without the consent of any other Owners or the Association. Any such amendment may impose covenants, conditions, restrictions and easements 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 any property in the Subdivision. After the Turnover Date, Declarant may unilaterally amend the provisions hereof, without the consent of any other Owners, if such amendment is: (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order; (2) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (3) necessary to conform to the requirements of the United States Federal Housing Administration or the Veterans Administration, or (4) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner or Owners have thereof consented to such amendment in writing.

Before or after the Turnover Date, Declarant shall have the right and power, but neither the duty nor the obligation, in its sole and unfettered discretion, to subject all or any part of the Additional Property to the provisions of this Declaration at any time and from time to time by executing and recording with the Recorder's office of Delaware County, Ohio, an amendment to this Declaration or a supplemental declaration specifying that such Additional Property is part of the Subdivision. Such an amendment or supplemental declaration shall not require the joinder or signature of the Association, other Owners, mortgagees, or any other Person. In addition, such amendments to this Declaration or supplemental declarations may contain such supplementary, additional, different, new, varied, revised or amended provisions as may be necessary or appropriate, as determined by Declarant, to reflect and address the different character or intended development of any such Additional Property.

After the Turnover Date, this Declaration may be amended or modified with the approval of Owners holding not less than seventy-five percent (75%) of the voting power of all Owners in the Association either in writing or in a meeting called for that purpose; provided, however, that the consent of Declarant shall be required for any amendment or modification which affects Declarant's rights hereunder, and further provided that the consent of all Owners shall be required for any amendment which effects a change in the voting power of any Owner, the method of allocating Common Expenses among Owners, or the fundamental purpose for which the Association is organized, or to terminate the provisions of this Declaration. Any amendment to this Declaration adopted with the aforesaid consent shall be executed with the same formalities as to execution as observed in this Declaration by the president and the secretary of the Association, and shall contain their certifications that the amendment was duly adopted in accordance with the requirements of this paragraph. Any amendment so adopted and executed shall be effective upon the filing of the same with the Delaware County Recorder's Office. The Declaration may not be amended so as to eliminate the Association's responsibility to repair and maintain Common Elements in the Subdivision or to change or eliminate the

requirement and obligation of the Owners to be Members of and pay Assessments to the Association.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

E. Declarant's Rights to Complete Development. Declarant, and/or any builders approved by Declarant, shall have the right to: (1) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (2) construct or alter Improvements on any property owned by Declarant; (3) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Declarant or the Association; or (4) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Declarant, its assignee, and/or any builders approved by Declarant, 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 Declarant or require Declarant or its assignee, and/or builders approved by Declarant, to obtain approval to: (i) excavate, cut, fill or grade any property owned by Declarant, or (ii) construct, alter, remodel, demolish or replace any Improvements on any Common Elements or any property owned by Declarant as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (iii) require Declarant, and/or builders approved by Declarant, to seek or obtain the approval of the Association or the Design Review Board for any such activity or Improvement on any Common Elements or any property owned by Declarant. Nothing in this section shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

F. Declarant's Rights to Re-plat Declarant's Property. Declarant reserves the right, at any time and from time to time, to amend, alter or re-plat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Declarant and Owners consenting to such amendment, alteration or re-platting shall be the subject of any such amendment, alteration or re-platting. The Association and each Owner whose Lot is not altered by such amendment, alteration or re-platting, for themselves and their successors and assigns, hereby consents to and approves any such amendment, alteration or re-platting and shall be deemed to have joined in the same.

G. 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:

1. any proposed amendment of this Declaration;
2. any proposed termination of the Association; and
3. 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.

H. 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.

I. 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.

J. 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.

K. Exhibits. The Exhibits hereto are part of this Declaration as if set forth in full herein.

L. Construction. In interpreting words and phrases herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. Any rule of construction to the effect that any ambiguities are to be resolved against the party who drafted the document shall not be utilized in interpreting this Declaration and the Exhibits hereto.

**IN TESTIMONY WHEREOF**, the Declarant has caused the execution of this Declaration as of the date first above written.

**MEDROCK, LLC**  
an Ohio limited liability company

By: *[Signature]*  
Name: P. Ronald Sabatino  
Title: Managing Member

STATE OF OHIO )  
COUNTY OF FRANKLIN ) SS:

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of January, 2017, by P. Ronald Sabatino, the Managing Member of Medrock, LLC, an Ohio limited liability company, on behalf of the limited liability company.



LINDSAY M HARRIS  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES 04-02-20

*[Signature]*  
Notary Public

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

Situated in the State of Ohio, County of Delaware, and being as Lots 11796 through 11835, both inclusive, and "Open Space", which may also be referred to as Lot 11836, consisting of approximately 0.891 acre of open space, as the same are numbered, identified and delineated on the plat of Millbrook Section 2, of record as Official Record Volume 1476, Page 1930, et seq. Recorder's Office, Delaware County, Ohio.

**EXHIBIT B**  
**CODE OF REGULATIONS**  
**(BYLAWS)**  
**OF**  
**WILLOWBROOK HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND PURPOSE**

Section 1.01. The name of this Ohio nonprofit corporation shall be Willowbrook 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 Willowbrook 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 "Willowbrook" or as the "Subdivision". The Association shall also serve as the "owners association" as that term is defined in Chapter 5312 of the Ohio Revised Code (the "Planned Community Act").

**ARTICLE II**  
**MEMBERS AND VOTING**

Section 2.01. Every individual 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, Conditions, Restrictions and Assessments for Willowbrook 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 the Subdivision shall be entitled to exercise one vote for each such Lot that the Owner or Owners own. 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 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, Medrock, LLC, an Ohio limited liability company and the Declarant of Willowbrook (hereinafter, the "Declarant"), 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 Declarant elects to relinquish the voting right, which relinquishment shall take place no later than the time that the Subdivision, including all "Additional Property" described in the Declaration, has been developed to its fullest extent and all Lots have been deeded to bona fide purchasers unrelated to Declarant. At such time as Declarant 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, Declarant, including Directors appointed by and employed by the Declarant, 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 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 Declarant, 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"), or on such other date within one month thereafter as may be designated by the Board of Directors from time to time. No annual meetings shall be required or held prior to the Declarant'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 Declarant, 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 persons 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 Persons 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 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 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, this Code of Regulations and the Rules (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 Declarant, members of the Board of Directors must be an Owner, the spouse of an Owner, or a principal, member of a limited liability company, partner, director, officer, trustee, or employee of an entity that is an Owner in the Association. Before the relinquishment of control of the Association by the Declarant, the Declarant shall appoint all Directors, which shall consist of three individuals named in the Articles of Incorporation, or such replacements thereof as Declarant shall from time to time appoint in its sole and unfettered discretion.

Subsequent to the relinquishment of control of the Association by the Declarant, the Board of Directors shall consist of three individuals. Directors elected at the meeting of Members in which Declarant 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 Declarant 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 of this Code of Regulations. 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 Declarant, 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 it 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 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 therefor, 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 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, 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 Declaration, 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) subject to the provisions of the Declaration, 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 Declaration 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 (3) consecutive regular meetings of the Board of Directors;

(i) subject to such approvals, if any, as may be required pursuant to the provisions of the 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 therefor and enforce collection thereof, as might be necessary or desirable in the judgment of the Board of Directors, to obtain any such loan;

(l) 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 the Subdivision;

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

(n) 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:

(a) 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 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;

(b) 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;

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

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

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

(f) 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;

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

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

(i) take all other actions required to comply with all requirements of the Declaration, 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 Vice-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 therefor, 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 Vice-President to perform the duties of the President in the event of the President's absence or disability and to perform such other duties as may be assigned to him or her by the Board.

Section 5.04. 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 5.05. 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 5.06. 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, Ohio 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, Ohio 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 (10) days after receipt of such notification such individual shall have the right to petition the Court of Common Pleas of Delaware County, Ohio 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:

(a) 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

(b) 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, Ohio 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 individual 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 individual and incurred by that individual in any such capacity, or arising out of that individual's status as such, whether or not the Association would have the obligation or the power to indemnify that individual against such liability under the provisions of this Article VI. Insurance may be purchased from or maintained with an individual 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 individual

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, Ohio. The Association and (by claiming such indemnification) each such individual consent to the exercise of jurisdiction over its or that individual by the Court of Common Pleas of Delaware County, Ohio 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.

## **ARTICLE IX**

### **DURATION**

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

## **ARTICLE X**

### **MISCELLANEOUS**

Section 10.01. This Code of Regulations shall also be deemed to be Bylaws as the same is defined in Chapter 5312 of the Ohio Revised Code.

**EXHIBIT C**

**APPROVED FENCE DETAIL**

[INTENTIONALLY OMITTED]