



## **PLANNING COMMISSION MEETING**

**Thursday, March 17, 2022, 7:30 PM**

**CITY HALL**

**301 SYCAMORE STREET, BROOKVILLE, OHIO 45309**

[www.brookvilleohio.com](http://www.brookvilleohio.com)

Online: <https://brookvilleoh.webex.com/brookvilleoh/j.php?MTID=m267826e67fa9628afbe28914fc94e612>

Meeting number: 2633 029 3681 Password: 2rRbNJRPd53

Join by phone: +1-415-655-0001 US Toll Access code: 263 302 93681

### **Agenda**

#### **I. Opening**

- a. Call to Order
- b. Pledge of Allegiance
- c. Roll Call

#### **II. Adoption of Agenda**

#### **III. Approval of Minutes**

- a. Approval of February 17, 2022 Meeting Minutes

#### **IV. Public Hearing - Preliminary Development Plan - E. Upper Lewisburg-Salem Road & Albert Road**

#### **V. Special Use Permit - Brookville Stor-n-Lock**

#### **VI. Special Use Permit - Louisiana Grill**

#### **VII. Reports**

- a. Law Director

#### **VIII. Old Business**

#### **IX. New Business**

#### **X. Adjournment**

Chairperson Ryan Henderson • Mayor Chuck Letner

Members: • Ken Claggett • Don Cordes • Ronda Dittrick • Curt Schreier • Jessi Sievers

Brookville Planning Commission  
Regular Meeting  
February 17, 2022

The Regular Meeting of the Brookville Planning Commission was called to order by Chairperson Henderson at 7:30 p.m. on February 17, 2022. The meeting was held in the City Council Chambers and virtually using Webex. The Pledge of Allegiance was recited. Mayor Letner; Members Claggett, Cordes, Dittrick, Schreier and Sievers; Law Director/Development Specialist Stephan and Clerk Duncan were present. Manager Keaton was absent.

Chairperson Henderson reminded everyone the meeting is being recorded.

Roll call by Clerk Duncan.

Motion by Claggett, second by Cordes to adopt the Agenda as presented. All yeas, motion carried.

Motion by Schreier, second by Sievers to approve the meeting minutes of the January 20, 2022 Planning Commission Meeting. All yeas, motion carried.

Law Director/Development Specialist Stephan reported Arbor Homes has requested a preapplication conference on a Preliminary Development Plan for a single-family housing project to be located on 18 acres at Upper Lewisburg-Salem Rd and Albert Rd. This property was zoned R-1B (PD) Urban Residential Planned Development Overlay District in 2018. The property was rezoned for a Planned Residential Project in 2021, but the November 2021 referendum election repealed this Planned Residential rezoning. Therefore, the zoning for this property remains R-1B (PD). Under Section 1151.04 of the Code of Ordinances, the developer is required to request a preapplication conference with Planning Commission prior to filing a formal application for approval of a planned development. The purpose of the preapplication conference is to allow the developer to present a general concept of the proposed development prior to preparation of detailed plans and filing of an application. Under 1151.15(d) of the Code of Ordinances, the site development regulations of the underlying zoning district apply to any project within a planned development overlay district. Therefore, the site development regulations for R-1B apply to this project. Law Director Stephan advised a copy of the R-1B site development regulations and the proposed preliminary plan has been provided to Planning Commission. The plan provides for 43 lots that meet the R-1B zoning requirements for single family housing. The lots in the proposed preliminary plan are 85 feet wide, and the proposed side yard and rear yard setbacks comply with the R-1B zoning requirements. The houses will be required to meet the minimum floor area of 1,600 square feet which is the requirement in R-1B. Law Director/Development Specialist Stephan advised this project has a lower density than the previously proposed Planned Residential project that was rejected by the voters in the November 2021 referendum election. The project that went to the voters in the November election was 59 lots that were 55 feet wide. This new proposed planned development is 43 lots that are 85 feet wide, and the new proposal will have larger side and rear yard setbacks. The result is a lower density project that is consistent with other R-1B housing projects in Brookville, such as Hunters Run Section Two. Law Director/Development Specialist Stephan advised after the preapplication conference, the

Planned Development process will commence, and Planning Commission will hold a public hearing on the project prior to making a recommendation to City Council regarding the Planned Development project.

Ryan Reed, with DDC Management, advised he is here on behalf of Arbor Homes who will be the developer and builder on this project. Mr. Reed advised there will be 43 units with 80-foot frontage on the lots and 10-foot side yard setbacks. They are not requesting any variances outside of existing zoning. Mr. Reed stated this project is a testament of DDC Management's and Arbor Homes commitment to the City of Brookville and to the opportunities here in the city. Mr. Reed stated this a great place for people to live and they are happy to be a part of it.

Member Cordes inquired whether there are any plans to put shrubbery along Albert Road? Member Cordes stated in the past, Planning Commission discussed they would like something to block the view from Albert Road.

Mr. Reed advised he will consult with Arbor Homes but feels confident they would be open to that possibility.

Member Cordes asked how much green space there will be?

Mr. Reed replied there will be 1.32 acres of open space or 7.3%.

Member Claggett asked if the street width is the standard city width?

Mr. Reed replied that is correct.

Member Cordes inquired if the corner lot on Albert and Upper Lewisburg Salem Road is still outside the city?

Law Director/Development Specialist Stephan replied that lot is owned by the Reeds and it is within the city. They are outside of this project but they are zoned R-1B.

Mr. Reed commented with the previous project they had some buffer in there but that has gone away under the current zoning.

Member Cordes inquired whether the Reed family will be assisted with the sidewalk?

Law Director/Development Specialist Stephan stated we are planning on providing some assistance. They will be receiving a significant discount under our code because they live on a corner lot. We are also going to work with the developer to address the rest of the cost.

Member Schreier stated the sidewalk will now come on along the perimeter to the front of the yard, rather than going behind as previously discussed.

Law Director/Development Specialist Stephan the best option is to stay on the street and follow the street. If we go behind, we will get into easements and other issues.

Member Claggett stated the plan looks good.

Member Cordes stated he liked the previous plan as it would have brought in a different type of clientele, such as older residents and single professionals.

Member Sievers asked if there will be a homeowners association?

Mr. Reed replied there will be a homeowners association to prevent above ground pools, trampolines and those types of things.

Mayor Letner observed there is ingress and egress off both Albert Road and Upper Lewisburg Salem Roads. The only downfall is cul-de-sacs as there is nowhere to put snow but there are only one or two times per year that we have a significant snowfall.

Chairperson Henderson stated DDC Management did a very nice job laying this out. They listened to our community and that is what makes a true partnership. Chairperson Henderson stated we are looking forward to working them.

Member Cordes inquired when development would start if everything goes according to plan?

Mr. Reed replied it would likely be spring of next year.

Member Schreier asked if the retention pond would be the responsibility of the HOA?

Mr. Reed replied that is correct.

Member Claggett asked if they will have to install curbs and sidewalks along Upper Lewisburg Salem?

Mr. Reed stated the proposed sidewalk is pending in the plan, pending the County's road improvement plan.

Law Director/Development Specialist Stephan agreed, stating the City will work through that. Long term we want walkability between the development and Market Street.

President Henderson stated this satisfies the Pre-Application Conference, and next they will have to submit a formal application and we will hold a public hearing.

Law Director/Development Specialist Stephan replied that is correct. If they submit the application soon, we will have a public hearing at the March Planning Commission meeting. Planning Commission will then make a recommendation to City Council.

There will then be a second public hearing with City Council and a final vote by City Council. Adjoining property owners will be notified once we receive the application and confirm a date and time for the public hearing.

President Henderson thanked everyone for coming.

Law Director/Development Specialist Stephan advised Planning Commission has a copy of zoning permits issued through January and early February. We continue to have activity with new homes under construction in the Meadows of Brookville. Law Director/Development Specialist Stephan advised the developer is diligently working on the infrastructure for Hunters Run, Section Two, and we are hopeful that project will be kicking off this year.

Member Cordes inquired if there is any progress on the Mexican restaurant?

Law Director/Development Specialist Stephan replied he did have an impromptu meeting today with someone in the same type of restaurant business.

Member Claggett asked about the piping on Main Street.

Mayor Letner replied we have completed the water project and are installing fire hydrants, which were late in getting here because of supply chain issues. The storm sewer on the Hay Avenue Project goes out to Wolf Creek Street. Hay Avenue will get new sidewalks, water and sewer main. This will make a big difference when it is complete.

Motion by Cordes, second by Claggett to adjourn. All yeas, motion carried.

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Kimberly Duncan, Clerk

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Ryan Henderson, Chairperson

**MEMORANDUM:**

**DATE: MARCH 11, 2022**

**TO: CITY OF BROOKVILLE PLANNING COMMISSION**

**FROM: RODNEY L. STEPHAN, LAW DIRECTOR**

**RE: PRELIMINARY DEVELOPMENT PLAN-ARBOR HOMES**

A public hearing will be held by Planning Commission on the proposed Preliminary Development Plan submitted by Arbor Homes for development of the 18 acre parcel at 10400 Upper Lewisburg-Salem Rd. The property is zoned R-1B (PD).

Attached is the preliminary development plan for the project. The preliminary development plan is entirely consistent with the R-1B site development regulations and meets the other requirements for planned developments.

At the conclusion of the public hearing, Planning Commission will need to make a recommendation to City Council on the Preliminary Development Plan. As a part of that motion, Planning Commission would approve the Preliminary Development Plan and make certain findings of fact required under the Planned Development Code. The required findings of fact are set forth in 1151.03 and 1151.15(f). I will be preparing a written statement of the findings of fact to be incorporated within the motion.

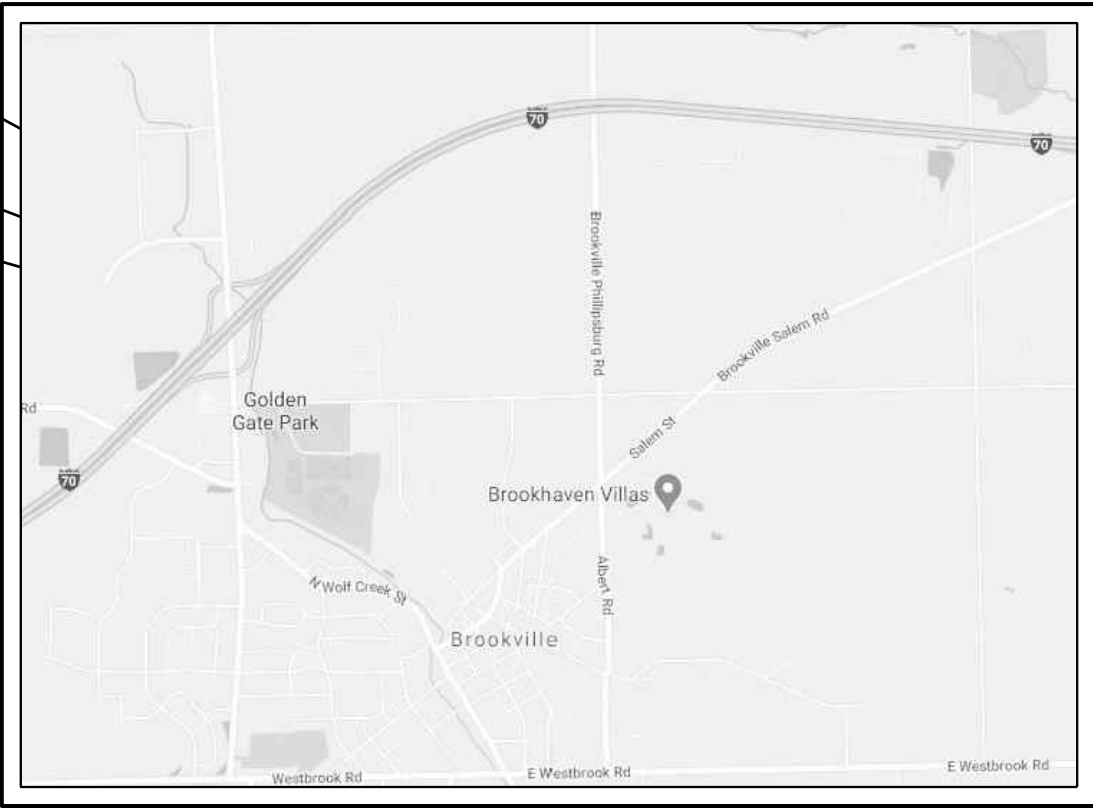
If you have any questions, please contact me.

PRELIMINARY DEVELOPMENT PLAN  
HARPER CREEK

UPPER LEWISBURG SALEM RD  
AND ALBERT RD

CITY OF BROOKVILLE  
MONTGOMERY COUNTY, OHIO  
SECTION 34, TOWN 6, RANGE 4E  
FEBRUARY 2022

SITE



VICINITY MAP  
NTS

NOTES:

- ALL LOTS WILL CONTAIN SINGLE-FAMILY, DETACHED RESIDENCES.
- THE SITE WAS PREVIOUSLY AGRICULTURAL.
- WATER SUPPLY TO BE BY CITY OF BROOKVILLE.
- WASTEWATER DISPOSAL TO BE BY THE CITY OF BROOKVILLE.
- STORMWATER SHALL COMPLY WITH THE CITY OF BROOKVILLE STANDARDS AND OEPA.
- ALL STREETS ARE TO BE PUBLIC STREETS CONSTRUCTED TO THE CITY OF BROOKVILLE STANDARDS.
- THE OPEN SPACE AREAS SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
- EXISTING ZONING: R-1B

DEVELOPER

ARBOR HOMES  
9225 HARRISON PARK COURT  
INDIANAPOLIS, IN 46216  
PH: (317) 649-5249

ENGINEER/SURVEYOR

CESO, INC.  
3601 RIGBY ROAD, SUITE 300  
MIAMISBURG, OH 45342  
PH: (937) 435-8584  
JUSTIN ELAM, P.E.  
JEFFREY MILLER, P.S.

OWNER

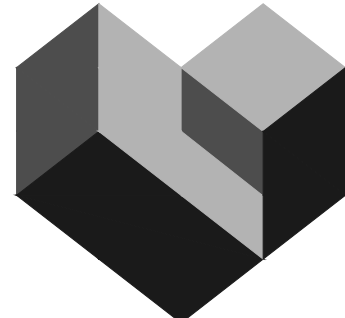
CITY OF BROOKVILLE  
301 SYCAMORE ST.  
BROOKVILLE, OH 45309

APPROVAL:

PLANNING COMMISSION CHAIRMAN \_\_\_\_\_ DATE \_\_\_\_\_

MAYOR \_\_\_\_\_ DATE \_\_\_\_\_

CLERK OF COUNCIL \_\_\_\_\_ DATE \_\_\_\_\_



CESO  
WWW.CESOINC.COM

REVISION DESCRIPTION

DATE

NO.

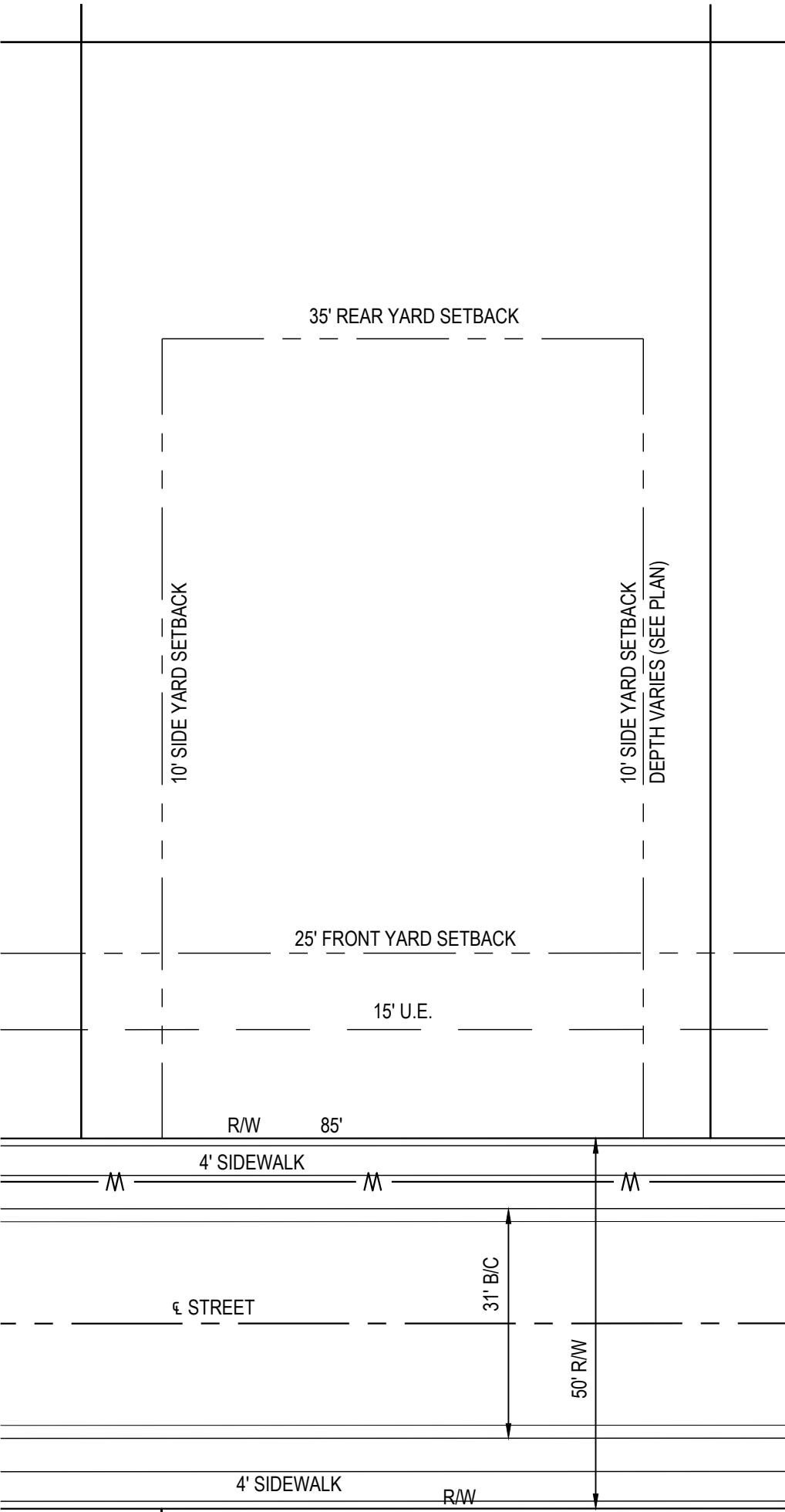
DDC MANAGEMENT, LLC.

HARPER CREEK

BROOKVILLE, OHIO

TITLE SHEET

ISSUE:  
DEVELOPMENT PLAN  
DATE:  
02/11/2022  
JOB NO.: 758340  
DESIGN: JEE  
DRAWN: SJS  
CHECKED: JEE  
SHEET NO.  
1

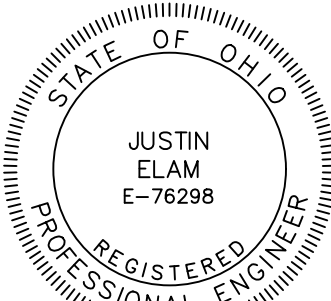


TYPICAL 85' LOT LAYOUT R1-B

SCALE 1" = 20'

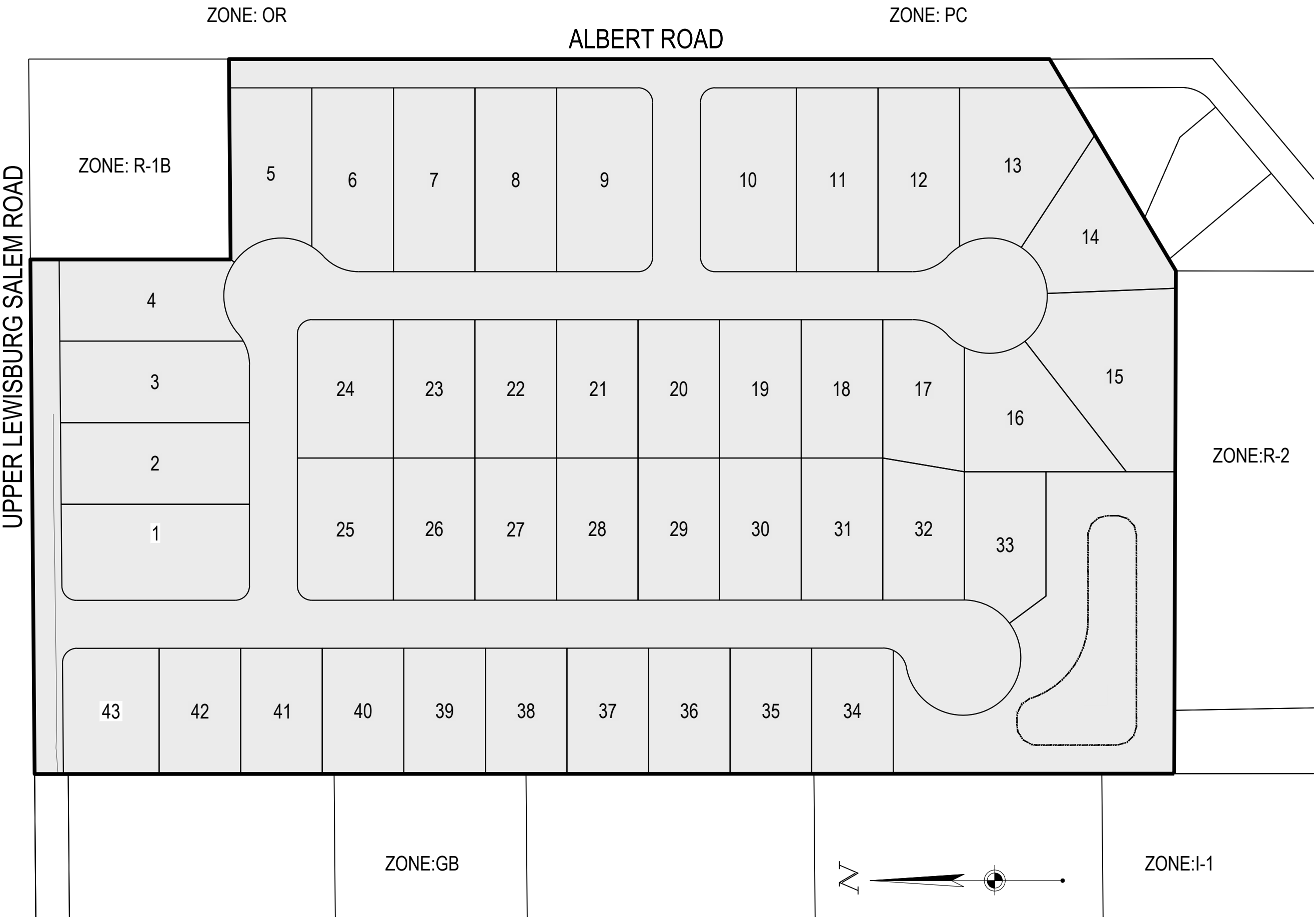
85' LOTS

LOT WIDTH 85'  
MIN. FRONT YARD SETBACK 25'  
MIN. REAR YARD SETBACK 35' REAR MIN.  
SIDE YARD SETBACK 10' 20' TOTAL MIN.  
LOT AREA 10,000 SF



JUSTIN ELAM, P.E.  
OHIO LICENSE NO. E-76298

02/11/22  
DATE



AREA MAP  
SCALE: 1" = 100'

| SITE DATA TABLE |                 |
|-----------------|-----------------|
| SITE ACREAGE    | 18.072 ACRES    |
| LOT COUNT       | 43              |
| DENSITY         | 2.38 UNITS/ACRE |
| OPEN SPACE      | 1.32 AC (7.3%)  |

| SHEET LIST TABLE |                          |
|------------------|--------------------------|
| Sheet Number     | Sheet Title              |
| 1                | TITLE SHEET              |
| 2                | EXISTING CONDITIONS PLAN |
| 3                | SITE PLAN                |
| 4                | UTILITY PLAN             |
| 5                | DRAINAGE PLAN            |

EXHIBIT "A" LEGAL DESCRIPTION

FROM STEWART TITLE GUARANTY COMPANY COMMITMENT NO. 2019120058 WITH A COMMITMENT DATE OF JANUARY 31, 2020 AT 7:59 PM.

PARCEL ONE:

LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWN 6, RANGE 4 EAST, CITY OF BROOKVILLE AND CLAY TOWNSHIP, MONTGOMERY COUNTY, OHIO, BEING ALL OF LOT 1744 OF THE CONSECUTIVELY NUMBERED LOTS OF THE CITY OF BROOKVILLE AND BEING ALL OF A 1-ACRE TRACT (BY DEED) AS CONVEYED TO CHARLES W. BRITTON AND GENEVA N. BRITTON, TRUSTEES OF THE BRITTON FAMILY TRUST DATED MAY 8, 2008 BY DEED RECORDED ON MICROFICHE NO. 01-032002 OF THE MONTGOMERY COUNTY DEED RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AS IRON PIN FOUND (58" DIA.) AT THE CENTERLINE INTERSECTION OF UPPER LEWISBURG SALEM ROAD AND ALBERT ROAD, SAID PIN BEING THE NORTHEAST CORNER OF SAID 1-ACRE TRACT AND THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 34;

THENCE, WITH THE CENTERLINE OF SAID ALBERT ROAD AND WITH THE EAST LINE OF SAID 1-ACRE TRACT, SOUTH 01 DEGREES 01 MINUTES 07 SECONDS EAST FOR 208.72 FEET TO A MAG NAIL FOUND, SAID MAG NAIL BEING THE SOUTHWEST CORNER OF SAID 1-ACRE TRACT;

THENCE, WITH THE SOUTH LINE OF SAID 1-ACRE TRACT, SOUTH 88 DEGREES 24 MINUTES 07 SECONDS WEST FOR 208.72 FEET TO AN IRON PIN FOUND (58" DIA.), SAID PIN BEING THE SOUTHWEST CORNER OF SAID 1-ACRE TRACT, PASSING AN IRON PIN FOUND (58" DIA.) IN THE FORMER WEST RIGHT-OF-WAY LINE OF SAID ALBERT ROAD AT 16.30 FEET ALONG THIS COURSE, ALSO PASSING A POINT IN THE CURRENT WEST RIGHT-OF-WAY LINE AS DESCRIBED IN A PERPETUAL EASEMENT FOR RIGHT-OF-WAY AS CONVEYED TO THE CITY OF BROOKVILLE, AN OHIO MUNICIPAL CORPORATION BY DEED RECORDED AS INSTRUMENT RECORD DEED NO. 04-01949 OF THE MONTGOMERY COUNTY DEED RECORDS AT 30.00 FEET ALONG THIS COURSE;

THENCE, WITH THE WEST LINE OF SAID 1-ACRE TRACT, NORTH 01 DEGREE 07 MINUTES 07 SECONDS WEST 208.72 FEET TO A MAG NAIL FOUND IN THE CENTERLINE OF SAID UPPER LEWISBURG SALEM ROAD, SAID MAG NAIL BEING ALSO IN THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34 AND SAID MAG NAIL BEING THE NORTHEAST CORNER OF SAID 1-ACRE TRACT, PASSING AN IRON PIN FOUND (58" DIA.) IN THE SOUTH RIGHT-OF-WAY LINE OF SAID UPPER LEWISBURG SALEM ROAD AT 178.72 FEET ALONG THIS COURSE, THENCE, WITH THE CENTERLINE OF SAID UPPER LEWISBURG SALEM ROAD AND WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34 AND WITH THE NORTH LINE OF SAID 1-ACRE TRACT, NORTH 88 DEGREES 24 MINUTES 07 SECONDS EAST FOR 208.72 FEET TO THE PLACE OF BEGINNING, CONTAINING 0.1442 ACRES WITHIN CLAY TOWNSHIP AND 0.8559 ACRES WITHIN THE CITY OF BROOKVILLE FOR A TOTAL OF 1.0001 ACRE MORE OR LESS AND SUBJECT TO ANY EASEMENTS, RESTRICTIONS, CONDITIONS, AND LEGAL HIGHWAYS OF RECORD PERTAINING TO ABOVE DESCRIBED TRACT.

SAVE AND EXCEPT:

A .856 ACRE OF LAND MORE OR LESS SOLD TO KEVIN N. REED AND BETH E. REED BY DEED DATED OCTOBER 15, 2008 AND RECORDED IN MONTGOMERY COUNTY DEED RECORDS INSTRUMENT NUMBER DEED 08-071758 0003. (PARCEL NUMBER C05 001019 0021)

LEAVING A TOTAL ACREAGE FOR SAID PARCEL IS: .144 ACRES MORE OR LESS.

NOTE: THIS DESCRIPTION DOES NOT CLOSE. IT IS MISSING THE LAST CALL.

PARCEL TWO AND THREE:

SITUATE IN THE TOWNSHIP OF CLAY AND THE CITY OF BROOKVILLE, COUNTY OF MONTGOMERY AND STATE OF OHIO; BEING PART OF THE NORTHEAST QUARTER OF SECTION THIRTY-FOUR (34), TOWN SIX (6), RANGE FOUR (4) EAST, AND BEING BOUNDED AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON STAKE AT THE NORTHEAST CORNER OF SAID QUARTER SECTION;

THENCE SOUTH 86° 54' WEST ON THE NORTH LINE OF SAID SECTION, 45.16 RODS TO AN IRON STAKE;

THENCE SOUTH 2° 35' EAST, 71.83 RODS TO AN IRON STAKE;

THENCE NORTH 87° 28' EAST, 31.75 RODS TO AN IRON STAKE;

THENCE SOUTH 2° 35' EAST, 13.6 RODS TO A CORNER IN THE CENTER OF THE BROOKVILLE AND SALEM PIKE. WITNESS AN IRON PIN BEARS NORTH 2° 35' WEST, 31.5 FEET DISTANT;

THENCE WITH SAID PIKE NORTH 47° 15' EAST, 17.54 RODS TO THE PLACE OF BEGINNING, CONTAINING 21 ACRES.

SAVE AND EXCEPTING ONE (1) ACRE OF LAND SOLD OFF THE SOUTHEAST CORNER THEREOF TO LEE MILLER, NOW KNOWN AS LOT 1741 OF THE CITY OF BROOKVILLE.

SAVE AND EXCEPT:

ONE ACRE OF LAND SOLD TO CHARLES W. BRITTON AND GENEVA NEOMA BRITTON BY DEED DATED MARCH 12, 1966, AND RECORDED IN MONTGOMERY COUNTY DEED RECORDS VOLUME 1763, PAGE 25 ON MARCH 12, 1966, AT 2:04 PM. SAID ONE ACRE IS MORE PROPERLY DESCRIBED AS FOLLOWS:

SITUATE IN THE TOWNSHIP OF CLAY AND THE CITY OF BROOKVILLE, COUNTY OF MONTGOMERY AND STATE OF OHIO; BEING PART OF THE NORTHEAST QUARTER OF SECTION THIRTY-FOUR (34), TOWN SIX (6), RANGE FOUR (4) EAST, ETC. AND BEING PART OF THE SAME PREMISES DESCRIBED IN THE CONVEYANCE FROM RAYMOND L. HUNT, HUSBAND, TO HATTIE H. HUNT, HIS WIFE, DEED DATED SEPTEMBER 23, 1947, AND RECORDED IN DEED BOOK 1245, PAGE 581, OF THE DEED RECORDS OF MONTGOMERY COUNTY, OHIO;

BEING BOUNDED AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN AT THE NORTHEAST CORNER OF SAID QUARTER SECTION;

THENCE SOUTH 86° 54' WEST, WITH THE NORTH LINE OF SAID SECTION AND APPROXIMATE CENTER OF THE UPPER LEWISBURG AND SALEM ROAD FOR A DISTANCE OF TWO HUNDRED EIGHT AND SEVENTY-TWO HUNDREDTHS (208.72) FEET TO AN IRON PIN;

THENCE SOUTH 2° 35' EAST AND PARALLEL, WITH THE EAST LINE OF SAID QUARTER SECTION AND APPROXIMATE CENTER OF THE BROOKVILLE AND PHILLIPSBURG ROAD FOR A DISTANCE OF TWO HUNDRED EIGHT AND SEVENTY-TWO HUNDREDTHS (208.72) FEET TO AN IRON PIN;

THENCE NORTH 86° 54' EAST AND PARALLEL WITH THE NORTH LINE OF SAID QUARTER SECTION AND UPPER LEWISBURG AND SALEM ROAD FOR A DISTANCE OF TWO HUNDRED EIGHT AND SEVENTY-TWO HUNDREDTHS (208.72) FEET TO THE PLACE OF BEGINNING, CONTAINING ONE ACRE (1) MORE OR LESS, SUBJECT, HOWEVER TO ALL LEGAL HIGHWAYS AND EASEMENTS OF RECORD;

NOW KNOWN AS LOT 1744 OF THE CITY OF BROOKVILLE. THE PARCEL DESCRIBED ABOVE IS NOW KNOWN AS LOT 1743 OF THE CITY OF BROOKVILLE.

SAVE AND EXCEPT:

ROADWAY EASEMENT:

BEING A PART OF LOT NUMBER 1743 OF THE CONSECUTIVE LOTS IN THE CITY OF BROOKVILLE OWNED BY CHARLES W. AND GENEVA N. BRITTON, TRUSTEES AS DESCRIBED IN DEED MICROFICHE 01-326 002, PARCEL NO. 2, SITUATE IN SECTION 34, TOWN 6, RANGE 4 EAST, CITY OF BROOKVILLE, MONTGOMERY COUNTY, OHIO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR REFERENCE AT AN IRON PIN FOUND AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 34, ALSO BEING THE INTERSECTION OF CENTERLINES OF ALBERT ROAD AND UPPER LEWISBURG AND SALEM ROAD;

THENCE, SOUTH 01° 06' 58" EAST, 208.72 FEET, ALONG THE EAST LINE OF SAID QUARTER SECTION AND THE CENTERLINE OF ALBERT ROAD TO THE SOUTHWEST CORNER OF LOT 1744;

THENCE, SOUTH 88° 22' 02" WEST, 16.50 FEET, ALONG THE SOUTH LINE OF LOT 1744 TO THE PRINCIPAL PLACE OF BEGINNING FOR THE EASEMENT HEREIN CONVEYED;

THENCE, SOUTH 01° 06' 58" EAST, 865.01 FEET, ALONG THE EXISTING WESTERLY RIGHT-OF-WAY LINE OF ALBERT ROAD TO A POINT;

THENCE, SOUTH 58° 12' 53" WEST, 15.70 FEET, TO AN IRON PIN FOUND AT THE NORTHEAST CORNER OF LOT 1694;

THENCE, ON A NEW DIVISION LINE, NORTH 01° 06' 58" WEST, 872.89 FEET, PARALLEL WITH THE EAST LINE OF SAID QUARTER SECTION AND THE CENTERLINE OF SAID ALBERT ROAD TO AN IRON PIN WITH CAP SET ON THE SOUTH LINE OF LOT 1744;

THENCE, NORTH 88° 22' 02" EAST, 13.50 FEET, ALONG THE SOUTH LINE OF LOT 1744 TO THE PRINCIPAL PLACE OF BEGINNING;

CONTAINING 11,730.80 SQUARE FEET MORE OR LESS, OR 0.269 MORE OR LESS WITH ALL BEING SUBJECT TO ANY LEGAL HIGHWAYS AND EASEMENTS OF RECORD;

24.

THE ABOVE DESCRIPTION WAS PREPARED BY THOMAS L. COVERSTONE, OHIO PROFESSIONAL SURVEYOR NUMBER 7100, BASED ON A FIELD SURVEY BY SAME AND DATED DECEMBER 8, 2003.

PARCEL NO. C05-001-09-0020 C04-000100014 C04-00010-0005

COMMONLY KNOWN AS: 10400 UPPER LEWISBURG SALEM ROAD, UPPER LEWISBURG SALEM ROAD, AND UPPER LEWISBURG SALEM ROAD, MONTGOMERY COUNTY, OHIO.

PRIOR INSTRUMENT REFERENCE: FILED CONCURRENTLY HERewith

SURVEYORS CERTIFICATION

TO: DDC MANAGEMENT, LLC AND STEWART TITLE GUARANTY COMPANY.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 5, 7(a), 7(b)(1), 7(c), 8, 9, 11(b), 13, 14, 16, 17, AND 18 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED IN MARCH OF 2021.

DATE OF PLAT OR MAP: APRIL 6, 2021

PRELIMINARY

MICHAEL JAY WILSON, P.S. STATE PROFESSIONAL SURVEYOR #8281

DATE

BENCHMARK DESCRIPTIONS

BM 1: CROSS NOTCH SET ON ARROW BOLT ON WEST SIDE OF A FIRE HYDRANT, ABOUT 50' SOUTH OF EAST UPPER LEWISBURG SALEM RD. ON THE EAST SIDE OF THE BROOKVILLE 76 FIRE STATION TRUCK ENTRY AND EXIT.

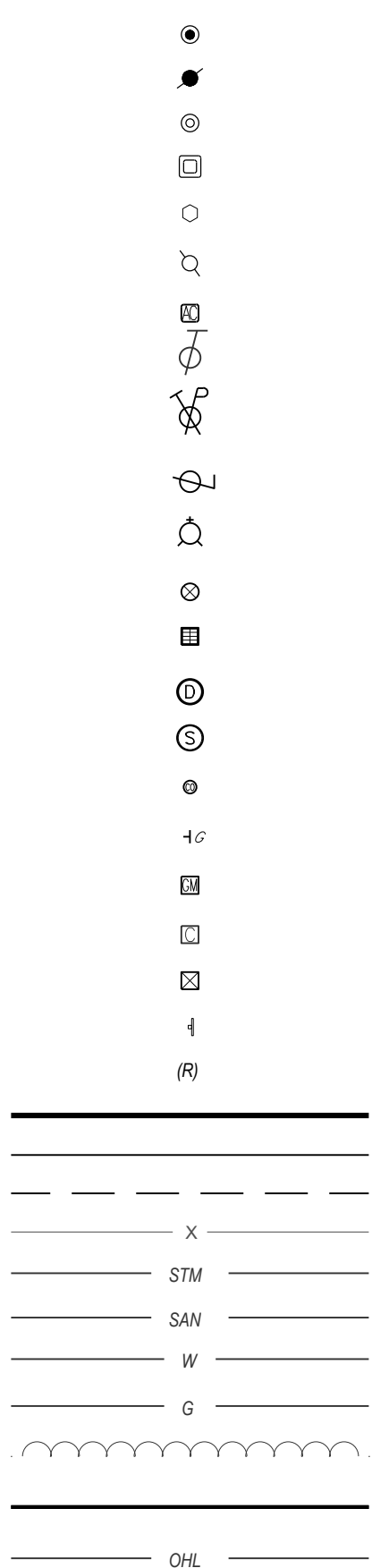
BM 2: CROSS NOTCH SET ON THE SOUTHWEST SIDE OF A FIRE HYDRANT, ABOUT THE RIGHT-OF-WAY OF ALBERT RD. ABOUT 50' SOUTH OF THE INTERSECTION OF UPPER LEWISBURG SALEM RD. AND ALBERT RD.

ALTA / NSPS LAND TITLE SURVEY

SECTION 34, TOWNSHIP 6, RANGE 4 EAST  
CITY OF BROOKVILLE, MONTGOMERY COUNTY, STATE OF OHIO

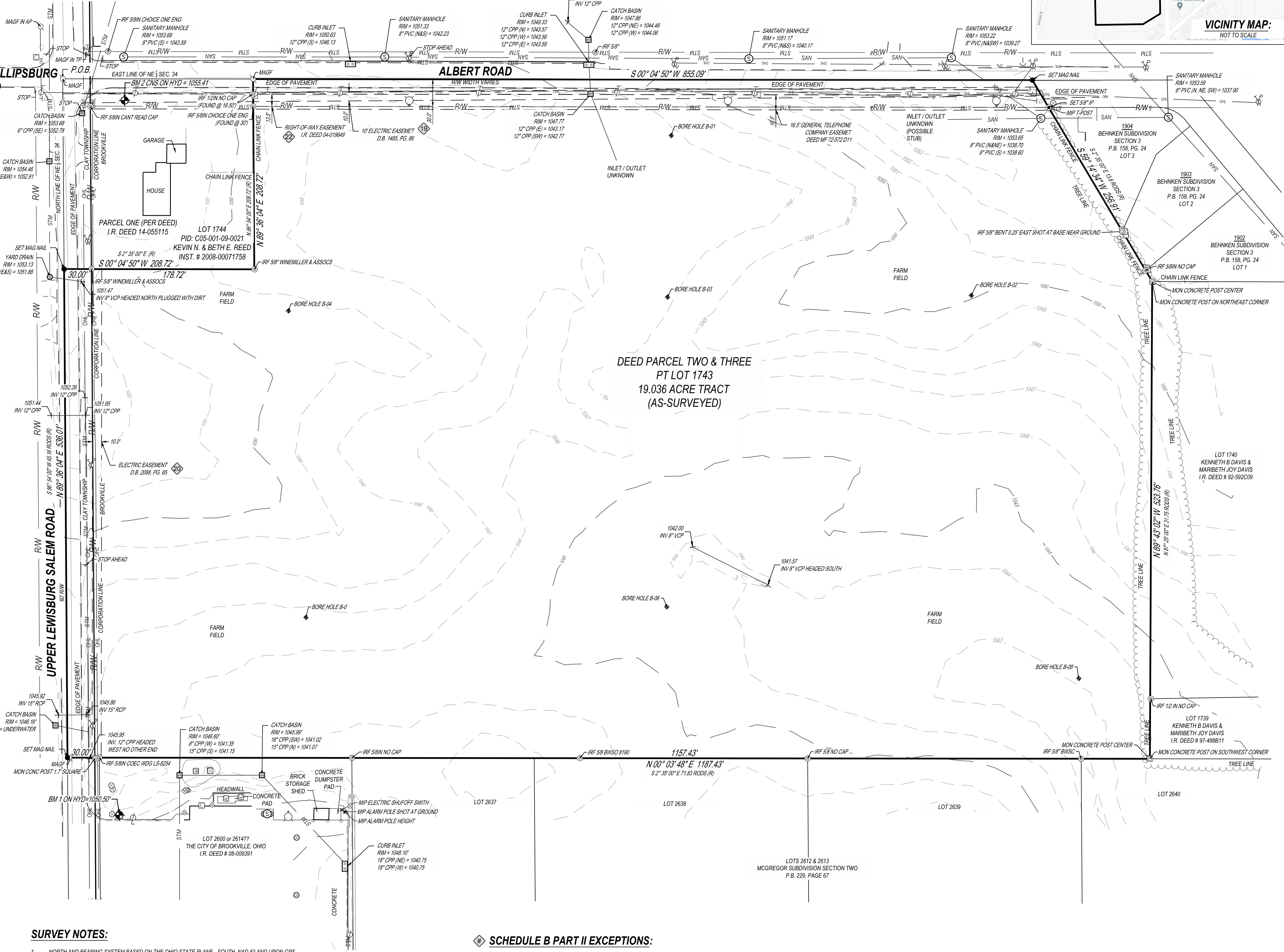


LEGEND:



BROOKVILLE PHILLIPSBURG ROAD

ALBERT ROAD



SURVEY NOTES:

- NORTH AND BEARING SYSTEM BASED ON THE OHIO STATE PLANE - SOUTH, NAD 83 AND UPON GPS OBSERVATIONS TAKEN BY CESO INC IN MARCH OF 2021. SCALED TO GROUND AT A LAT. N39°50'40.33302", LONG. W84°24'23.20801" AND A PROJECT HEIGHT OF 940.881 FEET AND A SCALE FACTOR OF 1.00007689009207.
- ALL DATA SOURCES, DOCUMENTS AND RECORDS SHOWN HEREON ARE ON FILE IN THE MONTGOMERY COUNTY RECORDERS OFFICE LOCATED IN DAYTON, OHIO, UNLESS NOTED OTHERWISE.
- SURVEY PREPARED FROM FIELDWORK PERFORMED IN MARCH OF 2021. ALL MONUMENTATION SHOWN HEREON IS IN GOOD CONDITION UNLESS OTHERWISE NOTED.
- THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY THE SURVEYOR. ALL INFORMATION REGARDING RECORD EASEMENTS, AND OTHER DOCUMENTS THAT MIGHT AFFECT THE QUALITY OF TITLE TO THE PARCEL SHOWN HEREON WE OBTAINED THROUGH A CERTIFIED TITLE COMMITMENT ISSUED BY STEWART TITLE GUARANTY COMPANY, COMMITMENT NUMBER: 2019120058, DATED JANUARY 31, 2020.
- THE SUBJECT PARCEL HAS ACCESS TO UPPER LEWISBURG SALEM RD. ALONG THE NORTHERN BOUNDARY AND ALBERT RD. ALONG WITH EASTERLY BOUNDARY BOTH BEING PUBLIC RIGHT-OF-WAYS.
- THE SURVEY IS NOT A RECORDABLE DOCUMENT FOR TRANSFER OF TITLE.
- OCCUPATION GENERALLY FITS THE BOUNDARY LINES AS SHOWN.

SCHEDULE B PART II EXCEPTIONS:

FROM STEWART TITLE GUARANTY COMPANY COMMITMENT NO. 2019120058 WITH A COMMITMENT DATE OF JANUARY 31, 2020 AT 7:59 PM.

ITEMS 1-18 ARE NOT SURVEY RELATED.

- ITEM 19. EASEMENT TO THE DAYTON POWER AND LIGHT COMPANY DATED 10/18/1951 AND FILED ON 10/30/1951 IN DEED BOOK 1485, PAGE 86 AS RECORDED IN THE RECORDERS OFFICE OF MONTGOMERY COUNTY, OHIO. EASEMENT IS ON SUBJECT PARCEL AND SHOWN HEREON.
- ITEM 20. EASEMENT TO THE DAYTON POWER AND LIGHT COMPANY DATED 5/2/1962 AND FILED ON 5/10/1962 IN DEED BOOK 2088, PAGE 65 AS RECORDED IN THE RECORDERS OFFICE OF MONTGOMERY COUNTY, OHIO. EASEMENT IS ON SUBJECT PARCEL AND SHOWN HEREON.
- ITEM 21. EASEMENT TO THE GENERAL TELEPHONE COMPANY OF OHIO DATED 10/30/1972 AND FILED ON 10/30/1972 IN DEED MF 12-572 D11 AS RECORDED IN THE RECORDERS OFFICE OF MONTGOMERY COUNTY, OHIO. EASEMENT IS ON SUBJECT PARCEL AND SHOWN HEREON.
- ITEM 22. PERPETUAL EASEMENT FOR RIGHT-OF-WAY TO THE CITY OF BROOKVILLE, OHIO DATED 1/29/2004 AND FILED ON 2/25/2004 IN INSTRUMENT 2004-00019648 AS RECORDED IN THE RECORDERS OFFICE OF MONTGOMERY COUNTY, OHIO. EASEMENT IS ON SUBJECT PARCEL AND SHOWN HEREON.



| REVISIONS |      |             |
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| NO.       | DATE | DESCRIPTION |
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ALTA / NSPS SURVEY

DDCM BROOKVILLE

10400 UPPER LEWISBURG SALEM RD. BROOKVILLE

SEC. 34, TWP. 6, R4E MONTGOMERY COUNTY, OHIO

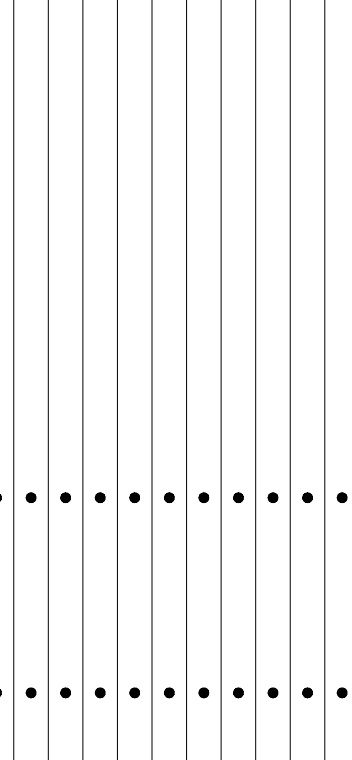
SCALE: 1" = 60' DATE: 04/7/2021

DESIGN: N/A JOB NO.: 757660

DRAWN: RSL SHEET NO.:

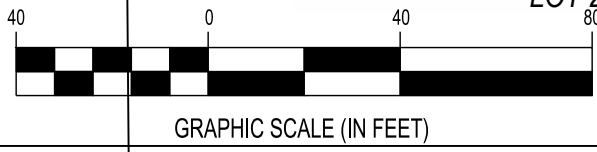
CHECKED: JKH

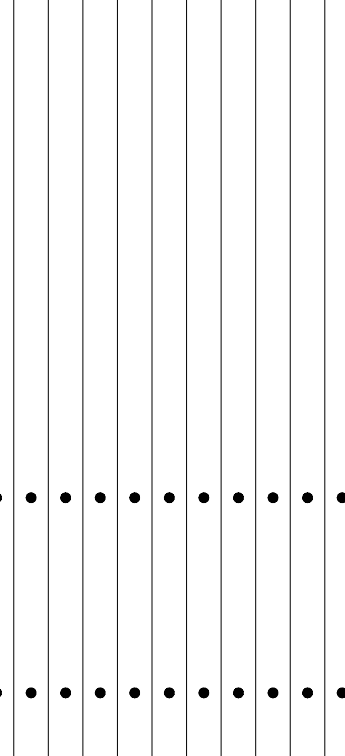




# HARPER CREEK

|                  |        |
|------------------|--------|
| ISSUE:           |        |
| DEVELOPMENT PLAN |        |
| DATE:            |        |
| 02/11/2022       |        |
| JOB NO.:         | 758340 |
| DESIGN:          | JEE    |
| DRAWN:           | SJS    |
| CHECKED:         | JEE    |
| SHEET NO.        |        |
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# HARPER CREEK

|                  |        |
|------------------|--------|
| ISSUE:           |        |
| DEVELOPMENT PLAN |        |
| DATE:            |        |
| 02/11/2022       |        |
| B NO.:           | 758340 |
| SIGN:            | JEE    |
| DRAWN:           | SJS    |
| CHECKED:         | JEE    |
| SHEET NO.        |        |
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## Statement of Commitments

Commitments concerning the use or development of real estate made in connection with the plan approvals for the Harper Creek (the “Development”) in Brookville, OH.

### Commitments:

1. The same dwelling elevation shall not be constructed on any adjacent lot or the lot directly across the street to ensure significant architectural features will differentiate the dwellings within the community.
2. The Developer shall provide a Landscaping Buffer along the Development’s frontage on Upper Lewisburg Salem Rd and Albert Road. The Developer shall install native trees and shrubs within the Landscaping Buffer, which shall be maintained by the HOA. The native plantings shall be depicted in a Landscape Plan at the time of Development Plan approval. However, should the City of Brookville have plans to make improvements to Upper Lewisburg Salem Rd or Albert Road at the time of the Development’s Development Plan approval, and should the improvements impact the plantings depicted in the Landscape Plan, the Developer shall make a contribution in leu of installing landscaping to the City of Brookville at the time of development permit approval. The value of the contribution shall equal the market value of the plantings depicted in the Landscape Plan within the Landscaping Buffer at the time of development permit approval, and the City of Brookville shall be responsible for installing the plantings after the road improvements have been made.
3. The Developer shall install frontage sidewalks within the Right-of-Way along the Development’s frontage on Upper Lewisburg Salem Rd and Albert Road. However, should the City of Brookville have plans to make improvements to Upper Lewisburg Salem Rd or Albert Road at the time of the Development’s Development Plan approval, and should the improvements impact the frontage sidewalks depicted in the Development Plan, the Developer shall make a contribution in leu of installing frontage sidewalks to the City of Brookville at the time of development permit approval. The value of the contribution shall equal the market value of the frontage sidewalks depicted in the Development Plan at the time of development permit approval, and the City of Brookville shall be responsible for installing the frontage sidewalks after the road improvements have been made.
4. Should a Residential TIF be approved and established for the Development, the Developer shall install frontage sidewalks along Upper Lewisburg Salem Rd and Albert Rd in the Right-of-Way along Kevin and Beth Reed’s property’s frontage as part of the Development. The Developer shall not be financially responsible for acquiring Right-of-Way for the installations associated with this commitment. Should Right-of-Way not be made available to the Developer or should the City of Brookville have plans to make improvements to Upper Lewisburg Salem Rd or Albert Road at the time of the Development’s Development Plan approval, and should the improvements impact the frontage along Kevin and Beth Reed’s property, the Developer shall make a contribution in leu of installing frontage sidewalks to the City of Brookville at the time of development permit approval. The value of the contribution shall equal the market value of the frontage sidewalks depicted in the Development Plan at the time of development permit approval, and the City of Brookville shall be responsible for installing the frontage sidewalks after the road improvements have been made.

**DRAFT**



**ARBOR**  
**H O M E S**

A BERKSHIRE HATHAWAY COMPANY

BUILDING GREAT NEIGHBORHOODS AND HOMES FOR  
PEOPLE TO **CELEBRATE LIFE**

***DRAFT***



**ASPEN ELEVATION B**

**DRAFT**



**BRADFORD ELEVATION A**

**DRAFT**



**CHESTNUT ELEVATION C**

**DRAFT**



**COOPER ELEVATION B**

**DRAFT**



**COTTONWOOD ELEVATION A**

**DRAFT**



**EMPRESS CRAFTSMAN**

**DRAFT**

**MULBERRY TRADITIONAL**



**DRAFT**



**NORWAY ELEVATION A**

**DRAFT**



**SPRUCE TUDOR**

City of Brookville, Ohio

# **R-1B Application and Development Plan Submittal**

Submitted on: 3-10-2022

**Contact: Austin Schile**

Arbor Homes  
9225 Harrison Park Ct  
Indianapolis, IN 46216  
317-674-7600

## **R-B1 Requirements:**

- 1123.02 Uses
  - a) Permitted Uses: The proposed Single Family Residential use is a permitted use
  - b) Special Uses: N/A
- 1123.03 Site Development Regulations (Permitted Uses Only)
  - a) Lot Requirements
    1. Minimum lot area: 10,000 square feet – Proposal meets requirement
    2. Minimum lot frontage: 85 feet – Proposal meets requirement
  - b) Yard Requirements
    1. Minimum front yard depth: 25 feet – Proposal meets requirement
    2. Minimum rear yard depth: 35 feet – Proposal meets requirement
    3. Minimum side yard width: 10 feet – Proposal meets requirement
    4. Minimum side yard width: 20 feet sum of both – Proposal meets requirement
  - c) Structural Requirements
    1. Maximum building height: 35 feet – Proposal meets requirement
    2. Minimum floor area: 1,600 square feet – Proposal meets requirement
  - d) Parking Requirement
    1. Off-street Parking: One and two-family dwellings. The off-street parking facilities required for one and two-family dwellings should be located on the same lot or plot of ground as the building they are intended to serve, but shall not be considered a parking lot under the provisions of this chapter. – Proposal meets requirements
  - e) Signs: Chapter 1161 – Proposal shall meet requirements of Chapter 1161, when applicable

## **High-level Development Schedule**

- **Preliminary Plan Approval, Planning Commission – March 2022**
- **Preliminary Plan Approval, City Council – April 2022**
- **Construction Drawing Submittal to City – June 2022**
- **Construction Drawing Approval – July 2022**
- **Begin Construction – July/August 2022**
- **Construction on 43 Lots Complete – November 2022**
- **Model Home Completion – Spring 2023**
- **First Homes Completed – Spring 2023**
- **Final Home Sale – Spring 2024**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**[SUBDIVISION NAME] SUBDIVISION**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
[SUBDIVISION NAME] SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions (“Declaration”) of [Subdivision Name] subdivision (hereinafter “Subdivision,” “Community” or “[Subdivision Name]”) is made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by [DEVELOPER] (the “**DECLARANT**”).

**WITNESSETH:**

**RECITALS**

WHEREAS, **DECLARANT** is the Owner of real estate in [County Name] County, State of Ohio, more particularly described in **Exhibit A** attached and made a part hereof, comprised of approximately \_\_\_\_ acres; and

WHEREAS, **DECLARANT** desires and intends to create on the Real Estate a residential community with public streets, with identification signage, and complimentary landscaping at the entranceway and with open spaces and with common areas for surface water management while also serving as open space, all for the benefit of such residential community, to be known as “[Subdivision Name] Subdivision” as shown on **Exhibit B**; and

WHEREAS, **DECLARANT** intends to develop the [Subdivision Name] Subdivision in separate sections, all of which comprise the [Subdivision Name] Subdivision, beginning with an initial section comprised of approximately \_\_\_\_ acres known as [Subdivision Name] Section 1 as shown on **Exhibit C**; and

WHEREAS, **DECLARANT** desires to provide, subject to this Declaration, a common interest community which addresses commonly owned real estate, their maintenance and other obligations, and the finances to honor these and other community obligations; and

WHEREAS, **DECLARANT** desires to subject the Initial Tract to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Initial Tract and each Owner of all or part thereof; and

WHEREAS, **DECLARANT** deems it desirable, to accomplish these tasks in said Initial Tract, to create an organization to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas and maintenance expense areas detailed in the Initial Tract, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed

and created hereby and hereunder, and promoting the common interest of the Owners of the Initial Tract, and all parts thereof; and

WHEREAS, **DECLARANT** has caused “[Subdivision Name] Homeowners Association, Inc.” to be incorporated under the provisions of Chapter 1702 of the Ohio Revised Code, as the referenced organization for the purpose of exercising such functions;

NOW THEREFORE, **DECLARANT**, as Owner of the Initial Tract hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth.

## **ARTICLE I DEFINITIONS**

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

(a) “Additional Property” shall mean any real estate, excluding the Initial Tract, which may in part or in total be made subject to this Declaration but ONLY if the Additional Property is developed as a subdivision for detached single family homes;

(b) “Applicable Date” shall mean and refer to the date determined pursuant to Article IV of this Declaration; and refers to the time at which the **DECLARANT** relinquishes control of the governance of the Association as detailed on Article IV;

(c) “Articles” shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;

(d) “Association” or “HOA” shall mean and refer to [Subdivision Name] Homeowners Association, Inc., an Ohio corporation organized under Chapter 1702 of the Ohio Revised Code, which **DECLARANT** has caused to be incorporated under said name, and its successors and assigns;

(e) “Board” or “Board of Directors” shall mean and refer to the governing body of the Association elected, selected or appointed as provided for in the Articles, Bylaws and this Declaration;

(f) “Bylaws” shall mean and refer to the Code of Regulations of the Association attached hereto as Exhibit D, as the same may be amended from time to time;

(g) “Code” shall mean and refer to the Ohio Nonprofit Corporation Law, Chapter 1702 of the Ohio Revised Code, as amended;

(h) “Committee” shall mean and refer to the “[Subdivision Name] Architectural Control Committee”, the same being the committee or entity established pursuant to Article IX of this Declaration for the purposes therein stated;

(i) “Common Areas” denominated by such title on recorded plats (“Plats”) of this community and will ultimately be transferred in legal title to the HOA by the **DECLARANT** and thereafter be commonly owned by the HOA. Common areas limited in use to less than all of the Owners, if any, are labeled “Limited Common Area.” All common areas not labeled Limited Common Area are “General Common Areas” available to all Owners in the Subdivision.

Subject to the tree preservation requirements contained herein, the HOA at all times herein has rights as respects these common areas to regulate the use thereof, to make and/or remove improvements thereon (except for the removal of fencing installed by **DECLARANT** (other than to repair or replace such fencing)), including but not limited to landscaping, and to provide utilities thereto with the attendant responsibility to care for and maintain same. Illustrative of such areas are the common areas denominated as such on Exhibit B.

The **DECLARANT** expects to convey legal title to Common Areas to the HOA as soon after the Applicable Date as any related mortgage of **DECLARANT** thereon is satisfied in full but reserves the right to transfer such title earlier in **DECLARANT’s** sole discretion. The Board, after the initial Board is replaced, is empowered to accept title subject to a mortgage if it is satisfied with assurances of payment thereof by **DECLARANT**. **DECLARANT** reserves the right to relocate and/or reconfigure the open space or common areas as precise engineering for the site may dictate;

(j) “Common Expenses” shall refer to expenses of administration of the HOA and for their exercised rights and obligations detailed in the definitions for “Common Areas” and “Maintenance Expense Areas” and shall also include the cost of overseeing areas designated on recorded Plats of [Subdivision Name] labeled “Common Area”;

(k) “Community” or “Project” refers to the [Subdivision Name] area depicted on Exhibit B as it is developed and as it continues to exist after the Applicable Date;

(l) “**DECLARANT**”, ALSO KNOWN AS “**DEVELOPER**”, SHALL MEAN AND REFER TO [**DEVELOPER**] AND ANY SUCCESSORS AND THEIR ASSIGNS INCLUDING, BUT NOT LIMITED TO, ANY MORTGAGEE ACQUIRING TITLE, TO ANY PORTION OF THE REAL ESTATE PURSUANT TO THE EXERCISE OF RIGHTS UNDER, OR FORECLOSURE OF, A MORTGAGE EXECUTED BY **DECLARANT**;

(m) “Dwelling Unit” shall refer to a single free-standing residential structure on an individual lot or multiple lots;

(n) “Initial Tract” shall refer to the **Exhibit C** real estate to be platted [Subdivision Name] Section 1, and shall be comprised of \_\_\_\_ Lots;

(o) “Lot” means any plot of ground designated as such upon the recorded final plat(s) of [Subdivision Name] (the “Final Plat(s)”), and upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon;

(p) “Maintenance Expense Areas.” Certain aesthetic, informational and other amenities influenced by the natural features of the Real Estate have been used in the development design to differentiate this community from other communities. As a consequence thereof, easement areas or improvements in dedicated rights-of-ways have or will be created shown on recorded plats that reserve to **DECLARANT** and after the Applicable Date the HOA certain rights and/or responsibilities. Illustrative of these areas are the following:

- (1) Common Areas and any dedicated common access thereto. These areas shall not include easement areas across lots nor any Tree Preservation Areas on such lots, which maintenance shall be the responsibility of the respective Owners.
- (2) The identification walls at the Community entrances and complimentary landscaping and possibly water and electric service for such identification within easements designated on recorded plats.
- (3) If the **DECLARANT** or the HOA after the Applicable Date contracts, under lease, with an electric utility to install street lighting in [Subdivision Name] the lease payments shall be a common expense.
- (4) Maintenance and repair of the fencing in Common Areas as indicated on the Plat for the Subdivision, and maintenance and preservation of trees in any Tree Preservation Areas in the Common Areas.

(q) “Member” means a Member of the Association;

(r) “Mortgagee” shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;

(s) “Open Space Areas/Common Areas.” In addition to the retention ponds being open space areas, other space labeled as noted is contemplated, some of which may be Limited Common Area;

(t) "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;

(u) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

(v) The "Real Estate" shall mean and refer to the parcel of real estate in [County Name] County, Ohio, described in Exhibit "A" attached to this Declaration and subject thereto, as referred to in the first recital clause of this Declaration;

(w) The description of "[Subdivision Name], Section 1" consists of \_\_\_\_\_ (\_\_\_\_) Lots numbered 1 through \_\_\_\_ inclusive. Consequently, the legal description for each Lot in this subdivision shall be as follows:

Lot \_\_\_\_ in [Subdivision Name], Section 1, a subdivision in [County Name] County, Ohio, as per plat thereof, recorded [Month] [Day], 20\_\_ as [Plat Book \_\_\_\_\_, Page \_\_\_\_\_ OR Instrument # \_\_\_\_\_] in the Office of the Recorder of [County Name] County, Ohio.

(x) "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time (see Article X);

(y) "Rules and Regulations" are the rules and regulations relative to the use, occupancy, operation and enjoyment of the Real Estate, Common Areas and individual Lots that are part of this Subdivision.

(z) "Tree Preservation Area(s)" shall mean those areas designated as such on any Plat, subject to drainage improvements, drainage easements as required by applicable law or local authority, and such other easements as are shown on the Plats or other plans for the Community.

**Section 2.** Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

## **ARTICLE II DECLARATION**

**DECLARANT** hereby expressly declares that the Initial Tract shall be held, transferred and occupied subject to the Restrictions as covenants running with the Real Estate. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed

conveying title thereto, or the execution of a contract for the purchase thereof, whether from **DECLARANT** or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of **DECLARANT**, the Committee and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with **DECLARANT**, the Committee, the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

### **ARTICLE III OBLIGATIONS OF DECLARANT**

**DECLARANT** has constructed or provided for, or will prior to the Applicable Date construct or provide for, the following:

- (a) a storm drainage system for the Initial Tract, including structures and drainage courses;
- (b) at the sole discretion of the **DECLARANT**, the installation in the designated easements of the subdivision identification signage and landscaping at the entranceway to [Subdivision Name] and possible water and electric service to accommodate same; and
- (c) the Common Areas described in Article I(1)(i).

### **ARTICLE IV ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**

**Section 1. Membership in Association.** **DECLARANT** and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association.

**Section 2. Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

(a) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the Bylaws if such determination is unavailable, but in no event shall more than one (1) vote be cast with respect to any such Lot. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one (1) vote;

(b) Class B. Class B Members shall be **DECLARANT** and all successors and assigns of **DECLARANT** designated herein as **DECLARANT** as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to four (4) votes for each Lot designated on the [Subdivision Name] Subdivision Exhibit B on all matters requiring a vote of the Members of the Association. **THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF:**

(i) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION; OR

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN ALL LOTS SUBJECT TO THIS DECLARATION ARE TITLED IN NAMES OTHER THAN THE **DECLARANT** OR AN ASSIGNEE OF THE **DECLARANT**.

THE DATE DETERMINED BY SECTION 2(B) ABOVE IS HEREINAFTER REFERRED TO AS THE "APPLICABLE DATE".

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one (1) Class A membership for each Lot owned.

The total possible votes for Class A Members prior to the Applicable Date considering only the Initial Tract is \_\_\_\_\_. The total votes for Class B Members prior to the Applicable Date considering only the Initial Tract is \_\_\_\_\_.

**Section 3. Functions.** The Association has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation of the Article III matters and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

## **ARTICLE V BOARD OF DIRECTORS**

**Section 1. Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a Member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by **DECLARANT** as provided in Section 2 of this Article V.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated in the Articles of Incorporation and the Bylaws (herein referred to as the "Initial Board" or "Board"), who have been or shall be appointed by **DECLARANT**. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Code (a) the Initial Board shall hold office until the first annual meeting of the Members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by **DECLARANT**, who shall thereafter be deemed a Member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of judicial acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed **DECLARANT** as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as **DECLARANT** determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Code or otherwise. This appointment of **DECLARANT** as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original Member thereof or as a Member thereof appointed by **DECLARANT** to fill a vacancy, shall be deemed a special member ("Special Member") of the Association and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

**Section 3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 4. Term of Office, Vacancy and Number of Directors After the Applicable Date.**

(a) Term. Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each Member of the Board of Directors shall be elected for a minimum term of one (1) year. Each Director shall hold office throughout the term of such Director's election and until a successor is elected and qualified.

(b) Number of Directors After Applicable Date. The number of Directors to serve on the Board after the Applicable Date shall be a minimum of three (3) with a maximum of nine (9).

(c) Vacancies. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board after the Applicable Date shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy. Any vacancy in a Director position that was appointed by **DECLARANT** must be replaced by a person designated by **DECLARANT**.

**Section 5. Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified. Any vacancy in a Director position that was appointed by **DECLARANT** must be replaced by a person designated by **DECLARANT**.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection of Regular Assessments and/or Special Assessments (collectively, the "Assessments") and other income, and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a managing agent ("Managing Agent") upon such

terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

(b) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

(c) preparation of the proposed annual budget, a copy of which will be distributed, delivered and otherwise made available to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

(d) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be distributed, delivered and otherwise made available to each Owner simultaneously with the distribution and publication of the proposed annual budget for the current year;

(e) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;

(f) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration, the Code, Chapter 5312 of the Ohio Revised Code, and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(g) paying any other necessary expenses and costs in connection with the Common Areas (including open space common areas) and including the overseeing of open space preservation areas that are not common areas but instead are impositions by easement within the confines of Lots; and

(h) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws, the Code or Chapter 5312 of the Ohio Revised Code.

**Section 7. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of its duties. These powers include, but are not limited to, the power:

(a) to employ a Managing Agent to assist the Board in performing its duties;

(b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

(e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Association;

(g) to promulgate, adopt, revise, amend and alter from time to time such additional Restrictions, Rules and Regulations with respect to use, occupancy, operation and enjoyment of the Real Estate (Lots) and the Common Areas (in addition to those set forth in this Declaration) including but not limited to charging uniform fees for the use of Common Areas and to set and charge fees for late payment of assessments and fines for violations of Restrictions, Rules and Regulations as the Board, as allowed by Ohio law, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; any elimination, modification, or addition of Restrictions, Rules and Regulations shall require the written approval of the **DECLARANT** so long as **DECLARANT** owns any lot, which approval shall not be unreasonably delayed, conditioned, or withheld.

(h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units, and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service, provided that such easements are located within or are coextensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded;

(i) shall have the right to convey title of Common Area to Owners to correct any overlaps or encroachments; and

(j) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

**Section 8. Limitation on Board Action.** After the Applicable Date, the authority of the Board shall be in accordance with Chapter 5312 of the Ohio Revised Code, and further limited to contracts involving a total expenditure of less than Thirty Thousand and No/100 Dollars (\$30,000.00) per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 9. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 10. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 11. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no

Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors. All Directors shall sign a commitment of professional behavior and agreement to avoid conflicts of interest.

**Section 12. Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**Section 13. Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, **DECLARANT** shall have, and **DECLARANT** hereby reserves to **DECLARANT**, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. **DECLARANT** may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, **DECLARANT** or such Managing Agent shall be entitled to reasonable compensation for its services so long as **DECLARANT** secures **DECLARANT's** written consent to a required written contract which will not be unreasonably delayed, conditioned, or withheld. After the Applicable Date, the HOA shall be required to hire a professional management company, as a Managing Agent, to perform the administration duties of the HOA, including accounting, billing, contracting and other similar duties.

## **ARTICLE VI**

### **REAL ESTATE TAXES; UTILITIES**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit including utilities (if any) to community identification signage shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**ARTICLE VII**  
**ENCROACHMENTS AND EASEMENTS IN COMMON AREAS**

If by reason of inexactness of construction, settling after construction, or for any other reasons, any Common Areas encroach on any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Areas.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Areas and serving his Dwelling Unit.

**ARTICLE VIII**  
**DELINEATION OF HOMEOWNERS ASSOCIATION VERSUS LOT OWNERS'**  
**MAINTENANCE, ETC. OBLIGATIONS**

**Section 1. Homeowners Association Obligations.** Maintenance of the Common Areas, unless the same is otherwise the responsibility or duty of Owners of Lots shall be provided by the Association, however, this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system.

**Section 2. Maintenance of Individual Lots.** Except as otherwise noted, each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition with an exterior appearance up to the general standards of [Subdivision Name] Subdivision, the Association may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Association's lien on the Owner's property in like manner to liens created for Assessments hereunder. Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to affect the maintenance, cleaning, repair or other work permitted herein and agrees to reimburse the Association for all legal and administrative charges and court cost incurred to require an Owner to comply with the covenants, restrictions and rules and regulations of the Association.

**Section 3. Damage to or Abuse of Common Area.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations and some maintenance or repairs are required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien in like manner to the lien under Assessments may attach

to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Association.

**Section 4. Access to Lots and Easements.** The authorized representatives of the **DECLARANT**, the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items, including, but not limited to, access to any easements reserved, granted or created by any [Subdivision Name] subdivision plat or of any portion of the Real Estate for such purposes.

**Section 5. Storm Water Quality and Best Management Practices.** This Community has been designed and developed in accordance with the City of \_\_\_\_\_'s Storm Water Drainage Ordinance. As part of said ordinance, it is required to install and maintain devices known as Best Management Practices ("BMP's"). BMP's are designed to filter impurities in the storm water runoff from the community, preventing said impurities from entering into creeks, streams and rivers and are generally located near the detention ponds at the outlets of the storms sewers. Over time, as these impurities are collected within the BMP's, it will become necessary to have the impurities removed. Upon recording of the plats for the Community, the Association shall become responsible for the operation and maintenance and any costs or fees associated with all BMP's installed in the Community.

As part of the pre-construction approval process, the City of \_\_\_\_\_ requires that "BMP Operation and Maintenance Manuals" be submitted for the Community. By reference hereto, all BMP Operation and Maintenance Manuals that have been submitted are incorporated into and made a part of this Declaration. Any additional BMP Operation and Maintenance Manuals that are submitted for the Community, if any, shall also be incorporated into and made a part of this Declaration by reference.

## **ARTICLE IX ARCHITECTURAL STANDARDS**

Nothing, including any fence, deck, retaining walls, recreational equipment (including basketball goals, swing sets and play sets or other play equipment), or any structure, storage shed, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of any residence or existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Committee has been obtained pursuant to Section 1 below.

**THIS ARTICLE SHALL NOT APPLY TO THE ACTIVITIES OF THE DECLARANT NOR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS BY OR ON BEHALF OF THE ASSOCIATION.**

THIS ARTICLE MAY BE AMENDED BY **DECLARANT**, BUT NOT WITHOUT THE **DECLARANT'S** WRITTEN CONSENT SO LONG AS THE **DECLARANT** OWNS ANY LAND SUBJECT TO THIS DECLARATION, WHICH CONSENT SHALL NOT BE UNREASONABLY DELAYED, CONDITIONED OR WITHHELD.

This Committee has the right to assign to the property manager to approve some or all Architectural Control Requests that fall within the scope of the Architectural Standards, Guidelines, Rules and Covenants. If the property manager determines the documents provide inadequate direction the property manager should seek guidance from the Committee and the Board of Directors.

**Section 1. Architectural Control Committee.** There shall be, and hereby is, created and established the "[Subdivision Name] Architectural Control Committee" ("Committee"), consisting of **DECLARANT**, which shall have exclusive jurisdiction over all construction on any portion of the Lots. UNTIL ONE HUNDRED PERCENT (100%) OF THE LOTS HAVE BEEN DEVELOPED AND CONVEYED TO PURCHASERS in the normal course of development and sale, the **DECLARANT**, or not more than five (5), nor less than three (3), Persons designated by it, SHALL CONSTITUTE THE COMMITTEE AND SHALL SERVE AT THE DISCRETION OF THE **DECLARANT**. THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE **DECLARANT**. **DECLARANT** RESERVES THE RIGHT TO DELEGATE COMMITTEE RIGHTS TO ANY OTHER ENTITY AT **DECLARANT'S** DISCRETION. After the sale of one hundred percent (100%) of the Lots, the Committee shall be a standing committee of the Association, consisting of not more than five (5), nor less than three (3), Persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

**Section 2. Approval Process.** The Committee has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the **DECLARANT** (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Lots and such Owners and builders shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval, not to be unreasonably withheld, for any building contractor selected by the Owner for construction.

Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and

form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee.

**Section 3. Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Committee;
- (b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee acting in good faith;
- (c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee acting in good faith, be contrary to the interest, welfare or rights of all or part of other Owners; or
- (d) the removal or placement of landscaping or structures in the open space preservation easements.

**Section 4. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within fifteen (15) calendar days after all required information has been submitted to it. One copy of the submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefore. In the event that the Committee fails to provide written notice of approval or to request written notice for additional information within forty-five (45) days after submission of all required or requested information, the plans shall be deemed and presumed denied. APPROVAL BY THE COMMITTEE MUST BE IN WRITING, AND NO VERBAL APPROVALS ARE ALLOWED OR AUTHORIZED.

**Section 5. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**Section 6. Variance.** The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Committee shall not be considered hardships warranting a variance.

**Section 7. Compliance with Guidelines.** Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Committee may be excluded by the Committee from the Real Estate without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by **DECLARANT** or the Association.

**Section 8. Non-Liability of DECLARANT and Committee.** Neither the **DECLARANT** nor the Committee shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, neither the Committee nor the **DECLARANT** makes, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

**Section 9. Inspection.** The Committee and the **DECLARANT** and/or any property management organization's personnel may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the Committee, nor any member thereof, nor the **DECLARANT**, nor any agent or contractor employed or engaged by the Committee, or the **DECLARANT** shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee, the **DECLARANT** shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

**Section 10. No Compensation.** Neither the Committee nor any of its members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

## **ARTICLE X USE RESTRICTIONS/COVENANTS AND REGULATIONS**

The following covenants and restrictions contained below and made a part hereof concerning the use and enjoyment of the Lots, Dwelling Units, and Common Areas (and Article VIII) are in addition to any other covenants or restrictions contained herein and in the Final Plat(s) of [Subdivision Name]. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and are enforceable by an Owner, or by the Association. In addition to any other remedies herein provided, present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees, but there shall be no right or reversion or forfeiture resulting from such violation.

### **Section 1. Intentionally Omitted.**

**Section 2. DECLARANT'S and the Association's Rights to Perform Certain Maintenance and Removal.** In the event that the Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the **DECLARANT**, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be reasonable necessary, to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof to the **DECLARANT** or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the **DECLARANT** nor the Association, nor any of its agents, employees or contractors, shall be liable for any damage with may result from any maintenance work performed hereunder.

**Section 3. Ditches and Swales and Erosion Control.** It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

**Section 4. Drilling.** No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

**Section 5. Ground Elevations and Erosion Control.** It shall be the Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control as finally required and approved by the [City/Town] of \_\_\_\_\_, [County Name] County as evidenced upon the final construction plan for the development of this subdivision.

**Section 6. Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

**Section 7. Landscape Easements.** There are strips and areas of ground shown titled as various easements on the Final Plat for the Real Estate which are hereby reserved for the use of Owners of Lots to the extent and limited for the purposes set forth in the Declaration and for the use of **DECLARANT** and Association for the installation, maintenance, repair and replacement of the matters detailed in Article I(1)(i) requiring maintenance. Except as installed and maintained by Owners, pursuant to the requirements of the Declarations, or by **DECLARANT** and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the **DECLARANT** and approved by the Board) shall be erected or maintained on said strips and areas by the Owner of any Lot subject to any such "Landscape Easement", and the Owners of such Lots affected by any such "Landscape Easement" shall take and hold title to their Lots subject to the foregoing rights of the **DECLARANT** and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the **DECLARANT** or Association in any such "Landscape Easement". The foregoing grant of rights to the **DECLARANT** shall not impose an obligation on the **DECLARANT** to undertake such maintenance unless it elects to do so.

**Section 8. Tree Preservation.** Owners of Lots shall not remove trees or vegetation within the Tree Preservation Areas except as necessary for the clearing of dead trees, the clearing of noxious weeds, or the removal of trees as necessary for public health and safety. Except as set forth in the preceding sentence, each tree within the Tree Preservation Areas which is badly damaged or destroyed by a builder or by an Owner during the course of construction activities or after occupancy shall be replaced within one (1) year with a tree which is at least two and one-half inches (2.5") in diameter (measured six inches (6") above the

ground). Any trees which are replaced pursuant to the terms and conditions of this paragraph and which die within one (1) year of their planting shall promptly be replaced with a substantially similar tree. The person responsible for replacing such tree hereunder, either initially or, if necessary, within the one (1) year period of their planting, will be the Owner of the Lot upon which the tree was originally located or, if the tree was damaged or destroyed by a builder or another Owner in the course of construction of a dwelling on another Lot in the Subdivision, the Owner of the Lot upon which such dwelling was being constructed will be responsible for replacing any such tree within the Tree Preservation Area. Similarly, any other vegetation (shrubs, wild flowers, underbrush, etc.) that is damaged or destroyed shall be replaced with similar plants, with the responsibility for replacement being consistent with that described above for trees. The provisions of this Section imposing responsibility upon an Owner for the replacement of any such tree are for the benefit of the Association and Subdivision and shall not be deemed or construed as limiting, in any way, the liability of any builder to any Owner and/or the Association for any damage to any trees in the Tree Preservation Areas. Trees and vegetation within any such Tree Preservation Areas shall be permanently maintained by the Owner of the applicable portion of the Real Estate and successors in title. Periodic maintenance, seasonal plantings and the like shall not be subject to the restriction in this Section. During construction, builders shall provide adequate physical barriers such as straw bales or snow fencing to protect designated trees and vegetation to be preserved from damage by construction equipment and activities.

**Section 9. Maintenance of Lots and Improvements.** It shall be the responsibility of each Owner to prevent the occurrence of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the forgoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Real Estate. No waste shall be committed in any Dwelling Unit or on any Lot. Each Owner shall:

- (a) Remove all debris or rubbish;
- (b) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (c) Cut down and remove dead trees;
- (d) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (e) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**Section 10. Occupancy and Residential Use of Partially Completed Dwelling Unit Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Board and such decision shall be binding on all parties, however, if an occupancy permit from a governmental authority is involved, the issuance thereof shall be deemed substantial completion.

**Section 11. Occupants Bound.** All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.

**Section 12. Quiet Enjoyment.** No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Real Estate that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants or surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Real Estate. For greater clarification, no Owner shall knowingly or willfully make or create an unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other machines or equipment. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Real Estate. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate. Also, excessive grass clippings from the mowing of lawns or other lawn/tree rubbish will not be allowed to be left on any street within the development.

**Section 13. Residential Use.** The Real Estate shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Real Estate at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

**Section 14. Business Use.** No individual garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an

Owner or occupant of a Lot may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate, (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door to door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the **DECLARANT** with respect to its development and sale of the Real Estate or its use of any Lots with such entity owns within the Real Estate.

**Section 15. Firearms.** The discharge of firearms within the Real Estate is prohibited. The term “Firearms” includes bows and arrows, slingshots, “B B” guns, pellet guns, paint ball guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary, contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

**Section 16. Tents, Trailers and Temporary Structures.** Except as may be permitted by the **DECLARANT** or the Board during initial construction within the Real Estate, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events for a period not longer than 48 hours unless otherwise consented to by the Committee.

**Section 17. Model Homes.** No Owner of any Lot shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the **DECLARANT**.

**Section 18. Non-Applicability to Association.** Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth, shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application

thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

**Section 19. Sales Office.** To the extent deemed necessary or desirable by **DECLARANT**, the **DECLARANT** shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision.

**Section 20. Sanitary Waste Disposal.**

(a) **Nuisances.** No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Board), and no sanitary waste or other wastes shall be permitted to be exposed.

(b) **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of the [Town/City] of \_\_\_\_\_, [County Name] County and these Restrictions.

(c) **Connection Requirements for Sanitary Sewers.** All homes shall have sewers directly connected by way of gravity except by the use of lift pumps and/or check valves or connections shall be one (1) foot above the lowest manhole in the Subdivision.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, **DECLARANT** shall have the right to use and maintain any Lots and Dwelling Units owned by **DECLARANT** in and on the Real Estate (other than individual Dwelling Units and Lots owned by persons other than **DECLARANT**), all of such number and size and at such locations as **DECLARANT** in its sole discretion may determine, as **DECLARANT** may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. **DECLARANT** shall have the right to relocate any or all of the same from time to time as it desires. **DECLARANT** shall have the right to remove the same from the Real Estate and Additional Property at any time.

**ARTICLE XI  
ASSESSMENTS**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a

financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** The Initial Board of the HOA shall establish the first annual budget and its resultant regular assessments thereafter. Annually, on or before the date of the annual meeting ("Annual Meeting") or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such Annual Meeting or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such Annual Meeting or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. After the Applicable Date, the annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association in a separate interest-bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in [County Name] County, Ohio selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the Annual Meeting or special meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot, provided, immediately following the adoption of the annual budget, each Owner shall be given notice of the assessment against his respective Lot (the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal

year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in annual installments payable in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Payment of the Regular Assessment, whether in one payment or in any other manner, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

(a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(b) if the total Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be retained by the Association for Association expenses but shall be taken into account in establishing the next regular assessments: provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner or the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 2 of Article XII hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein

are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. The initial and subsequent Regular Assessment shall be adopted by the Board based on the annual expenses of the Community, including but not limited to, the cost of maintenance, utilities, professional fees, general upkeep, etc. of the Community which includes the input of **DECLARANT**.

(c) **DECLARANT IS NOT OBLIGATED FOR ANY REGULAR ASSESSMENT AND SHALL NOT BE SUBJECT TO ASSESSMENT AT ANY TIME FOR ANY AMOUNTS RELATED TO THE REPLACEMENT RESERVE FUND.**

**Section 4. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Code, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, but not on Lots owned by **DECLARANT**, prorated in equal shares (the "Special Assessments"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration. **THE DECLARANT SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE APPLICABLE DATE OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT DECLARANT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT FOR ITSELF SPECIFICALLY AGREES OTHERWISE IN WRITING.**

**Section 5. Failure of Owner to Pay Assessments.**

(a) No Owner may exempt himself or herself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Maintenance Expense Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular Assessments and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and Special Assessments should constitute a lien against the Lots and Dwelling Units thereon, but not on Lots owned by

Declarant. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments within ten (10) days after its due date, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed for record in the office of the [County Name] County, Ohio Recorder and foreclosed by the Board for and on behalf of the Association as a mortgage on real property and enforced in like manner as mortgages. The lien for Regular Assessments or Special Assessments created by this Declaration shall be prior to all liens and encumbrances recorded subsequent to this Declaration, except the lien for real estate taxes and assessments and the lien of any first mortgage on a Lot filed of record. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorney fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by JPMorgan Chase Bank, N.A., or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in [County Name] County, Ohio selected by the Board) plus four percent (4%) but in no event more than the maximum rate allowable under applicable usury laws.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the person personally liable therefore, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

(c) In addition to the remedies above stated for failure to pay assessments, the Association may, as allowed by Ohio law, disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessments are

delinquent in addition to charging a reasonable late fee, as allowed by Ohio law, per day of delinquency to among other things, cover the administrative expense of addressing the delinquency and also deny such Member the use of the Common Areas for a period not exceeding sixty (60) days for each separate nonpayment.

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Code or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the **DECLARANT** by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date. Until otherwise established or modified by Declarant, the initial annual Regular Assessment shall be \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00).

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by **DECLARANT** with respect to any Lot or other portion of the Real Estate owned by **DECLARANT** while the same is owned by **DECLARANT**, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by **DECLARANT**, except as specifically detailed in the last paragraph of Section 4 of Article XI herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by **DECLARANT** to another Person after construction of a single family residence thereon, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Lot so conveyed by **DECLARANT** shall be paid by each purchaser upon such conveyance.

**Section 7. Initial Working Capital and Start-Up Fund.** Upon the closing of the initial conveyance of each Lot by **DECLARANT** to another Person, the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working, capital and start-up fund, \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00), which payment shall be nonrefundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to **DECLARANT** for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board. This start-up fund shall also be applicable from any successors in title to Lots and therefore is an obligation of successor title owners to the HOA at the time of such title transfer.

**Section 8. Compliance with Ohio Code.** To the extent that these covenants are inconsistent or not fully compliant with Chapter 5312 of the Ohio Revised Code, these covenants shall be interpreted to be in compliance therewith and the HOA shall be required to operate in compliance therewith in all respects.

## **ARTICLE XII MORTGAGES**

**Section 1. Notice to Association.** Any Owner, who places a first mortgage lien upon such Owner's Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which such Mortgagee otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon written request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

**Section 2. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article XI hereof.

## **ARTICLE XIII INSURANCE**

**Section 1. Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association shall maintain in force adequate officers' and directors' insurance covering the officers and directors of the Association. The Association shall also maintain in

force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, **DECLARANT**, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) year's assessment on all Lots in the Subdivision, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

**Section 2. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

#### **ARTICLE XIV CASUALTY AND RESTORATION**

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction

of these areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing these areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas and/or maintenance expense areas (if any) to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

## **ARTICLE XV AMENDMENT OF DECLARATION**

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(b) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XIII of this Declaration with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Article XIV of this Declaration with respect to reconstruction or repair of the Common Areas

in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.

(c) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of [County Name] County, Ohio, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by DECLARANT Only.** Notwithstanding the foregoing or anything else contained herein, the **DECLARANT** shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if **DECLARANT** records the modification in the Office of the Recorder of [County Name] County, Ohio, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) function similar to those performed by such agencies or entities, to subject additional property to these restrictions, (e) to annex additional real estate to the Subdivision, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the **DECLARANT** to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the **DECLARANT** to vote in favor of, make, execute and record any such amendments. The right of the **DECLARANT** to act pursuant to rights reserved or granted under this Section 2 shall

terminate at such time as the **DECLARANT** no longer holds or controls title to any part or portion of the Real Estate.

## **ARTICLE XVI ACCEPTANCE AND RATIFICATION**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended, or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

## **ARTICLE XVII NEGLIGENCE**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

## **ARTICLE XVIII BENEFIT AND ENFORCEMENT**

**Section 1. Covenants Appurtenant to Land.** These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after both the Applicable Date and a minimum of fifteen (15) years from recording, a majority of the then Owners of the Lots in this subdivision agree to change (or terminate) said covenants

in whole or in part and on the condition that an instrument to that effect signed by the Owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

**Section 2. Prosecution of Violations.** It shall be lawful for the Association, the Committee (as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then Owners of the Lots in this subdivision.

The Association may, with respect to an Owner who violates these restrictions and/or Rules and Regulations, after written notice to such Owner detailing the nature of the violation and providing a time period established by the Association to cure or conform, disqualify such Owner's voting rights and right to hold office while the violation continues, and may further, in the Board's sole discretion, provide that an additional fine be charged to such Owner, as allowed by Ohio law. This fine, if not paid when required, will be processed in the same manner as Assessments.

## **ARTICLE XIX MISCELLANEOUS**

**Section 1. Costs and Attorney Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorney fees incurred in connection with such default or failure.

**Section 2. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

**Section 3. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law. Non-enforcement of one provision does not affect the enforcement of another.

**Section 4. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 6. Delegation of Use of the Common Areas.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association, his right of enjoyment, and use of the Common Areas to members of his family, his tenants or contract purchasers who reside on any Lot.

**Section 7. The Plat.** The Final Plat of the realty of [Subdivision Name], Section - \_\_\_\_, that is the Initial Tract in this Declaration, is being recorded contemporaneously herewith in the Office of the Recorder of [County Name] County, Ohio.

**Section 8. Grievance Resolution.** Any grievance between and among the Members and the Board or any member thereof shall first be subject to discussion between the involved parties at a meeting held specifically for that purpose, and if unsuccessful referred to mediation. Only after unsuccessful discussions and determination by the mediator that further mediation would be fruitless, the parties may then submit their grievance to a court of competent jurisdiction to resolve the grievance.

IN WITNESS WHEREOF, [DEVELOPER] has caused this Declaration to be executed on the day and year first written above.

[DEVELOPER]

By: \_\_\_\_\_  
[OFFICER}, [TITLE]

STATE OF OHIO                    )  
                                          : SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, an Ohio [limited liability company], on behalf of the [limited liability company]. This is an acknowledgement clause; no oath or affirmation was administered.

\_\_\_\_\_  
Notary Public

This instrument prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

([Subdivision Name] Overall)

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**EXHIBIT B**  
**[Subdivision Name] Subdivision**

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**EXHIBIT C**  
**Initial Tract**

DRAFT

**EXHIBIT D**  
**CODE OF REGULATIONS (BYLAWS)**

0139377.0663915 4875-0636-5952v2

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**CODE OF REGULATIONS (BYLAWS)**  
**OF**  
**[NAME OF HOMEOWNER'S ASSOCIATION] HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**Identification**

Section 1. Name. The name of the corporation is "[NAME OF HOMEOWNER'S ASSOCIATION] Homeowners Association, Inc." (hereinafter referred to as the "Corporation").

Section 2. Principal Office and Registered Agent. The post-office address of the principal office of the Corporation is 9225 Harrison Court, Indianapolis, IN 46216; and the name of its Registered Agent in charge of such office is Peter Logan.

Section 3. Fiscal Year. The fiscal year of the Corporation shall begin at the beginning of the first day of January in each year and end at the close of the last day of December next succeeding.

**ARTICLE II**  
**Members**

Section 1. Membership. Every Owner, as defined in that certain Declaration of Covenants, Conditions and Restrictions of [NAME OF HOMEOWNER'S ASSOCIATION] Subdivision (the "Declaration"), shall be members of the Corporation.

Section 2. Place of Meeting. All meetings of members of the Corporation shall be held at such place, within or outside the State of Ohio, as may be determined by the Board of Directors and specified in the notices or waivers of notice thereof or proxies to represent members at such meetings.

Section 3. Annual Meetings. The annual meetings of members shall be held on the first Thursday in May of each year, if such day is not a legal holiday, or if a legal holiday, then on the next succeeding business day which is not a legal holiday.

Section 4. Special Meetings. Special meetings of members may be called at any time for the purpose of considering matters which require the approval of all or some of the voting members, or for any other reasonable purpose. Any such special meeting shall be called by written notice, authorized by the president, a majority of the Board, or by ten percent (10%) of the members, delivered not less than seven (7) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of meeting and the matters to be considered.

Section 5. Notice of Meeting. Written or printed notice stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered or mailed by the Secretary of the Corporation to each member of record of the Corporation entitled to vote at such meeting, at such address as appears upon the records of the Corporation, at least ten (10) days before the date of the meeting. Notice of any meeting of the members may be waived in writing by any member if the waiver sets forth in reasonable detail the

purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Any member may consent in writing to receive notices of any meeting by electronic mail or facsimile. The Secretary shall maintain electronic mail addresses or facsimile numbers of those members who have consented to receive notice by electronic mail or facsimile, but the Secretary shall remove such electronic mail addresses or facsimile numbers from the Association if and when such Voting Member revokes their consent in writing.

#### Section 6. Voting at Meetings.

(a) Voting Rights. There shall be one person with respect to each Lot, as such term is defined in the Declaration, who shall be entitled to vote at any meeting of the members. Such person shall be known herein as the "Voting Member." Such Voting Member may be the Owner, as such term is defined in the Declaration, or one of the group comprised of all the Owners of a Lot, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Any or all of such Voting Members may be present at any meeting of the Voting Members and may vote or take any action as a Voting Member, either in person or by proxy. Declarant, as such term is defined in the Declaration (or its nominee), may exercise the voting rights with respect to any Lot owned by it. Until the Applicable Date, as such term is defined in the Declaration, all actions of the Corporation shall require the prior written approval of the Declarant (or its nominee).

(b) Proxies. A Voting Member is entitled to vote either in person or by proxy, executed in writing by such Voting Member or by his or her duly authorized attorney-in-fact and delivered to the Secretary of the meeting. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Secretary before the scheduled time of the meeting. In any meeting of the Voting Members called for the purposes of electing the Board of Directors of the Corporation each Voting Member shall be permitted to cast the number of votes to which he is entitled, as hereinabove set forth, for each Director of the Corporation to be elected at such meeting, provided, however, that the first Board of Directors shall be elected solely by the Declarant as provided in the Declaration and the Articles.

(c) Quorum and Adjournments. The presence in person or by proxy of the Voting Members constituting the representation of a majority of the total votes of the Corporation shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meeting. Any meeting of the Voting Members, including both annual and special meetings and any adjournments thereof, may be adjourned to a later date without notice other than announcement at the meeting even though less than a quorum is present.

Section 7. List of Voting Members. At least five (5) days before each meeting of Voting Members, the Secretary of the Corporation shall prepare or cause to be prepared a complete list of the Voting Members of the Corporation entitled to vote at such meeting arranged in alphabetical order with the address of such Voting Members and shall be subject to inspection by a record Voting Member. The original or duplicate membership register shall be the only evidence as to the persons who are entitled as Voting Members to examine such lists or to vote at such meeting.

Section 8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Voting Members may be taken without a meeting, if prior to such action, a written consent thereto, setting forth the action so taken, is signed by all the Voting Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Voting Members. Such consent shall have the same effect as a unanimous vote of the Voting Members.

### **ARTICLE III**

#### **Directors**

Section 1. Number and Term of Office. The Board of Directors shall consist of three (3) members, each of whom must be an Owner who maintains his principal residence on a Lot, or be an officer, director or employee of Declarant. Any member of the Initial Board whose term expires prior to the Applicable Date (as defined in the Declaration) shall be deemed to be elected and re-elected as a Director at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date.

At the first annual meeting of the members after the Applicable Date, the Directors elected at such annual meeting shall be classified, with respect to the time for which such Director shall hold office, into three (3) classes as nearly equal in number as possible, with each Director to hold office until a successor is elected and qualified, or until such Director's earlier death, resignation or removal from office. The terms of the members of the Board of Directors in the first group expire at the first annual meeting of the members after their election, the terms of the second group expire at the second annual meeting of the members after their election, and the terms of the third group expire at the third annual meeting of the members after their election. At each annual meeting of the members after the Applicable Date, Directors shall be elected for a term of three (3) years, to succeed those whose terms expire.

The Directors shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes. If a member of the Board of Directors shall cease to meet any qualification herein required for a member of the Board, such member shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. The Voting Members may remove any member of the Board with or without cause, except as provided in the Declaration, and elect a successor at a meeting of the Voting Members called expressly for such purpose.

Section 2. Vacancies. Except as provided in the Declaration, vacancies occurring in the membership of the Board of Directors caused by resignation, death or other incapacity, or increase in the number of Directors shall be filled by a majority vote of the remaining members of the Board, and each Director so elected shall serve until the next meeting of the Voting Members, or until his successor shall have been duly elected and qualified. At the first annual meeting of the members following any such vacancy, a Director shall be elected for the balance of the term of the Director in respect to whom there has otherwise been a vacancy. Notice specifying any increase in the number of Directors and the name, address and principal occupation of and other pertinent information about any Director elected to fill any vacancy shall be given in the next mailing sent to the Voting Members after such increase or election.

Section 3. Annual Meetings. The Board of Directors shall meet annually, without notice, immediately following, and at the same place as, the annual meeting of the Voting Members.

Section 4. Regular Meetings. Regular meetings shall be held at such times and places, either within or without the State of Ohio, as may be determined by the President or Board of Directors.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by the President or by any member of the Board of Directors, at any place within or without the State of Ohio, upon twenty-four (24) hours notice, specifying the time, place and general purposes of the meeting, given to each Director personally, by telephone or telegraph; or notice may be given by mail or email if sent at least three (3) days before such meeting.

Section 6. Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting.

Section 7. Quorum. A majority of the entire Board of Directors then qualified and acting shall constitute a quorum and be sufficient for transaction of any business, except for filling vacancies in the Board of Directors which shall require action by a majority of the remaining Directors. Any act of the majority of the Directors present at a meeting at which a quorum shall be present shall be the act of the Board unless otherwise provided for by law or by these Bylaws. A majority of the Directors present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

Section 8. Action by Written Consent. Action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action, a written consent thereto is signed by all the members of the Board, and such written consent is filed with the minutes of the proceedings of the Board.

Section 9. Powers and Duties of the Board of Directors. The Board shall have all powers which can be exercised by a Board under the Declaration, Ohio Nonprofit Corporation Law (Chapter 1702 of the Ohio Revised Code, as amended) and Ohio Planned Community Law (Chapter 5312 of the Ohio Revised Code, as amended).

## **ARTICLE IV**

### **Officers**

Section 1. Number of Officers. The officers of the Corporation shall consist of a President, a Secretary, a Treasurer, and such officers or assistant officers as the Board shall from time to time create and so elect. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person. The President shall be chosen from among the Directors. Officers shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes.

Section 2. Election and Terms. Each officer shall be elected by the Board of Directors at the annual meeting thereof and shall hold office until the next annual meeting of the Board or until his successor shall have been elected and qualified or until his death, resignation or removal. Any officer may be removed at any time, with or without cause, by vote of a majority of the whole Board, but

such removal shall be without prejudice to the contract rights, if any, of the person so removed; provided, however, that election of an officer shall not of itself create contract rights.

Section 3. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, increase in the number of officers of the Corporation, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected or appointed.

Section 4. President. The President shall be the chief executive officer of the Corporation; shall preside at all meetings of Voting Members and of the Board of Directors; shall have general and active supervision, control and management of the affairs and business of the Corporation, subject to the orders and resolutions of the Board; shall have general supervision and direction of all officers, agents and employees of the Corporation; shall see that all orders and resolutions of the Board are carried into effect; and in general shall exercise all powers and perform all duties incident to such office and such other powers and duties as may from time to time be assigned to him by the Board.

The President shall have full authority to execute proxies on behalf of the Corporation, and to execute, with the Secretary, powers of attorney appointing other corporations, partnerships, or individuals the agent of the Corporation, all subject to the provisions of the laws of the State of Ohio, the Declaration, the Articles of Incorporation and this Code of Bylaws.

Section 5. Secretary. The Secretary shall attend all meetings of the Board and of the Voting Members and shall act as Secretary of such meetings; shall give or cause to be given all notices provided for in these Bylaws or required by law; shall record all votes and minutes of all proceedings of the meetings of Voting Members and the Board in a book or books to be kept for that purpose; shall be custodian of the records of the Corporation; shall have charge of the list of Voting Members; and in general shall exercise all powers and perform all duties as may be from time to time assigned to him or her by the Board or by the President.

Section 6. Treasurer. The Treasurer shall keep correct and complete records of account showing accurately at all times the financial condition of the Corporation; shall be the custodian of the corporate funds and securities; shall immediately deposit, in the name and to the credit of the Corporation, all moneys and other valuable effects of the Corporation in such depositories as may be designated by the Board of Directors; shall disburse the funds of the Corporation as may be ordered by the Board or by the President; and in general, shall exercise all powers and perform all duties customarily incident to such office and such other powers and duties as may from time to time be assigned to him or her by the Board or the President.

## **ARTICLE V**

### **Books and Records**

Section 1. Books and Records in General. The Board of Directors shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the "Subdivision" as defined in the Declaration, specifying and itemizing the maintenance and repair expenses of the Subdivision and other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by

Owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement in recordable form of his account setting forth the amount of any unpaid assessment or other charges due and owing from such Owner, and such amount shall be binding upon the Board and the Corporation, and any mortgagee or grantee of such Owner furnished with such statement shall not be liable for, and the Lot of such Owner shall not be conveyed subject to a lien for, any unpaid assessment in excess of the amount set forth in such statement.

Section 2. Preparation of Annual Budget. The Treasurer shall cause to be prepared an annual budget reflecting the estimated revenues for the following budget year as well as the estimated surplus or deficit as of the end of the budget year. The proposed annual budget must be approved at a meeting duly called for that purpose as provided in the Declaration. At least (10) days prior to such meeting, the Secretary shall deliver to each member of the Association written notice that the proposed annual budget is available upon written request at no charge to the member.

## **ARTICLE VI**

### **Execution of Instruments**

Section 1. Checks, Drafts, etc. All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Corporation shall be signed or endorsed by such officer or officers, employee or employees of the Corporation as shall from time to time be designated by the Board of Directors.

Section 2. Contracts. All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors shall be signed, unless otherwise directed by the Board of Directors or required by law, by the President and attested by the Secretary.

## **ARTICLE VII**

### **Amendments and Definitions**

Section 1. Amendments. These Bylaws may be altered, amended or repealed from time to time by a majority vote of the whole Board at any regular or special meeting if the notice or waiver of notice of said meeting shall have stated that the Bylaws are to be amended, altered or repealed or if all members of the Board of Directors at the time are present at said meeting. Any amendment to these Bylaws shall be recorded in the [COUNTY NAME] County, Ohio Recorder's Office, together with a certification a certification of the Secretary of the Association that the amendment was duly adopted by a majority vote of the Members at a meeting of the Members.

Section 2. Definitions. The terms used in these Bylaws shall have the same meaning as the same terms as defined and used in the Declaration, except as otherwise defined herein.

Section 3. Conflicts. In the event of any conflict between the provisions of the Declaration and these Bylaws, the provisions of the Declaration shall control. In the event of any conflict between the Articles and these Bylaws, the provisions of the Articles shall control.

## **ARTICLE VIII**

The Ohio Nonprofit Corporation Law

The provisions of the Ohio Nonprofit Corporation Law, as amended, applicable to any of the matters not herein specifically covered by these Bylaws, are hereby incorporated by reference in and made a part of these Bylaws.

Adopted: \_\_\_\_\_, 20\_\_

DRAFT

**MARCH 11, 2022**

**TO: CITY OF BROOKVILLE PLANNING COMMISSION**

**FROM: RODNEY L. STEPHAN, LAW DIRECTOR**

**RE: APPLICATION FOR SPECIAL USE APPROVAL-BROOKVILLE STOR-N-LOCK**

The Brookville Stor-N-Lock operates a storage unit facility located at 570 Albert Road. They are proposing to purchase 1.5 acres from Green Tokai Co. Ltd to expand their existing storage unit facility. Attached to this memo are the following documents:

- (1) The Special Use application,
- (2) A County Auditor Map depicting the existing Brookville Stor-N-Lock property at 570 Albert Rd.
- (3) A map of the proposed 1.5 acre lot that they would be purchasing from Green Tokai.
- (4) A letter from Terrance Klemm, GTC Chief Executive Officer, stating that the Board of Directors of Green Tokai has approved the sale of 1.5 acres to Brookville Stor-N-Lock.
- (5) A copy of Brookville Industrial Park Section Two Record Plan which describes Lot 2631 (12.047 acres), from which this 1.5 acre parcel would be subdivided.

The requested special use approval to construct additional storage units in the 1.5 acre lot is consistent with the existing storage unit use at 570 Albert Road.

If this special use application is approved, a final subdivision record plan will be presented to Planning Commission to subdivide the 1.5 acres from the existing lot for transfer from Green Tokai Co, LTD to Brookville Stor-N-Lock.

It is requested that Planning Commission approve the special use application of Brookville Stor-N-Lock to construct storage units on 1.5 acres to be subdivided from Lot 2631.

# City of Brookville

"A Proud and Progressive Community"

Application #SU 2022-02

## ZONING APPLICATION FOR A SPECIAL USE PERMIT

The undersigned hereby applies for a **SPECIAL USE PERMIT**, to be issued solely on the basis of information contained herein, and with the knowledge that the falsification of any fact or statement submitted with, or within, this application shall render this application null and void. **(PERMIT SHALL EXPIRE IF USE HAS NOT BEGUN WITHIN SIX (6) MONTHS, OR IF DISCONTINUED FOR MORE THAN TWO (2) YEARS.)**

1. Applicant Brookville Stor-N-Lock
2. Applicant address 570 Albert Rd.
3. Phone (Hm) 266-5625 (Bus) 833-1212 Interest in property Purchasing Property
4. Location or address of property to be affected SAKURA DR. Brookville OH
5. Legal description LOT 2631 - Brookville Industrial Park  
PARCEL NO - C05 00405 0095
6. Present Zoning classification I-2 Existing vacant
7. Proposed Special Use Additional Storage Buildings

8. In order for a **SPECIAL USE PERMIT** to be processed, applicant must provide a narrative statement evaluating the effect of such elements as noise, glare, odor, fumes, and vibrations on adjoining property; and discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the Zoning District Map.

Plan is to build Additional  
Storage buildings on 1 1/2 acres  
to be purchased from Green  
Tokai. Compatible to existing  
Facility.

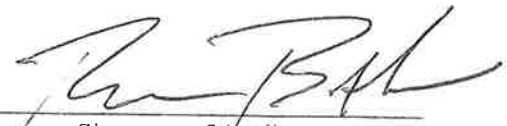
9. The Planning Commission shall establish beyond reasonable doubt that both the general standards and the specific requirements pertinent to each special use indicated herein shall be satisfied by the establishment and operation of the proposed special use.

10. Wherever no specific area, frontage and setback requirements are specified in provision for specific special uses, then the area, frontage and setback requirements in the applicable zone shall apply; provided, that the Planning Commission shall be authorized to waive or modify certain requirements as necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general. The Planning Commission may also impose such additional conditions, guarantees, and safeguards as it deems necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Ordinance will be observed.

11. Has previous application been filed for a **SPECIAL USE PERMIT**? \_\_\_\_\_

12. When? \_\_\_\_\_ Results? \_\_\_\_\_

MARCH 10, 2022  
Application Date

  
Signature of Applicant

\_\_\_\_\_  
OFFICE USE ONLY BELOW LINE  
\_\_\_\_\_

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

Appr/Denied Planning Commission \_\_\_\_\_ Date \_\_\_\_\_

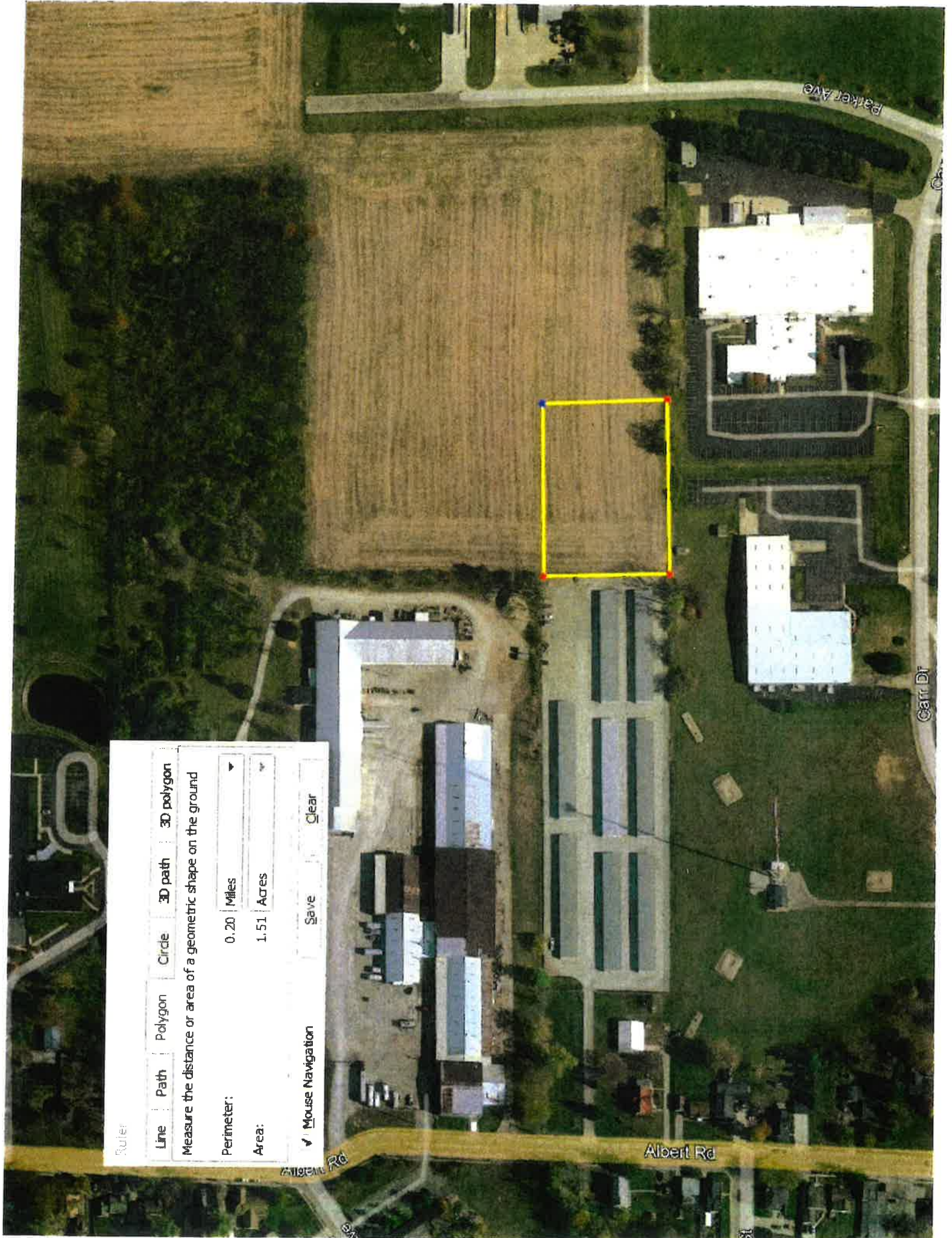
Fee \_\_\_\_\_ Receipt Number \_\_\_\_\_ Date \_\_\_\_\_  
(NON REFUNDABLE)



This map is a visual presentation of data to be used as a public resource of general information and is provided strictly as a courtesy. The Montgomery County Auditors' Office makes no warranty, representation, or guaranty as to the content, accuracy, timeliness, or completeness of any information provided herein.

1. Any errors, omissions, or inaccuracies in the information provided regardless of how caused or otherwise.
2. Any decision made or action taken or not taken by the reader in reliance upon any information furnished hereunder.

G.S. DEPARTMENT



Ruler

| Line                                                            | Path | Polygon | Circle | 3D path | 3D polygon |
|-----------------------------------------------------------------|------|---------|--------|---------|------------|
| Measure the distance or area of a geometric shape on the ground |      |         |        |         |            |
| Perimeter:                                                      |      | 0.20    | Miles  |         |            |
| Area:                                                           |      | 1.51    | Acres  |         |            |
| <input checked="" type="checkbox"/> Mouse Navigation            |      | Save    | Clear  |         |            |



## GREEN TOKAI CO., LTD.

55 Robert Wright Drive  
Brookville, Ohio 45309-1902  
TEL: (937) 833-5444  
FAX: (937) 833-2087 (Administrative)  
FAX: (937) 833-1184 (Engineering)

February 22, 2022

City of Brookville, Ohio  
ATTN: Sonja Keaton  
City Manager  
301 Sycamore Street  
Brookville, OH 45309

RE: Sale Approval of 1.5 acres of Parcel C05 00405 0095

Dear Ms. Keaton,

GREEN TOKAI CO., LTD. ("GTC") desires to inform the City of Brookville that GTC's Board of Directors and GTC's parent company, Tokai Kogyo Co., Ltd., have approved the sale of the above referenced to Brookville Store-N-Lock as note in Exhibits "A" and "B". Also enclosed is proof of the designation of signatory agents who may act on behalf of GTC (Exhibit "C") concerning this matter.

If you have any questions, or if GTC has any further obligations to the City of Brookville concerning this sale, please let me know at your earliest convenience.

Thank you for your assistance.

Sincerely,

Terrance Klemt  
GTC Chief Executive Officer

Encl: Action of the Board of Directors (Exhibit "A") dtd February 3, 2022  
Holdings' Approval cover letter (Exhibit "B") dtd February 3, 2022  
Action by Written Consent by the Board of Directors of GREEN TOKAI CO., LTD. (Exhibit "C")  
dtd. July 29, 2021

Cc: Daniel Bowers, GTC Director & Chief Compliance Officer  
Masahiro Kuwabara, GTC's Director & Chief Operating Officer  
Keiji Matsukawa, GTC's Director



## EXHIBIT A

GREEN TOKAI CO., LTD.

### **ACTION OF THE BOARD OF DIRECTORS** **February 3, 2022**

Pursuant to Section 141(f) of the Delaware Code Title 8 and Article III Section 10 of GREEN TOKAI CO., LTD.'s ("GTC") bylaws; the undersigned being all members of the Board of Directors of GTC, a Delaware corporation, (the "Corporation"), do hereby vote for, adopt, and approve the following resolution:

**WHEREAS** GTC has received a proposal from a local business owner to purchase 1.5 acres and of land GTC owns. See attached Exhibit "A" for additional details. GTC's Officers have agreed to sell the property (see attached Exhibit "B").

**RESOLVED**, as per Section 20 of the attached Board of Director Approval Guidelines (Exhibit "C"), the Corporation grants permission to GTC to sell 1.5 acres of Parcel C05 00405 0095 located at 2621 Brookville Industrial Park Section 2 for \$66,000.

**IN WITNESS WHEREOF**, the undersigned have executed this agreement and Unanimous Written Consent as of the 3rd of February 2022.

  
Dan Bowers

  
Masahiro Kuwabara

  
Keiji Matsukawa

## EXHIBIT B

東海興業ホールディングス御中

発行日: 2022 年 2 月 3 日

## 報告・承認申請書

会社名: Green Tokai Co., Ltd.

## 【申請会社記入欄】

|                  |                                                                                                                                                                   |           |                  |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------------|
| 申請窓口<br>(部署・担当者) | GTC BOD (D. Bowers/K. Matsukawa)                                                                                                                                  | 電話<br>連絡先 | 937 - 238 - 9492 |
| 大項目<br>(リストより選択) | 経営上の重要施策・事項                                                                                                                                                       |           |                  |
| 小項目<br>(リストより選択) | 土地の取得・譲渡(含む借地権)                                                                                                                                                   |           |                  |
| 件名               | GTC 遊休土地の一部売却に関わる稟議<br>Proposal of the sale of a portion of vacant property                                                                                       |           |                  |
| 添付資料             | 4 枚                                                                                                                                                               |           |                  |
| 備考               | GTC所有の有休土地の一部売却(買い手は隣接倉庫業者。土地は現状地元農家に貸与中)。<br>Sale of a portion of vacant property to a local business owner. The property is currently leased to a local farmer. |           |                  |

## 【東海興業ホールディングス記入欄】

|      |                       |            |                  |
|------|-----------------------|------------|------------------|
| 担当部署 | 経営戦略本部                | 区分         | 報告・承認            |
| 結果   | 承認・否認・その他( )          |            |                  |
| コメント | 2022年2月7日付TKHD経営会議承認案 | 担当役員       | 執行役員 部長<br>細田 松川 |
| 受付日  | 2022 年 2 月 3 日        | 管理NO.      | HD-6管-2021062    |
| 返却日  | 2022 年 2 月 7 日        | 事務局<br>人事部 | 加藤 近藤            |

## &lt;処理フロー&gt;

申請会社 ⇒ HD人事部(受付)⇒HD担当部署(決裁)⇒HD人事部(原紙保管・コピー返却) ⇒ 申請会社



**ACTION BY WRITTEN CONSENT BY THE BOARD OF DIRECTORS  
OF GREEN TOKAI CO., LTD.**

The undersigned, hereby certifies that the following resolution was approved by written consent of the board of directors ("Directors") of GREEN TOKAI CO., LTD. a Delaware corporation (the "Corporation"), acting pursuant to Section 141(f) of the General Corporation Law of Delaware, as amended, hereby waives all notice, and hereby vote for, consent to, ratify, and adopt the following action as if the same had been duly voted for, consent to, ratified, and adopted:

**WHEREAS**, the Stockholder desires to reorganize the structure of the Corporation and

**WHEREAS**, Mr. Daniel Bowers has tendered his resignation, effective as of July 31, 2021, from the position of Chief Executive Officer.

**BE IT RESOLVED**, that in accordance with the By-Laws of the Corporation, the Directors accepts and acknowledges the resignation of Mr. Daniel Bowers from the office of Chief Executive Officer as noted in Exhibit "A".

**NOW THEREFORE, BE IT RESOLVED**, effective as of July 31, 2021, the following persons shall serve as officers of the Corporation

Mr. Terrance Klemt as Chief Executive Officer

Mr. Daniel Bowers as Executive Advisor / Chief Compliance Officer

Mr. Masahiro Kuwabara as Chief Operating Officer

Mr. Harumitsu Yamamoto as Chief Financial Officer

Mr. Larry Davis as Chief Supply Chain Officer

Mr. Scott Price as Chief Technical Officer

**BE IT FURTHER RESOLVED**, effective July 31, 2021, that Mr. Terrance Klemt, as Chief Executive Officer of the Corporation,

Mr. Daniel Bowers, as Chief Compliance Officer, and Mr. Harumitsu Yamamoto, as Chief Financial Officer of the Corporation, are named and approved to represent the Corporation as authorized and designated signers for the Corporation in accordance with the provisions of the Certificate of Incorporation and Bylaws of the Corporation and the Delaware General Corporation Law.

IN WITNESS WHEREOF, the undersigned, being all members of the Board of Directors of the Corporation listed alphabetically, has executed this consent on July 29, 2021.

  
Daniel Bowers

  
Masahiro Kuwabara

  
Keiji Matsukawa

# RECORD PLAN

005-4-5-67AL

227 P58

## BROOKVILLE INDUSTRIAL PARK, SECTION TWO

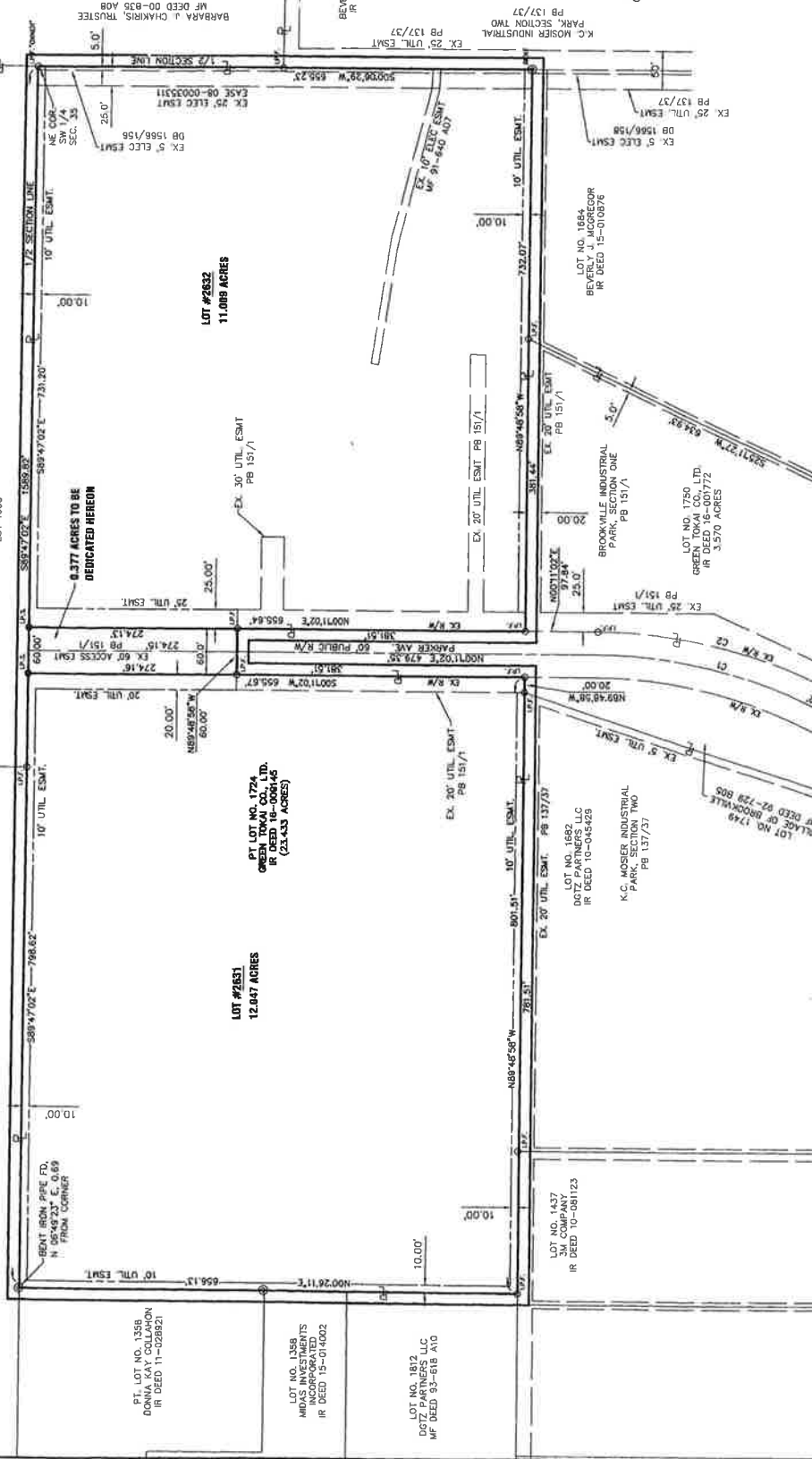
SECTION 35, T. 6, R. 4E,  
BEING PART LOT 1724 OF THE CONSECUTIVE  
LOT NUMBERS OF THE CITY OF BROOKVILLE,  
MONTGOMERY COUNTY, OHIO  
23.433 ACRES TOTAL

TRANSFERRED  
16 APR - 1 AM 10:04  
KARL L. KEITH  
AUDITOR

Type DEE  
Kind: PLAT  
Recorded: 04/02/2018 10:03:14 AM  
Filed: 04/02/2018 10:03:14 AM  
Montgomery County, OH  
Wills E. Blackhead County Recorder  
File# 2018-00015868

DOMINA KAY COLLAMON  
IR DEED 11-028921  
PT LOT 1382

BROOKVILLE, INC.  
ENTERPRISES, INC.  
MF DEED 95-436 003  
LOT 1960



58

PLAT BOOK 227 PAGE:

### CURVE DATA

| CURVE | RADIUS  | Δ         | LENGTH  | CHORD   | BEARING       |
|-------|---------|-----------|---------|---------|---------------|
| C1    | 650.00' | 24°40'25" | 279.91' | 277.76' | N 12°31'15" E |
| C2    | 680.00' | 24°40'25" | 292.83' | 290.57' | N 12°31'15" E |
| C3    | 30.00'  | 20°08'33" | 47.12'  | 42.43'  | N 20°08'33" W |

### LEGEND

- 1/8" x 30" REBAR
- 5/8" W/CAP SET
- 1/2" 5/8" IRON PIN FOUND
- ⊙ IRON PIPE FOUND



THE BEARING OF N 89°48'58" W ALONG THE  
SOUTH LINE OF PART LOT NO. 1724 WAS  
BASED ON NAD 83 CORRS 2011 ADJUSTMENT,  
OHIO SOUTH ZONE, 0007 VRS CORRS NETWORK

PREPARED BY:

**CHOICE ENGINEERING**

DATE: 03-11-2016  
DRAWN BY: WDG  
JOB NUMBER: MOTB01507  
SHEET NUMBER: 1 OF 2

SMITH, OHIO 43081-4700  
LINTLAGE, OHIO 43110-8534  
COLUMBUS, OHIO 43260-1206  
www.choiceengineering.com

TRANSFERRED  
16 APR - 1 AM 10:04  
KARL L. KEITH  
AUDITOR

227 P 58A

## DEDICATION

WE, THE UNDERSIGNED, BEING ALL OWNERS OF THE LANDS HEREIN SUBDIVIDED, DO HEREBY ACKNOWLEDGE THE MAKING AND SIGNING OF THIS INSTRUMENT TO BE OUR VOLUNTARY ACT AND DEED. DO HEREBY DEDICATE THE ROADS AND RESERVE THE EASEMENTS AS SHOWN TO THE PUBLIC USE FOREVER.

THE RESERVATION OF THE EASEMENTS SHOWN ON THE PLAT ARE FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, OR REMOVAL OF WATER, GAS, ELECTRIC, TELEPHONE, OR OTHER UTILITY LINES OR SERVICES, AND FOR THE EXPRESS PRIVILEGE OF REMOVING ANY AND ALL TREES OR OTHER OBSTRUCTIONS TO THE FREE USE OF SAID UTILITIES, AND FOR PROVIDING OF INGRESS AND EGRESS FROM THE PROPERTY FOR SAID PURPOSES, AND ARE TO BE MAINTAINED AS SUCH FOREVER. ALSO, AN EASEMENT TO INSTALL, CONSTRUCT, RECONSTRUCT, OPERATE, MAINTAIN, REPAIR, SUPPLEMENT, AND REMOVE AT ANY TIME OR TIMES HEREFTER, UNDERGROUND COMMUNICATIONS SERVICE CABLE FACILITIES, AND/OR ELECTRIC POWER CABLES AND APPURTENANCES IN, UNDER, AND UPON THE UTILITY EASEMENTS SHOWN ON THE PLAT. INCLUDES THE RIGHT AT ALL TIMES, OF INGRESS TO AND EGRESS FROM SAID STRIP, AND THE RIGHT TO CLEAR AND KEEP CLEARED SAID UTILITY EASEMENT OF ALL SHRUBBERY, TREES, ROOTS, UNDERGROWTH, AND OBSTRUCTIONS, SO AS TO KEEP FACILITIES CLEAR THEREOF.

SIGNED AND ACKNOWLEDGED GREEN TOKAI CO. LTD.  
IN THE PRESENCE OF:

WITNESS David D. Brown DATE 03/30/2016  
AUTHORIZED SIGNATURE

WITNESS Rodney L. Stepan DATE 3/22/16  
TITLE President

STATE OF OHIO  
COUNTY OF MONTGOMERY, SS:

BE IT REMEMBERED, THAT ON THIS 22<sup>nd</sup> DAY OF MARCH, 2016, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY, PERSONALLY CAME Daniel Brown, ON BEHALF OF GREEN TOKAI CO., LTD. AND ACKNOWLEDGED THE SIGNING OF THIS INSTRUMENT TO BE HIS VOLUNTARY ACT AND DEED AND THE VOLUNTARY ACT AND DEED.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL ON THE DAY AND YEAR ABOVE WRITTEN.

Rodney L. Stepan  
NOTARY PUBLIC



INCHES

PLAT BOOK 227 PAGE:

58A

TRANSFERRED  
16 APR - 1 AM 10:04  
KARL L. KEITH  
AUDITOR

## RECORD PLAN

## BROOKVILLE INDUSTRIAL PARK, SECTION TWO

SECTION 35, T 6, R 4E,  
BEING PART LOT 1724 OF THE CONSECUTIVE LOT NUMBERS OF THE CITY OF BROOKVILLE, MONTGOMERY COUNTY, OHIO  
23.433 ACRES TOTAL

## APPROVED FOR DESCRIPTION ONLY

FILE # 16-0067

David D. Brown  
MONTGOMERY COUNTY ENGINEER  
DATE 03/30/2016

## APPROVALS

APPROVED THIS 18<sup>th</sup> DAY OF February, 2016 BY THE PLANNING COMMISSION OF THE CITY OF BROOKVILLE, OHIO  
David D. Brown  
CHAIRMAN

APPROVED AND ACCEPTED THIS 1<sup>st</sup> DAY OF MARCH, 2016 BY THE COUNCIL OF THE CITY OF BROOKVILLE, OHIO  
Wesley D. Goubeaux  
MAYOR  
CLERK

## DESCRIPTION

BEING THE SUBDIVISION OF 23.433 ACRES BEING PART LOT 1724, OF THE CONSECUTIVE LOT NUMBERS OF THE CITY OF BROOKVILLE, MONTGOMERY COUNTY, OHIO, OWNED BY GREEN TOKAI CO. LTD. AS CONVEYED IN IR DEED 16-009145 OF THE MONTGOMERY COUNTY DEED RECORDS.

## CERTIFICATION

I HEREBY CERTIFY THIS PLAT WAS PREPARED IN ACCORDANCE WITH O.A.C. CHAPTER 4733.37 STANDARDS OF PLAT OF SURVEYS AND ALSO CONFORMS TO THE O.R.C. CHAPTER 711 FOR RECORD PLANS AND WAS CONDUCTED UNDER MY DIRECT SUPERVISION AND BASED ON ACTUAL FIELDWORK PERFORMED IN DECEMBER, 2015. ALL MEASUREMENTS ARE CORRECT AND MONUMENTS ARE SET OR TO BE SET AS SHOWN. CURVE DISTANCES ARE MEASURED ON THE ARC.

Wesley D. Goubeaux  
WESLEY D. GOUBEUX, P.S. #8254  
DATE 3/15/2016

DATE: 03-11-2016  
DRAWN BY: WDG  
JOB NUMBER: M07B01507  
SHEET NUMBER: 2 OF 2



PREPARED BY:

PROPERTY LINES CALCULATED FROM EXISTING MONUMENTATION AND SURVEYS OF RECORD.

## OCCUPATION STATEMENT

Lines of OCCUPATION (WHERE EXISTING) IN GENERAL AGREE WITH PROPERTY LINES.

## PERTINENT INFORMATION

PLAT BOOK 137, PAGE 37  
PLAT BOOK 151, PAGE 1  
LAND SURVEY 2007-0148  
LAND SURVEY 2008-0284  
LAND SURVEY 2016-0018

## SUPERIMPOSED AREA NOTE:

ALL OF THE LANDS OF THE DEDICATOR ARE CONTAINED WITHIN SURVEY.

## VICINITY MAP



TRANSFERRED  
16 APR - 1 AM 10:04  
KARL L. KEITH  
AUDITOR

**MARCH 11, 2022**

**TO: CITY OF BROOKVILLE PLANNING COMMISSION**

**FROM: RODNEY L. STEPHAN, COMMUNITY & ECONOMIC DEVELOPMENT**

**RE: APPLICATION FOR SPECIAL USE-LOUISIANA GRILL, HOME OF BOURBON CHICKEN**

The Louisiana Grill, Home of Bourbon Chicken, has submitted a special use application to operate their mobile food truck at McMakens, One McMaken Lane. This application is a renewal of their special use application that had previously been approved by Planning Commission. Section 1163.03(b)(26) sets forth the conditions for approval of a special use permit for a mobile food vendor.

It is requested that Planning Commission approve this special use application for this mobile food vendor, Louisiana Grill, Home of Bourbon Chicken, to be located at McMakens, One McMaken Lane, for a period of one year.

# City of Brookville

*"A Proud and Progressive Community"*

Application #SU 2022-01

## **ZONING APPLICATION FOR A SPECIAL USE PERMIT**

The undersigned hereby applies for a **SPECIAL USE PERMIT**, to be issued solely on the basis of information contained herein, and with the knowledge that the falsification of any fact or statement submitted with, or within, this application shall render this application null and void. (**PERMIT SHALL EXPIRE IF USE HAS NOT BEGUN WITHIN SIX (6) MONTHS, OR IF DISCONTINUED FOR MORE THAN TWO (2) YEARS.**)

1. Applicant Louisiana Grill, Home of Bourbon Chicken James R. Kelly
2. Applicant address 10809 Yankee Street Dayton, OH 45458  
email: jamesrkellycpa@gmail.com
3. Phone (Hm) \_\_\_\_\_ (Bus) 937-602-9272 Interest in property \_\_\_\_\_
4. Location or address of property to be affected McMaken IGA, One McMaken Way
5. Legal description Mobile Food Service, Manufacture of Sauces & Other Food Products
6. Present Zoning classification \_\_\_\_\_ Existing \_\_\_\_\_
7. Proposed Special Use Food Concession to support retail sales of vendor's product

8. In order for a **SPECIAL USE PERMIT** to be processed, applicant must provide a narrative statement evaluating the effect of such elements as noise, glare, odor, fumes, and vibrations on adjoining property; and discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the Zoning District Map.

Outdoor cooking using propane gas; gilling vapors from cooking chicken, pinto beans & rice

Assist retail client with sales promotion of food products by invitation.

9. The Planning Commission shall establish beyond reasonable doubt that both the general standards and the specific requirements pertinent to each special use indicated herein shall be satisfied by the establishment and operation of the proposed special use.

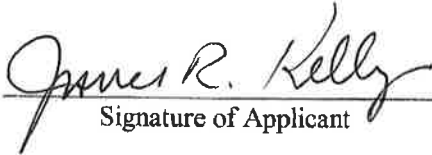
10. Wherever no specific area, frontage and setback requirements are specified in provision for specific special uses, then the area, frontage and setback requirements in the applicable zone shall apply; provided, that the Planning Commission shall be authorized to waive or modify certain requirements as necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general. The Planning Commission may also impose such additional conditions, guarantees, and safeguards as it deems necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Ordinance will be observed.

11. Has previous application been filed for a **SPECIAL USE PERMIT**? Yes

12. When? 2021 Results? Approved

March 9, 2022

Application Date

  
Signature of Applicant

---

OFFICE USE ONLY BELOW LINE

---

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

Appr/Denied Planning Commission \_\_\_\_\_ Date \_\_\_\_\_

Fee \_\_\_\_\_ Receipt Number \_\_\_\_\_ Date \_\_\_\_\_  
(NON REFUNDABLE)

## ZONING PERMITS 2021-2022

| ZONING PERMITS JANUARY 2022  |                           |                                     |                |                 |             |                         |                         |
|------------------------------|---------------------------|-------------------------------------|----------------|-----------------|-------------|-------------------------|-------------------------|
| Date                         | Address                   | Application                         | Name           | Zoning Permit # | Special Use | Subdivision Major/Minor | Zoning Approved/ Denied |
| 1/3/2022                     | 151 Brooke Parke Ave.     | SFR 1,743 Sq. Ft. basement Danville | Fischer Homes  | 4326            |             |                         | A-1-6-22                |
| 1/7/2022                     | 128 Brooke Parke Ave.     | SFR 2,793 Sq. Ft. slab Jensen       | Fischer Homes  | 4327            |             |                         | A-1-10-22               |
| 1/3/2022                     | 536 E. Westbrook Rd       | 6' Privacy Fence                    | Dempster       | 4328            |             |                         | A-1-12-22               |
| 1/12/2022                    | 8 Wilderness Cove         | Pool, Fence, Patio                  | Hoelzle        | 4329            |             |                         | A-1-25-22               |
| 1/18/2022                    | 152 Brooke Parke Ave.     | SFR 2964 Sq. Ft. slab Denali        | Fischer Homes  | 4330            |             |                         | A-1-18-22               |
| ZONING PERMITS FEBRUARY 2022 |                           |                                     |                |                 |             |                         |                         |
| Date                         | Address                   | Application                         | Name           | Zoning Permit # | Special Use | Subdivision Major/Minor | Zoning Approved/ Denied |
| 2/2/2022                     | 433 N. Wolf Creek         | Automotive Retail Store             | 6S Development | 4332            |             |                         |                         |
| 1/30/2022                    | 236 Johnsville-Brookville | Storage Shed and Fence              | Goepferich     | 4333            |             |                         | A-2-4-22                |
| 2/16/2022                    | 825 Flanders Ave          | Fence permit                        | Carlin         | 4334            |             |                         | A-2-16-22               |
| 2/16/2022                    | 278 Crosswell Ave.        | Fence permit                        | Friedlander    | 4335            |             |                         | A-2-16-22               |
| 2/22/2022                    | 584 Flanders Ave          | Fence permit                        | Brown          | 4336            |             |                         | A-2-28-22               |
| 2/24/2022                    | 15 Deger Ct.              | Front Porch                         | Craig          | 4337            |             |                         | A-2-28-22               |