



BK: 2365 PG: 367

**DECLARATION OF COVENANTS AND RESTRICTIONS AND  
BY-LAWS OF HEATHERSTONE HOMEOWNERS' ASSOCIATION, INC.**

This will certify that a copy of the Declaration of Covenants and Restrictions and By-Laws of Heatherstone Homeowners' Association, Inc. has been filed in the office of the County Auditor, Clermont County, Ohio, this 29 day of March, 2012.

**CLERMONT COUNTY AUDITOR**

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**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
HEATHERSTONE HOMEOWNERS' ASSOCIATION, INC.**

**WHEREAS**, the Regulations of Heatherstone Homeowner's Association, Incorporated, dated April 30, 1975, were printed on the Record Plat of Heatherstone, recorded at Volume R, Page 56 of the Clermont County, Ohio Recorder's Office on September 16, 1975 (the "Regulations");

**WHEREAS**, Restrictions were also printed on the Record Plat of Heatherstone, recorded at Volume R, Page 55 of the Clermont County, Ohio Recorder's Office on September 16, 1975 (the "Restrictions");

**WHEREAS**, the Articles of Incorporation of Heatherstone Homeowner's Association, dated January 25, 1975, were filed with the Ohio Secretary of State on February 11, 1977 (the "Articles");

**WHEREAS**, the Heatherstone Homeowners Association Rules, undated, were recorded at Book 1330, Page 314-320 of the Clermont County, Ohio Recorder's Office on April 12, 2001 (the "2001 Rules");

**WHEREAS**, the Heatherstone Homeowners Association Rules, dated November 18, 2002, were recorded at Book 1542, Page 1413-1428 of the Clermont County, Ohio Recorder's Office on December 4, 2002 and were distributed to the Owners in 2003 (the "2003 Rules");

**WHEREAS**, the By-Laws and Regulations of Heatherstone Homeowners Association, dated March 31, 2003, were recorded at Book 1602, Pages 1668-1698 of the Clermont County, Ohio Recorder's Office on April 10, 2003 (the "By-Laws");

**WHEREAS**, the Regulations state that they may be modified by means of an amendment to the Articles as provided therein and such modification or amendment shall be effective from the time the certificate setting forth such amendment is recorded;

**WHEREAS**, the Articles do not state how they are to be amended;

**WHEREAS**, the Restrictions do not specify how they are to be amended;

**WHEREAS**, Ohio Revised Code §1702.38 allows for articles of incorporation to be amended by the voting members present in person, by use of authorized communications equipment, or by mail by adopting an amendment with the affirmative vote of a majority of the voting members present if a quorum is present;

**WHEREAS**, Ohio Revised Code §5312.05 allows for an amendment to the declaration and by-laws by the consent of seventy-five percent (75%) of the owners in writing; and

**WHEREAS**, at least seventy-five percent (75%) of the owners have consented to adopt this Declaration and By-Laws and replace the Regulations, Restrictions, Articles, 2001 Rules, 2003 Rules, and the By-Laws with this Declaration of Covenants and Restrictions of Heatherstone Homeowners' Association, Inc. ("Declaration"), By-Laws attached hereto as Exhibit "B", and Amended Articles of Incorporation (the "Amended Articles") attached hereto as Exhibit "C";

**WHEREAS**, this Declaration and its Exhibits "B" and "C" shall be binding upon the real property described in Exhibit "A" attached hereto;

**NOW THEREFORE**, the Regulations, Restrictions, Articles, 2001 Rules, 2003 Rules, the By-Laws, and the Articles of Incorporation are hereby replaced in their entirety with this Declaration, By-Laws attached as Exhibit "B", and Amended Articles of Incorporation attached as Exhibit "C".

## **ARTICLE I.** **NAME, PURPOSE AND DEFINITIONS**

**SECTION 1. Name.** The name of this Association as declared in the Amended Articles shall be Heatherstone Homeowners' Association, Inc. (hereinafter referred to as the "Association").

**SECTION 2. Purpose.** The purpose of this Association shall be as stated in the Amended Articles. The Association has been incorporated as a non-profit corporation within the meaning of Chapter 1702 of the Ohio Revised Code and has been organized to administer the Planned Unit Development known as Heatherstone in the Township of Batavia, Clermont County, Ohio. The Association is the owner of certain real estate conveyed to it by deed recorded in Deed Book 700, page 319 of the Clermont County, Ohio Deed Records which is Common Area, held by the Association for the use and benefit of the Members, in accordance with this Declaration and administrative Rules and Regulations adopted pursuant to the By-Laws and this Declaration.

**SECTION 3. Definitions.** As used herein or in the By-Laws, Rules, or amendments thereto, the following terms shall be defined as follows:

**A.** "**Articles**" and "**Articles of Incorporation**" shall mean those Amended Articles, filed with the Secretary of State of Ohio, incorporating the Association as a non-profit corporation under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be amended from time to time. A copy of the Amended Articles is attached hereto as Exhibit "C" and made a part hereof.

**B.** "**Assessment**" means a fee levied by the Board against a Lot Owner pursuant to Article V.

**C.** "**Association**" means Heatherstone Homeowners' Association, Inc., an Ohio non-profit corporation, or its successors.

D. **"Board"** means the Board of Directors of the Association.

E. **"By-Laws"** means the By-Laws of the Association attached hereto as Exhibit "B".

F. **"Common Area"** means all of that part of the Planned Unit Development which is not a Lot as set forth on the Record Plat and which is owned by the Association in fee simple, including all improvements thereon such as buildings, streets, driveways, walkways, and recreational facilities.

G. **"Common Expenses"** means the cost of:

i. Administration, maintenance, management, operation, repairs, replacements, restoration, additions to and utility services for the Common Area land and facilities, including snow removal, insurance, real estate taxes, roadway maintenance and repair, and trash service.

ii. The management and administration of the Association, including, but not limited to, compensation paid by the Association to a managing agent, accountant, attorney, contractor or other service provider.

iii. The insurance required by Article VI herein to be carried by the Association on the Lots and the Common Area.

iv. The establishment of a reasonable reserve for replacement of the Common Area.

v. Any other items specified in this Declaration or the By-Laws or otherwise determined by the Board to be defined as a common expense.

vi. Mowing and edging of the lawns on the Lots and occasional leaf removal;

vii. Maintenance of the Lots as agreed upon by the parties under Article V, Section 2(d).

H. **"Common Surplus"** means the amount by which collected Assessments and profits, receipts, rents, and revenues collected from the use of the Common Area exceed Common Expenses at the end of the fiscal year.

I. **"Director" and "Directors"** shall mean that person or those persons serving, at the time pertinent, as a Director or Directors of the Association.

**J.** “**Dwelling Unit**” means and refers to any attached single family residence situated upon an individual Lot designated and intended for use and occupancy as a residence by a single household or family.

**K.** “**Good Standing**” means that an Owner is current in the payment of all sums due to the Association and is thus eligible to vote.

**L.** “**Lot**” shall mean the real property individually owned by a Lot Owner as depicted on the Record Plat, upon which a Dwelling Unit has been constructed.

**M.** “**Lot Owner**” or “**Owner**” means the person or persons holding title in fee simple to a Lot within Heatherstone Planned Unit Development, which Lots are depicted on the Record Plat.

**N.** “**Member**” means a member of the Association. All Lot Owners shall be Members.

**O.** “**Planned Unit Development**” or “**PUD**” means the land development known as Heatherstone Subdivision as depicted on the Record Plat.

**P.** “**Property**” means all of the real estate which comprises Heatherstone Planned Unit Development, including the Lots and the Common Area, as described in Exhibit “A” attached hereto.

**Q.** “**Record Plat**” means the record plat of Heatherstone Subdivision recorded at Volume R, Pages 54, 55, and 56 of the Clermont County, Ohio Recorder’s Office, which pages 55 and 56 have been superseded and replaced by this Declaration.

**R.** “**Rules and Regulations**” mean the administrative rules and regulations enacted by the Board pursuant to authority therefor in Article VII herein.

## **ARTICLE II. PROPERTY RIGHTS**

**SECTION 1. Owner's Right of Enjoyment.** Every Owner and, in the case of rented Dwelling Units, such Owner's tenants, shall have a right to an easement for the enjoyment of, in, and to the Common Areas, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

**A.** The right of the Association, in accordance with its Amended Articles and By-Laws, to borrow money for the purpose of improving the Common Areas, and in aid thereof to mortgage the Common Area. The Association shall not mortgage the Common Area except by resolution approved by two-thirds (2/3) of the total number of votes held by the Members;

B. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against mortgage default and/or foreclosure;

C. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration, provided, however, that no such dedication or transfer shall be effective unless an instrument, signed by two-thirds (2/3) of the total number of votes held by the Members agreeing to such dedication or transfer has been recorded upon the public records of Clermont County, Ohio;

D. The rights of the Association and Owners of Lots to a perpetual easement over any Common Areas, and upon other Lots for such portions of their Dwelling Units that may overhang or encroach on said Common Areas or upon any other Lot, and for necessary pedestrian and automotive ingress and egress to and from such Dwelling Unit over the streets, driveways and walkways of the Common Areas and for gas, electric, telephone, water, sewer, drain, cable television connections, and other utility conduits with rights to repair, maintain, and replace same, as they may be established over, upon, and through the Common Areas or other Lots, which rights are hereby expressly established, granted, and reserved for the benefit of the individual Lots;

E. The requirement of the Association to purchase fire, lightning and extended coverage or similar insurance on the Dwelling Units and Lots as specified in Article VI;

F. The right of the Association to enter into any Dwelling Unit at any time for the purpose of repairs or saving of property where there is an emergency which effects or threatens that Dwelling Unit or any other Dwelling Units, the cost of which shall be an Individual Assessment under Article V, Section 3;

G. Easements and restrictions of record;

H. The right of the Association to grant additional easements over the Common Areas and Lots as provided in Section 5 hereof.

**SECTION 2. Parking Rights.** Except as otherwise provided by the Rules and Regulations, parking areas situated on the Common Areas are reserved for the exclusive use of Owners, guests of the Owners, or in the case of rented Dwelling Units, tenants and the guests of such tenants. The Association shall have the right to adopt Rules and Regulations pertaining to the parking of motor vehicles on the Lots and Common Areas and shall have the right to tow vehicles parked in violation of such Rules and Regulations.

**SECTION 3. Title to Common Areas.** The title to the Common Areas is held by the Association free and clear of all liens and encumbrances other than easements and restrictions of

record. Except as otherwise provided in this Declaration, the Association may not mortgage or convey any interest in the Common Areas without the consent of two-thirds (2/3) of the Members.

**SECTION 4. Right to Grant Easements.** The Association, without the consent of any Owner, shall have the right at any time to grant easements across, through or under the Common Areas. Such easements, which shall be exclusive or non-exclusive, shall be limited to utility easements (including cable television, Internet and telephone), green belt easements, sign easements, access easements or roadway easements.

**SECTION 5. Rights Not Subject to Suspension.** Notwithstanding anything herein contained to the contrary, the rights and easements created in paragraph (D) of Section 1 of this Article II shall not be suspended by the Association for any reason.

### **ARTICLE III. ASSOCIATION MEMBERS AND VOTING RIGHTS**

**SECTION 1. Members.** All Members must be fee simple title owners of a Lot, with each designated grantee being a qualified Member, or their heirs, assigns, or legal representatives. Membership in the Association shall be a covenant running with the land, binding all heirs, assigns, administrators, executors or other representatives of the Lot Owner, all of whom agree to abide by the Declaration, By-Laws and Rules which have been enacted by the Association.

**SECTION 2. Voting Rights.** On any question for which the vote of Lot Owners is permitted or required, each Lot Owner shall be entitled to exercise one (1) vote for each Lot owned by him or her, providing that said Member is in Good Standing. If a Lot is owned by more than one person or entity, said persons or entities are permitted one (1) collective vote, so that there shall never be more votes cast or tallied than the total number of Lots within the PUD.

Any Owner who does not reside in the Dwelling Unit which he or she owns shall have the continuing obligation to keep the Association informed in writing as to such Owner's current mailing address and telephone number. Any such Owner who does not provide the Association such current contact information in writing, which prevents reasonable attempts to provide notices to such Owner as required by this Declaration and By-Laws, shall be deemed thereby to have relinquished his or her right to vote on matters brought before the Owners and shall not be deemed a Member of the Association for the purpose of determining the number of Members necessary to establish a quorum of the Association.

**ARTICLE IV.**  
**MAINTENANCE, REPAIR, RESTORATION, REPLACEMENT AND ADDITIONS**

**SECTION 1. Maintenance, Repair, Restoration, Replacement and Additions to the Common Area.** Except as hereinafter provided, all maintenance, repair, restoration and replacement of and additions to the Common Areas shall be done and performed by the approval of the Board, and the cost thereof shall be a Common Expense, with the exception set forth in Section 3 (vii) below. In the event of damage to or destruction of all or any part of the Common Areas, the damaged or destroyed portion shall be repaired, restored or replaced promptly, the cost of which shall be a Common Expense.

**SECTION 2. Addition to Common Area.** No new addition to the Common Areas or facilities, the cost of which exceeds Eight Thousand and 00/100 Dollars, (\$8,000.00) shall be made unless such addition has been authorized by 75% of the Lot Owners entitled to exercise a vote (36 of 48 Owners). Once authorized by the Lot Owners, any addition to the Common Areas shall be done and performed by the Board.

**SECTION 3. Maintenance, Repair, Restoration, and Replacement of Lots and Dwelling Units.** The maintenance, repair, restoration, and replacement of decks, patios, shutters, doors, windows, planting areas and the Unit exterior and Lot shall be performed by the Lot Owner(s), at his or her expense. The Owners shall be responsible for exterior maintenance of the Lots and Dwelling Units with the exception that the Association shall be responsible for mowing and edging the lawns on the Lots and occasional removal of leaves at the Board's discretion.

Exterior maintenance of the Lots to be undertaken by the Owners shall include but is not limited to providing exterior maintenance of the Dwelling Units and Lots as follows:

- i. paint, caulk, repair and replace roofs, roof vents, chimneys, gutters, flashing, downspouts, wood balconies and railings, stoops, patios and exterior wall surfaces, and Unit dividers;
- ii. paint the exterior surfaces of doors;
- iii. repair, replacement or care of mechanical equipment and/or its pads and foundations, light bulbs, exterior light fixtures attached to Dwelling Units, electric outlets, water sillcock, window and/or door glass or screen;
- iv. repair, replacement or care of doorjambs, thresholds, window frames or operating parts of doors and windows;
- v. cleaning, weather-stripping or replacement of doors and windows;
- vi. general cleaning or debris removal.

vii. providing maintenance of the Common Areas as follows:

1. maintenance, repair, and replacement of all surface or storm water pipes or drains servicing less than all Dwelling Units, whether located on the Lot or upon the Common Area and whether intended for the use of one or more but not all Dwelling Units. The cost of such maintenance, repair, and replacement of surface or storm water pipes or drains servicing less than all Dwelling Units shall be borne by the Owners of Dwelling Units making use of such pipes or drains in proportion to their use.

2. maintenance, repair, and replacement of all gutters, downspouts, drain pipes, or other portions of the Dwelling Units which service one or less than all Units and which may be located upon the Common Area.

**SECTION 4. Sharing of Costs.** In the case where roofs gutters, downspouts, or drains are shared by more than one Dwelling Unit, the respective Owners shall share the cost of such maintenance, repair or replacement equal to the amount of roof that covers their respective Dwelling Units or any other apportionment which may be mutually agreeable to the Owners. All decisions as to maintenance, repair, and replacement of such shared areas or equipment shall be made by the affected Owners with the exception set forth in Article V, Section 3.

## ARTICLE V. ASSESSMENTS

**SECTION 1. Covenant for Assessments.** Each person, group of persons, or entity who becomes an Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments; (2) Individual Assessments; and (3) Special Assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments, together with interest thereon as hereafter provided and costs of collection thereof (including court costs and reasonable attorney's fees) as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection as herein provided, shall also be the personal obligation of the person, group of persons, or entity who was the Owner of such Lot at the time when the assessment fell due.

**SECTION 2. Annual Assessments, Purposes.** The Annual Assessments levied by the Association are for the purpose of promoting and protecting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Property and preserving the aesthetic and scenic qualities of the Planned Unit Development.

To carry out these purposes, an Annual Assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement and maintenance of the Common Areas, including, but not limited to, the payment of taxes, insurance and fidelity bonds, and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision, and including the maintenance, repair and landscaping of streets and right of ways. The Annual Assessment shall also be used for the purpose of:

- A. providing for grass cutting and maintenance of landscaping installed by the Association upon the Lots and the Common Area;
- B. providing for snow removal in the Common Areas;
- C. structural repair, replacement or care of all retaining walls situated on the Common Areas;
- D. providing fire, lightning and extended coverage in accordance with Article VI, Section 1;
- E. providing such additional matters, consistent with the general purposes of this Annual Assessment, as may be approved in writing by not less than a two-thirds (2/3) affirmative vote of the Members.

### **SECTION 3. Individual Assessments.**

A. In the event that the majority of the Board is of the opinion that maintenance, repair or restoration of any part of the Lot or Dwelling Unit is immediately necessary for public health or safety, or to prevent imminent damage to any Common Area or is necessary to prevent devaluation of other Dwelling Units, the Board shall serve a written notice to the Owner of the Dwelling Unit needing such maintenance, repair or restoration that such maintenance, repair or restoration are to be made immediately. If the Owner fails to make such maintenance, repair or restoration within ten (10) days of receiving such notice, or does not contact the Board with an acceptable plan and time schedule of resolving the situation, such repairs may be authorized by the Board and charged to the Owner as an Individual Assessment. Should the Board unanimously believe that the situation poses an immediate life hazard, the Board need not make written notification to the Owner but shall be authorized to take such action as is reasonably necessary to temporarily eliminate such immediate life hazard so that the written notification process herein can then be followed. All costs so expended by the Board shall be the responsibility of the Owner. Any expenses or costs incurred by the Board on behalf of an Owner shall be reimbursed to the Board within thirty (30) days of the Owner being served with written notice of all such expenses and costs. The cost of such exterior maintenance and repair

(including charges incurred by the Association for attorney's fees, court costs, or other expenses incurred to obtain access to the subject Lot) shall be levied as an Individual Assessment.

**B.** In the event an Owner of any Lot shall fail to maintain the Lot or Dwelling Unit in a manner satisfactory to the Board and consistent with the Architectural Standards, and such maintenance is not that to be provided by the Association for which Assessments are provided, then the Association, after approval by two-thirds (2/3) vote of all members of the Board, shall have the right, through its agents and employees, to enter upon the Lot and to repair, maintain and restore the Lot and the exterior of the Dwelling Unit. The cost of such exterior maintenance and repair (including charges incurred by the Association for attorney's fees, court costs, or other expenses incurred to obtain access to the subject Lot) shall be levied as an Individual Assessment.

**C.** Costs of maintenance, repair, or replacement of the Common Area incurred due to the willful or negligent act of an Owner or occupant of a Lot or their family, tenants, guests, or invitees, including, but not limited to, attorney's fees, court costs, and other expenses, shall be levied as an Individual Assessment.

**SECTION 4. Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, maintenance, replacement or addition of a described capital improvement located upon the Common Areas, which cost has not otherwise been provided for in full as part of the Annual Assessment, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) of the total number of votes held by the Members. Any Special Assessments levied by the Association pursuant to the provisions of this section shall be fixed at a uniform rate based upon the number of applicable Dwelling Units. All monies received by the Association as a Special Assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of the Special Assessment, and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association. The assessment may be billed in advance on a monthly, quarterly or annual basis. The Board may from time to time determine the manner and schedule of payments; however, the Board must give Owners at least sixty (60) days to pay a one-time special assessment unless an emergency threatens immediate destruction of the Property in which event the Board may impose an earlier due date.

**SECTION 5. Access to Lot.** An Owner shall permit agents or employees of the Association and other Owners access through the Owner's Lot and Dwelling Unit for the purpose of fulfilling the Association's duties and obligations. Any damage to the Common Area, Lot, or Dwelling Unit due to that access is the responsibility of the Owner that caused the damage or the Association if it is responsible for the damage. That Owner, or the Association, is liable for the

prompt repair of any damage and, if not repairable, for the value of the damaged property or item as it existed immediately prior to that damage.

#### **SECTION 6. Establishment of Assessments.**

**A.** It shall be the duty of the Board to periodically fix the amount of the Annual Assessment against each Lot for such assessment period. The Board shall make reasonable efforts to fix the amount of the Annual Assessment against each Lot for each assessment period by preparing and approving an estimated budget for revenues and expenditures for the next fiscal year by October 1. The budget must include reserves in an amount adequate to repair and replace major capital items of the Common Area in the normal course of operations without the necessity of special assessments.

**B.** On or before October 1 of each year, the Board shall send this estimated budget to all of the Owners. The Board shall also include with this estimated budget a ballot, so that the Owners may vote upon whether they wish to waive the reserve requirement for the coming fiscal year. If a majority of the voting power (25 of 48 owners) votes affirmatively to waive the full reserve requirement by October 15, the Board shall instead adopt an estimated budget on or before November 1 which provides for reserves but does not fully fund the reserves. By waiving the reserve requirement in any given year, the Owners acknowledge the probability or possibility of further assessments, special or general, to maintain, repair, or replace components of the Common Area.

**C.** On November 1, the Board shall prepare a roster of the Lots and Annual Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of any Assessment shall be sent to the Owner of any Lot.

**D.** Annual Assessments shall become a lien on January 1 of each year; Individual and Special Assessments shall become a lien at the time designated by the Board. No notice of lien other than this Declaration need be recorded to establish the validity of any such lien, and this Declaration shall stand as notice thereof. However, the Board may file or record such further notice of any such lien, or such other or further document, to confirm the establishment and priority of such lien.

**SECTION 7. Assessment Certificates.** The Association shall, upon demand, at any reasonable time, furnish to the Owner liable for Assessments a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said Assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

**SECTION 8. Non-Payment of Assessment.** Any Assessment levied pursuant to these covenants which is not paid by the tenth (10) day after it is due (for Annual Assessments, the tenth day of the month) shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien upon the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association. Such personal obligation to pay such Assessment shall be in addition to the lien rights established by this Declaration.

If the assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of each Assessment. No Owner shall waive or otherwise escape liability for the Assessments herein provided for by non-use of the Common Areas or abandonment of his Lot or Dwelling Unit.

In addition to the ten percent (10%) per annum interest provided above, in the event of any Assessment that is not paid within ten (10) days after the due date, the delinquent Owner shall pay to the Association a late fee to be established by the Board. The Board in its discretion may change the amount of such late fee from time to time.

**SECTION 9. Lien for Assessments.** The Association has a lien upon the Lot for the payment of any Assessment or Charge levied herein, as well as any related interest, administrative late fees, Enforcement Assessments, collection costs, attorney's fees and paralegal fees, that are chargeable against the Lot and that remain unpaid ten days after any portion has become due and payable.

All of the following apply to a lien charged against a Lot pursuant to this Section:

**A.** The lien is effective on the date that a certificate of lien is filed for record in the office of the Clermont County Recorder, pursuant to authorization by the Board of Directors. The certificate shall contain a description of the Lot, the name of the record owner of the Lot, and the amount of the unpaid Assessment or Charge. It shall be subscribed to by the President of the Board or the Association's counsel.

**B.** The lien is a continuing lien upon the Lot against which each Assessment or Charge is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, Enforcement Assessments, collection costs, attorney's fees, paralegal fees, and court costs.

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

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

E. The Association is entitled to the appointment of a receiver to collect rental payments due on the Lot. Any rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the Common Expenses chargeable to the Lot during the foreclosure action.

F. Following any foreclosure action, the Association or an agent the Board authorizes is entitled to become a purchaser at the foreclosure sale.

G. An Owner may commence an action for the discharge of the lien in the court of common pleas of Clermont County if the Owner believes that the liability for the unpaid Assessment or Charge for which the Association filed a certificate of lien was improperly charged. In the action, if it is finally determined that the unpaid amount of the Assessment or Charge was improperly charged to the Owner or the Lot, the court shall enter an order that it determines to be just, which may provide for a discharge of record of all or a portion of the lien and an award of attorney's fees to the Owner.

**SECTION 10. Subordination of Lien to Mortgage.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien.

**SECTION 11. Foreclosure.** The lien for Assessments may be enforced and foreclosed upon in the manner provided by the laws of the State of Ohio by an action in the name of the Board.

**SECTION 12. Personal Judgment.** A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

**SECTION 13. Application of Payments.** The Association shall credit any amount it receives from a Lot Owner in the following order:

- A. To interest owed to the Association;
- B. To administrative late fees or Enforcement Assessments owed to the Association;
- C. To collection costs, attorney's fees, and paralegal fees the Association incurred in collecting the assessment;
- D. To the oldest principal amounts the Owner owes to the Association for the Common Expenses chargeable against the Dwelling Unit or Lot.

## ARTICLE VI. INSURANCE

**SECTION 1. Property and Casualty Insurance.** The Board shall obtain, for the benefit of all Owners, fire, lightning, and extended coverage or similar insurance on a blanket basis on all buildings and structures in an amount of not less than one hundred percent (100%) of the replacement cost thereof (exclusive of the cost of foundations, footings and excavation) on all Dwelling Units, excluding physical improvements and betterments, and excluding the contents thereof, personal liability, and Dwelling expenses insurance. Such insurance shall have a reasonable deductible set at the discretion of the Board of Directors. Said insurance shall be payable to the Association, the Owners and their mortgagees, as their interests may appear and the proceeds from which shall be used to restore or replace any Dwelling Unit or Common Area damaged or destroyed by any peril covered by said insurance to commercial builder grade specifications (bare walls). Owners are responsible for securing appropriate coverage for all improvements and betterments, such as wall and floor coverings, fixtures, built-in appliances and cabinetry, desks, etc. The "deductible" portion of any insured claim, payable by any other than the insurance company, shall be paid by the Owner(s) of the Dwelling Unit damaged or destroyed. Such insurance shall be in such amounts at all times sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision. The policy or policies insuring the buildings and structures of the Property shall provide that any proceeds payable by reason of an insured loss shall be paid to the Board of Directors who shall hold the same as trustee for the benefit of the insured thereunder, as their respective interests may appear, and such proceeds shall be utilized to pay for the cost of repair or restoration of the part or parts of the Property damaged or destroyed. The cost of all insurance provided for herein shall be a Common Expense. Insurance coverage does not and shall not cover an Owner's personal property, regardless of its location or nature. Owners are responsible for any deductibles relating to their personal property insurance policies in addition to being responsible for any deductible related to the insurance policy(s) covering buildings and structures. Any and all potential insurance claims must be submitted to the Board of Directors.

**SECTION 2. Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of public liability insurance covering the Common Areas, but not the Lots, insuring the

Association, Directors, and Owners and members of their respective families, tenants and occupants in an amount of not less than Three Million Dollars (\$3,000,000.00) per occurrence for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. The insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a residential Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants or occupants.

**SECTION 3. Other Insurance.** In addition, the Association shall obtain and maintain contractual liability insurance, Directors' and Officers' liability insurance, and such other insurance as the Board may deem desirable from time to time.

**SECTION 4. Owners Insurance.** Any Owner, tenant, or occupant may carry such insurance in addition to that provided by the Association pursuant to this Declaration, as that Owner, tenant, or occupant may determine, subject to the provision hereof and provided that no Owner, tenant, or occupant of any Dwelling Unit may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried by the Association pursuant to Article VI, Section 1. Owners must carry coverage of all improvements and betterments.

**SECTION 5. Insufficient Insurance.** In the event the improvements forming the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots, and such assessment shall have the same force and effect, and if not paid, may be enforced in the same manner as herein provided for the nonpayment of Assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

**SECTION 6. Fidelity Bonds.** The Board shall obtain fidelity bond coverage, naming the Association as an insured, with respect to any person or agent handling Association funds in an amount of not less than Five Thousand Dollars (\$5,000.00) as determined by the Board.

## **ARTICLE VII. ADMINISTRATIVE RULES AND REGULATIONS**

Subject to the Declaration and By-Laws, the Board may from time to time adopt, amend or repeal such administrative Rules and Regulations governing the operation and use of the Property or any part thereof as it deems necessary or advisable, including rules concerning the use of the Common Area and the use of the Lots which do not conflict with the provisions of this

Declaration. A copy of any such Rule or Regulation shall be delivered pursuant to Article XI to each Owner not less than seven (7) days prior to the effective date of the Rule's adoption, amendment or repeal.

## **ARTICLE VIII. RESTRICTIONS**

**SECTION 1. Binding Effect.** The covenants and restrictions set forth herein are expressly for the benefit of all Owners and are to run with the land and shall be binding on all parties and all persons claiming ownership under them.

**SECTION 2. Use Restrictions.**

**A. Residential Usage.** No Dwelling Unit shall be used for any purpose other than that of a dwelling place for a single private family and for purposes necessarily incidental thereto, and no Common Area shall be used for any purpose other than for the health, safety, welfare, convenience, comfort, recreation or enjoyment of the Owners and residents of the Property.

**B. Home Occupations.** Home occupations shall be subject to the following conditions:

i. Only an Owner or occupant may engage in such home occupation, and that Owner or occupant cannot hire an employee or independent contractor who works from within the Dwelling Unit.

ii. There shall be no change in the outside appearance of the Property or other visible evidence of the conduct of such home occupation.

iii. No home occupation shall be conducted in any accessory building or structure outside of the Dwelling Unit.

iv. There shall be no sales of products from within the Dwelling Unit which require persons to visit the Dwelling Unit for pick-up or delivery.

v. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood.

vi. No equipment or process shall be used in such home occupations which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the Lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the Property or which causes fluctuations in line voltage off the Property.

vii. Said home occupations shall be clearly incidental and subordinate to the use of the Property for residential purposes.

viii. No more than the equivalent of twenty-five (25) percent of the gross floor area of the Dwelling Unit shall be utilized for a home occupational use.

ix. There shall be no outside storage of any kind related to the home occupational use.

x. No heavy equipment such as bulldozers, front loaders, tractors, dump trucks, tractor trailers, semi-trucks, etc., or any business vehicles shall be used in such home occupation or stored on the Property.

xi. No Dwelling Unit shall serve as a gathering point for employees engaged in the business that takes place off the premises. This may include, but it is not limited to, landscape business offices, construction offices, or a trucking business where drivers or employees gather at the Dwelling Unit before being dispatched from the Unit.

C. Outbuildings. No structure of a temporary character, trailer, tent, shack, garage, accessory building or outbuilding shall be placed upon the Property at any time nor used as a residence, either temporary or permanent in nature.

D. Animal Houses. No doghouses or other structures to house any domestic animal shall be erected or placed, either temporary or permanently in nature, upon the Property.

E. Animals. The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling Unit situated upon the Property, except that this shall not prohibit the keeping of dogs, cats, fish and/or caged birds as domestic pets provided that the total of such pets (exclusive of fish) do not exceed three (3) in number and that such pets are not kept, bred or maintained for commercial purposes and which do not annoy, disturb, or interfere with other Owners or occupants. Dogs and cats must be kept within the confines of the Owner's Dwelling Unit or Lot. Dogs are permitted upon the Common Area and Lots if held on leash or tied outdoors, but pets may not be tied outdoors for extended periods. Owners and/or harbores of dogs and cats shall be liable for any damage caused by such animals. Any animals known to be dangerous or vicious to the public shall not be kept on the Property.

F. Signs. No sign of any kind shall be erected, posted, attached or displayed to the public view on any part of the Property except street and identification signs installed by the Association or the developer and except for temporary signs not exceeding one (1) for each Lot and measuring no longer than 2' x 2' which advertises a Dwelling Unit for sale or rent. Real estate signs shall be removed immediately upon the sale or lease of a Dwelling Unit. Directional

signs and signs regarding the use or rules of the Common Area are permitted to be placed upon Common Area by the Board. The Board may also adopt Rules and Regulations governing the placement of the signs upon the Common Area, such as signs advertising Dwelling Units for sale or signs informing Owners about Association meetings, according to Rules adopted by the Board of Directors.

**G. Fences and Walls.** Except as authorized by the Board of Directors, no fence or wall of any kind, specifically including the use of hedge or other growing plants as a fence, for any purpose, except a retaining wall shall be erected, placed or suffered to remain upon any Lot with the exception that existing privacy fences between Dwelling Units may be maintained, restored, and replaced.

**H. Windows.** No sliding side-by-side windows shall be permitted in a Dwelling Unit except those in existence on the date of filing of this Declaration. Replacements of such windows shall not be with side-by-side windows, whatever the reason for the replacement.

**I. Nuisance.** No noxious or offensive activity or nuisance of any kind or character shall be committed, suffered or maintained on any part of the Property. Nothing shall be done on the Property which may be or become an annoyance or nuisance to the neighborhood or the other Owners of the Property.

**J. Satellite Dishes.** No outside television or radio aerial or antenna, satellite dish or other aerial or antenna, for reception or transmission, shall be maintained on any Lot or Dwelling Unit, except one satellite dish per Dwelling Unit is permitted provided it does not exceed one (1) meter in diameter and, to the extent practical, it is screened from view from all streets and does not damage the structure. Owners shall be solely responsible for any such damage or repairs that result from such attachments or installations.

**K. Common Area Structures.** All structures or facilities which are located upon the Common Area such as the swimming pool, clubhouse, tennis court, basketball court, parking lot, or playground may not be materially altered or removed without the approval of seventy-five (75%) percent of the Owners in Good Standing.

**L. Party Walls.** Each party wall was originally built as part of the original structure(s) and placed on the dividing line between Lots. The cost of repair and maintenance of such party walls shall be shared equally by the two Owners whose properties are divided by the wall. A "party wall" includes the existing privacy fences between Dwelling Units.

**M. Air Conditioners.** All Dwelling Units are equipped with central air systems. Window air conditioning units are not permitted unless a heat emergency or other emergency condition mandating their presence occurs, in which case they must be removed when the emergency conditions cease to exist.

N. Renting and Leasing of Dwelling Units. Leasing of Units. In order to (i) protect the equity of the individual property owners in Heatherstone Homeowners Association; (ii) to carry out the purposes for which the Association was formed by preserving the character of the Association as a homogeneous residential neighborhood of predominantly owner-occupied homes and by preventing the Association from assuming the character of a renter-occupied community; and (iii) to comply with the eligibility requirements for financing in the secondary mortgage market, insofar as such criteria provides that the project be substantially owner-occupied, leasing of the Dwelling Units shall be governed by the restrictions imposed by this Section.

i. Except as otherwise provided in this Section in the case of undue hardship, no Unit may be leased so long as at least ten percent (10%) of the total Dwelling Units are leased, effective upon the date of recording of this Declaration (the "Effective Date").

ii. The Board of Directors shall be empowered to allow reasonable leasing of any Unit to avoid undue hardship, including, but not limited to (i) where an Owner must relocate his or her residence and cannot, within three (3) months from the date the Unit was placed on the market, sell the Unit for the current appraised market value, after having made reasonable effort to do so; (ii) where the Owner dies and the Unit is being administered by his or her estate; and (iii) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside at the Unit.

iii. Those Unit Owners who are leasing their Units upon the Effective Date may continue to do so and shall not be required to demonstrate undue hardship as a prerequisite for same. However, copies of all outstanding leases must be submitted to the President of the Association no later than thirty (30) days following the recording of this Declaration. Additionally, upon any conveyance of the Unit, any grantee thereof shall be subject to the provisions of this Section, in addition to all other provisions of the Declaration, By-Laws, and Rules and Regulations adopted by the Board.

iv. With respect to those Owners who are permitted by the terms of this Declaration to continue to rent their Units until such time as the Unit is conveyed and with respect to those Owners granted a hardship exception pursuant to this Section, the Board shall have the authority to make and enforce reasonable Rules and Regulations and to levy Enforcement Assessments, as provided in Article X, Section 1 of the Declaration, for violations of any Rules and Regulations set out in the Declaration, By-Laws or made by the Association.

v. With respect to those Owners who are permitted by the terms of this Declaration to continue to rent their Units until such time as the Unit is conveyed and with respect to those Owners granted a hardship exception pursuant to this Section no Unit may be leased by any Owner under any circumstances for transient or hotel purposes, which shall include, without limitation, the following: (i) rental for any period less than thirty (30) days; and

(ii) any rental where the occupants of the Unit are provided customary hotel service such as room service, maid service, furnishing of laundry and linens, etc. No lease may be of less than an entire Unit. Any transaction which does not comply with this Section shall be void unless subsequently approved by the Board of Directors in writing.

vi. Any lessee or tenant of a Unit shall in all respects be subject to the Declaration, By-Laws, and all Rules and Regulations as are from time to time promulgated by the Board of Directors as though such lessee or tenant were an Owner. To the extent leasing is permitted hereunder, the following provisions shall be applicable. The lease of any Unit shall be in writing and in a form approved by the Board. Such lease shall provide that the violation of any provision of the Declaration, By-Laws, or the Rules and Regulations promulgated thereunder shall constitute a default under the lease giving the Association the right to evict the lessee. In the event the lease does not include such provision, then, by means of this covenant on the Units, such provision shall be deemed automatically included in such lease. Each Owner agrees to provide each lessee or occupant with a copy of the Declaration, By-Laws, and all Rules and Regulations as are from time to time promulgated by the Board of Directors. Each Owner agrees, furthermore, to cause his or her lessee or persons Dwelling with such Owner or with his or her lessee to comply with the Declaration, By-Laws, and the Rules and Regulations promulgated thereunder and is responsible and liable for all violations and losses caused by such tenant or lessee, notwithstanding the fact that such occupants of the Units are fully liable for any violation of the Declaration, By-Laws, and Rules and Regulations. A copy of the lease, signed by all parties, must be given to the President of the Association within thirty (30) days of the enactment of the lease.

vii. Each Owner agrees to notify the Board's President in writing of the intent to lease or rent a Unit at least thirty (30) days prior to leasing or renting the Unit. If the leasing or renting of that Unit will cause the number of leased Units to exceed ten percent (10%), the leasing or renting of that Dwelling Unit will be denied unless the Owner applies for and the Board grants an exception for undue hardship under paragraph (1) above.

viii. Any lease permitted or approved by the Board pursuant to this Section shall be for a minimum period of not less than one (1) year and must be for the entire Unit. Subleasing is not permitted.

ix. The occupancy of a Unit by an immediate family member of the Owner(s) shall not be prohibited by this provision. "Immediate family member" shall mean spouse, father, mother, brother, sister, children or step-children of the Owner(s), grandparents and grandchildren.

x. For purposes of this Section, an Owner is deemed to be renting or leasing his or her Unit if the Unit is not owner-occupied. If a Unit is not occupied by the Owner, the Unit is deemed to be rented or leased and therefore subject to this Section, notwithstanding

whether the Owner and occupant have executed a rental agreement or whether the occupant exchanges consideration with the Unit Owner to reside in the Unit.

Any first mortgagee of a Unit who becomes the Owner of that Unit by foreclosure of its first mortgage or a deed in lieu of foreclosure on its first mortgage shall be permitted to lease the Unit without having to demonstrate undue hardship; however, such lease term shall not be for less than one (1) year. The lease must be in writing and in a form approved by the Board, and must be provided to the Board. Any subsequent purchaser from the first mortgagee is subject to this Section.

**O.** Boats and Trailers. No boat or trailer shall be parked or stored at any time on the Property other than within an enclosure.

**P.** Trash. Trash, garbage or other waste shall not be burned, dumped, deposited or permitted to remain on any part of the Lots or Common Areas except in covered, sanitary containers placed upon the Lot. No open fires shall be permitted on any part of the Common Areas except in outside cooking grills or devices. Trash and garbage containers shall not be permitted to remain outside any Dwelling Unit except on days of trash collection and after 6:00 P.M. on the days prior to the days of trash collection.

**Q.** Trees. No sound hardwood trees or shrubbery shall be removed from any Common Areas without the written approval of the Association acting through its Board of Directors.

**R.** Exterior of Units. The Owners of each Lot shall not cause or permit anything to be hung or placed on the outside of the windows of the Dwelling Units, including reflective-type materials, or placed on the exterior walls or roof of the Dwelling Units, and no sign (except as provided in paragraph (F) above), awning, canopy, shutter, satellite dish (except as provided in paragraph (J) above) shall be affixed to or placed upon the exterior walls or roof of any part of the Dwelling Units or the Common Areas, without the prior written consent of the Board of Directors of the Association. Additionally, no statues, bird baths, decorations, or similar type items may be placed on the Common Areas or in the front yard of any Lot without the prior written consent of the Board of Directors of the Association.

**S.** Rules Violations. There shall be no violation of any rules for the use of the Common Areas which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, as the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt or amend such rules.

**T.** Garages. Except for options available as part of the original construction, garages shall be used only for the parking of vehicles and other customary uses and shall not be used for

or converted into Dwelling area, e.g., family room(s), bedroom(s), recreation room(s), or work areas for conducting a business.

**U. Parking.** (i) Use. The parking areas situated on the Common Areas (other than the garage or driveway areas) are reserved for the exclusive use of guests of the Owners, or in the case of rented Dwelling Units, the guests of such tenants. (ii) Number of Vehicles. Notwithstanding the above, in the event that the occupants of a Dwelling Unit own or operate multiple vehicles, then those vehicles may be parked in the garage, driveway, or in the Common Area adjacent to the Clubhouse, subject to Rules and Regulations enacted by the Association. The repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out upon the Property. (iii) Permissible Vehicles. Vehicles that may be parked within the community include conventional passenger vehicles in good repair, not leaking fluids and which are currently licensed and in regular use with a load capacity of no more than five tons. (iv) Restricted Vehicles and Equipment. The following vehicles may not be parked either on community streets, guest or owner parking spaces including driveways: personal Commercial vehicles, including, but are not limited to, delivery trucks, special use trailers, buses, recreational vehicles, utility trailers, campers, boats, snowmobiles [jet skis and like recreational equipment], stored, broken down or wrecked vehicles. Restricted vehicles and equipment may be parked in a garage. (v) Parking Location. All vehicles must be properly parked in either a driveway, garage, or Common Area parking space. No vehicle may be parked on the grass anywhere upon the Property. No vehicle may be parked upon the Common Area streets. (vi) All parking, whether upon the Common Area or a Lot, is subject to Rules and Regulations enacted by the Association. (vii) Clubhouse Parking. Guest parking space is limited and cannot be used for storage. RVs and campers may load and unload, temporarily parking in the Clubhouse lot, for no longer than 72 hours. (viii) Visitor Parking. Guest parking space is limited and should only be temporary so that available parking is not overburdened. It is extremely important that residents neither offer nor expect special parking privileges for guests. Guests are subject to the same penalties, including towing. Owners may not park in guest parking. **Exceptions: One hour drop-off or pickup, Emergency, and Maintenance.** (ix) Driveways. Each resident is permitted to park upon the Lot no more vehicles than can be accommodated by garage and driveway. All vehicles must be parked parallel within the driveway. Parking in driveways is limited to automobiles, vans, pick-up trucks and motorcycles. Only minor maintenance of vehicles such as oil changes or tune-ups may be performed in the driveway.

**V.** No deck may be constructed upon a Lot nearer than six feet from the front or back property line. Decks may be constructed up to and upon the side property lines.

No deck may be constructed upon a Lot if the area of the deck exceeds 65% of the total area of the rear yard.

**W. Right of Removal.** The Association may, in the interest of the general welfare of all of the Owners, enter upon any Lot or the exterior of any Dwelling Unit at reasonable hours on any day for the purpose of removing or correcting any violation or any attempted violation of any of the covenants and restrictions contained in this Article or in the Rules, or for the purpose of abating anything herein defined as a prohibited use or nuisance. No such action shall be taken pursuant to this Section without a resolution of the Board of the Association authorizing access to any Lot or property covered under this Section. In such event, any charges incurred by the Association in correcting the violation (including court costs and reasonable attorney's fees) shall constitute a charge against the subject property and a personal obligation of the Owner thereof, and the Association shall have a lien upon the property and Lot for such expenses, including costs of collection of said lien amount.

## **ARTICLE IX. ARCHITECTURAL CONTROL**

**SECTION 1. Applicability.** All construction, reconstruction, additions, improvements, including landscaping other than annuals, remodeling and exterior changes to a Lot or Dwelling Unit shall be subject to these provisions. All architectural review shall be performed by the Board, or a committee appointed by the Board, in accordance with the provisions of this Article. If the Board appoints a committee to perform the architectural review functions, there shall be no less than three (3) and no more than five (5) members of the committee, all of whom must be Owners. The terms of office shall be as designated by the Board. Any Owner who wishes to make any Improvement to his or her Lot or Dwelling Unit is required to obtain the approval of the Board pursuant to this Article prior to making such Improvement. Any Owner who makes an Improvement without the prior approval of the Board shall be deemed in violation of this Declaration, and the Board upon its own motion shall proceed as though the Owner gave notice of completion as specified below. Nothing in this Article shall be deemed to relieve any Owner from obtaining all necessary consents and permits and otherwise complying with all applicable state and local laws and ordinances.

**SECTION 2. Definition of Improvement.** For purposes of this Article, "Improvement" shall mean:

- A.** Any alteration or addition which affects the exterior of the Lot or Dwelling Unit;
- B.** Any thing or object (other than trees, shrubbery, landscaping and hedges less than two feet high, and annuals) the placement or removal of which on the Lot may affect the appearance of such Lot, including without limitation, any building, garage, porch, greenhouse, bathhouse, covered or uncovered patio or deck, swimming pool, fence, play structure, curbing, paving, wall, signboard, or any temporary or permanent improvement on such Lot;

C. Any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters, from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot;

D. Any change in grade of any Lot of more than six inches.

E. An Improvement shall not include repainting in the original color scheme and routine repairs which do not alter the external appearance.

**SECTION 3. Duties.** The Board shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Board, from time to time and in its sole discretion, may propose, adopt and promulgate architectural rules, regulations and guidelines (“Architectural Standards”). The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, color schemes, exterior finishes and materials and similar features which may be used in the Property.

**SECTION 4. Application for Approval of Improvements.** Any Owner who wants to make an Improvement shall notify the Board in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Board. The Board may impose a reasonable charge for review of such application.

**SECTION 5. Basis for Approval of Improvements.** The Board may approve the proposal only if the Board finds that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time that the proposal was submitted; and (ii) the proposed Improvement will be consistent with the standards within the Property as to the quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures, environment, location with respect to topography, and finished grade elevations.

**SECTION 6. Form of Approvals and Denials.** All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within sixty (60) days from the date of submission shall be deemed approved.

**SECTION 7. Proceeding with Work.** Upon approval of the Board, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within three (3) months from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No

extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

**SECTION 8. Failure to Complete Work.** Completion of the work approved must occur in the six (6) month period following the commencement of the work unless the Board determines that completion is impossible or would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to complete the work within the three (3) month period, the Board shall proceed in accordance with the provisions of Section 9 below.

**SECTION 9. Determination of Compliance.** Any work performed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made as follows:

A. Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

B. Within sixty (60) days of the giving of notice or motion of the Board, the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

**SECTION 10. Failure to Remedy the Non-Compliance.** If the Board has determined that a Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide a hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated cost of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as an Individual Assessment.

**SECTION 11.** **Waiver.** Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval, shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

**SECTION 12.** **Roofs.** Unless otherwise approved by the Association, all roofs on residences shall be asphalt dimensional shingle, wood tone. A partial replacement or repaired roof shall be color matched to the original or current roof.

## **ARTICLE X. ENFORCEMENT**

**SECTION 1. Charge for Damages or Enforcement Assessment.** The Board shall have the authority to impose a reasonable Enforcement Assessment for violations of the Declaration, the By-Laws, and the Rules of the Association before levying a reasonable Charge for Damages or an Enforcement Assessment pursuant to this Section, the Board of Directors shall give the Lot Owner a written notice that includes all of the following:

- A. A description of the property damage or violation;
- B. The amount of the proposed Charge or Assessment;
- C. Statement that the Owner has a right to a hearing before the Board of Directors to contest the proposed Charge or Assessment;
- D. A statement setting forth the procedures to request a hearing pursuant to this Section.

To request a hearing, an Owner shall deliver a written notice to the Board of Directors not later than the tenth day after receiving the notice from the Board required by his Section. If the Owner fails to make a timely request for a hearing, the right to that hearing is waived, and the Board may immediately impose a Charge for Damages or an Enforcement Assessment pursuant to this Section.

If a Lot Owner requests a hearing, at least seven days prior to the hearing, the Board of Directors shall provide the Lot Owner with a written notice that includes the date, time, and location of the hearing.

The Board of Directors shall not levy a Charge or Assessment before holding any hearing requested pursuant to this Section.

The Lot Owners, through the Board of Directors, may allow a reasonable time to cure a violation described in this Section before imposing a Charge or Assessment.

Within thirty days following a hearing at which the Board of Directors imposes a Charge or Assessment, the Association shall deliver a written notice of the Charge or Assessment to the Lot Owner.

**SECTION 2. Right of Action.** The Association and all Owners, residents, tenants, and other persons lawfully in possession and control of any part of the Property, shall comply with any covenant, condition, and restriction set forth in the Declaration, By-Laws, and Rules of the Association, as lawfully amended. Any violation is grounds for the Association or any Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action. The Board of Directors shall have the right to seek and obtain reasonable costs and expenses incurred due to Owners' violations of the covenants and Rules and Regulations. Such costs and expenses shall include, but not be limited to, costs required to remedy the violation(s), legal fees, court costs, attorney fees, allowable fines and other related expenses should such costs or expenses arise as a direct or indirect result of the Lot Owner's failure to abide by this Declaration or By-Laws or any Rules which are properly instituted.

## **ARTICLE XI. NOTICES AND DEMANDS**

Any notice, demand or other instrument which is required to be given or delivered to or served upon an Owner shall be in writing and shall be deemed to be so given, delivered or served upon a) personal delivery to his/her person; or b) mailed to his/her address by U.S. Mail, postage prepaid to the address as it appears upon the records of the Association; or c) otherwise duly served upon the Owner or his/her agent as permitted and recognized by law.

## **ARTICLE XII. INDEMNIFICATION**

**SECTION 1.** The Association shall indemnify and hold harmless each present and former member of the Board of Directors, Officers and employees of the Association for all expenses and costs, including attorney's fees, actually and necessarily incurred or paid in connection with the defense of any pending or threatened action, suit or proceeding, to which he or she is or may be made a party thereto by reason of being or having been such member of the Board of Directors, Officer or employee. Such indemnification shall not be made unless it is determined that said person to be indemnified:

A. Was not, and has not been, adjudicated to have been negligent or guilty of misconduct in the performance of his/her duty to the Association or guilty of violating any law, ordinance or statute; and,

B. Has acted in good faith in what he/she reasonably believed to be in the best interest of the Association.

Such determination of these factors shall be made by the members of the Board at a meeting at which a quorum consisting of members qualified to vote on such determination is present. Any member of the Board who is not a party to or threatened with any such action, suit or proceeding shall be qualified to vote on such determination. If a quorum of members of the Board qualified to vote on such determination cannot be obtained, or all such members are parties or so threatened, such determination shall be made by an attorney at law who has not represented the Association in any manner and who shall be selected by a majority of the officers and members of the Board who are not parties to or threatened with any such action, suit or proceeding. If there is no officer or member of the Board qualified to make such a selection, such selection shall be made by the majority of the Owners at a special meeting called for such a determination.

### ARTICLE XIII. AMENDMENTS

The Declaration may be amended by the affirmative vote of 75% of the Owners. The By-Laws may be amended by the affirmative vote of a majority of the Members. The Board may from time to time adopt, amend or repeal such administrative Rules and Regulations governing the operation and use of the Property or any part thereof as it deems necessary or advisable. Any modification or amendment of the Declaration or By-Laws shall be effective from the time the certificate setting forth such modification or amendment is recorded with the Clermont County Recorder's Office for record.

***IN WITNESS WHEREOF***, the undersigned Association has hereunto set its signature on the day and year first above written.

HEATHERSTONE HOMEOWNERS'  
ASSOCIATION, INC.,  
An Ohio Non-Profit Corporation

By: Kim Schulz  
Kim Schulz, President

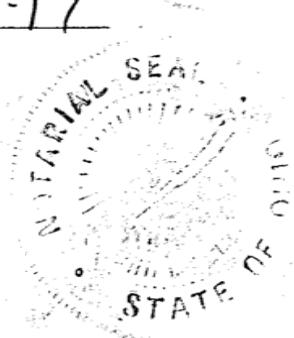
STATE OF OHIO )  
                  )  
                  :SS  
COUNTY OF CLERMONT )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of March, 2012,  
by Kim Schulz, President of Heatherstone Homeowners' Association, Inc., an Ohio non-profit  
corporation, by and on behalf of the corporation.

Tracy C. Craft  
Notary Public

My Commission expires: 1-22-17

TRACY C. CRAFT  
Notary Public, State of Ohio  
My Commission Expires 01-22-2017



This instrument was prepared by:

Amy Schott Ferguson, Esq.  
*Cuni, Ferguson, & LeVay Co., L.P.A.*  
10655 Springfield Pike  
Cincinnati, Ohio 45215-1120  
(513) 771-6768 – Telephone  
(513) 771-6781 – Facsimile

**EXHIBIT A**

Situated in Mabones Military Survey 998, and in Batavia Township, Clermont County, Ohio.

Being more particularly described as Lots 1-48, inclusive, of the Heatherstone Subdivision, Section I, Phase I, Deed out 13.857 acres more or less as recorded in Plat Book R, Pages 54 - 56 of the records of the Recorder of Clermont County, Ohio.

**BY-LAWS OF  
HEATHERSTONE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I  
GENERAL**

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

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

**SECTION 3. Definitions.** The terms used in these By-Laws shall have the same meanings as set forth in the Declaration, unless the context shall prohibit.

**ARTICLE II  
MEETINGS OF MEMBERS**

**SECTION 1. Annual Meeting.** The annual meeting of the Lot Owners of this Association, for the election of members of the Board of Directors, the consideration of reports to be laid before such meeting, and for the transaction of such other business as may properly come before such meeting, shall be held in the first calendar quarter of each year on a date and at an hour and place established by the Board of Directors with proper notice, as required herein, to all Lot Owners.

**SECTION 2. Special Meetings.** Special meetings of the Lot Owners shall be held whenever called by the President, by a majority of the Board of Directors, or at the request of those Lot Owners entitled to exercise not less than twenty-five percent (25%) of the voting power of all Lot Owners. Upon delivery of a request in writing to the President or Secretary by persons entitled to call a meeting of the Lot Owners, it shall be the duty of the President or Secretary to give proper notice to the Lot Owners in accordance with these By-Laws, but if such proper request be refused, then the person(s) making such request may call a meeting by giving such proper notice to all Lot Owners as required herein. The notice of special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at special meetings except for that which is stated in the notice.

the person(s) calling the meeting.

**SECTION 4. Notice of Meeting.** A written or printed notice of every meeting of Lot Owners, whether annual or special, shall state the time, place and the purpose or purposes for which the meeting is called, and shall be given by the President or Secretary by personal delivery, by first class U.S. mail, postage prepaid, or otherwise duly served, delivered or post marked not less than three (3) nor more than twenty (20) days prior to said meeting to each Lot Owner unless an emergency situation exists, in which case such notice shall be given to Lot Owners as soon as is possible, unless such notice is waived by the Lot Owners. If mailed, such notice shall be addressed to the Lot Owners at their respective addresses appearing upon the records of the Association. The Lot Owners shall meet for such purpose at the time and place specified.

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

**SECTION 6. Quorum.** At any meeting of Lot Owners, those Members present in person or by proxy shall constitute a quorum for such meeting. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of the Members, if any action taken is approved by at least a majority of the required quorum for that meeting. Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at such meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted.

**SECTION 7. Proxies.** A vote allocated to a Lot may be cast pursuant to a written proxy duly executed by an Owner and filed with the Secretary at the meeting. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the Owners of a Lot through a duly executed proxy. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall terminate one year after its date, unless it specifies a shorter time. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering the Lot, its presentation to the Board of a copy of the mortgage shall be notice of the proxy designation, and if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of a revocation of a proxy designation shall not affect any vote or act previously taken. Each proxy shall automatically cease upon conveyance of the Lot.

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

Unless expressly reserved and the Association is notified of such reservation, a land contract vendee as defined in Chapter 5313 of the Revised Code shall be deemed the proxy of a land contract vendor for purposes of this section.

**SECTION 9. Conduct of Meeting.** Robert's Rules of Order (in their simple form) shall be utilized and applied to the conduct and proceedings of all meetings, to the extent possible. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in the minute book all resolutions adopted, as well as a record of all transactions occurring at the meeting. The order of business of any meeting of Lot Owners shall be determined by the presiding officer unless otherwise determined by a vote of those Lot Owners entitled to exercise not less than a majority of the voting power of the Lot Owners present in person or represented by proxy at the meeting.

**SECTION 10. Action Without a Meeting.** Any action which may be authorized or taken at a meeting of Lot Owners may be authorized or taken without a meeting in a writing or writings signed by all of the Lot Owners, which writings or writing shall be filed with or entered upon the records of the Association by the Secretary of the Association.

**SECTION 11. Election of Board Members.** At all elections of members of the Board of Directors, the candidates receiving the greatest percentage of the votes cast shall be elected to the Board.

**SECTION 12. Majority.** The act of a majority of the Members present in person or by proxy at any meeting at which there is a quorum present shall be an act of the Board except as otherwise provided by law, the Declaration, or these By-Laws. As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members or other group, as the context may indicate, totaling more than fifty (50%) percent of the total number.

## **BOARD OF DIRECTORS**

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

**SECTION 2. Number and Qualification of Directors.** The Board of Directors of the Association shall consist of five (5) persons. All Directors must be Owners or occupants of Lots. The spouse of an Owner is qualified to act as a Director if both the Owner and the spouse occupy the Lot. No person and his or her spouse may serve on the Board at the same time. If an Owner is not an individual, any principal, member of a limited liability company, partner, director, officer, director or employee of the Owner may be elected to the Board.

The Board shall manage and conduct the business and affairs of this Association and exercise the powers and duties set forth in the Amended Articles and By-Laws, until their successors are elected and qualified.

**SECTION 3. Election of Directors.** Members of the Board shall be elected by the Lot Owners in person or by proxy at each annual meeting or at a special meeting called for the purpose of electing them. At a meeting of Members of the Association at which Directors are to be elected, only persons nominated as candidates shall be eligible for election as Directors, and the candidates receiving the greatest number of votes shall be elected. The Board may adopt rules regarding nominations and procedure for elections. Election to the Board shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, such voting power as they are entitled to exercise under the provisions of the Declaration.

**SECTION 4. Term of Office; Resignations.** Each Director shall hold office for a term of two (2) years and until his or her successor is elected, or until his or her earlier resignation, removal from office, or death. It is intended by these By-Laws that the terms of the Directors shall be staggered, with three (3) Directors being elected in odd numbered years and two (2) Directors being elected in even numbered years. The terms of the Directors elected by the Owners in 2011 shall be adjusted to carry out this intent.

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

If the remaining members cannot agree upon a person to fill such vacancy within ten (10) days after such vacancy is created, such remaining members shall call a special meeting

**SECTION 5. Compensation.** Members of the Board of Directors shall serve without compensation, except that they may be reimbursed for actual expenses incurred on behalf of the Association.

**SECTION 6. Removal of Directors.** At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by the affirmative vote of 36 of the 48 Owners, and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting and the purposes thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) unexcused absences from Board meetings or who is delinquent in the payment of an Assessment for more than twenty (20) days may be removed by a majority vote of the Directors at a meeting, a quorum being present.

**SECTION 7. Organizational Meetings.** The first meeting of the members of the Board of Directors following each annual meeting of the Members shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

**SECTION 8. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter.

**SECTION 9. Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Secretary of the Association, or by any three (3) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

**SECTION 10. Notice of Meetings; Waiver.** Notice of the time and place of each meeting of the Directors, whether regular or special, shall be given to each Director by one of the following methods: (a) personal delivery of notice; (b) written notice by first class mail, postage prepaid; (c) telephone communication, either directly to the Director or to a person at the Director's home or place of business who would reasonably be expected to communicate such notice promptly to the Director; or (d) electronic mail. All such notices shall be given or sent to the Director's home or email address or telephone number as shown on the records of the Association. Notice sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or email shall be given at least seventy-two (72) hours before the time set for the meeting.

Waiver of notice of meetings of the Directors shall be deemed the equivalent of proper notice. Any Director may, in writing, waive notice of any meeting of the Board, either

to or at the commencement of the meeting, of the lack of proper notice shall be deemed to be a waiver by him or her of notice of the meeting.

**SECTION 11. Quorum of the Board of Directors.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of the Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at such meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted.

**SECTION 12. Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep the minutes of the meeting and record in the minute book all resolutions adopted, as well as a record of all transactions occurring at the meeting.

**SECTION 13. Method of Meeting.** The Board may hold a meeting by any method of communication, including electronic or telephonic communication, provided that each member of the Board can hear or read in real time and participate and respond to every other member of the Board.

**SECTION 14. Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, or orders of business of similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**SECTION 15. Action Without A Meeting.** Any action which may be authorized or taken at a meeting of the Board of Directors may be authorized or taken without a meeting with the affirmative vote or approval and in writing or writings signed by all the Directors. Any such writing shall be entered into the minute book of the Association. An explanation of the action taken shall be posted at a prominent place or places within the Property within three (3) days after written consents of all the Board members have been obtained. For purposes of this Section, an electronic mail received from a Board Member shall constitute a "writing".

**SECTION 16. Managing Agent.** The Board of Directors may employ or engage the services of a manager or a managing agent and such other persons, firms or corporations as it deems necessary or advisable in order to perform the duties imposed upon it and may pay to such manager, managing agent, persons, firms or corporations such compensation as it shall determine. The Board may delegate to any such manager,

**SECTION 17. Majority.** The act of a majority of the Board members present at any meeting at which there is a quorum present shall be an act of the Board except as otherwise provided by law, the Declaration, or these By-Laws.

**SECTION 18. Owners' Participation in Meetings.** Owners may attend Board meetings but may not participate in any discussion or deliberation of the Board of Directors unless the Board expressly authorizes that Owner to attend or participate. Owners do not have the right to attend any executive session of the Board of Directors.

**SECTION 19. Duties.**

A. The Association, through its Board of Directors, shall do both of the following:

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

2. Collect Assessments for Common Expenses from Owners in accordance with the Declaration.

B. The Association, through its Board of Directors, may do any of the following:

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

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

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

4. Enforce all provisions of the Declaration, By-Laws, covenants, conditions, restrictions, and Amended Articles governing the Lots and Common Area;

5. Adopt and enforce Rules that regulate the maintenance, repair,

6. Acquire, encumber, and convey or otherwise transfer real and personal property, subject to Section 5312.10 of the Ohio Revised Code;
7. Hold in the name of the Association the real property and personal property;
8. Grant easements, leases, licenses, and concessions through or over the Common Area;
9. Levy and collect fees or other charges for the use, rental, or operation of the Common Area or for services provided to Owners;
10. Pursuant to Section 5312.11 of the Ohio Revised Code, levy the following Charges and Assessments:
  - a. Interest and charges for the late payment of Assessments;
  - b. Returned check charges;
  - c. Enforcement Assessments for violations of the Declaration, the By-Laws, and the Rules of the Association;
  - d. Charges for damage to the Common Area or other Property.
11. Adopt and amend Rules that regulate the collection of delinquent Assessments and the application of payments of delinquent Assessments;
12. Impose reasonable charges for preparing, recording, or copying the Declaration, By-Laws, amendments to the Declaration and By-Laws, resale certificates, or statements of unpaid Assessments;
13. Authorize entry to any portion of the Property by designated individuals when conditions exist that involve an imminent risk of damage or harm to Common Area, another Dwelling Unit, or to the health or safety of the occupants of that Dwelling Unit or another Dwelling Unit;
14. Subject to division (A)(1) of Section 5312.09 of the Ohio Revised Code, borrow money and assign the right to Assessments or other future income to a lender as security for a loan to the Association;
15. Suspend the voting privileges and use of recreational facilities of an Owner who is delinquent in the payment of Assessments for more than thirty days;

17. Invest excess funds in investments that meet standards for fiduciary investments under the laws of Ohio;

18. Exercise powers that are any of the following:

a. Conferred by the Declaration or By-Laws;

b. Permitted to be exercised in Ohio by a nonprofit corporation;

c. Necessary and proper for the government and operation of the Association.

## **ARTICLE IV** **OFFICERS**

**SECTION 1. Officers.** The officers of this Association, to be elected by the Board of Directors, shall be a President, a Vice President, a Secretary, a Treasurer and such other officers as the Board of Directors may elect. Officers must be Lot Owners. Officers shall hold office at the pleasure of the Board of Directors.

### **SECTION 2. Duties.**

A. President. It shall be the duty of the President to preside at all meetings of Lot Owners and the Board of Directors, to exercise general supervision over the affairs of the Association, and in general to perform all the duties usually incident to such office or which may be required by the Lot Owners or Board of Directors.

B. Vice President. It shall be the duty of the Vice President to perform all the duties of the President in the event of his/her absence or disability and such other duties as may be assigned to him/her by the Board of Directors.

C. Secretary. It shall be the duty of the Secretary to keep or cause to be kept under his/her supervision an accurate record of the acts and proceedings of the Lot Owners and the Board of Directors and maintain records of the names and addresses of the Lot Owners and to perform all the duties usually incident to such office or which may be required by the Lot Owners or Board of Directors. On the expiration of his/her term of office, the Secretary shall deliver all books, papers, and property of the Association in his/her hands to his successor or to the President within fourteen (14) days of such expiration. Minutes of all meetings are to be completed within seven (7) days of each meeting. The Secretary shall also provide, as requested, a copy of the Declaration and its

D. **Treasurer.** The Treasurer shall receive and safely keep all monies, securities, and other intangible property belonging to the Association, or evidence thereof, and disburse the same under the direction of the Board of Directors; shall keep or cause to be kept under his/her supervision correct and complete books and records of account, specifying the receipts and expenditures relating to the Common Areas and other Common receipts and Expenses, together with records showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Lot Owners; shall hold the same open for inspection and examination by the Board of Directors and Lot Owners, and present abstracts of the same at quarterly and at annual meetings of Lot Owners or at any other meeting, or agreed upon time, when no less than three (3) days notice is given; and shall give bond in such sum with such surety or sureties as the Board of Directors may require for the faithful performance of his/her duties. On the expiration of his/her term of office, the Treasurer shall deliver, within fourteen (14) days of such expiration, all monies and other property of the Association in his/her hands to his/her successor or to the President; and shall perform any other duties which may be required of him/her by the Lot Owners or Board of Directors, including but not limited to filing all necessary tax documents and returns with proper agencies or bodies.

## **ARTICLE V COMMITTEES**

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

**SECTION 2. Architectural Control Committee.** The Board of Directors may appoint an Architectural Control Committee which shall be responsible for plan approval in accordance with Article IX of the Declaration. In addition, the Committee shall develop and promulgate architectural standards and guidelines with respect to those matters that are within the Association's authority to regulate.

## **ARTICLE VI DETERMINATION AND PAYMENT OF ASSESSMENTS**

**SECTION 1. Adoption of Budget.** It shall be the duty of the Board to prepare and adopt an operating budget covering the estimated Common Expenses of the Association for the coming fiscal year. The budget shall also include a capital contribution or reserve in accordance with a capital budget separately prepared in an

budget, the Board shall cause the summary of the operating budget, the reserve budget, and the Assessments to be levied against each Lot for the following year to be delivered to each Owner on or before November 1 of each year. Along with the reserve budget, the Board shall give the Owners the right to waive the reserve funding requirement under Article V, Section 6 of the Declaration by providing a waiver to the Owners for their consideration. If 25 of 48 Owners return the waiver to the Board and elect to waive the reserve requirement, the Board shall amend the reserve budget to a lesser amount which may not be sufficient to repair and replace major capital items in the normal course of operations without the necessity of special assessments. The final budget, whether if amended or not, shall be delivered at least thirty (30) days prior to the start of the fiscal year. The budget and Assessments shall take effect on the first day of the fiscal year.

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

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

**SECTION 4. Computation of Assessments.** The Assessments for Common Expenses for each Lot shall be determined in accordance with the operating budget and the capital contribution budget as they apply to the various Lots.

**SECTION 5. Payment, Delinquency and Acceleration.** Unless otherwise determined by the Board, all Annual Assessments shall be payable monthly. Any monthly installment of an Assessment shall become delinquent if not paid on the due date as established by the Board. With respect to each installment of any type of Assessment not paid within ten (10) days after its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, together with interest. If any installment of an Annual Assessment is not paid within thirty (30) days after its due date, the Board may, at its election, declare all of the unpaid balance of the Annual Assessment for the then current fiscal year, attributable to that Lot, to be immediately due and payable without further demand and may enforce collection of the full Annual Assessment and all charges thereon in any manner authorized by law, the Declaration and these By-Laws.

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

## **ARTICLE VII** **MISCELLANEOUS**

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

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

**SECTION 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of Ohio law, the Amended Articles, the Declaration, and these By-Laws, the provisions of Ohio law, the Declaration, the Amended Articles and these By-Laws (in that order) shall prevail.

### **SECTION 4. Books and Records.**

A. The Association shall keep all of the following in the Common Area clubhouse:

1. Correct and complete books and records of account that specify the receipts and expenditures relating to the Common Area and other Common receipts and Expenses;
2. Records showing the collection of the Common Expenses from the Owners;
3. Minutes of the meetings of the Association and the Board of Directors;
4. Records of the names and addresses of the Owners.

B. Unless otherwise prohibited by this Section, any Owner may examine and copy the books, records, and minutes of the Association described in Section (A), pursuant to reasonable standards set forth in the Declaration, By-Laws, or Rules the Board promulgates. The standards may include, but are not limited to, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable

C. Unless approved by the Board of Directors, an Owner may not examine or copy any of the following from books, records, and minutes:

1. Information that pertains to Property-related personnel matters;
2. Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or other Property-related matters;
3. Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
4. Information that relates to the enforcement of the Declaration, By-Laws, or Rules of the Association against other Owners;
5. Information, the disclosure of which is prohibited by state or federal law.

### **Rules for Inspection.**

A. The Board shall establish reasonable rules with respect to:

1. notice to be given to the custodian of the records by the Members desiring to make the inspection;
2. hours and days of the week when such inspection may be made; and
3. payment of the cost of reproducing copies requested by a Member.

### **Inspection by Directors.**

A. Every Director shall have the right at any reasonable time to inspect all books, records, and documents of the Association and the Common Area owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association, but such rights must be exercised reasonably. The decision as to reasonability rests with the discretion of the Board of Directors.

writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the residence of such Owner; or

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

**SECTION 6. Amendment.** Except as otherwise provided by law or the Declaration, these By-Laws may be amended by a majority of the Owners (25 of 48 owners)

**SECTION 7. Financial Review.** A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide, provided, however, after having received the Board's report at the annual meeting, the Owners, by a vote of 75% (36 of 48 Lots), may require the accounts of the Association to be audited as a Common Expense by a public accountant.



Central Ohio: (614) 466-5910

Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us

e-mail: buserv@sos.state.oh.us

<input type="radio"/> Yes	P.O. Box 1330 Columbus, OH 43216
*** Requires an additional fee of \$100 ***	
<input checked="" type="radio"/> No	P.O. Box 1329 Columbus, OH 43216

**Certificate of Amendment by  
Shareholders or Members**  
*(Domestic)*  
Filing Fee \$50.00



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(CHECK ONLY ONE (1) BOX)

(1) Domestic for Profit	<b>PLEASE READ INSTRUCTIONS</b>		(2) Domestic Nonprofit
<input type="checkbox"/> Amended (122-AMAP)	<input type="checkbox"/> Amendment (125-AMDS)		<input checked="" type="checkbox"/> Amended (126-AMAN)
			<input type="checkbox"/> Amendment (128-AMD)

Complete the general information in this section for the box checked above.

Name of Corporation	HEATHERSTONE HOMEOWNERS' ASSOCIATION, INC.		
Charter Number	493434		
Name of Officer	KIM SCHULZ		
Title	PRESIDENT		

 Please check if additional provisions attached.

The above named Ohio corporation, does hereby certify that:

<input type="checkbox"/> A meeting of the	<input type="checkbox"/> shareholders	<input type="checkbox"/> directors ( <i>nonprofit only</i> )
<input type="checkbox"/> members was duly called and held on _____	(Date)	

at which meeting a quorum was present in person or by proxy, based upon the quorum present, an affirmative vote was cast which entitled them to exercise \_\_\_\_\_ % as the voting power of the corporation.

In a writing signed by all of the  shareholders  directors (*nonprofit amended articles only*)  
 members who would be entitled to the notice of a meeting or such other proportion not less than a majority as the articles of regulations or bylaws permit.

Clause applies if amended box is checked.

Resolved, that the following amended articles of incorporation be and the same are hereby adopted to supersede and take the place of the existing articles of incorporation and all amendments thereto.

**SECOND:** The place in the State of Ohio where its principal office is located is in the City of:

BATAVIA

(city, village or township)

CLERMONT

(county)

**THIRD:** The purposes of the corporation are as follows:

To act on behalf of the Owners to provide for maintenance, preservation, and architectural control of Heatherstone Homeowners' Association and to promote the health, safety and welfare of the residents.



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**FOURTH:** The number of shares which the corporation is authorized to have outstanding is: \_\_\_\_\_

(Does not apply to box (2))

**REQUIRED**

Must be authenticated  
(signed) by an authorized  
representative

(See Instructions)

Authorized Representative

February 27, 2012

Date

Amy S. Ferguson

(Print Name)

Authorized Representative

Date

(Print Name)

# **HEATHERSTONE HOMEOWNER'S ASSOCIATION**

In compliance with the requirements of the provisions of Chapter 1702 of the Ohio Revised Code, the undersigned hereby forms a nonprofit corporation. All capitalized terms shall have the same meanings as defined in the Declaration of Covenants and Restrictions of Heatherstone Homeowner's Association.

## **ARTICLE I**

### **PURPOSE AND POWER**

The purposes for which this Association is formed are to act on behalf of the Owners of Lots within the Heatherstone Subdivision and are as follows:

to provide for maintenance, preservation and architectural control of the Property as stated in the Declaration, and to promote the health, safety and welfare of the Owners. To promote these purposes, the Association shall have the following powers:

to adopt and amend By-Laws for the government of the Association, the conduct of its affairs, and the management of the Property;

to adopt Rules and Regulations for the use and occupation of the Common Area and the Lots and to enforce violations of the Rules and Regulations and the provisions and restrictions of the Declaration as against the Owners and occupants;

to adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Owners;

to hire and discharge managing agents and other employees, agents and independent contractors;

to institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners;

to make contracts and incur liabilities;

to regulate the use, maintenance, repair, replacement and modification of the Common Area for which the Association has maintenance responsibility and other rights as set forth herein;

to cause additional improvements to be made as part of the Common Area;

to acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property;

to grant easements, liens, licenses and concessions through or over the Common Area;

to impose and receive any payments, fees or charges for the use, rental or operation of the Common Area and for services provided to Owners;

to impose charges for late payments of Assessments and, after notice and an opportunity to be heard, levy reasonable Enforcement Assessments for violations of the Declaration, By-Laws, and Rules and Regulations of the Association;

to impose reasonable charges for the preparation and recordation of amendments to the Declaration or for statements of unpaid Assessments;

to provide for indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance;

to assign its right to future income, including the right to receive Common Expense Assessments, except that this power shall be limited to the purposes of repair of existing structures or improvements;

to exercise any other powers conferred by the Declaration, By-Laws or Articles of Incorporation;

to exercise all other powers that may be exercised in this state by nonprofit corporations;

to exercise any other powers necessary and proper for the governance and operation of the Association.

The Association shall not do any act or enter into any agreement or enter into any transaction in a manner which would violate any provision of Chapter 1702 of the Ohio Revised Code or the provisions of these Articles, the Declaration or the By-Laws.

## ARTICLE II

The following are the names and addresses of the individuals who are currently serving as Directors.

Kim Schulz, President  
407 Terra Place  
Batavia, OH 45103

Lois Philips, Vice President  
230 Apples Way  
Batavia, Ohio 45103

Carol Sexton, Treasurer  
241 Apples Way  
Batavia, Ohio 45103

Judy Hershey, Co-Secretary  
222 Apples Way  
Batavia, Ohio 45103

Joan Hobson, Co-Secretary  
307 Heather View  
Batavia, Ohio 45103

Elenora Miles, Board Member  
246 Apples Way  
Batavia, Ohio 45103

Stephen Mills, Board Member  
400 Terra Place  
Batavia, Ohio 45103



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### **ARTICLE III INDEMNIFICATION**

(1) The Association shall indemnify and hold harmless each present and former member of the Board of Directors, Officers and employees of the Association for all expenses and costs, including attorney's fees, actually and necessarily incurred or paid in connection with the defense of any pending or threatened action, suit or proceeding, to which he or she is or may be made a party thereto by reason of being or having been such member of the Board of Directors, Officer or employee. Such indemnification shall not be made unless it is determined that said person to be indemnified:

- A. Was not, and has not been, adjudicated to have been negligent or guilty of misconduct in the performance of his/her duty to the Association or guilty of violating any law, ordinance or statute; and,

- B. Has acted in good faith in what he/she reasonably believed to be in the best interest of the Association.

Such determination of these factors shall be made by the members of the Board at a meeting at which a quorum consisting of members qualified to vote on such determination is present. Any member of the Board who is not a party to or threatened with any such action, suit or proceeding shall be qualified to vote on such determination. If a quorum of members of the Board qualified to vote on such determination cannot be obtained, or all such members are parties or so threatened, such determination shall be made by an attorney at law who has not represented the Association in any manner and who shall be selected by a majority of the officers and members of the Board who are not parties to or threatened with any such action, suit or proceeding. If there is no officer or member of the Board qualified to make such a selection, such selection shall be made by the majority of the Owners at a special meeting called for such a determination.

## **ARTICLE IV**

### **DURATION**

The Association may be dissolved only with the same consents as are required to terminate the regime, as provided in the Declaration. In the event that the Association is dissolved, all of its assets shall be dedicated to a public body, or conveyed to a nonprofit organization with similar purposes.

4  
2013000008146  
Filed for Record in  
CLERMONT COUNTY, OH  
DEBORAH HALL CLEPPER  
03-18-2013 At 02:11 PM.  
DECLAR 44.00  
OR Book 2440 Page 316 - 319



BK: 2440 PG: 316

**FIRST AMENDMENT TO THE DECLARATION OF  
COVENANTS AND RESTRICTIONS OF  
HEATHERSTONE HOMEOWNERS' ASSOCIATION, INC.**

This will certify that a copy of the First Amendment to the Declaration of Covenants and Restrictions of Heatherstone Homeowners' Association, Inc. has been filed in the office of the County Auditor, Clermont County, Ohio, this 18 day of March, 2013.

**CLERMONT COUNTY AUDITOR**

By: Linda L Fratky Sm  
Printed: Linda L Fratky Sm

Prepared by:

Amy Schott Ferguson, Esq.  
*Cuni, Ferguson, & LeVay Co., L.P.A.*  
10655 Springfield Pike  
Cincinnati, Ohio 45215  
(513) 771-6768 – Telephone  
(513) 771-6781 – Facsimile



BK: 2440 PG: 317

**FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS OF  
HEATHERSTONE HOMEOWNERS' ASSOCIATION, INC.**

**WHEREAS**, the Declaration of Covenants and Restrictions of Heatherstone Homeowners' Association, Inc. ("Declaration") was recorded on March 29, 2012 at Official Record Book 2365, Page 367-418 of the Clermont County, Ohio Recorder's Office;

**WHEREAS**, the Declaration recited that Exhibit "B", the By-Laws, had been approved by the Owners;

**WHEREAS**, the By-Laws were not submitted to and approved by the Owners because of a clerical error, but the By-Laws have subsequently been submitted to and approved by the Owners by a vote;

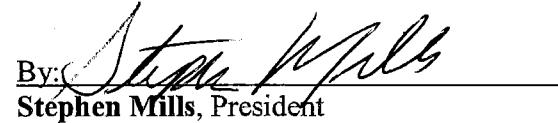
**WHEREAS**, on October 23, 2012, the Association properly called and noticed a meeting of the Owners at which at least 51% of the Owners were present as a quorum, a motion was made to ratify the recorded By-Laws, and a majority of the owners voting in person or by proxy voted in favor of ratification of the By-Laws attached as Exhibit B to the Declaration;

**WHEREAS**, this action was taken pursuant to Ohio Revised Code Section 1702.10 which provides that if the incorporator fails to adopt regulations as authorized by Section 1702.10 within ninety (90) days after the date of incorporation, regulations may be adopted at a meeting of voting members by the affirmative vote of a majority of the voting members;

**NOW, THEREFORE**, the purpose of this First Amendment is to confirm that the By-Laws attached as Exhibit B to the Declaration are in fact ratified and approved by the Owners and shall be binding upon the corporation.

**IN WITNESS WHEREOF**, the undersigned Association has hereunto set its signature on the day and year first above written.

**HEATHERSTONE HOMEOWNERS'  
ASSOCIATION, INC.,  
An Ohio Non-Profit Corporation**

By:   
**Stephen Mills, President**



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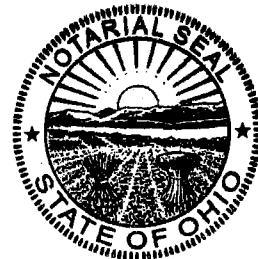
STATE OF OHIO )  
HAMILTON ) :SS  
COUNTY OF CLERMONT )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 2013,  
by Stephen Mills, President of Heatherstone Homeowners' Association, Inc., an Ohio non-profit  
corporation, by and on behalf of the corporation.

Patricia Heinekamp  
Notary Public

My Commission expires: 1-17-2016

This instrument was prepared by:  
**Amy Schott Ferguson, Esq.**  
**Cuni, Ferguson, & LeVay Co., L.P.A.**  
10655 Springfield Pike  
Cincinnati, Ohio 45215-1120  
(513) 771-6768 – Telephone  
(513) 771-6781 – Facsimile



Patricia Heinekamp  
Notary Public, State of Ohio  
My Commission Expires 01-17-2016



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**EXHIBIT A**

Situated in Mabones Military Survey 998, and in Batavia Township, Clermont County, Ohio.

Being more particularly described as Lots 1-48, inclusive, of the Heatherstone Subdivision, Section I, Phase I, Deed out 13.857 acres more or less as recorded in Plat Book R, Pages 54 - 56 of the records of the Recorder of Clermont County, Ohio.