

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

HICKORY POINTE OWNERS' ASSOCIATION

BY

ASSOCIATE CONSTRUCTION, INC.,

an Ohio corporation

31 Eagle Court

Carlisle, Ohio 45005

DEVELOPER

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DECLARATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HICKORY POINTE OWNERS' ASSOCIATION ("Declaration") is made this April 13, 2006, by ASSOCIATE CONSTRUCTION, INC., an Ohio corporation ("Developer"), whose address is 31 Eagle Court, Carlisle, Ohio 45005, under the following circumstances:

A. Developer is the owner of certain real property known as Hickory Pointe, Section One, located in the Village of Germantown, Montgomery County, Ohio, more particularly described on Exhibit A attached to this Declaration (the "Property").

B. Developer desires to declare that the Property shall be held, sold and conveyed subject to the provisions of this Declaration.

C. Developer intends to form an Ohio non-profit corporation to be known as the Hickory Pointe Owners' Association (the "Association"), which shall be responsible for the administration and enforcement of the provisions of this Declaration.

D. Developer owns or may acquire other real property in the vicinity of the Property that may be annexed to the Property and subjected to this Declaration. This other real property is more particularly described below as the "Additional Property."

NOW, THEREFORE, for the purposes of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer declares that the Property shall be held, occupied, sold and conveyed subject to this Declaration.

SECTION 1. DEFINITIONS

In addition to any definitions contained elsewhere in this Declaration, the following terms used in this Declaration shall have the meanings set forth in this Section 1.

1.1 Additional Property. "Additional Property" means the real property described on Exhibit A-1 attached to this Declaration.

1.2 Articles of Incorporation. "Articles of Incorporation" means the Articles of Incorporation of the Association filed with the Ohio Secretary of State, a copy of which is attached as Exhibit C to this Declaration.

1.3 Assessments. "Assessments" means the charges established by Section 3 of this Declaration.

1.4 Association. "Association" means Hickory Pointe Owners' Association, an Ohio non-profit corporation, which will own, operate and maintain the Common Property, and any successor organization that owns, operates and/or maintains the Common Property. Except as

the context otherwise requires, "Association" shall mean the Board acting on behalf of the Association.

1.5 Board. "Board" means the Board of Directors of the Association.

1.6 Code of Regulations. "Code of Regulations" means the Code of Regulations adopted by the Association, a copy of which is attached as Exhibit B to this Declaration.

1.7 Common Expenses. "Common Expenses" means those costs and expenses incurred by the Association as described and defined in Section 3.3 of this Declaration.

1.8 Common Property. "Common Property" means all real and personal property owned, under easement, leased or managed by the Association for the common use and enjoyment of the Owners of the Property. This real and personal property includes, but is not limited to, any of the following types of areas, facilities and amenities now or in the future located on or serving the Property:

(a) areas designated as "Open Space," "Common Area," or "Reserve Area" on the recorded plat(s) of the Property, or as easement areas in favor of the Association or the Property generally, together with all improvements and amenities associated with each such area, including, for example, landscaping, woods/natural areas, irrigation systems, detention/retention ponds or basins, identification and directional signs, and all utilities (electricity, water, sewer, etc.) necessary for the maintenance and operation of these areas, facilities, and amenities; and

(b) entrance walls, streetscape (landscaping and fencing), lighting, irrigation and associated utilities for the entrances to the Property and/or at other locations within the Property where the development, its neighborhoods or amenities are identified, within easement areas or reserve areas established for the benefit of the Association.

1.9 Default. "Default" means any violation or breach of, or any failure to comply with, this Declaration or the Code of Regulations, the Rules and Regulations or other standards or regulations adopted pursuant to this Declaration.

1.10 Developer. "Developer" means the Developer named on the first page of this Declaration, its successors and assigns. However, the rights and obligations of Developer under this Declaration shall inure to the benefit of and be binding against only those to whom such rights and obligations are expressly assigned and assumed.

1.11 Development Period. "Development Period" means the period commencing on the date this Declaration is recorded and terminating on the date which is the earlier of (a) the date 20 years after the date of recordation of the Declaration or (b) the date when Developer has sold the last Lot that may be created within both the Property and the Additional Property.

1.12 Director. "Director" means any person elected or appointed to the Board of Directors pursuant to the Code of Regulations.

1.13 Lot. "Lot" means any sub-divided parcel of the Property upon which a single-family residence has been or may be constructed. Unless the context otherwise requires, the term "Lot" shall be deemed to include both the parcel of land and the residence and other improvements on that land.

1.14 Occupant. "Occupant" means any Owner, tenant, family member or other person lawfully occupying any Lot.

1.15 Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, but shall not include the Association. This term shall include Developer with respect to Lots owned by Developer.

1.16 Property. "Property" means that real property located in the Village of Germantown, Montgomery County, Ohio, more particularly described on Exhibit A to this Declaration. When portions of the Additional Property are subjected to this Declaration pursuant to Section 12, those portions shall then be deemed part of the Property.

1.17 Structure. "Structure" means: any improvement on a Lot or on the Common Property forming a construction for occupancy or use including, but not limited to, any building, garage, porch, shed, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, fence, tennis court, wall, signboard or any other temporary or permanent improvement; and any excavation, fill, ditch, dam or other thing or device that changes the grade of any land by more than six inches or alters the natural flow of waters from, upon or across any Lot or the Common Property.

SECTION 2. MEMBERSHIP, VOTING RIGHTS, DIRECTORS, ETC.

The Association shall be governed by its Directors, who shall be appointed or elected by the members of the Association in accordance with the voting rights and the other rights and proceedings set forth in the Code of Regulations. All provisions of the Code of Regulations and the Articles of Incorporation of the Association are incorporated into this Declaration by reference and made a part hereof.

SECTION 3. ASSESSMENTS

3.1 Covenant of Payment; Creation of Lien. Each Owner of a Lot, by acceptance of a deed or other instrument of conveyance for that Lot, agrees to pay to the Association the annual assessments, special assessments and individual assessments (collectively, the "Assessments") provided in this Section 3. The Assessments (and late charges and costs of collection, as provided below) shall be a charge and lien on each Lot and shall also be the personal obligation of the Owner of each Lot, to the extent and for the period provided in this Section 3.

3.2 Annual Assessment. The Association shall be entitled to collect from all Owners an annual assessment for Common Expenses and other purposes described in Section 3.3. The annual assessment will not commence until one or more Lots have been sold to a bona fide purchaser for value. Until the first Lot is sold to a bona fide purchaser for value, the charges that would normally be paid by the Association will be paid by the Developer. Subsequently, upon the initial sale of a Lot to a bona fide purchaser for value, the annual assessment shall commence on all Lots, including those Lots owned by the Developer.

3.3 Purpose of Annual Assessment. The annual assessment are established for the benefit and use of the Association and shall be used in covering all of the costs (the "Common Expenses") of the operation, maintenance, and repair of Common Property and the performance of all other duties and obligations to be performed by the Association under this Declaration. The Common Expenses may include, but are not limited to, the costs of employees' wages, materials, equipment, supplies, utilities, insurance premiums for the insurance of the Common Property, rental fees for any Common Property leased to the Association, the cost of establishing reserves as provided in Section 3.13, taxes and assessments on the Common Property, management fees, legal and accounting fees, and all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration or the Code of Regulations. The annual assessment may also be used in covering the cost of any capital addition or capital improvement that is authorized by the Board and, if applicable, approved by the members of the Association in accordance with Section 5.3.

3.4 Operating Shortfalls. If in any year the Common Expenses exceed the income from the annual assessment, the amount of any operating deficit may, at the Board's sole option, be charged to the Owners by means of a special assessment, or charged against any reserve funds held by the Association. No consent of the members of the Association shall be required with respect to this special assessment.

3.5 Amount of Annual Assessment. The amount of the annual assessment shall be determined by the Board based on the estimated budget prepared in accordance with the Code of Regulations. The amount of the annual assessment to be charged to the Lots shall be determined by dividing the amount of Common Expenses shown on the budget by the total number of Lots subjected to this Declaration at the time of preparation of the budget, all as determined by the Board in its discretion. The annual assessment shall also be charged to Owners of Lots subjected to the Declaration after the preparation of the estimated budget.

3.6 Initial Assessment. Upon the initial conveyance of a Lot by Developer to a bona fide purchaser for value, the Developer may require the grantee to pay an initial assessment. The initial assessment shall be used as the initial working capital of the Association and not in lieu of any installments of the annual assessment. The initial assessment is nonrefundable. No initial assessment shall be due on any Lot purchased from an Owner other than the Developer. The initial assessment may be waived at the Board's sole discretion.

3.7 Individual Assessment. If any portion of the Property that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or

omission of an Owner or an Occupant claiming under that Owner, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The cost so incurred by the Board shall be assessed as an individual assessment against all Lots owned by the Owner responsible for that cost. To the extent that special services are provided to the Owner of a Lot as provided in Section 6.7, the fee or charge established by the Association in providing these special services shall also be assessed as an individual assessment to the Owner of that Lot. This Declaration may also provide for other circumstances in which individual assessments may be charged.

3.8 Payment. The annual assessment shall be payable in a single annual installment not more than 10 days after the due date established by the Board. The Board may, at its option, allow for payment of the annual assessment in monthly or quarterly installments. Any other Assessments shall be due not more than 10 days after the due date established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures as it shall deem appropriate. If an Owner is in Default in payment of any installment of the annual assessment, the Board may accelerate the remaining installments of the annual assessment for the year during which the Default occurs by giving notice to the Owner. The Board may also establish penalties for late payments of Assessments. The penalties shall not exceed 10% of the overdue amounts.

3.9 Personal Obligation. Any Assessments becoming due and payable during the period that an Owner owns a Lot, together with any related penalties and costs of collection, shall constitute the personal obligation of that Owner and shall remain the personal obligation of that Owner until paid. This personal obligation shall not pass to an Owner's successor in title unless expressly assumed by the successor in title. If the obligation is so assumed by a successor in title, the successor and the former Owner shall be jointly and severally liable for payment of the amounts assumed.

3.10 Perfection and Priority of Liens. If an Assessment on any Lot is not paid within the period established under Section 3.8, the amount unpaid together with any late penalty, costs and reasonable attorney fees, shall constitute a lien on that Lot in favor of the Association. The Association may perfect the lien by recording a notice of lien with the Recorder of Montgomery County, Ohio in any legally recordable form, including an affidavit as provided in Section 5301.252 of the Ohio Revised Code. The transfer of ownership of a Lot shall not affect the ability of the Association to perfect its lien against that Lot with respect to amounts unpaid prior to the transfer of ownership. Nonpayment of any Assessment or an installment of an Assessment shall be deemed and is declared to be a condition or event that creates an interest in real estate. Each lien shall expire 5 years after the filing of a notice of lien, unless preserved by the filing of a new notice of lien or the commencement of foreclosure proceedings. The lien shall be prior to all other liens and encumbrances whatsoever, except real estate taxes and assessments, liens of record in favor of the United States of America, the State of Ohio, or other governmental instrumentalities to the extent made superior by applicable law, and all bona fide recorded first mortgages.

3.11 Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage. In any enforcement proceeding, the amount that may be recovered by the Association shall include all costs of the proceeding, and, to the extent permitted by law, reasonable attorneys' fees. In any foreclosure sale, the Association may become the purchaser.

3.12 Purchaser at Foreclosure Sale. Any purchaser of a Lot at a foreclosure sale shall automatically become a member of the Association and shall be subject to all of the provisions of this Declaration. When the purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage, the acquirer of title shall not be solely liable for the share of the Assessments chargeable to the acquired Lot that became due prior to the acquisition of title to that Lot. Instead, any unpaid share of the Assessments that became due and payable prior to the date of acquisition shall be deemed to be part of the Assessments collectible from all of the Lots, including that of the acquirer.

3.13 Reserves. The Board may establish and maintain reserves in amounts it determines appropriate from time to time for the replacement of major amenities comprising the Common Property. The Board shall also have the right, but not the obligation, to establish reserves for contingencies and working capital in such amounts as it may determine from time to time in its discretion. The Board shall have sole discretion as to the expenditure of any reserve funds.

SECTION 4. COVENANTS AND RESTRICTIONS ON USE AND OCCUPANCY

4.1 Purposes/Use Restrictions. In order to promote the health, safety and welfare of all Owners and Occupants and to preserve, beautify and maintain the Property and all Structures as a subdivision of high quality, and to preserve and promote environmental quality, the following covenants, restrictions and limitations as to use and occupancy of the Property are declared and established.

4.1.1 Permitted Uses. Except as otherwise provided in this Declaration, no Lot shall be used for any purposes except as a residence for a single family or a family-sized group. To the extent permitted by law, an Owner may use a portion of a residence for his or her office or studio (other than a music studio) as long as those activities do not interfere with the quiet enjoyment or comfort of any other Owner or Occupant, and as long as those activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of that Owner's residence. Except as permitted by the preceding sentence, no industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property.

4.1.2 Structures. No Structure shall be maintained on any Lot except in accordance with the following provisions:

(a) only single family dwellings shall be permitted, not to exceed two (2) stories, not including basements, attic spaces, and garage spaces. No garage shall exceed the height of the accompanying house;

(b) roof pitch on all residences and garages shall not be less than 6/12;

(c) no building shall be placed nearer to the Lot lines than the setback lines shown on the recorded plat;

(d) the living area of any residence in Section 1-4 (Lots 1-81 inclusive) shall not be less than 1,500 square feet in a single story, or 2,000 square feet in two (2) story or a split-level residence, not including basement, attic areas, porches or garage;

(e) all residences shall be brick, wood, or stone. No vinyl siding is permitted;

(f) all walkways to a street or to a driveway must be at least four (4) feet in width;

(g) during the Development Period, no Structure shall be constructed on any Lot without prior approval of the plans and specifications by Developer based on the harmony of the proposed plans with the other residences and Structures in the Property.

(h) any Structure on any Lot that is partially destroyed by fire, storm or other casualty shall be repaired, reconstructed or removed within six (6) months of the occurrence of such casualty. Any Structure repaired or reconstructed after any such casualty shall be repaired or reconstructed to substantially the same design and appearance of the Structure prior to such casualty.

(i) all homes are to have uniform subdivision mailboxes. No secondary mailboxes are permitted.

Variances from the above requirements may be granted by the Board based on the Board's determination that the variance will not have an adverse impact on adjoining property values, on the overall harmony and integrity of the plan for the development contemplated by this Declaration. During the Development Period, Developer shall not be required to obtain approvals for variances for residences and other Structures constructed by the Developer.

4.1.3 Exterior Surfaces; Signs. Owners shall not cause or permit anything to be hung or displayed on the outside walls or windows of a residence or other Structure on a Lot, and no signs shall be affixed to or placed upon the exterior of a Structure, or upon any other area of a Structure that is visible from the street, or upon any other part of a Lot, without the prior consent of the Board, except for (a) one (1) real estate sign as permitted by the applicable zoning code, or (b) no more than a total of two (2) political signs endorsing either candidates for public office or issues on the ballot as permitted by the sign code of the jurisdiction in which the Property is

located. Without limiting the foregoing, signs addressing social, political, business and personal issues, except those specifically permitted by clauses (a) and (b) of the preceding sentence, are prohibited. Further, Owners shall not permit any curtains, shades or other window coverings to be hung inside or outside any windows that will show any colors other than those approved by the Board. Notwithstanding anything to the contrary herein, Developer and its agents shall have the unrestricted right to place "For Sale" or "For Rent" signs on any unsold or unoccupied Lots, the Common Property, or other Structures on the Property, and to use unsold Lots or Structures as models, for promotional purposes and/or as offices in connection with the construction, sale, management, maintenance, repair, remodeling and/or rental of Lots.

4.1.4 Parking. No inoperative or unlicensed vehicle may be parked on the Property. No vehicles may be parked on the streets located within the Property. No part of any driveway shall be used for parking any trailer, truck, boat or anything other than operative automobiles, motorcycles, bicycles, scooters or other vehicles permitted under this Section. Any trailer, truck or boat parked on the Property must be parked in the rear of a Lot, behind the residence permitted on such Lot. No more than one (1) truck, trailer or boat may be parked on a Lot. The word "trailer" shall include any trailer coach, house trailer, boat trailer, mobile home, automobile trailer, camp car, camper, recreational vehicle or any other similar vehicle. The word "truck" shall include every type of motor vehicle other than (a) passenger cars and (b) pickup trucks, sport utility vehicles and vans that are used as a primary source of transportation by an Owner or Occupant of a Lot and that are not identified and used as a commercial vehicle. Notwithstanding the foregoing, vehicles being used for the purpose of construction, delivery to or repair work upon any Lot shall be permitted to park on the Property during the time(s) that services are being provided; short-term visitor parking (less than one week) of prohibited vehicles is permitted on the driveway of a Lot, but not on the streets located within the Property; and trailers may be parked in the driveway for a period not to exceed twenty-four (24) hours for loading and unloading purposes. The Association shall have the right to tow away vehicles parked in violation of these provisions after 24 hours notice to the affected Owner or Occupant or by placing a 24-hour notice of intent to tow on the vehicle itself. The costs of towing shall be borne by the Owner, Occupant or other person responsible for the vehicle.

4.1.5 Hazardous Uses and Waste. Nothing shall be done or kept on any Lot or on the Common Property that is unusually hazardous in relation to ordinary residential uses, or that increases the rate of insurance on the buildings or their contents, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Lot or on the Common Property that will result in the cancellation of insurance on the buildings or their contents, or will be in violation of any law. No waste shall be committed on the Common Property.

4.1.6 Animals and Pets. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, is prohibited on any Lot, except that this shall not prohibit the keeping of dogs, cats, caged birds or aquarium fish or other domestic pets provided they are not kept, bred, or maintained for commercial purposes, and provided they are kept according to the Rules and Regulations of the Association and not more than three (3) dogs and/or cats are kept by any Owner. Any pet causing or creating a nuisance or

unreasonable disturbance; or that is kept in violation of this Declaration or the Rules and Regulations promulgated by the Board shall be permanently removed from the Property upon seven days written notice from the Board. No pet shall be allowed to run unattended. No device or apparatus to which a line, wire or rope is connected for the restraint of animals or pets shall be constructed or permitted upon any part of a Lot or the Common Property.

4.1.7 Nuisances. No activity that may be considered noxious or offensive by reason of odor, sound, appearance or sight shall be conducted on any Lot or any part of the Common Property, nor shall anything be done on any Lot either willfully or negligently, that may be or become an annoyance or nuisance to the other Owners or Occupants.

4.1.8 Trash. Trash, garbage or other waste shall not be kept upon any part of the Property except in sanitary containers and screened from visibility from the streets of the Property. Notwithstanding the foregoing, sanitary containers containing trash, garbage or other waste may be visible on any day such trash, garbage or other waste is scheduled to be removed from the Property.

4.1.9 Antennas and Satellite Dishes. No antenna shall be fastened to a metal or artificial flue of any kind. Owners shall be permitted to place over-the-air reception devices (such devices and their supporting apparatus being referred to herein as "satellite dishes") on their Lots upon compliance with the following criteria: (i) any satellite dish must be one meter or less in diameter; (ii) the preferred location of any satellite dish shall be in the rear yard, not visible from the street, unless the placement in the rear yard would unreasonably delay or prevent, or unreasonably increase the cost of installation, maintenance or use of such satellite dish or preclude the reception or transmission of an acceptable quality signal; (iii) installation of equipment that is merely duplicative and not necessary for the reception of video programming is prohibited; (iv) where the satellite dish is located on or immediately adjacent to the residence, the satellite dish shall be painted to blend with the color of the residence, unless painting the satellite dish would result in voiding the manufacturer's warranty, would unreasonably delay or prevent, or unreasonably increase the cost of installation, maintenance or use of such satellite dish or preclude the reception or transmission of an acceptable quality signal; (v) where the satellite dish is not attached to or immediately adjacent to the residence, the Owner shall take reasonable measures to screen or camouflage the satellite dish from view by the installation of shrubbery or other screening measures that do not unreasonably delay or prevent, or unreasonably increase the cost of installation, maintenance or use of such satellite dish or preclude reception or transmission of an acceptable quality signal; and (vi) satellite dishes shall not be placed on any Common Property.

4.1.10 Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

4.1.11 Fences. Fences complying with the requirements of this Section 4.1.11 shall be permitted. No fence or any portion thereof may be installed on that part of any Lot that is closer to the street than the primary front wall of the residence on the Lot (i.e., fencing is permitted only on the sides and in the rear of the residence.) The primary front wall shall be

determined by lineal feet of wall area at the front of the residence and porch or garage walls shall not be included in the calculation of the primary front wall if the garage extends further to the front of the residence than does the living area of the residence. Fencing shall be of wood, wrought iron or maintenance free vinyl; no aluminium or chain link type fencing will be permitted. Fences shall not exceed six (6) feet in height. All corner Lots are classified as double fronting Lots. Double fronting Lots must adhere to the 50 foot minimum building setback requirements and no fence shall be permitted to extend beyond the plane of the house. Any fence enclosing an in-ground swimming pool and located entirely within 30 feet of such pool may be of a design and construction as is from time to time required by applicable governmental authorities for enclosures of swimming pools. No fence shall obstruct the flow of stormwater. Any fencing that is not in accordance with this Section 4.1.11 shall be prohibited. Notwithstanding anything in the foregoing to the contrary, no fences shall be erected without the prior approval of the Association.

4.1.12 Swingsets and Play Equipment. All swingsets, treehouses, junglegyms and other outdoor play equipment that are affixed to a Lot shall be considered Structures requiring the Board's approval pursuant to Section 4.1.2.

4.1.13 Laundry on Parcels. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any Lot or on the Common Property.

4.1.14 Sheds. A maximum of one (1) storage shed shall be permitted on any Lot. Any such shed shall be no more than 100 square feet total and shall be constructed of materials similar to the primary Structure, painted to match the existing primary Structure and have a similar appearance and design as that of the existing primary Structure. No shed shall exceed ten (10) feet in height. Sheds not in accordance with this Section 4.1.14 shall be prohibited.

4.1.15 Rental of Lots. No Owner shall lease to another any Lot or Structure on a Lot unless the lease is in writing, is for a period of at least 30 days, is of the entire residence on the Lot and expressly provides that the terms of the lease are subject in all respects to the provisions of this Declaration and the Code of Regulations. Lots shall not be rented for transient or hotel purposes, which shall be deemed to include any rental for a period of less than 30 days.

4.1.16 Landscaping. Within three (3) months of occupancy of a Structure by an initial Owner, the Lot upon which such Structure is located shall be landscaped with at least two (2) hardwood shade trees and ten (10) other bushes or shrubs, excluding flowers.

4.1.17 Use of Common Property. The Common Property shall be used only in accordance with the purposes for which they are intended and no Owner or Occupant shall hinder or encroach upon the lawful rights of other Owners or Occupants. This restriction includes, but is not limited to, the following:

- (a) Except as provided in this Declaration, there shall be no obstruction of the Common Property, nor shall anything be stored in the Common Property, without the prior consent of the Association.

(b) In using the Common Property, no Owner or Occupant shall violate any provisions of this Declaration, the Code of Regulations, or the Rules and Regulations.

(c) Nothing shall be altered, constructed in or removed from the Common Property except as otherwise provided in this Declaration or except with the prior consent of the Association.

(d) The Common Property shall be kept free of rubbish, debris and other unsightly materials.

4.2 Failure to Comply. Failure to comply with any of the requirements of this Section 4 shall constitute a Default. A Default by any Occupant or other person residing in, occupying or visiting a Lot or Common Property at the request or with the implied or express permission of the Owner or any other Occupant of the Lot, or committed by any agent, employee, business invitee or contractor of the Owner or Occupant of a Lot, shall be attributed to that Owner and Lot. Defaults may be enforced against Owners and Occupants pursuant to the provisions of Section 11.

SECTION 5. COMMON PROPERTY

5.1 Rights of Enjoyment in Common Property. Each Owner shall have a right and nonexclusive easement for the use and enjoyment of the Common Property. This right and easement shall be appurtenant to, and shall pass with, the title to his or her Lot. Each Owner shall have a perpetual right of ingress and egress across the Common Property to that Owner's Lot, which shall be appurtenant to the ownership of the Lot. Each Occupant shall have a nontransferable right to use and enjoy the Common Property, which right shall terminate when that person ceases to have the status of an Occupant. These rights and privileges shall be subject, however, to the following:

5.1.1 The right of the Board, with the approval by (a) 75% of the votes cast by Members (as defined in the Code of Regulations) who are voting in person or by proxy at a meeting of the Association at which a quorum is present in person or by proxy, and (b) so long as it is the Owner of at least one Lot, the Developer, to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Property and for such purposes to mortgage the Common Property, provided that any mortgage shall be subject to the Unit Owners' rights of ingress and egress across the Common Property.

5.1.2 The right of the Board to adopt, enforce and amend reasonable Rules and Regulations pertaining to the use of the Common Property.

5.1.3 The right of the Board to establish and charge reasonable admission and other fees for the use of any of the Common Property that is in the nature of recreational facilities (as determined by the Board). In establishing any fee, the Board may establish

reasonable classifications of Owners, Occupants and other persons. Each fee must be uniform within each class but need not be uniform between classes.

5.1.4 The right of the Board to suspend the right of any Owner or the privilege of any Occupant to use any of the Common Property that is recreational in nature for any infraction of the Rules and Regulations relating to the Common Property, which period of suspension shall not exceed 60 days per infraction.

5.1.5 The right of the Board to suspend the right of any Owner and the privilege of any Occupant claiming through that Owner to use any of the Common Property that is recreational in nature for the nonpayment or delinquency of any Assessments.

5.1.6 All other easements, restrictions, and rights to which the Property is subject, including, but not limited to, any easements granted or reserved pursuant to Section 7.

5.2 Subordination to Mortgage or Other Lien. Except as set forth in Section 5.1.1, the rights and privileges provided in this Section shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Property.

5.3 Additional Common Property Constructed by the Association. The Association shall not construct any capital addition or capital improvement to the Common Property or any Lot if the cost to the Association of the addition or improvement exceeds \$5,000 unless the addition or improvement has been authorized by (a) 60% of the votes cast by Members who are voting in person or by proxy at a meeting of the Association at which a quorum is present in person or by proxy, and (b) so long as it is the Owner of at least one Lot, the Developer. This Section shall not limit Developer's right, at its cost, to perform the initial construction of the capital improvements constituting the Common Property and to construct and annex to the Property additional Lots and Common Property in accordance with Section 13. Capital expenditures for repairs or replacements of Common Property and/or other Structures that the Association is required to maintain shall not be subject to approval of the Owners under this Section.

5.4 Maintenance and Management of Common Property. Except as provided in Section 6, the Association shall provide for the maintenance, repair and management of all Common Property. The Association may fulfill this responsibility and any other duties and obligations of the Association under this Declaration by contracting with any professional management company (including Developer or an affiliate of Developer) upon such terms and conditions as shall be agreed upon by the Board and the manager. Any contract with Developer or an affiliate of Developer shall be terminable by the Association within one year after the expiration of the Development Period.

5.5 Payment by First Mortgagees of Obligations and Reimbursement for Same. If the Association (a) defaults with regard to payment of taxes or other obligations which become a charge against the Common Property, or (b) fails to pay premiums for insurance in accordance

with Section 9, and does not in good faith contest liability for payment of the same, any first mortgagee of a Lot may, after giving prior written notice of its intent to do so to the Association, pay those amounts. The first mortgagee shall then be entitled to immediate reimbursement from the Association of the amount so paid.

5.6 Use of Common Property by Developer. In addition to the rights described in Section 5.1, Developer and its affiliates shall have the right during the Development Period to use the Common Property, free of charge, for promotional, construction, management, maintenance, repair, remodeling, rental and sales purposes.

5.7 Conveyance of Common Property to Association. No later than the expiration of the Development Period, Developer shall transfer ownership of the Common Property to the Association by deed or other instrument of conveyance, free from liens except as permitted by this Declaration.

SECTION 6. MAINTENANCE

6.1 Adoption of Standards. The Board may adopt maintenance standards pertaining to the maintenance, repair and appearance of all Lots, and the exterior of all Structures. The maintenance standards shall be adopted in the same manner and be enforceable in the same manner as the Rules and Regulations. If any provision of any applicable building inspection, housing inspection or similar maintenance statute, ordinance, resolution, regulation or order of the State of Ohio, or any other governmental instrumentality, is more stringent with regard to a Lot than a comparable provision of the maintenance standards, the more stringent provision shall be deemed incorporated in the maintenance standards. The Association shall comply with the maintenance standards with respect to the Common Property, and the costs of the Association in meeting the maintenance standards and its responsibilities pursuant to Section 6.2 below, shall be Common Expenses of the Association.

6.2 Association Responsibilities. Except as otherwise provided below, the Association shall be responsible for (a) maintenance, repair and replacement of the Common Property; and (b) cutting, spraying, trimming and maintaining all landscaping, shrubs and trees located on the Common Property. Notwithstanding the foregoing, the Association shall not be required to mow, trim or provide similar types of maintenance of drainage and utility easement areas that are located upon the Lots; that responsibility shall be borne by the Owners of the affected Lots, as provided in Section 6.3. However, the Board's right of entry as provided in Section 6.6 shall include the right to enter upon any Lot to provide needed maintenance for any drainage or utility easement area, or any other swales or similar areas that have an impact on the neighbor drainage pattern, as conditions dictate in order to address drainage issues affecting other areas of the Property. In addition, the Association's responsibility shall include the maintenance of any pipes, culverts, headwalls and other drainage facilities within a drainage easement unless such responsibility has been assumed by a public authority having jurisdiction. Except for the maintenance of drainage or utility easement areas provided by the Association due to the failure of an Owner to fulfill its responsibilities set forth in Section 6.3, the costs incurred by the Association pursuant to this Section shall be a Common Expense.

6.3 Owner Responsibilities. Each Owner shall maintain, repair and replace, and keep in good condition and repair, at his or her expense, all portions of that Owner's Lot, including the residence and all other Structures on the Lot. The Owner's maintenance responsibilities include the exterior and structural portions of all Structures on the Lot, all internal and external installations of the Lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and also any portion of any other utility service facilities exclusively serving the Lot (whether located on the Lot or on the Common Property). The cost of mowing, trimming and providing similar maintenance of drainage and utility easement areas located upon a Lot shall be borne by the Owner of that Lot.

6.4 Repairs Due to Negligence, Etc. Each Owner agrees to repair and/or replace at his or her own expense any damage to that Owner's Lot or to any other portions of the Property caused by the negligent or wrongful acts of that Owner or any Occupant or other person claiming under that Owner. The Association may perform those repairs and/or replacements and assess the cost as an individual assessment against that Owner and the Owner's Lot.

6.5 Periodic Inspection. Periodically, as needed, the Association shall inspect each Lot to determine whether the Lot and any other Structures comply with the maintenance requirements in this Declaration.

6.6 Right of Entry. The Board, through its authorized officers, employees and agents, shall have the right to enter upon any Lot at all reasonable times and upon reasonable advance notice for the purpose of making inspections or repairs, maintenance and replacements as required by this Section 6. To the extent that an Owner fails to make a repair or replacement that is the Owner's responsibility under this Section 6, the Association shall have the right to enter upon the Owner's Lot and provide the necessary maintenance, repairs and replacements, and assess the costs so incurred as an individual assessment against that Owner and the Owner's Lot.

6.7 Optional Additional Services. The Association may, from time to time, establish special services available to Owners (at the Owner's option) for an additional charge. The costs incurred by the Association in providing these additional services will be assessed as an individual assessment against that Owner and the Owner's Lot.

SECTION 7. EASEMENTS

7.1 Platted Easements. Easements for installation, maintenance and location of utilities and drainage facilities may be reserved on the recorded plat for the Property. Owners and Occupants shall not (i) obstruct or interfere with any easements or the natural flow of surface water, which shall, at all times, be kept free from obstruction, or (ii) alter the location or grade of open storm water drainage ways. In furtherance of the foregoing, all utility easements, as dedicated on the face of the plat, shall be kept free of permanent structures, trees, shrubbery, fences, or other installations thereon, whether temporary or permanent, and the removal thereof by a utility company shall in no way obligate the utility company in damages or to restore the obstruction to its original form.

7.2 Encroachments. If, by reason of the construction, reconstruction, repair, settlement, shifting or other movement of any of the Structures or by reason of the partial or total destruction and rebuilding of the Structures, any part of the Common Property encroaches upon any part of a Lot or any part of a Structure on a Lot encroaches upon any part of the Common Property or on another Lot; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving one Lot encroach upon any part of any other Lot, valid easements for the maintenance of such encroachments are established. These easements shall exist for the benefit of the affected Lot(s) and the Common Property, as the case may be, so long as the encroachments exist. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if the encroachment occurred due to the willful conduct of that Owner.

7.3 Maintenance Easements. Each Lot shall be subject to easements for access arising from necessity of maintenance or operation of the Property pursuant to the provisions of this Declaration. The Owner of each Lot shall have the permanent right and easement to and through the Common Property for the use of water, sewer, power, television and other utilities now or in the future existing within the Common Property.

7.4 Reservation of Construction, Sewer, and Utility Easements. Developer reserves easements across the Common Property for the construction, installation, and maintenance of utilities, drainage facilities, and storm and sanitary sewers, and to cut and grade slopes in and along parcel boundaries at streets built within the Property.

7.5 Easements for Certain Utilities. The Association may grant easements through the Common Property for utility purposes for the benefit of the Property or other land in the vicinity owned by Developer, including, but not limited to, the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Property; and each Owner grants the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of the Owner, such instruments as may be necessary to effectuate the foregoing.

7.6 Easements Reserved by Developer. Developer reserves the right and easement for itself, its successors and assigns, to enter upon the Common Property in order to install, maintain, repair, replace and use pipes, wires, antennas, cables, towers, conduits and other lines and facilities for the purpose of providing water, sanitary sewer, storm sewer, electrical, gas, telephone, television and other utility or quasi-utility services to part or all of the Additional Property; to enter upon the Common Property to the extent necessary in order to construct residential units and/or other improvements on the Additional Property; and to use all streets and drives within the Common Property for purposes of ingress and egress to the Additional Property. Developer shall have the right to grant to any party having any interest in the Additional Property the right to use, maintain, repair and replace any of the items listed above which now or in the future serve the Additional Property or are located on the Common Property, without the consent of any party having any interest in the Common Property, whether

or not the benefited portions of the Additional Property are ever annexed to this Declaration. However, any utilization of the foregoing rights and easements shall not unreasonably interfere with the use and enjoyment of the Common Property; and, if any damage, destruction or disturbance occurs to the Common Property as a result of this utilization, the Common Property shall be restored promptly to the condition that existed immediately prior to the utilization at the sole expense of the person or persons making the utilization. In the event that pursuant to the easements created under this Section any portion of the Additional Property is served by roads, utility facilities or the like located on the Common Property, the costs of using, maintaining, repairing and replacing those facilities shall be equitably apportioned between the Owners of parcels of the Property and the owners of the benefited portions of the Additional Property. The annexation of the Additional Property to the Property shall be deemed to satisfy this latter requirement.

7.7 Easements to Run With Land. All easements and rights described in this Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, the Association, and any Owner, purchaser, Occupant, mortgagee and other person now in the future having an interest in any part of the Property or, to the extent applicable, the Additional Property.

SECTION 8. DAMAGE OR DESTRUCTION AND INSURANCE

8.1 Liability Insurance. The Association may insure itself, the Owners and their Occupants, and/or persons lawfully in possession of or in control of any part of the Property, against liability for bodily injury, disease, illness, or death and for injury to or destruction of property occurring in connection with the operation, maintenance, or use of the Common Property in such amount and upon such terms and conditions as the Board may determine. The policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Lots. The policy shall provide for at least 10 days written notice to the Association before the insurer may cancel or substantially modify the policy. The Association may also be required to maintain liability insurance (or include under its general policy) for boulevard/island areas maintained by the Association by agreement with the applicable authority, for the benefit of the public and the public authority.

8.2 Other Association Insurance. The Board may purchase and maintain liability insurance, directors' and officers' insurance, fidelity bonds for Directors, officers, employees and managers, and such other insurance as the Board may determine.

8.3 Insurance Premiums. Insurance premiums for the policies of the Association referred to above and for such other policies as the Association shall determine to be desirable shall be Common Expenses paid from the annual assessment established in Section 3.

SECTION 9. CONDEMNATION

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the

Common Property. Each Owner, by acceptance of delivery of a deed for a Lot, appoints the Association as his or her attorney in fact for this purpose.

If part or all of the Common Property is taken or acquired by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of Owners and their mortgagees as their interests may appear.

SECTION 10. ENFORCEMENT

10.1 Curing Defaults; Lien. If any Default occurs with respect to any Lot under the provisions of this Declaration, the Board shall give written notice to the Owner, with a copy of the notice to any Occupant in Default and a copy to any first mortgagee of the Lot who has requested copies of default notices, setting forth in reasonable detail the nature of the Default and the specific action(s) required to remedy the Default, except that no notice of Default shall be required before the Board takes any of the actions set forth in Section 3 for nonpayment of Assessments. If the Owner or Occupant shall fail to take the specific action(s) within 30 days after the mailing of the notice, the Board may, but shall not be required to, exercise any or all of its rights in this Declaration or otherwise available at law or in equity. The Board may exercise without notice any of its rights with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot, together with court costs, reasonable attorneys' fees and other costs of enforcement, shall be a binding personal obligation of the Owner and shall be payable on demand. If the Owner fails to pay costs within 30 days after demand, the Association may file a notice of lien in the same manner and which shall have the same priority as the liens for Assessments provided in Section 3.

10.2 Remedies. Nothing contained in this Section shall be deemed to affect or limit the rights of Developer, the Association, any Owner or Occupant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the provisions of this Declaration or recover damages for any Default. It is declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration as well as any other relief available at law or in equity.

10.3 No Waiver. The failure of Developer, the Association, any Owner or Occupant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such right or privilege, including the right to cure any Default, but the same shall continue and remain in full force and effect as if no forbearance had occurred.

10.4 Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations (the "Rules and Regulations") regarding the administration, interpretation, and enforcement of this Declaration and the Code of Regulations.

Each Rule and Regulation shall be consistent with and designed to further the purposes outlined in this Declaration. The Rules and Regulations may include, if the Board so elects, establishment of monetary fines for violations of this Declaration, the Code of Regulations or the Rules and Regulations, in such amounts as the Board may deem appropriate.

SECTION 11. DURATION, AMENDMENT AND TERMINATION

11.1 Duration. This Declaration shall be deemed to create covenants running with the land and shall bind the Property and shall inure to the benefit of and be binding upon Developer, the Board, the Association, and each Owner, Occupant and their legal representatives, heirs, successors and assigns, and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded. Thereafter this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Section.

11.2 Amendment or Termination. Except as provided in this Declaration, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by (i) the Member representing at least 75% of the total votes of the Association and (ii) so long as it is the Owner of at least one Lot, the Developer.

The President of the Board shall determine whether the persons who have approved of any amendments or the termination of this Declaration constitute the Owners of the required percentage of Members. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded (a) the written instrument of amendment or termination executed in properly recordable form by the President of the Association (and the Developer, if the Developer owns at least one Lot), and (b) the certificate of the President of the Association that the Members representing at least 75% of the total votes of the Association have approved such instrument.

Notwithstanding the above, this Declaration may be amended at any time during the Development Period, without the vote of Owners, by a written instrument executed by the Developer for any of the following purposes: eliminating or correcting any typographical or other inadvertent errors; eliminating or resolving any ambiguity; making minor or non-substantial changes; clarifying or modifying the use restrictions in Section 4.1; clarifying Developer's original intent; and/or making any changes necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Mortgage Corporation, or any other agency that may insure or purchase loans on a Lot. No amendment for these purposes shall materially adversely affect any Owner's interest in his or her Lot, the Association or the Common Property without that Owner's written consent. Each Owner and his or her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering a Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Developer as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Developer, shall execute and deliver from time to time all

such instruments and perform all such acts as may be deemed by the Developer to be necessary or proper to effectuate the provisions of this paragraph.

SECTION 12. COVENANT FOR STAGED DEVELOPMENT

12.1 Right of Staged Development. During the period that commences on the date of recordation of this Declaration and ends on the twentieth (20th) anniversary of that date, the Developer may submit, make subject to or annex to this Declaration, in one or any number of additional phases, part or all of the Additional Property.

12.2 Supplemental Declaration for Staged Development. The Additional Property may be subjected, annexed, or submitted to this Declaration during the period stated above by filing of record a supplemental declaration executed by Developer with the same formalities as this Declaration which shall incorporate and extend this Declaration to the affected portion(s) of the Additional Property. After the expiration of the 20-year period provided in Section 12.1, the Additional Property may be subjected, annexed or submitted to this Declaration only by filing of record an amendment to this Declaration executed by the Developer and the President of the Board certifying that the required percentage of Owners has approved the amendment. Upon annexation of all or part of the Additional Property, the portion of the Additional Property so annexed shall be deemed part of the "Property" for purposes of this Declaration and the Code of Regulations.

SECTION 13. MISCELLANEOUS

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

13.2 Notices. Any notice required or permitted to be given to an Owner or Occupant by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to that person's last address as it appears on the records of the Association.

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

13.4 Headings. The headings of the Sections and subsections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

13.5 Gender. Throughout this Declaration, where the context so requires, the masculine gender shall be deemed to include the feminine and neuter, and the singular shall include the plural, and vice versa.

13.6 Availability of Documents. The Association shall make available to Owners, lenders, and to holders, insurers, or guarantors of any first mortgage on a Lot, current copies of the Declaration, the Code of Regulations and other Rules and Regulations concerning the Property. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

IN WITNESS WHEREOF this Declaration of Covenants, Conditions and Restrictions for Hickory Pointe Owners' Association is executed as of the day and year first above written.

ASSOCIATE CONSTRUCTION, INC.,
an Ohio corporation

By: 

Name: Ryan Morris

Title: Vice-President

Exhibit A	--	Property
Exhibit A-1	--	Additional Property
Exhibit B	--	Code of Regulations
Exhibit C	--	Articles of Incorporation

STATE OF OHIO)
) SS:
COUNTY OF Warren)

The foregoing instrument was acknowledged before me this 13 day of
April, 2006, by Ryan Morris, Vice-President of
Associate Construction, Inc., an Ohio corporation, on behalf of the corporation.

Tracie L. Rush
Notary Public

This Instrument Prepared By:

Robert M. Curry, Esq.
THOMPSON HINE LLP
2000 Courthouse Plaza, N.E.
Dayton, Ohio 45402
(937) 443-6511

TRACIE L. RUSH, NOTARY PUBLIC
IN AND FOR THE STATE OF OHIO
MY COMMISSION EXPIRES: AUGUST 18, 2008

EXHIBIT A

[Property]

EXHIBIT A-1

[Additional Property]