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WATERFORD

HOMEOWNER'S ASSOCIATION

DECLARATION OF COVENANTS, CONDITIONS,

RESTRICTIONS, EASEMENTS AND LIENS

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WATERFORD

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND LIENS

THIS DECLARATION, made this 17th day of April, 1986 by The Zaring Company, an Ohio Corporation, hereinafter called "Declarant", WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" hereof and desires to create thereon a residential community with permanent common areas for the benefit of said community; and

WHEREAS, the Declarant desire to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas; and to this end, desires to subject the real property described in Exhibit "A" hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas, and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed Waterford Homeowners' Association, as a non-profit Ohio Corporation for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A", and such other property as may be subjected to the provisions hereof pursuant to Article II, shall be held, sold and conveyed subject to the easements, restrictions, covenants, conditions and liens set forth in this Declaration and any subdivision plat which includes the property, which are for the purpose of protecting the value and desirability of, and which shall run with, the property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1.1. Definitions. The following terms when used in this Declaration have the following meanings:

- A. "Articles" and "Articles of Incorporation" shall mean those articles, filed with the Secretary of State of Ohio, incorporating the Waterford Homeowners' Association, as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "D" is attached hereto and made a part hereof.
- B. "Association" shall mean and refer to Waterford Homeowners' Association, Inc. and its successors and assigns.
- C. "Board" and "Board of Trustees" mean the Board of Trustees of the Association as provided in the Articles of Incorporation and By-Laws of the Association.
- D. "By-Laws" means the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time, pursuant to Section 1702 of the Revised Code of Ohio. A true copy of the By-Laws as shown in Exhibit "C" is attached hereto and made a part hereof.
- E. "Common Areas" shall mean and refer to all real property, including structures thereon, owned by the Association for the benefit, use and enjoyment of its Members.
- F. "Declarant" shall mean and refer to The Zaring Company, its successors and assigns.
- G. "Developer" shall mean and refer to The Zaring Company and such other persons and entities as may acquire one or more lots from the Declarant for the purpose of constructing improvements thereon for resale, but only to the extent of such lots acquired.
- H. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property or recorded re-subdivision thereof with the exception of land designated by Declarant to be conveyed to the Association as Common Areas.
- I. "Living Unit" shall mean and refer to any building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.
- J. "Member" shall mean any one of those Owners who are members of the Association as provided in its Articles of Incorporation.
- K. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

L. "Property" shall mean and refer to the property described in Exhibit A and such additions thereto as may hereafter be annexed pursuant to Article II.

M. "Section" shall mean and refer to all of the land area encompassing a group of lots as designated on a recorded subdivision plat.

ARTICLE II  
ANNEXATION

Section 2.1. Annexation of Additional Property. The Declarant may annex to this Declaration the real property, or any part thereof, described in Exhibit "B" attached hereto, without the assent of the members of the Association, within seven (7) years after the date this Declaration is filed for record. However, the Declarant is not bound to annex any of said property to this Declaration, and until such time as any of said property is annexed, the same shall not be subject to the provisions of this Declaration.

All improvements on said annexed property shall be compatible with the improvements on the property submitted with this Declaration in terms of quality of construction.

Section 2.2. Procedure. Any annexations made pursuant to this Article II, or otherwise, shall be made by recording a supplement to this Declaration with the Recorder of Hamilton County, Ohio, which Supplementary Declaration shall extend this Declaration to such annexed property. Such Supplementary Declaration may contain such additional covenants, conditions, restrictions, easements and liens as the Declarant shall deem appropriate for the purpose of completing the development of the Property.

ARTICLE III  
PROPERTY RIGHTS

Section 3.1. Owner's Right of Enjoyment. Every Owner and, in the case of rented Living Units, such Owner's tenants, shall have a right to and easement for the enjoyment of, in, and to the Common Areas, and such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

A. The right of the Association, in accordance with its Articles of Incorporation and Regulations, to borrow money for the purpose of improving the Common Areas, and in aid thereof to mortgage said property. The Association shall not mortgage the Common Areas except by resolution approved by two-thirds (66-2/3%) of the total number of votes held by the Owners of each class;

B. The right of the Association to levy annual and special assessments and to charge reasonable admission and other fees for the use of any recreational facility which may be situated upon the Common Areas;

C. The right of the Association to permit the use of the Common Areas and recreational facilities which may be situated thereon by non-members of the Association for such fees as may be established by the Association's Board of Trustees.

D. The right of the Association to suspend the voting rights and the rights to use of the Common Areas and recreational facilities which may be situated thereon for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of published rules and regulations. Assessments shall continue during any suspension period;

E. The right of the Association to limit the number of guests of Owners;

F. The right of the Association to grant easements over or to dedicate or transfer all or any part of the Common Areas to any public agency, authority, utility, or other persons or entities for such purposes and subject to such conditions as may be determined by the Board of Trustees. No dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such a dedication or transfer has been recorded upon the public records of Hamilton County, Ohio;

G. The rights of the Association and Owners of Lots to a perpetual easement over any Common Areas and upon other Lots for gas, electric, telephones, 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;

H. The right of the Declarant or any Developer to make any improvements it deems proper upon the Common Areas, even after their conveyance to the Association, so long as any Lots contiguous to such Common Areas remain unsold, which rights are hereby reserved;

I. The right of the Association, acting by and through the Board of Trustees, to prescribe and enforce reasonable rules and regulations governing the use of the Common Areas, as provided in Section 9.3 K of Article IX of this Declaration.

Section 3.2. Title to Common Areas. Title to the Common Areas shall be conveyed to the Association free and clear of all liens and encumbrances; provided, however, that the Declarant shall have the right from time to time to reserve for the purpose of development of the property described in Exhibits A and/or B all or any portion of the Property for various easements and rights-of-way, together with the right to dedicate same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the property described in Exhibits A and/or B. The Declarant's rights hereunder shall not unreasonably interfere with the Owners' easement of enjoyment as set forth in Section 3.1.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the applicable Regulations of the Association, his right of enjoyment in the Common Areas to the members of his family resident in the Living Unit, guests, his tenants, or contract purchasers who reside in the Living Unit.

ARTICLE IV  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 4.1. Members. Every Lot Owner shall be a member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of any Lot. The Declarant shall be a member of the Association so long as it qualifies as a Class A or Class B member as defined below.

Section 4.2. Classes and Voting Rights. The Association shall have two (2) classes of voting membership:

- A. Class A - Except as provided below, Class A members shall be all Lot Owners except the Declarant, and Class A members shall be entitled to one (1) vote for each such Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the Owners determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- B. Class B - Class B members shall be the Declarant (as defined in the Declaration), and such member shall be entitled to such number of votes as will constitute seventy-five percent (75%) of the total voting power of the Association, so long as the Class B membership continues to exist. The Class B membership shall cease to the extent permitted by Ohio Law and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:
  - (a) Four (4) months after seventy-five percent (75%) of the Lots included herein have been conveyed to individual lot Owners;
  - (b) Five (5) years after the date this Declaration is filed for record.

Provided, however, that if additional land is annexed to this Declaration so as to create an additional number of Lots of such an amount that the proportion of Lots sold is decreased below seventy-five per cent (75%), the Class B membership shall be re-created automatically in the same manner and in the same condition as that in which it had existed originally, without regard to the fact that an earlier date the Class B membership may have been terminated by sale of seventy-five per cent (75%) of the previous number of Lots.

Provided, further, that nothing herein shall be construed to prohibit the Class B member from converting all its Class B membership to Class A membership with the results set forth above at any time earlier by written statement executed by the Declarant and delivered to the Association.



ARTICLE V  
ASSESSMENTS

Section 5.1. Covenant for Assessments. The Parties hereto, and each person, group of persons or entity which becomes an Owner of a Lot, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay the Association: (1) annual assessments; (2) special assessments for capital improvements or other services provided by the Association; (3) individual assessments; and such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on and shall be a continuing lien upon the Lot and improvements against which such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, including, without limitation, attorneys' fees, shall also be the personal obligation of the person, group of persons or entity who was the Owner of such property and Lot at the time when the assessment fell due.

Section 5.2. Purpose of Assessments. The assessment levied by the Association shall be used to maintain, promote, protect and enhance the value of all Lots and Common Areas.

Section 5.3. Annual General Assessments. An annual general assessment shall be levied on the Lots and Owners in each particular section in such amount as determined for each Owner of a Lot within a Section (as herebefore defined), by the Association to provide and be used for the purpose of: (a) providing grass cutting and maintenance of all trees and shrubbery located on the Common Areas and other areas upon which the Association holds a maintenance easement; (b) providing fire and extended coverage insurance, and vandalism and malicious mischief coverage, on a blanket basis (or such other varieties of insurance as may be agreed to by the Association), all of such insurance policies shall be payable to the Association as Trustee for the Lot Owners, the Association, and their mortgagees, as their interests may appear, the proceeds of which shall be used to restore or replace any building or any improvements on any Common Area or other area upon which the Association has a maintenance easement, damaged or destroyed by any peril covered by said insurance; (c) repair, maintenance, lighting and snow removal of private roads, driveways and parking areas on the Common Area; (d) real estate taxes and assessments on Common Areas; (e) management, supervision, legal and accounting expenses; (f) providing reasonable reserves for contingencies, replacements, maintenance, repairs, other costs incurred by the Association, and working capital of at least two (2) months' estimated charges for each lot; and (g) other maintenance and repair of Common Areas as further detailed in Section 6.1 and Section 6.2 of this Declaration.

Section 5.4. Special Assessments. In addition to the annual and individual assessments authorized by this Article, the Association may levy special assessments, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement, of a capital improvement located upon the Common Areas, provided (except in the case of insufficient insurance as set forth in Article VII, Section 7.6) such special assessments shall have the assent of 66-2/3% of the total number of votes held by the Members of each class. A meeting of the Members shall be duly called for this purpose, written notices of which shall be sent to all Members at least fifteen (15) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Section 5.5. Individual Assessments. In the event that any damage is caused to any of the Common Areas through the willful or negligent act of the Lot Owner, his family, tenants, guests or invitees, the Board shall have the obligation to correct or repair any such damage, and the costs thereof shall be added to and become a part of the assessment against the individual Lot owned by the Lot Owner, or his family, tenants, guests or invitees causing such damages.

Section 5.6. Basis and Apportionment of Assessments. Both annual and general assessments and special assessments, as provided for in Sections 5.3 and 5.4 shall be apportioned equally upon all of the Lots.

Section 5.7. Commencement of Assessments. The annual assessment for each Lot shall commence on the first day of the month following the conveyance of the first Lot in a phase from a Developer or Declarant to an individual Lot Owner. An assessment equal to fifty percent (50%) of the allocated assessment shall be allocated to unsold Lots owned by the Declarant or a Developer, if they are not occupied, for a period not to exceed sixty (60) days after the date of conveyance of the first Lot in a Section to a Lot Owner other than the Declarant or a Developer. All assessments shall be payable in advance in equal installments as determined by the Board of Trustees. Failure to mail notices by the dates required shall not affect the rights of the Association to assess Lots as provided herein.

It shall be the duty of the Board of Trustees of the Association to fix the amount of the general assessments applicable to each Lot annually. The Board of Trustees shall make reasonable efforts to fix such amounts, in advance, by the first day of December of each year, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Lot Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owners of any Lot subject thereto. Annual assessments shall become a lien on each Lot on January 1 of each year.

Individual and special assessments shall be fixed by the Board of Trustees as provided in this Article, which assessments shall become a lien on the Lots on the date that the Board mails written notice of any such assessment to the Owners of any Lot subject thereto.

Any increase in the annual assessments which exceeds the annual general assessment for the prior year by a percentage to excess of two percent (2%) above the increase of the average reading of the Consumer Price Index of all items as published by the Bureau of Labor Statistics, Department of Labor for the Cincinnati area, for the most recent available twelve month period, shall not take effect until such increase has been approved by a majority vote of the Members voting in person or by proxy, at a special meeting duly called for this purpose. Written notice of any meeting called for this purpose shall be sent to all Members not less than fourteen (14) days nor more than thirty (30) days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast one-half (1/2) of all the votes of each class of membership shall constitute a quorum.

Section 5.8. Assessments Certificates. The Association shall, upon demand, at any reasonable time, furnish to any Lot Owner liable for assessments or to his designee a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessments, i.e., whether the same are paid or unpaid and the amount

outstanding. Such certificate shall be conclusive evidence of the payments of any assessments therein stated to have been paid. A charge not to exceed Fifteen Dollars (\$15.00) may be levied in advance by the Association for each Certificate so delivered.

Section 5.9. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a continuing lien which shall bind such Lot in the hand of the then Owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the Lot, in either of which events, interest, costs and reasonable attorneys' fees shall be added to the amount of each assessment. No owner may waive or otherwise escape liability for the assessment herein provided for by non-use of any Common Areas or abandonment of his Lot. To the extent any assessment lien is not paid out of the proceeds of a foreclosure sale, and is discharged, the amount thus unpaid shall be deemed to be common expenses and shall be levied against all of the Lots subject to such original type of assessment, at the time of the first assessment of the same type or types next following such next Annual General assessment, and such additional levy shall not be limited by the maximum increase limitation provided for in Section 5.7, nor shall it count as part of the increase allowable thereby.

Section 5.10. Subordination of Lien to First Mortgage. Any lien for delinquent assessments, as provided in Section 5.9, shall be subordinate to a first mortgage on the Lot, if said first mortgage was recorded before the delinquent assessment came due.

When the mortgagee of a first mortgage of record, or other purchaser of a Lot as a result of judicial execution, acquires title to the Lot as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure of the first mortgage, such acquirer of title, his or its heirs, successors and assigns, shall not be solely liable for the share of the assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer and any lien against such Lot shall be cancelled and voided, and shall become unenforceable. Such unpaid share of assessment shall be deemed to be common expenses collectible from all of the Lots, including that of such acquirer, his or its heirs, successors and assigns.

ARTICLE VI  
MAINTENANCE

Section 6.1. Maintenance of Common Lots. The Association shall be responsible for the care and maintenance of the Common Areas, including both interiors and exteriors of and structures erected thereon; and shall also be responsible for the care of the property, including easements, rights-of-way, private and public roadways, water main and services to the point of connection to the public water main beyond the water meter, and sanitary sewer and laterals to the point of connection to the public sewer unless dedicated to an appropriate governmental or quasi-governmental entity, or utility company where such entity or company has agreed to care for and maintain said property.

Section 6.2. Reserves. The Association shall establish and maintain a reserve account containing such amounts as the Board of Trustees shall annually determine to be necessary to adequately meet the cost of all anticipated repairs, replacements and maintenance activities required of it under this Declaration. Such account shall be funded from the annual general assessments provided for in Article V, Section 5.3.

Section 6.3. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee, on ninety (90) days or less written notice.

ARTICLE VII  
INSURANCE

Section 7.1. Fire, Extended Coverage and Standard "All Risks" Insurance. The Association shall maintain insurance for all buildings, structures and improvements hereinafter constructed on the Common Areas against any loss or damage by fire, lightning and such other hazards as are ordinarily insured by a comprehensive fire, extended coverage and "all-risks" policies issued in the amounts at all times sufficient to prevent the Lot Owners from becoming coinsurers under the terms of any applicable coinsurance clause or provision and in no event less than the actual replacement cost of such buildings and structures, as determined from time to time by the insurer.

The insurance required hereby shall be obtained from a fire and casualty insurance company authorized to write such insurance in the State of Ohio which has a general policy holder rating of no less than A, as determined by the then latest edition of the Best's Insurance Reports or its successor guide, and shall be written in the name of the Association for the use and benefit of the Lot Owners and their mortgagees as their interests may appear. The Board and/or its authorized representatives shall have the exclusive right to negotiate and adjust all losses to the Common Areas. Unless the Board determines otherwise, all such insurance shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers or Trustees, and all Lot Owners and occupants.

Section 7.2. User of Fire Insurance Proceeds. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant or Developer) of the individual lots have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of such Common Areas.

Section 7.3. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all Common Areas, insuring the Association, the Trustees, and the Lot Owners and members of their respective families, tenants and occupants, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injury and/or property. This insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim for a Lot Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Lot Owners, tenants, or occupants.

Section 7.4. Other Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may deem desirable from time to time.

Section 7.5. Insufficient Insurance. In the event the improvements forming a part of 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 assessments shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the non-payment 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 7.6. Fidelity Bonds. The Board shall obtain fidelity bond coverage with respect to any person who either handles or is responsible for funds held or administered by the Association, in an amount no less than the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. Provided, however, the fidelity bond coverage must at least equal the sum of three months' assessments on all living units in the project, plus the Association's reserve funds. A management agent handling funds for the Association shall also be covered by its own fidelity bond, naming the Association as an additional obligee, at the sole cost of said agent.

ARTICLE VIII  
ARCHITECTURAL CONTROL

Section 8.1. Architectural Control Committee. Except for construction or improvements during the development period, which shall be under the exclusive control of the Declarant, its successors and assigns, no building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition or change (including any change in color) or alteration thereof be made until the plans and specifications showing the nature, kind, shape, heights, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Trustees of the Association, and the Waterford Design Review Committee, composed of not less than three (3) nor more than five (5) members appointed by the Board of Trustees. In the event the Board of Trustees or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article VIII will be deemed to have been fully complied with. Such submission to the Board shall be in person, or by registered or certified mail, with return receipt, directed to the Association manager, or if there is no manager, to its President.

Section 8.2. Enforcement. In the event of violation of any of the provisions of this Article VIII, the Association shall have the right to enforce this Article by legal action as provided in Section 9.4 of Article IX of this Declaration.

ARTICLE IX  
USE RESTRICTIONS

Section 9.1. The covenants and restrictions set forth in this Article are for the benefit of the Declarant and all Lot Owners, and any portion of the land described in Exhibit "B" at such time as said property is annexed to this Declaration, and are to run with the land and shall be binding on all parties and all persons claiming ownership under them. These covenants and restrictions are not applicable to any real property other than the property submitted to this Declaration.

Section 9.2. Residential. All of the Lots shall be used for private residential purposes exclusively, and for no other purposes. No profession or customary home industry shall be conducted in or on any part of any Lot or in any Living Unit or improvement thereon without the specific written approval of the Board of Trustees. The use restrictions shall not apply to the Declaration or any Developer relative to models and sales offices.

Section 9.3. Prohibited Uses. Except for the activities of the Declarant and Developers during the original construction or development:

A. No noxious or offensive trade shall be carried on upon the property or within any dwelling situated upon the Property, nor shall anything be done therein or thereon which may be or may become an annoyance or nuisance to the neighborhood or the Owners of the Property.

B. The maintenance, keeping, boarding 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 situate upon the Property, except that this shall not prohibit the keeping of dogs, cats and caged birds as 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.

C. No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the Property.

D. Except as hereinafter provided, no commercial vehicle, trailer, truck, motorcycle, camper, camp truck, house trailer, boat or the like shall be kept or used upon the Property other than being totally enclosed within a Living Unit or garage, so as not be visible from the exterior thereof. No junk vehicle, inoperative or unlicensed motor vehicle, structure of a temporary character, mobile home, tent, shack, barn, or other outbuilding, shall be kept or used upon the Property, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

E. Trash and garbage containers shall not be permitted to remain in the public view except on days of trash collection.

F. No sound hardwood trees shall be removed from the Property without written approval of the Association acting through its Board of Trustees or duly appointed committee.



G. No signs of any character shall be erected, posted, or displayed upon any Lot, excepting street and identification signs installed by the Association or the Developer and excepting one (1) temporary real estate sign not to exceed six (6) square feet in area erected upon any Lot advertising same upon the market for sale or rent.

H. No structure, planting or other material other than driveway or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

I. No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be maintained on any Lot.

J. No vegetable garden shall be larger than 12' x 15' and must be maintained so as not to be unsightly. No homeowner shall be allowed to store more than two cords of firewood on any Lot. Said wood must be neatly stacked and free of unsightly debris.

K. No oil drilling, quarrying, or mining operation shall be permitted on any Lot.

L. No above-ground swimming pool shall be permitted on any Lot. In-ground pools shall be permitted provided they have first been approved by the Design Review Committee and the Board of Trustees.

M. No tennis court shall be permitted on any Lot.

N. Swingsets, jungle-gyms, playhouses and similar yard equipment may not be placed, installed or maintained on any Lot without prior approval of the Design Review Committee and the Board of Trustees.

O. Mailboxes shall be black galvanized steel rural mailboxes, medium model 1-1½, mounted on a 4 x 4 rough sawn post, or such other uniform design approved by the Design Review Committee and the Board of Trustees.

P. No fence may be installed on any Lot other than a split rail fence, which must first be approved by the Design Review Committee and the Board of Trustees.

Q. 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 to Trustees and promulgated among the membership by them in writing, and the Board of Trustees is hereby and elsewhere in this Declaration authorized to adopt such rules.

Section 9.4. Right of Association to Remove or Correct Violations. The Association may, in the interest of the general welfare of all the Owners, and after reasonable notice to the Owner, enter upon any Lot or the exterior of any dwelling at reasonable hours on any day for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in Article IX, or violation of the rules

and regulations of the Design Review Committee, as provided in Article VIII, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such actions shall be taken without a resolution of the Board of Trustees of the Association. Before any items of construction may be altered or demolished pursuant to this section, judicial proceedings must be had against the Owner.

ARTICLE X  
MISCELLANEOUS

Section 10.1. Duration. Except where permanent or perpetual easements or other permanent rights or interests are herein created the terms and provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument signed by the then Owners of two-thirds (2/3) of the Lots have been recorded, agreeing to terminate the Declaration.

Section 10.2. Amendment. The Declaration may be amended, from time to time, as follows:

A. By Declarant: The Declarant reserves the right and power and each Lot Owner by acceptance of a deed to a Lot is deemed to and does grant to the Declarant a Power of Attorney coupled with an interest which shall run with the title to the Lot, and shall be irrevocable except by Declarant for a period of five (5) years from the date hereof, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lot Owners, or to the extent necessary to enable Declarant or any other Developer to meet any other reasonable need or requirement in order to complete the development of the property described in Exhibit B and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall take effect only upon recording.

B. By Lot Owners. This Declaration may be amended at any time by an instrument executed by persons or entities enabled to exercise sixty-seven (67) percent of the voting power of both classes of the Association and approved by eligible first mortgage holders representing Lots having at least fifty-one (51) percent of the voting power; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be recorded and shall take effect only upon recording.

Section 10.3. Personal Liability. Nothing in this Declaration, the Articles or the By-Laws and Regulations of the Association, or any rules or regulations enacted pursuant to any of the foresaid, shall impose personal liability upon any member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the maintenance, repair or replacement of any Living Unit or of part of the Common Areas or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an Officer or Trustee, or both, from any liability for injury or damages to such member or Owner or to such member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.

Section 10.4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.5. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain and/or to enjoin violation and/or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 10.6. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.

Section 10.7. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By-Laws of the Association, the Declaration shall control.

Section 10.8. Rights of Mortgage Holders. Any first mortgagee or mortgagees of Lots may, jointly or singly, pay any taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas, and such first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

The holder, insurer or guarantor of the first mortgage on any Lot shall be entitled to timely written notice of the following:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
- B. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- C. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

A mortgage holder, insurer or guarantor shall send a written request to the Association, stating both its name and address and the Lot number or address of the Lot upon which it holds a mortgage, in order to obtain the foregoing notices.

Section 10.9. Condemnation.

- A. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement

shall be the property of the Lot Owner and the holder of the first mortgage, to the extent of their respective interests. Each Lot Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

B. In the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Lot Owners and their mortgagees, as their interests appear.

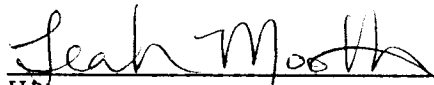
IN WITNESS WHEREOF, the Declarant has executed this Agreement on the date set forth hereinabove.

Signed and acknowledged in  
the presence of:

The Zaring Company, an Ohio  
Corporation

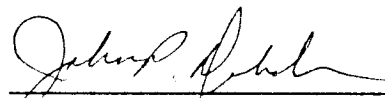
  
Witness

By:   
Ronald J. Benkert, Vice-President

  
Witness

STATE OF OHIO, COUNTY OF HAMILTON, SS:

The foregoing instrument was executed before me this 17th day of April, 1986, by Ronald J. Benkert, Vice-President of The Zaring Company, an Ohio Corporation, on behalf of said Corporation.

  
Notary Public, State of Ohio

JOHN P. DUMBACHER, Attorney at Law  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration  
date. Section 147.03 R. C.

This instrument prepared by: John P. Dumbacher, Attorney at Law  
914 Main Street, Suite 500  
Cincinnati, Ohio 45202  
(513) 421-5400

EXHIBIT "A"

Situate in Section 18, Town 4, Entire Range 1, City of Sharonville, Sycamore Township, Hamilton County, Ohio and being more particularly described as follows:

Being all of Lots 1, 2, 3, 4, 5, 6, 20, 78, 81, 106, 107, 108, 109 and 110 of Waterford Subdivision, Section One as the same is recorded in Plat Book 56, Pages 27, 28 and 29, Registered Land Records, Hamilton County, Ohio.

EXHIBIT "B"

Parcel I:

Situate in Section 18, Town 4, Entire Range 1, partly in the City of Sharonville and partly in the City of Blue Ash, and being more particularly described as follows:

Beginning at the southwest corner of Section 18, said point being the southwest corner of the land as shown on Registered Title Certificate No. 34310 of the Registered Land Records of Hamilton County, Ohio; thence from said beginning point North 2° 01' West along the west line of said Section 18, 1496.22 feet; thence South 86° 39' East, parallel with Cornell Road, 467.66 feet; thence northwardly on a curved line deflecting toward the left, having a radius of 300 feet for a distance of 30.06 feet, chord of said curve bearing North 6° 13' 15" East, 30.05 feet; thence North 3° 21' East, tangent to the last described curve and along the east line of Lot No. 6 of Block "A", Malaer Subdivision, as recorded in Plat Book 6, Pages 55 and 56 of the Registered Land Records of Hamilton County, Ohio, 105 feet; thence northwardly on a curved line tangent to the last described course and deflecting toward the left, having a radius of 15 feet for a distance of 23.56 feet chord of said curve bearing North 41° 39' West, 21.21 feet to the south line of Cornell Road; thence South 86° 39' East, along the south line of Cornell Road as widened, 80 feet; thence westwardly on a curved line tangent to the last described course and deflecting toward the left, having a radius of 15 feet for a distance of 23.56 feet, chord of said curve bearing South 48° 21' West, 21.21 feet to the west line of Lot No. 7 of said Malaer Subdivision; thence South 3° 21' West, tangent to the last described curve and along the west line of said Lot 7, 105 feet; thence southwardly on a curved line tangent to the last described course and deflecting toward the right, having a radius of 350 feet for a distance of 64.38 feet, chord of said curve bearing South 8° 37' 10" West, 64.29 feet to the southwest corner of said Lot No. 7; thence South 76° 06" 40" East, along the south line of said Lot 7, 87.38 feet to the southeast corner of said Lot 7; thence South 86° 39' East, parallel with Cornell Road and along the south line of said Malaer Subdivision, 909.46 feet to the southeast corner of Lot 16 of said Subdivision; thence South 2° 03" East, along the corporation line between Sharonville and Blue Ash, 1369.22 feet; thence South 44° 24' East, 109.68 feet to the southeast corner of said Registered Land; thence North 86° 45' West, along the south line of said Registered Land and the south line of Section 18, 1578.72 feet to the southwest corner of said Registered Land and the southwest corner of Section 18 and the place of beginning. Containing 50.514 acres.

Being the same property described as Parcel I on Certificate of Title No. 128007.

SAVE AND EXCEPT the following described real property:

Situate in Section 18, Town 4, Entire Range 1, City of Sharonville, Sycamore Township, Hamilton County, Ohio and being more particularly described as follows:

Being all of Lots 1, 2, 3, 4, 5, 6, 20, 78, 81, 106, 107, 108, 109 and 110 of Waterford Subdivision, Section One as the same is recorded in Plat Book 56, Pages 27, 28 and 29, Registered Land Records, Hamilton County, Ohio.

Parcel II:

Lying and being in Section 17, Town 4, Entire Range 1, Sycamore Township, in the City of Blue Ash, County of Hamilton, State of Ohio, and being more particularly described as follows:

Beginning at a point in the north line of Section 17, South  $86^{\circ} 45''$  East, 1501.76 feet from the northwest corner of Section 17 measured along the north line of Section 17; said point of beginning being in the south line of the land as shown on Registered Title Certificate No. 34310, of the Registered Land Records of Hamilton County, Ohio; thence from said beginning point, South  $86^{\circ} 45'$  East, along the north line of Section 17, 414.34 feet; thence South  $15^{\circ} 07' 30''$  East, 1033.28 feet; thence South  $83^{\circ} 22' 56''$  West and along the north line of Wengate Lane Subdivision, as recorded in Plat Book 32, Pages 12 and 13 of the Registered Land Records of Hamilton County, Ohio, 656.71 feet; thence North  $01^{\circ} 37'$  West, along the corporation line between Sharonville and Blue Ash, 1097.11 feet to the north line of Section 17 and the place of beginning. Containing 12.902 acres.

Prior instrument reference: Deed Book 4331, Page 1122, Hamilton County, Ohio Recorder's Office.



EXHIBIT "C"

BY-LAWS AND REGULATIONS OF  
WATERFORD HOMEOWNERS' ASSOCIATION

ARTICLE I

Section 1.1. Name and Location. The name of the corporation is Waterford Homeowners' Association, hereinafter referred to as "Association". The principal office of the corporation shall be located at Suite 100, 11300 Cornell Park Drive, Cincinnati, Ohio 45242, but meetings of members and trustees may be held at such places within Hamilton County, State of Ohio, as may be designated by the Board of Trustees.

ARTICLE II  
DEFINITIONS

Section 2.1. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions, Easements and Liens applicable to the Property recorded in the office of the Hamilton County Recorder, as the same may be amended, from time to time.

Section 2.2. As used in these Regulations, the terms "Association", "Owner", "Property", "Lot", "Common Areas", "Living Unit", "Member", "Developer", and "Declarant" shall have the same meaning as each is defined to have in the Declaration.

ARTICLES III  
MEETING OF MEMBERS

Section 3.1. Annual Meeting. The first annual meeting of the members of shall be held on the first Monday of March, 1987, and each subsequent regular annual meeting of the Members shall be held on the first Monday of March of each year thereafter, at the hour of 7:30 o'clock p.m.

Section 3.2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Trustees, or upon written request of the Members who are entitled to vote one-third (1/3) of all the votes of membership.

Section 3.3. Notice of Meetings. Except as otherwise provided in the Declaration, written notice of each meeting of the Members shall be given by, or at the direction of the Secretary or person authorized to call the meeting, by mailing or delivering a copy of such notice, at least fifteen (15) days before such meeting, to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in case of a special meeting, the purpose of the meeting.

Section 3.4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws

and Regulations. If however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 3.5. Adjourned Meetings. If, at any regular or special meeting of the Members of the Association, there be less than a quorum present, a majority of those Members present and entitled to vote may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, at which time the quorum requirement shall be one-third (1/3) of the votes of the membership of the Association, and any business which might lawfully have been transacted at the meeting as originally called may be transacted without further notice.

Section 3.6. Proxies. At all meetings of the Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 3.7. Voting. The vote of the majority of those present, either in person or by proxy, shall decide any questions brought before the meeting, unless the question is one upon which a different vote is required by provision of the laws of Ohio, the Declaration, the Articles of Incorporation of the Association or these By-Laws and Regulations.

Section 3.8. Suspension of Voting Privileges. No Member shall be eligible to vote or to be elected to the Board of Trustees who is shown on the books of the Association to be more than thirty (30) days delinquent in the payment of any assessment due the Association.

#### ARTICLE IV BOARD OF TRUSTEES; SELECTION; TERM OF OFFICE

Section 4.1. Number. The affairs of this Association shall be managed by a Board of five (5) Trustees, who need not be Members of the Association.

Section 4.2. Term of Office. At the first annual meeting the Declarant shall elect three (3) Trustees for a term of one year, and the Members other than the Declarant shall elect two (2) Trustees for a term of one year, and at each annual meeting thereafter the Class A Members shall elect two (2) Trustees and Class B Members shall elect three (3) Trustees, for a term of one year, or until their successors are elected and qualified. At such time as Class B memberships terminate, as provided in the Declaration and the Articles of Incorporation, all Trustees shall be elected by the Members for a term of one year, or until their successors are elected and qualified.

Section 4.3. Removal. Any Trustee may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Trustee, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. However, any Trustee elected by the Declarant may only be removed by the Declarant, and his successor may only be appointed by Declarant, to serve for the unexpired term.

Section 4.4. Compensation. Members of the Board of Trustees shall serve without compensation. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.5. Action Taken Without a Meeting. The Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

#### ARTICLE V NOMINATION AND ELECTION OF TRUSTEES

Section 5.1. Nomination. Nomination for election to the Board of Trustees shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Trustees 90 days prior to each annual meeting of the Members, to serve from the time of appointment until the close of the next annual meeting, and such appointment shall be announced at the next regular Board meeting. The Nominating Committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 5.2. Election. Election to the Board of Trustees shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and Section 3.7 of Article III of these By-Laws and Regulations. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETINGS OF TRUSTEES

Section 6.1. Regular Meetings. The Board of Trustees shall meet annually within 10 days after the annual meeting of Members and, in addition to the annual meeting, shall meet at regular meetings established as to time and place by resolution of the Board. Should any regular meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2. Special Meetings. Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any three (3) Trustees, after not less than three (3) days notice to each Trustee.

Section 6.3. Quorum. A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 7.1. Powers. The Board of Trustees shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Areas and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the Common Areas (except the right to ingress and egress to a Lot) by a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days, for infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws and Regulations, the Articles of Incorporation, or the Declaration;
- (d) declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees; and
- (e) employ such independent contractors, and other employees as they deem necessary, and to prescribe their duties.

Section 7.2. Duties. It shall be the duty of the Board of Trustees to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fifth (1/5) of each class of Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
  - (2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and
  - (3) foreclose the lien against any Lot for which assessments are not paid within sixty (60) days after due date or bring an action at law against the Owner personally obligated to pay the same, if the Board deems foreclosure or other action necessary.

- (d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge not to exceed fifteen dollars (\$15.00), may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers having fiscal responsibilities to be bonded, as required by the Declaration; and
- (g) cause the Common Areas to be maintained.

#### ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 8.1. Enumeration of Officers. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Trustees, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the Members.

Section 8.3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year and until his successor is elected and qualified, unless he shall sooner resign, or shall be removed or other disqualified to serve.

Section 8.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 8.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.7. Multiple Offices. The office of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more the one of any of the other offices except in the case of special offices created pursuant to Section 8.4 of this Article.

Section 8.8. Duties. The duties of the officers are as follows:

- (a) President - The President shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board are carried out; and shall act as chief executive officer.
- (b) Vice-President - The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board.
- (c) Secretary - The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- (d) Treasurer - The Treasurer shall receive and deposit in appropriate bank or savings and loan accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; keep proper books of accounts; cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at its regular annual meeting, and deliver a copy of each to the Members.

#### ARTICLE IX COMMITTEES

The Board of Trustees shall appoint a Design Review Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws and Regulations. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purposes.

#### ARTICLE X MISCELLANEOUS

Section 10.1. Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member, and any holder, insurer or guarantor of a first mortgage on a Lot. The Declaration, the Articles of Incorporation and the By-Laws and Regulations of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 10.2. Fiscal Year. The fiscal year shall begin on the first day of January every year, except that the first fiscal year of the Association shall begin on the date of incorporation. The commencement date of the fiscal year herein established may be changed by the Board of Trustees should corporate practice subsequently dictate.

Section 10.3. Execution of Association Documents. All notes, contracts, other documents, checks, and other drafts shall be executed on behalf of the Association by such officers, agents or other persons as are from time to time designated by the Board of Trustees.

Section 10.4. Conflict. In the case of any conflict between the Articles of Incorporation and the By-Laws and Regulations, the Articles shall control; and in the case of conflict between the Declaration and these By-Laws and Regulations, the Declaration shall control.

Section 10.5. Amendments. These By-Laws and Regulations may be amended at a regular or special meeting of the members, by affirmative vote of a majority of the total number of votes held by each class of Members of the Association.

EXHIBIT "D"

ARTICLES OF INCORPORATION  
OF  
WATERFORD HOMEOWNERS' ASSOCIATION

The undersigned, desiring to form a corporation not for profit, under the Ohio Non-Profit Corporation Law, Section 1702.01 to 1702.58, inclusive, of the Revised Code of Ohio, does hereby certify:

ARTICLE I

The name of the corporation shall be Waterford Homeowners' Association, Inc.

ARTICLE II

The place in the State of Ohio where the principal office of the corporation is to be located is in Hamilton County, Ohio, in the City of Blue Ash.

ARTICLE III

The purpose for which said non-profit corporation is formed, and various other provision pertaining to this non-profit corporation and its powers are set forth in the following sections of these Articles. This non-profit corporation, hereinafter sometimes referred to as the "Association", does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to act as the Lot Owners' Association with regard to the tract of real estate specifically described in the Declaration of Covenants, Conditions and Restrictions applicable to said real estate, said Declaration being recorded or to be recorded in the property records of the county where the principal office of this corporation is located. In addition, the specific purposes for which this Association is formed are to provide for the maintenance, preservation and architectural control of the aforesaid real estate and the buildings and improvements situated thereon under the terms of said Declaration, and to promote the health, safety and welfare of the residents and owners of the above described property and to act in the same manner with regard to any other property which may hereafter be brought within the jurisdiction of this Association as part of the same plan, and for these purposes:

- (a) to exercise all the power and privileges and to perform all of the duties and obligations of the Association as set forth in the aforesaid Declaration or as the same may be amended from time to time;
- (b) to fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office, administrative, and other expenses incident to the conduct of the business of the Association, including all license fees, taxes or governmental charges levied or imposed against the property of the Association;



- (c) to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association and subject to the terms of the Declaration;
- (d) to borrow money, and with the assent of a majority of the voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, but only to the extent permitted by the Declaration;
- (e) to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority or utility for such purpose and to the extent and in such manner as may be authorized in the Declaration;
- (f) to acquire additional Lots, Common Area, Dedicated Area, in addition to that described in the Declaration when it was first recorded, but only in accordance with the provisions of the Declaration;
- (g) to own, acquire, build, operate and maintain footways, parking areas, driveways, utility lines, recreation areas, playgrounds, swimming pools, and any structures, fixtures and all personal property incidental thereto, in accordance with the Declaration;
- (h) to obtain, pay for and maintain insurance to the extent provided in the Declaration;
- (i) to do any other thing necessary, expedient, incidental, appropriate or convenient to the carrying out of the foregoing purposes or which will promote the common benefit and enjoyment of the residents or owners of the Lots, insofar as not prohibited by law or the Declaration; and
- (j) to have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Ohio by law may now or hereafter have or exercise, insofar as not prohibited by the Declaration.

#### ARTICLE IV TRUSTEES

The affairs of this Association shall be managed by the Board of Trustees, sometimes referred to as Directors, who need not be members of the Association. The number of trustees may be designated as not less than three (3) nor more than seven (7) members by said Association. The names and addresses of the persons who are to act in the capacity of initial Trustees until the selection of their successors are:

<u>Name</u>	<u>Address</u>
Janice Young	11300 Cornell Park Drive Suite 100 Cincinnati, Ohio 45242 Hamilton County, Ohio

<u>Name</u>	<u>Address</u>
L. Timothy Zaring	11300 Cornell Park Drive Cincinnati, Ohio 45242
Daniel Jones	11300 Cornell Park Drive Cincinnati, Ohio 45242

#### ARTICLE V MEMBERSHIP

Every Owner of a Lot as described in the Declaration and as created by that Declaration which is subject by covenants of record contained in the Declaration to assessment by the Association, including purchasers on land installment contract as such instruments are defined in Ohio Revised Code Chapter 5313, and including contract sellers on other forms of executory contracts for the sale of a Lot, but excluding those holding record title or a similar interest merely as security for the performance of an obligation, shall automatically on acquisition of such ownership interest in a Lot be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Such membership shall terminate upon the sale or other disposition by such Lot Owner of his ownership interest, at which time the new Lot Owner shall automatically become a member of the Association.

#### ARTICLE VI VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A - Class A members shall be all owners (with exception of the Declarant for as long as Class B membership exists), who shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as set forth in the Declaration and By-Laws.

Class B - Class B members shall be the Declarant (as defined in the Declaration), and such member shall be entitled to a such number of votes as will constitute seventy-five percent (75%) of the total voting power of the Association, as long as the Class B membership continues to exist. The Class B membership shall cease and be converted to Class A membership with one (1) vote for each Lot owned, on the happening of the following events, whichever occurs earlier:

A. Four (4) months after seventy-five percent (75%) of the Lots included in the Declaration have been sold and conveyed to individual Lot owners;

B. When the period of time of five (5) years has expired from and after the date the Declaration is recorded.

Provided, however, that if additional land is annexed to the Declaration so as to create an additional number of Lots of such an amount that the proportion of Lots sold is decreased below seventy-five percent (75%), the Class B membership shall be re-created automatically in the same manner and in the

same condition as that in which it had existed originally, without regard to the fact that at an earlier date the Class B membership may have been terminated by the sale of seventy-five percent (75%) of the previous number of Lots.

Provided, however, that nothing herein shall be construed to prohibit the Class B member from converting all or part of its Class B membership to Class A membership with the results set forth above at any time earlier than the latter of the alternative events referred to above, by a written statement executed by the Declarant and delivered to the Association.

#### ARTICLE VII DISSOLUTION

Upon dissolution of the corporation, any assets remaining after payment or adequate provision for payment of all debts and obligations of the corporation shall be expended in furtherance of the purposes set forth herein. If no successor in interest to the corporation is formed to administer the property of the corporation, its assets shall be distributed to its members according to a plan adopted and administered by the Board of Trustees.

#### ARTICLE VIII DURATION

The corporation shall exist perpetually, unless dissolved earlier under the terms of these Articles.

#### ARTICLE IX AMENDMENTS

Amendments of these Articles shall require the assent of members holding at least sixty-seven percent (67%) of the voting power of each class of the Association, except as may be provided to the contrary in the Declaration.

#### ARTICLE X DEALING WITH CORPORATION

A director or officer of the corporation shall not be disqualified by his office from dealing or contracting with the corporation as a vendor, purchaser, employee, agent or otherwise; nor shall any transaction, contract or act of the corporation be void or voidable or in any way effected or invalidated by reason of the fact that any director or officer or any firm of which such director or officer is a member, or any corporation of which such director or officer is a shareholder, director or officer, is in any way interested in such transaction, contract or act; provided, however, that the fact that such director, officer, firm or corporation is so interested must be disclosed to or known by the Board of Trustees or such members thereof as shall be present at the meeting of said Board at which action is taken upon such matters. No director or officer shall be accountable or responsible to the corporation for or in respect to any such transaction, contract, or act or for any gains or profits realized by him or by any organization affiliated with him as a result of such transaction, contract or act. Any such director or officer may be counted in determining the existence of a quorum at any meeting of the Board of Trustees of the corporation which shall authorize or take action in respect of any such contract,

transaction or act, and may vote to authorize, ratify or approve any such contract, transaction or act, with like force and effect as if he or any firm of which he is a member or a corporation of which he is a shareholder, officer or director, were not interested in such transaction, contract or act.

ARTICLE XI  
INDEMNIFICATION OF TRUSTEES, OFFICERS OR EMPLOYEES

The corporation shall indemnify any and every trustee, officer or employee against expenses, judgments, decrees, fines, penalties or amounts paid in settlement in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such trustee, officer or employee is or may be made a party by reason of being or having been such trustee, officer or employee, provided a determination is made by the trustees in the manner set forth in Ohio Revised Code Section 1702.12(e) (1) to the effect (a) that such trustee, officer or employee was not, and has not been adjudicated to have been, negligent or guilty of misconduct in the performance of his duty to the corporation of which he is a trustee, officer or employee, (b) that he acted in good faith in what he reasonable believed to be the best interest of such corporation, and (c) that, in any matter the subject of a criminal action, suit or proceeding, he had no reasonable cause to believe that his conduct was unlawful. Such indemnification shall not be deemed exclusive of any other rights to which such trustee, officer or employee may be entitled under these Articles, the By-Laws of this corporation, any agreement or any insurance purchased by this corporation, or by vote of the members, or otherwise.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Ohio the undersigned Incorporator of this Association has executed these Articles of Incorporation on this        day of April, 1986.

  
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Ronald J. Benkert, Incorporator

ORIGINAL APPOINTMENT OF AGENT

The undersigned, being the Incorporator of Waterford Homeowners' Association, Inc., hereby appoints Ronald J. Benkert, a natural person resident in the State of Ohio, upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. His complete address is Suite 100, 11300 Cornell Park Drive, Cincinnati, Ohio 45242.

  
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Ronald J. Benkert, Incorporator

Cincinnati, Ohio

17th day of April, 1986

WATERFORD HOMEOWNERS' ASSOCIATION

Gentlemen:

I hereby accept appointment as agent of your corporation upon whom process, tax notices or demands may be served.

  
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Ronald J. Benkert