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**ARBOR CREEK PLANNED RESIDENTIAL
DEVELOPMENT ASSOCIATION, INC.**

BYLAWS

DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS OF
ARBOR CREEK PLANNED RESIDENTIAL DEVELOPMENT

This Declaration is made this _____ day of _____, 2003, by **ARBOR CREEK CORP.**, a corporation duly incorporated and existing under the laws of the State of Ohio (the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of real property situated in Southeast and Southwest Quarters, Section 25, Jackson Township, Stark County, Ohio, and being further described as follows: Lots Nos. 1 through 32 and open spaces of Arbor Creek (the "Property"); and

WHEREAS, Declarant intends to subject the Property to the terms of the covenants, conditions, easements and restrictions set forth herein for the purpose of establishing a common scheme for the betterment and development of the Property, to provide for a consistent and uniform appearance, maintenance and use thereof.

NOW, THEREFORE, Declarant declares the Property shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges and liens (collectively, "Covenants and Restrictions") provided in this Declaration, which covenants and Restrictions shall run with the land and shall be binding on and inure to the benefit of all persons having any right, title or interest in and to any and all parts of the Property, and their respective heirs, personal representatives, successors and assigns, all or any portion of the Property to be hereafter conveyed subject to such Covenants and Restrictions.

ARTICLE I

DEFINITIONS

1. "ARCHITECTURAL CONTROL COMMITTEE". A Committee comprised of Lot Owners in Arbor Creek responsible for review and approval of all plans, drawings and specifications for building and/or exterior improvements or modifications, including color and location of buildings and/or any appurtenant improvements.

2. "ASSESSMENTS". A Lot Owner's share of costs incurred in connection with maintenance, repair and upkeep services performed by the Association set forth in ARTICLE V below, together with other charges and/or Special Assessments which from time to time may be levied by the Board and required to be paid by Lot Owners. Such Assessments shall include any late charges or interest accruing on any unpaid Assessments as set forth below.

3. **"ASSOCIATION"**. Arbor Creek Planned Residential Development Association Inc., which is a not-for-profit corporation, created for the purpose of managing and operating Arbor Creek Court Property and supervising the maintenance, repair and upkeep of the Common Area thereof, and enforcing the Covenants and Restrictions set forth herein.

4. **"BOARD" and/or "BOARD OF MANAGERS"**. Those Lot Owners who, as a group, serve as members of the Board of Managers of Arbor Creek Planned Residential Development Association, Inc. pursuant to the terms hereof.

5. **"BY-LAWS"**. The By-Laws of the Association governing the manner in which the Association shall conduct business, as the same may be amended from time to time.

6. **"COMMON AREAS"**. Those portions of Arbor Creek Property designated as open spaces.

7. **"COMMON ASSESSMENTS"**. Assessments charged equally against all Lot Owners covering costs of all Common Area maintenance, repairs and upkeep, including reasonable reserves, as may be found to be necessary and appropriate by the Board, pursuant hereto.

8. **"DECLARANT"**. Arbor Creek Corp. and its successors and assigns, which are specifically designated in writing by Declarant as succeeding to Declarant's rights hereunder.

9. **"DECLARATION"**. This document, as it may be amended from time to time, which subjects Arbor Creek Property to the Covenants, Easements and Restrictions set forth herein.

10. **"LOTS"**. All or any portion of Lots Numbered 1 through 32 inclusive in Arbor Creek subdivision, southeast and southwest quarters, section 25, Jackson Township, Stark County, Ohio, as the same is recorded as Official Records Imaging #200208020061238 of the Stark County, Ohio, Records.

11. **"LOT OWNER(S)" and/or "OWNER(S)"**. Such person or persons owning fee simple interest in a Lot or a portion of a Lot upon which a free-standing residence is or may be located, including Declarant with respect to any unsold dwelling unit, each of such Owners also be a "Member" of the Association. If a Lot or residence is sold under a Land Installment Contract, the purchaser, vendee, rather than the fee owner, will be considered the Lot Owner.

12. **"MANAGER" and "MANAGERS"**. Any person, or those persons, serving, at the time pertinent, in the capacity of a Member of the Board of Managers of the Association, as defined herein.

13. **"OCCUPANT"**. Any person or persons in possession of a residence, regardless of whether that person is an Owner.

14. **"PERSON"**. Any natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

15. **"PROPERTY", "ARBOR CREEK PROPERTY" and/or "ARBOR CREEK"**. All or any portion of the Lots and adjacent acreage referenced above.

16. "RULES AND REGULATIONS". Rules and regulations governing the administration of the Association and/or the use, maintenance and upkeep of the Property adopted by the Board from time to time.

17. "SPECIAL ASSESSMENTS". Any costs, expenses or charges, excluding Common Area Assessments, which the Association or the Board shall charge against an Owner pursuant to the terms hereof, for specific services rendered on behalf of the Owner and/or as a result of the Owner's specific activities or omissions.

ARTICLE II

ARBOR CREEK PLANNED RESIDENTIAL DEVELOPMENT ASSOCIATION, INC.

1. **Existence.** The Association is an Ohio not-for-profit corporation. The association is not a condominium association or a unit owner association as defined in the Ohio Revised Code Chapter 5311, as the same may be amended from time to time.

2. **Membership.**

A. Every Lot Owner, as defined above, shall be deemed to have a membership in the Association. No Lot Owner, whether one or more person, shall have more than (1) membership for Lot owned.

B. Membership shall terminate upon the conveyance, transfer or assignment of record by a Lot Owner of his or her ownership interest, at which time the new Lot Owner shall immediately and automatically become a Member of the Association.

3. **Voting Rights.** Each Member shall be entitled to cast one vote for each Lot owned by the Member. If a Lot is owned of record by two or more persons, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or otherwise in a form of joint or common ownership, then, unless the instrument or order appointing or creating such tenancy provides otherwise, such Owners shall select one official representative to qualify for voting and shall notify the Secretary of the Association of the name or such individual. The vote of such individual shall be considered to represent the will of all Owners of the Lot.

4. **Board and Officers of the Association.** The Board of Managers initially shall be those three persons named as the initial Board pursuant to the provisions of the Articles of Incorporation of the Association, with such other person or persons as may from time to time be substituted by Declarant. The Declarant shall continue to control appointments to the Board of Managers until such time as ten (10) Lots have been sold and are not owned by Declarant. Within thirty (30) days after the sale of such tenth Lot, the then Owners, including the Declarant with respect to any unsold Lots, shall elect three (3) Lot Owners to serve as the Board of Managers. The terms of such Managers shall be three (3) years, two (2) years and one (1) year, respectively, starting with the Manager receiving the most votes having a three-year term, the Manager receiving the second most votes having a two-year term, and the Manager receiving the third most votes having a single-year term. Thereafter, one Board Member shall be elected

each year for a three-year term. As noted above, in such elections, each Lot Owner shall be entitled to cast one vote for each Lot owned. There shall be no cumulative voting.

5. Responsibilities of the Association.

A. Maintenance and Repairs. The Association shall be responsible for maintenance and necessary repair or replacement of certain portions, but not all, of the Common Areas. The Association's maintenance and repair responsibilities shall be as follows:

- i. Maintenance, care, lawn mowing and fertilizing of all plantings or structures placed by Declarant in the common areas;
- ii. Maintenance, care and replacement of trees and/or shrubs planted by Declarant upon Arbor Creek Property, lawn mowing and fertilizing, and trimming of plants, shrubberies, and other growth planted by Declarant; provided, however, that, if necessary, lawn and plant watering shall be the individual Lot Owner's responsibility;
- iii. Although Association shall not be responsible for maintenance, repair or replacement of private driveways leading to a residence, walkways, front steps and/or landings, the same being the individual Lot Owner's responsibility, the Association shall provide snow and ice removal from such private driveways, walkways, front steps and landings. Such snow and ice removal services shall be provided at intervals and at such times as the Board shall reasonably determine; and
- iv. The Association shall not be responsible for maintenance of the interior and/or the exterior of any residence located upon the Property, or for any improvements on other portions of Arbor Creek Property not listed above, the same being solely the responsibility of the individual Lot Owner.

B. Management. The Association shall establish and maintain such policies, programs, rules, regulations and procedures to fully implement this Declaration for the purposes set forth herein and for the benefit of all Members, and in so doing, may, but shall not be required to:

- i. Adopt reasonable rules and regulations regarding the use, maintenance, upkeep and modification to Arbor Creek Property and/or any improvements thereon;
- ii. Engage employees and agents, including without limitation, security personnel, attorneys, accountants and consultants, maintenance firms and contractors;
- iii. Delegate all or any portion of its authority and responsibilities to a manager, managing agent, and/or management company, evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for payment to a managing agent of reasonable compensation. Such compensation shall be charged to Lot Owners as a part of the Common Assessments referenced above. Such management agreement may be with an entity owned by or association with Declarant or owned by,

associated with, or controlled or employed by any shareholder, officer, director, agent or employee of Declarant; provided, however, that if any such management agreement is executed by Declarant, then the term thereof shall not exceed one (1) year, unless approved by a majority of the Lot Owners after all of the Lots at Arbor Creek have been sold.

- iv. Obtain public liability insurance covering the Association and its Members insuring against any and all damage or injury caused by the negligence of the Association or any of its Members in connection with any act or omission involving the maintenance, repair and/or replacement of the Common Areas. At the election of the Board, the Association shall also obtain directors, managers and officers liability coverage in an amount deemed to be reasonable by the Board and/or by a majority of the Members at a duly called and noticed meeting;
 - v. The Association shall have the authority to make, determine, levy and collect Assessments, both Common Assessments and Special Assessments, where appropriate, from Lot Owners, which Common Assessments shall be assessed equally to each Owner of a Lot in connection with costs incurred by the Association for management, repair, maintenance, upkeep and, if necessary, replacement of any or all portions of the Common Area which are the responsibility of the Association hereunder, and further for the cost of requiring and/or maintaining any and all insurance coverage referenced herein, or required by the Association in its best business judgment. The Association shall have such rights in connection with the collection of such Assessments, including lien rights and the right to suspend and/or terminate any and all voting rights of a Lot Owner for failure to pay such Assessments in a timely manner, as such rights are set forth hereinbelow; and
 - vi. The Association shall perform and carry out all duties and acts reasonably necessary to give effect to and implement the intent of the provisions of this Declaration, as the same may be conducted by a corporation under the laws of the State of Ohio.
6. **Bylaws.** The Association shall conduct its business, and the Board of Directors shall take action in accordance with the By-Laws of the Arbor Creek Planned Residential Development Association, Inc. as the same may be amended from time to time.

ARTICLE III

COVENANTS AND RESTRICTIONS

The intent of this Declaration is to cause the Arbor Creek Property to be kept and maintained as a high-quality residential development. The Covenants and Restrictions contained herein shall be applicable to the Lot Owners, any lessees, tenants and/or Occupants of the Arbor Creek Property.

1. Approval of Building Plans and Standards.

A. Each Lot shall be used only for private, single-family residential purposes and only one single-family residence with one attached two-car garage shall be constructed or permitted to remain on any one Lot, unless the same is subdivided by Declarant for such purposes. Each residence shall maintain front, side, and rear setbacks as prescribed by all applicable zoning laws, and by the Declarant hereunder.

B. Prior to commencing construction upon the Arbor Creek Property, an Owner must first submit all plans, drawings and specifications for the residence to Declarant for approval, which approval may be withheld at the discretion of Declarant. Any such residence must be consistent with and compatible to existing residences located upon the Property with regard to quality of construction, materials used therein, style and design of the residence, use of exterior siding and/or masonry, color, slope and roof lines and otherwise aesthetically consistent with existing structures at or on the Property. All private driveways, walkways, stoops and landings shall be cement, and the location thereof subject to Declarant's approval. Landscaping plans and/or designs are likewise subject to prior approval of Declarant. Plans and specifications submitted to Declarant for approval shall include, but not be limited to, plans, working drawings, all elevations and specifications, including plot plan showing the location of the buildings and structures, driveways, Property lines and setbacks. No alteration in the exterior appearance of any residence shall be made without Declarant's approval. Declarant shall have ten (10) working days after receipt of all required plans, drawings and specifications to review, approve, reject or modify the same. Failure of Declarant to respond to Lot Owner within such time period will constitute rejection of the plans and shall require re-submittal and approval prior to commencement of construction.

C. All garages must be attached to the residence. No carports or exterior or disconnected storage areas shall be permitted.

D. No fence or other device installed for the purpose of separating Lots shall be maintained on any Lot, unless the same has been approved by Declarant. This restriction, however, excludes any perimeter fencing installed or to be installed upon the Arbor Creek Property by Declarant or the Arbor Creek Planned Residential Development Association, Inc. as a buffer from adjacent properties.

E. After approval of plans and specifications by Declarant herein, construction shall be commenced not later than six (6) months after a Lot is acquired by Owner and such construction shall be completed not later than eighteen (18) months after commencement of the same. Each Owner shall have his Lot fully landscaped within nine (9) months after taking possession of a residence. All driveways shall likewise be completed not less than nine (9) months after Owner takes possession of the residence.

F. Each Owner shall be responsible for grading and surface drainage so that surface run-off will not adversely affect adjoining Lots or other properties and all residences shall be provided with gutters and downspouts.

G. No awnings, canopies and shutters shall be permitted or fixed to the exterior of the residence unless the same are approved by Declarant.

H. No accessory structures, such as decks, privacy fences, playhouses, tool sheds, dog houses, dog runs, antennas, transmitters, satellite dishes, or other receivers or other communication devices,

sculptures, bird baths, fountain, or like decorative items shall be located upon a Lot or any other portion of the Arbor Creek Property without Declarant's prior written approval. Although a flag pole for the display of the American flag will be permitted, subject to approval of Declarant as to size, location and color, no flag pole shall be used as an antenna.

2. **Maintenance of Improvements.** Each Lot Owner shall keep and maintain the residence, driveway, walkway and all other improvements upon his or her Lot or portion thereof, not to be maintained and/or repaired by the Association, in clean and safe condition and in good order and repair, and shall maintain the appearance thereof in a good condition consistent with other improvements located upon the Arbor Creek Property, and in a manner and with such frequency as is consistent with good property management.

3. **Lot Uses.** Each Lot, or portion thereof improved by a residence, is to be utilized for residential purposes only, and should not be utilized for transient and/or hotel purposes, or otherwise utilized in connection with leasing activities involving leases having a term which are less than 12 months. No Owner shall carry on, or permit to be carried on, any trade, business or profession which can be perceived in any manner by any person not physically present on the Lot upon which such trade, business or profession is being carried on. This provision shall, however, not preclude the location of a home office and/or library within a residence upon the Property.

4. **Laundry and Rubbish.** No Owner shall permit clothes, sheets, laundry or any other articles to be hung out or exposed on any part of the Arbor Creek Property and all Lots and/or any and all other portions of the Arbor Creek Property shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage and other rubbish shall be deposited only in accordance with the rules and regulations for weekly pickup by a refuse collection company selected by the Association. Such refuse collection fees, however, shall not be a part of the Common Area Assessments and shall be paid separately by each Lot Owner.

5. **Exterior Appearance.** Nothing shall be caused or permitted to be hung or displayed on the outside of windows (other than curtains, drapes or other customary window coverings, which shall adversely affect, in the opinion of Declarant or thereafter the Board or the Architectural Control Committee, the exterior appearance of a residence) or placed on the outside walls of a residence or building or otherwise placed or displayed outside of a residence, building or any part thereof, and no sign, awning, canopy, shutter or television antenna or transmitter or other device or ornament shall be affixed to or placed upon the exterior walls or roof of a residence or building or any part thereof, nor shall any alterations of any type, including painting or other decorating activities be permitted to the exterior walls or roof of a residence building or any part thereof, unless authorized by the Declarant and thereafter by the Board or the Architectural Control Committee.

6. **Nuisances.** No loud, noxious or offensive activity shall be carried on, caused or permitted on any Lot, in any residence, or on any other portion of the Arbor Creek Property, nor shall any residence, lot or other portion of the Arbor Creek Property be used in any way or for any purpose which may endanger the health of or reasonably disturb any Lot Owner and/or Occupant or otherwise result in an unsafe condition, or affect or cause casualty and/or liability insurance to lapse and/or to have the cost thereof increase.

7. **Vehicles.** Parking and storage of vehicles shall be subject to reasonable rules and regulations promulgated by the Association, which shall include, but not be limited to, the following:

- A. Subject to other restrictions set forth herein and/or otherwise established by the Board, no trucks (other than two-axle trucks with no more than four tires) shall be parked in front of any Lot or residence except in an enclosed structure, and further except as is necessary for moving in and/or relocating from the Property.
- B. No Owner shall make repairs to a vehicle of any kind in front of or on any Lot or other portion of the Property except in an enclosed structure;
- C. All cars and/or other vehicles must be parked in a garage space or in the driveway directly in front of such garage or in any other spaces specifically provided for parking, if any.
- D. No boats, trailers or other recreational vehicles, or inoperable vehicles or trucks may be stored on any Lot, or on any other portion of the Arbor Creek Property unless within a garage, except as may be necessary for a limited period of time, not to exceed two (2) days during any given month, as is necessary to provide for transportation of such vehicle to an appropriate storage facility off of the Arbor Creek Property.

8. **Animals.** Except as provided herein, no animals shall be permitted on the Arbor Creek Property, and under no circumstances shall animals be raised, bred, or kept upon the Arbor Creek Property or within any residence for commercial purposes. Notwithstanding the foregoing, not more than two (2) household domestic pets, not bred or maintained for commercial purposes may be maintained in a residence, provided that:

- A. No dogs or other domestic pets shall be permitted in any portion of the Arbor Creek Property except on a leash maintained by a responsible person. Invisible fences may be permitted within an individual lot line.
- B. Animals permitted upon the Arbor Creek Property shall be subject to rules and regulations promulgated by the Board from time to time, which may include limitations as to the size and number of pets and may include the right to fine Owners or occupants who do not clean up after their pets or who otherwise violate applicable rules and regulations; and
- C. The right of a Lot Owner or Occupant to maintain a pet shall be subject to termination if the Board reasonably determines that maintenance of the animal constitutes a nuisance or if the Lot Owner is in violation of rules and regulations governing such pet ownership.

9. **Additions and Modifications to Property and Landscaping.** No additions or alterations may be made to the exterior of a residence, or to the landscaping and/or plantings upon the Arbor Creek Property by any Owner without first obtaining the prior written consent of the Declarant or thereafter by the Architectural Control Committee or, if appropriate, a landscape control committee. Upon



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receipt of approval of any such additional plantings and/or modifications to the landscape plan of a Lot or other portion of the Arbor Creek Property, the subsequent maintenance and care thereof shall become a part of the Association's responsibility, and if appropriate, the Association may elect to levy a Special Assessment upon a Lot Owner, in order to cover additional costs incurred as a result of such landscape additions and/or modifications.

10. **Storage Prohibited.** No Owner shall utilize any space located beneath any decks and/or elevated terraces, or otherwise utilize any exterior space for storage or personal property, trash and/or waste, unless such area is shielded from public view. Further, no Owner shall allow trash or garbage to accumulate on any premises except in containers to be emptied in accordance herewith, and such containers shall be kept in the rear of the premises.

11. **Conveyance.** Any conveyance by a Lot Owner of the fee simple title ownership of such Lot, and/or permitted lease thereof, shall be subject to the terms, conditions, easements and rights or way and rules and regulations set forth herein and/or referenced hereby. The right of a Lot Owner to sell, transfer or otherwise convey a Lot and/or any residence thereon is not subject to any right of first refusal or similar restriction, and any Lot Owner may transfer a Lot and any residence thereon free of any limitations. To enable the Association to maintain accurate records of the names and addresses of Lot Owners, each Lot Owner agrees to notify the Board, in writing, within five (5) days after an interest in a Lot has been transferred to another person. In addition, each Lot Owner agrees to provide to purchaser, a copy of this Declaration and all effective rules and regulations.

12. **Arbitration.** In the event of any dispute between Lot Owners as to the application of these Restrictions or any rule or regulation to any particular circumstance, the Owner claimed to be aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within thirty (30) days thereafter and give written notice to each party thereof no less than three (3) days in advance. The Board shall thereupon hear such evidence on the dispute that the Board deems proper and shall render a written decision of the matter to each party within thirty (30) days thereafter. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

13. **Declarant's Right of Approval.** Declarant's right to approve of or reject all plans and specifications prior to construction and to approve of or reject proposed modifications to any residence or other improvements upon the Arbor Creek Property shall continue until such time as Declarant no longer holds any interest in any portion of the Arbor Creek Property. After such final conveyance, such approval rights shall be held by the Architectural Control Committee or, at the Board's discretion, in such other committee(s) as the Board should reasonable determine.



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ARTICLE IV

INSURANCE

1. **Fire and Extended Coverage Insurance.** Each Lot Owner shall be solely responsible for obtaining and maintaining fire and extended coverage insurance upon the Lot Owner's residence and any and all improvements upon the Lot Owner's Lot or Lots upon the Arbor Creek Property. Each Lot Owner is responsible for maintaining contents coverage with respect to any and all personal property, fixtures, equipment and/or assets located on and/or utilized upon the Arbor Creek Property.

2. **Insurance to be Covered by Association.** The Association shall obtain and maintain a comprehensive policy of public liability insurance insuring the Association, the Board of Managers, the Lot Owners and occupants, such insurance to be with such limits as the Board may determine (provided, that such coverage shall be for at least \$300,000 per occurrence, for personal injury and/or property damage) covering claims for personal injury and/or property damage, or otherwise arising from Association activities, acts or omissions in connection with the maintenance, upkeep, repair and/or replacement obligations of the Association hereunder. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner or Occupant because of negligent acts of the Association, the Board or other Lot Owners or Occupants. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance and such other insurance as the Board may determine. Finally, at the Board's election, fidelity bond coverage against dishonest acts on the part of Managers, officers, employees, agents or volunteers responsible for handling funds belonging to or administered by the Association may be obtained in amounts deemed reasonable by the Board.

ARTICLE V

ASSESSMENTS

As used herein, Assessments shall mean all the costs and expenses incurred by the Association in the exercise of its obligations hereunder, including, without limitation:

1. All expenditures required to fulfill the responsibilities of the Association;
2. All amounts incurred to fulfill the responsibilities of the Association;
3. Reasonable reserves for uncollectible Assessments, unanticipated expenses and contingencies;
4. Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Declaration.

Each Lot Owner shall be responsible for paying an equal share of Common Assessments. Payment of such Owner's share of Assessments shall commence on the date that an Owner, other than a Declarant, acquires title to a Lot. No Lot Owner may exempt himself or herself from liability for Assessments levied



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against such Lot Owner by waiver of use of any portion of the Property or other amenities or facilities located upon the Arbor Creek Property. Likewise, failure and/or refusal to build a residence upon a Lot shall not result in a Lot Owner's being released from liability for payment of Assessments.

ARTICLE VI

ELEMENTS, APPORTIONMENT AND DUE DATES OF ASSESSMENTS

1. Common Assessments.

(A) At the time of the filing of this Declaration, the Declarant shall, and thereafter the Board shall, prior to the beginning of each fiscal year of the Association, estimate and prorate among the Lots, common expenses of the Association, consisting of the following:

- i. the estimated next fiscal year's cost of the maintenance, repair, replacement, and other services to be provided by the Association;
- ii. the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;
- iii. the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Declarant and/or by the Board;
- iv. the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, if to be provided, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and any other costs constituting common expenses not otherwise herein specifically excluded.

(B) The Declarant and/or the Board shall thereupon allocate to each Lot Owner an equal one-thirty-second (1/32) share of all of these items, each of the thirty-two (32) Lots and residences equally sharing the annual operating expenses of the Association. For administrative convenience, such assessments may be rounded to the nearest whole dollar.

(C) The Common Assessment shall be payable in advance annually or in such periodic installments (monthly, quarterly, etc.) and shall have such due dates, as the Declarant and/or the Board shall determine.

(D) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Declarant and/or the Board among the Lots on the same basis as heretofore set forth.

(E) If the assessment collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be allocated and paid to



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the reserve applicable to that type of expense, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Lot Owners.

2. **Special Assessments.** There may be levied a Special Assessment against an individual Lot Owner to reimburse the Association for those costs incurred in connection with that Lot and/or Lot Owner properly chargeable by the terms hereof to that Lot Owner (such as, but not limited to, the cost of insurance premiums separately billed to a Lot Owner, and a Lot Owner's enforcement and arbitration charges). Any such assessment shall become due and payable as soon as such expenses are incurred.

3. **Effective Date of Assessment.** Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Declarant and/or the Board to the Lot Owner subject thereto at least ten (10) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Lot Owner's Lot shall constitute notice to that Lot Owner, unless the Lot Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to the last designated address shall constitute notice to that Lot Owner.

4. **Effect of Non-payment of Assessment; Remedies of the Association.**

(i) If any Assessment or any installment of any Assessment is not paid within then (10) days after the same has become due, the entire unpaid balance of the Assessment shall, without demand or notice, forthwith become due and payable, and bear interest thereafter at the rate of eight percent (8%) per annum.

(ii) Common Assessments and Special Assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association upon the Lot against which each such Assessment is made.

(iii) At any time after an Assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for the entire unpaid balance of that Assessment, interest and costs, may be filed with the Stark County Recorder at the option of the Board. The certificate shall contain a description of the Lot against which the lien exists, the name or names of the record Owner or Owners thereof, and the amount of the unpaid portion of the Assessments, and shall be signed by the president of the Association. If the president is the defaulting Owner, then any officer of the Association may sign the certificate on behalf of the Association.

(iv) The lien provided for herein shall remain valid for a period of five (5) years from the date a certificate of lien was duly filed therefor, unless sooner released or satisfied in the same manner provided for by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(v) Any Lot Owner who believes that an assessment of lien to his, her or its Lot (for which a certificate of lien has been filed by the Association) has been improperly charged against that Lot, may bring an action in the Stark County Court of Common Pleas for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the Assessment has been improperly charged to that Lot, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(vi) Each such Assessment together with interest and costs shall also be the joint and several personal obligations of the Lot Owners who owned the Lot at the time when the assessment fell due. The obligation for delinquent Assessments, interest and costs shall not be the personal obligation of the Owner's or Owners' successors in title unless expressly assumed by the successors, provided, however, that the right of the Association to a lien against that Lot, or to foreclose any lien thereon for these delinquent assessments, interest and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(vii) The Association, at the option of the Owner or Owners of Lots who are not in default with regard to such matter, may file a lien to secure payment of the entire unpaid balance of a delinquent Assessment, interest and costs, and bring an action at law against the Owner or Owners personally obligated to pay the same, or an action to foreclose the lien, or any one or more of the above. In any such foreclosure action, the Owner or Owners affected shall be required to pay reasonable rental for that Lot during the pendency of such action, and the Association as plaintiff in any such action shall be entitled to become a purchaser at the foreclosure sale. In any such action, interest and costs of such action (including attorneys fees) shall be added to the amount of any such Assessment, to the extent permitted by Ohio law.

(viii) No Lot Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by nonuse of the Common Areas, or any part thereof, or by abandonment of his, her or its Lot.

5. **Subordination of the Lien to First Mortgages.** The lien of the Assessments provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid Assessments or charges against the mortgaged Lot which became payable prior to the time such holder or purchaser took title to that Lot.

6. **Certificate Regarding Assessments.** The Board shall, upon demand, from time to time, furnish a written statement setting forth whether the assessments on a Lot have been paid. This certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

ARTICLE VII

REMEDIES OF THE ASSOCIATION

1. **Denial of Voting Rights.** If any Lot Owner fails to pay an Assessment when due, or otherwise is in breach of any of the rules and regulations contained herein or properly promulgated by the Board hereafter, such Lot Owner and the Occupants of any and all dwelling units of such Lot Owner shall not be entitled to vote on Association matters until said Assessment is paid in full and/or until such Lot Owner is in full compliance with the terms and conditions hereof.

2. **Specific Remedies.** The violation of any rule, or breach of any Restriction, Covenant or



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provision contained in this Declaration, in the By-Laws of the Association or subsequently promulgated by the Board shall give the Association and/or the Declarant the right, in addition to all the rights herein set forth, and as provided by law, to enter upon a Lot or residence upon which such violation or breach exists and summarily abate and remove, at the expense of the Lot Owner, any structure, thing, or condition that may exist thereon, contrary to the intent and meaning of this Declaration, the By-Laws, or the rules and regulations promulgated by the Board, and the Board, the Association, and/or any agent utilized in connection therewith, shall not be deemed guilty in any manner of trespass. In addition, the Association and/or the Declarant may enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach, and/or may commence and prosecute an action to recover any damages which may have been sustained by the Declarant and/or the Association or any of its members.

ARTICLE VIII
AMENDMENTS

1. **Power to Amend.** The terms of this Declaration may be amended by Declarant unilaterally until such time as a Lot has been sold to a third party other than Declarant. Following such sale, except as specifically set forth below, the terms of this Declaration may only be amended with the written consent of at least 75% of the Lot Owners. Provided, however, that as long as Declarant owns a Lot or any portion of the Arbor Creek Property, no such Amendment shall be effective without Declarant's prior written consent. Further, Declarant reserves the right and power, and each Lot Owner, by acceptance of a deed, gives and grants to Declarant a power of attorney, which right an power is coupled with an interest, and runs with the title to a Lot and is irrevocable for a period of three (3) years from the date hereof, to amend the Declaration to the extent necessary to conform with requirements then governing the purchase or insurance or mortgages by Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Federal Housing Administration, the Veterans Administration or any other such agency; and, further provided, that if there is a Lot Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control by the Declarant.

2. **Method to Amend.** An amendment to this Declaration adopted with the contents hereinbefore provided, in a writing executed with the same formalities as this Declaration by all Lot Owners, shall be effective upon the filing of the same with the Stark County Recorder.

3. **Amendment by Declarant.** For so long as the Declarant, or a successor developer designated by Declarant, is the Owner of a fee simple interest in any portion of the Arbor Creek Property, the Declarant shall be entitled from time to time to amend or modify any provisions of this Declaration or to waive any of the provisions, either generally or with respect to particular Lots and/or Property, if in its judgment, the development or lack of development of the Arbor Creek Property requires such modification or waiver, or if in its judgment the purposes of the general plan of development of the Lots will be better served by such modification or waiver, provided no such amendment, modification or waiver shall materially and adversely affect the value of existing Lots or shall prevent a Lot or residence from being used by a Lot Owner in the same manner that said residence was used prior to the adoption of said amendment, modification or waiver. In order to effect such amendment, the Declarant need only file a

Supplemental Declaration setting forth the amendment, which Supplement need no be executed by the Association, or any other Owners of the Arbor Creek Property.

ARTICLE X
GENERAL PROVISIONS

1. **Covenants Running with the Land.** The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Arbor Creek Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

2. **Duration.** Unless sooner terminated or amended, as hereinabove provided, the Covenants and Restrictions of this Declaration shall continue for a term of twenty-one (21) years from the date hereof, after which time, said Covenants and Restrictions shall automatically be extended for successive periods of ten (1) years each unless repealed as provided herein. However, if any of the privileges, covenants or rights created in this Declaration and/or by any of the exhibits hereto shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue only until 21 years after the death of the last survivor of the now living descendants of George W. Bush, President of the United States of America.

3. **Severability.** Invalidation of any one of the covenants, restrictions or provisions contained herein shall in no way affect any other provision, which shall remain in full force and effect.

4. **Captions.** The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned Declarant has executed this instrument this 12th day of February, 2003.

ARBOR CREEK CORE
By: [Signature]
Robert P. Leach
Its: President




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STATE OF OHIO, STARK COUNTY, ss:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Arbor Creek Corp., by Robert P. Leach, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at North Canton, Ohio, this 12th day of February, 2003.


Notary Public

LISA E. LEECH
Notary Public State Of Ohio
My Commission Expires Feb. 28, 2005

of the Association by Declarant and each year thereafter, the Board shall notify each Homeowner in writing of the amount of such estimate, with reasonable itemization thereof. The "estimate cash requirement" shall be assessed to the Homeowners as set forth herein and according to the Restrictions. On or before January 1 of the ensuing year, and the first of each and every month of said year, each Homeowner shall be obligated to pay the Association or as it may direct one-twelfth (1/12th) of the Assessment made pursuant to this section.

The failure or delay of the Association to prepare or serve the annual or adjusted estimate on any Homeowner shall not constitute a waiver or release in any manner of such Homeowner's obligation to pay their share of the Common Expenses, including, without limitation, the maintenance cost and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, each Homeowner shall continue to pay a monthly assessment at the then existing monthly rate established for the previous period until the amount of the monthly assessment is changed as herein provided.

Section 3. Working Capital Contribution

At closing, each original purchaser from the Declarant before title is transferred may be required to pay to the Declarant or to the Association, if formed at that time, an additional working capital contribution in an amount equal to the regular monthly assessment on that Lot. Payment of such initial working capital contribution shall not relieve that purchaser of his obligation to separately pay the full amount of the first monthly installments or any other assessments when due, nor shall they have any right to direct that this amount of working capital be applied against any assessments or be applied for any particular purpose. Any such working capital contributions made to the Declarant shall be delivered by the Declarant to the Association upon its formation.

Section 4. Reserve Fund

From time to time Declarant, and after turn over of the Association by Declarant, the Board, may determine to levy a special assessment against each Homeowner or subsequent purchaser for the purpose of establishing a reserve for capital improvements. Such assessment shall be maintained in a reserve fund. Upon the sale of a Lot by any Homeowner, such Homeowner shall have no right to any portion of the funds in the reserve account, nor shall such Homeowner have any claim against Declarant or the Association with respect thereto. Any funds paid directly to the Declarant shall be delivered to the Association upon turn over of the Association by Declarant.

Section 5. Assessments Due Prior to Organizational Meeting

Until such time as the Association is turned over by Declarant, each Homeowner shall pay the monthly assessment established with respect to their Lot by the Declarant or the initial Board, as the case may be, and such funds shall be used for the benefit of the Association. Notwithstanding anything in these Bylaws to the contrary, the Declarant or the initial Board, as the case may be, shall have the right to increase or decrease the monthly assessment at any time and from time to time to reflect increases or decreases in the actual Common Expenses applicable to the PRD by notifying all Homeowners (other than Declarant) of such increase or

decrease. Any such increase or decrease shall be pro rata in accordance with the percentage of interest in the common open space attributable to each Lot in the PRD.

Section 6. Status of Funds Collected by the Association

All funds collected hereunder shall be held and extended solely for the purposes designated in the Restrictions and these Bylaws and (except for special assessments as may be levied hereunder against less than all the Homeowners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit, and account of all Homeowners.

Section 7. Lien of Unpaid Assessments

Unpaid assessments shall be a lien upon the Lot. The Board may charge interest and collect attorney fees associated with the collection of the assessment from the non-paying Homeowner.

Section 8. Remedies for Failure to Pay Assessments

If a Homeowner is in default in the payment of any charges or assessments for ten (10) days, the Association upon authorization of the Board, or the Declarant prior to turn over of the Association, may bring suit to enforce collection thereof or to foreclose the lien thereof as provided in the Restrictions or at law, together with interest and reasonable attorneys' fees. The amount of any delinquent and unpaid charges or Assessments, and interest, costs, and fees as provided above shall constitute a lien and may be foreclosed by an action brought by the Association if authorized by the Board or the Declarant, however as the case may be. The Board, acting on behalf of consenting Homeowners, shall have the power to bid in the interest so foreclosing at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 9. Additions, Alterations, or Improvements by Board

Whenever in the judgment of the Board, the common open space and facilities shall require additions, alterations, or improvements (as opposed to maintenance, repair, and replacement) costing in excess of Two Thousand Dollars (\$2,000) and the making of such additions, alterations or improvements shall have been approved by Homeowners entitled to exercise not less than a majority of the voting power, the Board shall proceed with such additions, alterations, or improvements and shall assess all Homeowners for the cost thereof as Common Expense. Any additions, alterations, or improvements costing Two Thousand Dollars (\$2,000) or less may be made by the Board without approval of the Homeowners, and the cost thereof shall constitute part of the Common Expense. As long as Declarant shall be the Homeowner of ten percent (10%) of the Lots or more in the PRD, the Board shall not authorize any addition, alteration, or improvements as set forth in this paragraph without the prior written consent of the Declarant. See also Article VII, Section 2.

ARTICLE XI MORTGAGES

A Homeowner who mortgages their Lot shall notify the Association through the Management Agent, if any, or the President of the Board and the Secretary of the Board in the event there is no Management Agent of the name and address of his mortgagee, and the Association shall maintain such information in a book entitled "Mortgagees of Lots."

ARTICLE XII GENERAL PROVISIONS

Section 1. Books and Records

The Association shall keep correct and complete books and records of account, specifying the receipts and expenditures relating to the common open space and facilities and other common receipts and expenses, together with records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the Homeowners; minutes of the proceedings of the Homeowners and Board of Trustees and records of the names and addresses of the Homeowners. The Association shall keep and make available during ordinary business hours to all Homeowners or to any holders, insurers, and guarantors of first mortgages secured by a Lot copies of all documents, including the Restrictions, Bylaws, Articles of Incorporation, and minutes of meetings of the Association.

Section 2. Annual Audit

The books of the Association shall be audited once a year by the Board of Trustees, and such audit must be completed prior to each annual meeting of the members. If requested by three (3) members of the Board of Trustees, such audit shall be made by a Certified Public Accountant or an independent auditing firm. Upon written request, the audit will be provided to a Homeowner and/or a holder, insurer, or guarantor of a first mortgage secured by a Lot.

Section 3. Rules and Regulations

The Association, by the affirmative vote of the Members entitled to exercise a majority of the voting power of the Association, or the Board, by a vote of a majority of the authorized number of Trustees, or the Declarant, may adopt such reasonable rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Restrictions and these Bylaws as it or they may deem advisable for the operation, use, maintenance, conservation, and beautification of the PRD or any portion thereof, or for the health, comfort, safety, and general welfare of the Homeowners and Occupants of the PRD. Written notice of such PRD shall be given to all Homeowners and Occupants, and the PRD shall at all times be maintained subject to such rules.

Section 4. Median Dividers

In the event that median dividers are approved for the PRD, the Jackson Township Board of Trustees shall retain the authority to determine what, if any, improvements (including signs) are to be made to the median dividers.

Section 5. Fines

The Association, by the affirmative vote of the members entitled to exercise a majority of the voting power of the Association, or the Board, by a majority of the authorized number of Trustees, or the Declarant may adopt such reasonable fines and from time to time amend the same to be assessed against a Homeowner for a breach of any covenant or restriction contained in the Restrictions, the within Bylaws or any additional rules or regulations promulgated in accordance therewith. The offending Homeowner shall be notified in writing in accordance with the provisions hereof as to the amount of violation and the amount of the fine. The Homeowner shall have five (5) business days from the date of receipt of the notice to pay the fine in full. A Homeowner's failure to pay a fine in accordance with this Section or as otherwise provided in the Restrictions and/or Bylaws may result in a collection of the fine as an assessment against the Homeowner.

Section 6. Declarant's Rights Pending First Organizational Meeting

Until such time as the Association is turned over by Declarant, the powers, rights, duties and functions of the Association and the Board, including, without limitation, the power to determine the amount of and levy Assessments and reserves, shall be solely exercised by the Declarant.

Section 7. Severability

The invalidity of any covenant, restriction, condition, limitation, or any other provision of these Bylaws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability, or effect of any other provisions contained in these Bylaws or in the Restrictions.

Section 8. Ratification

All present or future Homeowners or tenants or their employees or occupants shall be subject to the regulations set forth in the Restrictions and in these Bylaws. The mere acquisition or rental of any of the Lots located within the PRD described in the Restrictions, or the mere act of occupancy of any of said Lots will constitute acceptance and ratification of the Restrictions and of these Bylaws. In the event of any conflict or inconsistency between any rules and regulations and these Bylaws or the Restrictions, it is agreed that the provisions of the Bylaws and the Restrictions shall apply.

Section 9. Conflict Between Restrictions and Bylaws

In the event of conflict or inconsistency between any of the provisions of the of the Restrictions and of these Bylaws, it is hereby agreed that the provisions of the Restrictions shall apply.

Section 10. Construction of Provisions

The provisions of these Bylaws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first-class planned residential development.

**ARTICLE XIII
FISCAL YEAR**

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of this Association.

**ARTICLE XIV
AMENDMENTS**

Declarant may amend these Bylaws in any manner prior to turn over of the Association. After turn over of the Association, these Bylaws may be amended or modified at any time(s) by action or approval of Homeowners exercising seventy-five percent (75%) or more of the voting power of the Association.

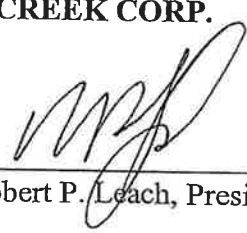
Any amendment to the Restrictions and/or Bylaws that pertains to the maintenance of or access to the common open space shall be approved by the Jackson Township Law Director.

The undersigned, has caused these Bylaws to be duly adopted on or as of the 9 day of May, 2002.

Declarant

ARBOR CREEK CORP.

By: _____

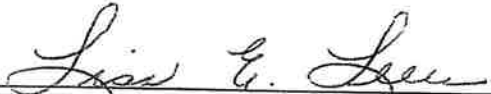

Robert P. Leach, President

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STATE OF OHIO; STARK COUNTY

Before me, a Notary Public in and for said County and State, personally appeared the above-named ARBOR CREEK CORP., by Robert P. Leach its President, and who acknowledged that he did sign the foregoing instrument, and that the same is the free act and deed of said corporation, and the free act and deed of him personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at North Canton, Ohio this 9TH day of May, 2002.



Notary Public

This instrument prepared by:
Brian C. Cich, Esq.
Black, McCuskey, Souers & Arbaugh
1000 Unizan Plaza
220 Market Avenue South
Canton, Ohio 44702
(330) 456-8341

LISA E. LEECH
Notary Public State Of Ohio
My Commission Expires Feb. 28, 2005