

CODE OF REGULATIONS OF WAGNER HILL HOMEOWNERS ASSOCIATION

Pursuant to Section 1702.10 of the Ohio Revised Code, the sole initial Member of WAGNER HILL HOMEOWNERS ASSOCIATION, an Ohio nonprofit corporation, (the "Corporation") has adopted this Code of Regulations (the "Regulations") for the government of the Corporation, the conduct of its affairs and the management of its property.

ARTICLE I Definitions

In addition to other words or phrases parenthetically defined in these Regulations, all of the terms used in these Regulations shall have the same meanings as set forth in the Declaration of Protective Covenants, Conditions and Restrictions for the single family residential subdivision known as Wagner Hill ("the Declaration"), recorded or to be recorded in the Recorder's Office of Greene County, Ohio, and as the Declaration may be lawfully amended from time to time.

ARTICLE II Name and Location

The name of the Corporation is Wagner Hill Homeowners Association. The principal office of the Corporation shall be in the City of Beavercreek, Greene County, Ohio, or at such other place as the Board of Trustees may from time to time designate.

ARTICLE III Members

Section 3.1 Membership Qualification. Members in the Corporation may be individuals, general or limited partnerships, limited liability companies, profit or nonprofit corporations, trusts, or any other form of entity recognized under Ohio law and having the power to hold legal title to real estate (all of whom are referred to as a "person" for purposes of these Regulations). Membership in the Corporation is an incidence of ownership of a present interest in legal title to real property in the Subdivision, and all Members of the Corporation must have a present legal interest in title to one or more of the single family residential lots within Wagner Hill subdivision (the "Subdivision"). No person who holds a future legal or equitable interest (whether vested or contingent) in any lot in the Subdivision shall be a Member of the Corporation, nor have any rights or obligations of Members of the Corporation. Lenders holding any interest in property within the Subdivision as security for an

obligation of the owner of such property are not eligible to be Members in the Corporation unless and until they have foreclosed on the security and obtained legal title to the property.

Section 3.2 Membership Classes. Membership in the Corporation shall be divided into the following three (3) initial classes, until such time as these classes are merged into one class as provided in these Regulations:

(a) **Developer Class.** Kingswood III Co., or its successors or assigns, as the owner and developer of the Subdivision, shall hold the only Membership interest within the Developer Class. This Developer Class shall remain in effect until title to the last lot within the Subdivision is transferred to a Member holding a Builder Class or Homeowner Class interest in the Corporation, at which time the Developer Class shall automatically be dissolved and terminated.

(b) **Builder Class.** Each builder who has been approved by the Board of Trustees to participate as a general contractor for the construction of single family residences in the Subdivision shall be a Member of the Corporation within the Builder Class for so long as the builder holds a present interest in legal title to one or more lots in the Subdivision. Builders who are merely constructing improvements on a lot owned by a Homeowner Class Member are not, by virtue of their participation as a builder, Members of the Corporation.

(c) **Homeowner Class.** Any person who owns a present interest in legal title to a lot in the Subdivision improved or to be improved with a single family residence with the intent to occupy the residence as that person's principal residence shall be a Member of the Corporation within the Homeowner Class for so long as that person owns the property.

Section 3.3 Transfer of Membership. Membership in the Corporation shall be evidenced by a properly executed and delivered deed granting a present legal interest in a lot in the Subdivision, and shall be effective from the date such deed is recorded. If a Member sells, assigns, gives or otherwise transfers a present legal interest in a lot it owns in the Subdivision to another person or persons, that Member's membership in the Corporation arising from ownership of the lot then conveyed shall cease and shall immediately transfer to the grantee(s) of legal title to that lot upon recording of the deed.

Section 3.4 Voting Rights. Members of the Corporation shall be entitled to vote on all matters requiring the approval of the Members under the Ohio Revised Code, and such other matters as the Members or the Board of Trustees may from time to time determine.

Section 3.5 Number of Votes. It is the intention of these Regulations to provide a mechanism for the Developer Class Member to retain control of the Subdivision and of the Corporation until such time as title to all lots in the Subdivision has been transferred to Builder Class Members or Homeowner Class Members. Accordingly, the voting rights of the respective classes of membership shall be as follows:

(a) **Developer Class Votes.** Until legal title to all lots in the Subdivision are transferred to Builder Class Members or Homeowner Class Members, the Developer Class Member shall have Two (2) votes for each lot in the Subdivision it owns, plus one (1) vote for each lot in the Subdivision owned by a Builder Class Member or Homeowner Class Member. When legal title to the final lot in the Subdivision is transferred and the Developer Class of membership terminates, all voting rights of the Developer Class Member shall also terminate.

(b) **Builder Class Votes.** Each Builder Class Member shall have one (1) vote for each lot in the Subdivision to which it holds legal title.

(c) **Homeowner Class Votes.** Each Homeowner Class Member shall have one (1) vote for each lot in the Subdivision to which it holds legal title.

(d) **Limitation of Voting Rights.** Except for the voting rights of the Developer Class Member, there shall only be one (1) vote per lot, regardless of the number of persons who hold a present legal interest in such lot. If ownership of a lot is held by more than one person at the same time, then the owners shall determine among themselves who shall be entitled to exercise the single vote for each lot. If the owners cannot jointly agree as to which of them shall be entitled to exercise the vote attributable to that lot, then the right to vote shall be forfeited until such time as the owners designate which of them shall exercise such vote.

(e) **Transition.** After the Developer Class of membership has terminated and legal title to all of the lots have been transferred to Homeowner Class Members, then the Builder Class of membership shall automatically be dissolved and terminated. Thereafter, the Corporation shall operate with only the Homeowner Class of membership, and the Homeowner Class Members shall have exclusive control of and responsibility for the continued operation of the Corporation.

Section 3.6 Annual Meetings. The first annual meeting of the Members after adoption of these Regulations shall be held on or before May 31, 1997. Each succeeding year, a regular annual meeting of the Members shall be held on or before the last day of May, or on such other date as may be designated by the Board of Trustees. All annual meetings of the Members shall be held at an hour and at a location established from time to time by the Board of Trustees.

Section 3.7 Special Meetings. Special meetings of the Members may be called at any time by the President, a majority of the Board of Trustees acting with or without meeting, or upon written request of Members entitled to exercise one-fourth or more of the voting power of Members. All special meetings of the Members shall be held at an hour and at a location established by the Board of Trustees, but no later than thirty (30) days after receipt of the written request from the person calling the meeting.

Section 3.8 Notice of Meetings. Written notice of each annual or special meeting of Members shall be given by, or at the direction of, the person or person authorized to call the meeting, by hand delivering or by mailing a copy of such notice, postage prepaid, at least ten (10) days, but not more than sixty (60) days, before such meeting to each Member entitled to vote at such meeting, addressed to the Member's address last appearing on the books of the Corporation, or supplied by such Member to the Corporation for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.9 Quorum. The Members present, in person or by proxy, at any duly called and noticed meeting of Members, shall constitute a quorum for such meeting.

Section 3.10 Proxy. At any meeting, a Member may vote in person or by proxy. All proxies shall be in writing and if more than one person owns a present interest in legal title to any single lot, then each person representing the total present interest in legal title to any single lot shall join in signing the proxy. All proxies shall be filed with the Secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by a Member of his, her or its lot.

Section 3.11 Voting Power. Except as otherwise provided in these Regulations, in the Articles of Incorporation, or in the Declaration, or by law, the affirmative vote of a majority of the voting power of Members present at a meeting at which a quorum is present shall be required for the authorization or taking of any action voted upon by the Members. Roberts Rules of Order shall apply to the conduct of all meetings of Members except as otherwise specifically provided in these Regulations.

Section 3.12 Action in Writing Without Meeting. Any action that could be taken by Members at a meeting may be taken without a meeting with the unanimous affirmative vote or approval, in a writing or writings, of Members who would be entitled to notice of such meeting.

ARTICLE IV
Board of Trustees

Section 4.1 Trustee Number and Qualification. The Board of Trustees shall be comprised of three (3) persons, unless the Members of the Corporation vote to increase the number of Trustees on the Board. Trustees of the Corporation must be individuals, but do not have to be Members of the Corporation. Each Trustee shall serve a term of one year, being from the date of election to the date of the next election of Trustees at the annual meeting of Members, unless the Trustee resigns during his or her term or is removed earlier as provided in these Regulations. There are no limitations on the number of successive terms an individual may serve as Trustee.

Section 4.2 Initial Trustees. The Trustees shall initially be those named in the Articles, or substitutes or additional Trustees elected by the Members.

Section 4.3 Successor Trustees. At each annual meeting of Members the Members shall elect Trustees, who shall serve until the election of a successor Trustees at the next annual meeting of Members, subject to earlier removal or resignation as provided in these Regulations. No cumulative voting shall be permitted in the election of Trustees.

Section 4.4 Removal. Any Trustee may be removed from the Board during his or her term, with or without cause, by Members exercising a majority of the voting power of Members at a special meeting of Members called for that purpose. If a Trustee dies, resigns or is removed during his or her term, that Trustee's successor shall be selected by majority vote of the remaining Trustees and shall serve until the next annual meeting of Members. Notwithstanding the foregoing, the Board of Trustees may by majority vote of the remaining Trustees immediately remove any Trustee from office if such Trustee is absent from three consecutive regular meetings of the Board of Trustees;

Section 4.5 Compensation. Unless otherwise determined by the Members at an annual meeting or a special meeting called for such purpose, no Trustee shall receive compensation for any services rendered to the Corporation as a Trustee. However, any Trustee may be reimbursed for his or her actual expenses incurred in the performance of duties as Trustee.

Section 4.6 Regular Meetings. Regular meetings of the Trustees shall be held no less than semi-annually on such date and at such place and hour as may be fixed from time to time by resolution or verbal agreement of the Trustees.

Section 4.7 Special Meetings. Special meetings of the Trustees shall be held when called by the President or by any Trustee.

Section 4.8 Notice of Meetings. Written notice of each regular or special meeting of the Board of Trustees shall be given by, or at the direction of, the officer or Trustee calling the meeting, by hand delivering or by mailing a copy of such notice, postage prepaid, at least ten (10) days, but not more than thirty (30) days, before such meeting to each Trustee, addressed to the Trustee's address last appearing on the books of the Corporation, or supplied by such Trustee to the Corporation for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4.9 Quorum. The presence at any duly called and noticed meeting, in person, of Trustees entitled to exercise a majority of the voting power of Trustees, shall constitute a quorum for such meeting.

Section 4.10 Voting Power. Each Trustee shall have one (1) vote on each matter that comes before the Board for determination. Except as otherwise provided in the Declaration, Articles, these Regulations or by law, the affirmative vote of a majority of the Trustees present at a meeting at which a quorum is present shall be required for the authorization or taking of any action voted upon by the Trustees. Roberts Rules of Order shall apply to the conduct of all meetings of Trustee except as otherwise specifically provided in these Regulations.

Section 4.11 Action In Writing Without Meeting. Any action that could be taken by Trustees at a meeting may be taken without a meeting with the unanimous written consent of all Trustees.

Section 4.12 Powers and Duties of the Board. The Trustees shall have all powers, authority and obligations provided under law, and under the provisions the Declaration, Articles and these Regulations that are not specifically and exclusively reserved to the Members. Without limiting the generality of the foregoing, the Trustees shall have the following rights, powers, authority and obligations:

- (a) Keep a complete record of all acts approved by the Trustees and all other records of the corporate affairs, and to present a statement or report of the same to the membership at each annual meeting of Members, or at any special meeting of Members called for such purpose;
- (b) Supervise all Officers, employees, agents and contractors of the Corporation, and to see that they properly perform their duties;
- (c) Take all action deemed necessary or desirable to comply with all requirements of law, the Declaration, Articles and these Regulations;
- (d) Obtain and maintain adequate liability insurance coverage for the Corporation relating to the common areas and other corporate activities,

and cause officers and employees having fiscal responsibilities to be bonded as the Trustees deem appropriate;

- (e) Interpret and enforce the covenants, conditions and restrictions set forth in the Declaration, and any design standards developed by the Trustees or a committee established by the Trustees as provided in these Regulations;
- (f) Maintain the Common Areas and all other improvements owned by the Corporation;
- (g) Establish, enforce, levy and collect assessments as provided in the Declaration;
- (h) Issue or cause an appropriate Officer to issue, upon the written request of any Member and after payment of a reasonable fee, a certificate setting forth whether or not any assessment has been paid; and if a certificate states that an assessment has been paid, such certificate shall be conclusive proof of payment;
- (i) Adopt and publish rules and regulations governing the use of the Common Areas and the exterior portions of all improvements on any lots in the Subdivision and the personal conduct of Members and their guests in the Subdivision, and establish charges for the violations of such rules and regulations;
- (j) Suspend, without notice or a hearing, the voting rights of any Member during any period in which such Member is in default in the payment of any assessment levied by the Corporation, or suspend, after notice and hearing, the voting rights of any Member for material violations of published rules and regulations of the Corporation or of any provision of the Declaration;
- (k) Enter into, or authorize the Officers of the Corporation to enter into, management agreements or other contracts with third parties in order to facilitate the efficient operation of the Corporation's affairs;
- (l) Delegate to persons, committees, firms or corporations of its choice such duties and responsibilities of the Corporation as the Board of Trustees may from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

ARTICLE V
Officers

Section 5.1 Designation of Offices. The principal Officers of the Corporation shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board of Trustees, and all of whom shall also be Trustees. Any one person may hold more than one office at the same time, except that the offices of President and Vice President must be held by different persons.

Section 5.2 Term of Office; Vacancies. The Officers of the Corporation shall hold office from the date of election until the next organizational meeting of the Board of Trustees and until their successors are elected, unless such officer dies, resigns or is removed earlier as provided in these Regulations. The Board of Trustees may remove any Officer at any time, with or without cause, by a majority vote of the Trustees then in office. Any vacancy in any office may be filled by the Board of Trustees.

Section 5.3 President. The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the Members and of the Board of Trustees. Subject to directions of the Board of Trustees, the President shall have general executive supervision over the business and affairs of the Corporation. He may execute all authorized deeds, contracts and other obligations of the Corporation and shall have such other authority and shall perform such other duties as may be determined by the Board of Trustees, or otherwise provided for in the Declaration or in these Regulations.

Section 5.4 Vice President. The Vice President shall perform the duties of the President whenever the President is unable to act, and shall have such other authority and perform such other duties as may be determined by the Board of Trustees.

Section 5.5 Secretary. The Secretary shall prepare and serve all notices required by the Declaration and by these Regulations and shall keep the minutes of all meetings of the Members and the Board of Trustees. He shall have charge of and keep and maintain such books and papers as the Board of Trustees may direct and shall perform all the duties required by the Board of Trustees.

Section 5.6 Treasurer. The Treasurer shall have responsibility for Corporation funds and securities, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books of account belonging to the Corporation. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may from time to time be designated by the Board of Trustees. The Treasurer shall also prepare an annual budget and statement of income and expenses of the Corporation to present to the membership at the annual meeting of Members each year.

ARTICLE VI
COMMITTEES

Section 6.1 General. The Board of Trustees may appoint such committees as its deems appropriate in carrying out the purposes of the Corporation. Each committee shall have the purposes, rights and powers, and shall exist for so long, as may be designated by the Board of Trustees. No action of any committee with respect to third parties shall be binding on the Corporation without approval of the Board of Trustees.

Section 6.2 Architectural Review Board. The Board of Trustees shall establish and maintain as a standing committee and Architectural Review Board (the "ARB") for the purpose of interpreting, reviewing, establishing guidelines, approving, disapproving or otherwise fulfilling all responsibilities within the Declaration regarding the construction, alteration, modification, demolition or other matters pertaining to Improvements in the Subdivision. The ARB shall have as many members as may be required in the Declaration or as may be determined by the Board of Trustees. Members of the ARB may, but are not required to, be Trustees or Members of the Corporation. The ARB shall hold meetings at such times as may be necessary to carry out its duties in a timely manner. All actions of the ARB shall be enforceable by the Board of Trustees in the name of the Corporation.

ARTICLE VII
Indemnification

The Corporation shall indemnify every person who is or has been a Trustee, Officer, employee, agent or volunteer of the Corporation and those persons' respective heirs, beneficiaries, executors, administrators, legal representatives, successors and assigns to the extent and subject to the terms, conditions and standards set forth in Section 1702.12(E) of the Ohio Revised Code, or any subsequent amendment or replacement of that statute. The Board of Trustees may obtain such insurance coverage as it deems appropriate and as may be available to insure against possible losses or liabilities as a result of this indemnification obligation. Any such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled under law, any agreement, or any insurance purchased by the Corporation, or by majority vote of the Members, or otherwise.

ARTICLE VIII
Assessments

The Declarations require the owner of each lot in the Subdivision to pay to the Corporation annual, special and compliance assessments which are secured by a continuing lien upon the property against which the assessments are made. All assessments shall be due and payable in full within thirty (30) days after the date of

mailing of the invoice for the assessments to the owner at the address last shown on the records of the Corporation. Any assessment not paid by the due date shall bear interest from the due date at the prime rate of interest charged by National City Bank of Dayton, Ohio, or its successor, until paid in full. If the assessment is not paid in full, with interest, within thirty (30) days after the due date, the Corporation may bring a legal action against the owner(s) personally for the amount due, and/or may foreclose the lien against the property. Any judgment against the owner(s) personally or in foreclosure shall in addition to the amount of the assessment include all interest accrued and accruing on the delinquent account, plus all costs and expenses (including reasonable attorney fees) incurred by the Corporation in connection with collecting the amount due or in working with the owner(s) to bring the assessment account current. No owner may waive or otherwise escape liability for the assessments by non-use of the common areas or abandonment, sale, gift, or other transfer of his lot.

ARTICLE IX
Books and Records

The books, records and other papers of the Corporation shall at all times during reasonable business hours be subject to inspection by any Member. The Declaration, Articles of Incorporation and these Regulations shall be available for inspection by any Member at the principal office of the Corporation, and copies may be purchased for a reasonable cost.

ARTICLE X
Amendment

These Regulations may be amended at a regular meeting of the Members, or at a special meeting of the Members called for that purpose, by the affirmative vote of Members exercising Seventy-Five Percent (75%) of the voting power of Members. If the amendment would materially affect the rights of a mortgagee with an interest in any property in the Subdivision, the amendment must first be approved by a majority of holders of first mortgage liens on such property.

ARTICLE XI
Dissolution

The Corporation shall remain in existence perpetually, unless merged into or consolidated with another corporation as permitted by law, or until dissolved in the manner provided in these Regulations. The Corporation may only be dissolved at a regular meeting of the Members, or at a special meeting of the Members called for that purpose, by the affirmative vote of Members exercising Seventy-Five Percent (75%) of the voting power of Members. In the event of a vote of dissolution, the Members

shall within thirty (30) days adopt a formal plan of dissolution and distribution (the "Plan"), describing the procedures to be taken to wind-up the affairs of the Corporation and the manner in which the remaining assets of the Corporation are to be distributed. The Plan shall be approved by the Members by the same percentage of affirmative vote as required for approving dissolution of the Corporation. If the Members fail to adopt a Plan within the thirty (30) day period, then the Board of Trustees shall adopt a Plan by majority vote, which shall be binding upon all Members and the Corporation. In any event, the Plan and all actions taken by the Members, Trustees and Officers of the Corporation as part of the dissolution shall be consistent with Ohio law and applicable provisions of the Internal Revenue Code and related Treasury Regulations.

ARTICLE XII

General Provisions

Section 12.1 Copies of Notices to Mortgage Lenders. Upon written request to the Board of Trustees, the holder of any duly recorded mortgage against any property in the Subdivision shall be given a copy of any and all notices and other documents permitted or required by the Declaration or these Regulations to be given to the Member or Members whose property is subject to such mortgage, and a copy of any lien filed by the Corporation on such property.

Section 12.2 Non-Waiver of Covenants. No covenants, conditions, restrictions, obligations or provisions contained in the Declaration or these Regulations shall be deemed to have been abrogated or waived by reason of any delay or failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 12.3 Conflicts with Other Documents. If any provision of these Regulations conflicts with any provision of the Articles of Incorporation or the Declaration, then the Articles or the Declaration shall control.

Section 12.4 Agreements Binding. All agreements and determinations lawfully made by the Corporation in accordance with the procedure established in the Declaration and these Regulations shall be deemed to be binding on all Members and their respective heirs, beneficiaries, executors, administrators, personal representatives, successors and assigns.

Section 12.5 Severability. The invalidity of any covenant, condition, restriction, limitation or any other provision of these Regulations or of any part of the same shall not impair or affect in any manner the validity, enforceability or effect of the rest of these Regulations.

Section 12.6 Gender and Grammar. As used in these Regulations, the singular shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions in these Regulations apply to either corporations, partnerships or individuals, male or female, shall in all cases be construed in that manner in order to reach a reasonable and just interpretation of these Regulations.

Approved and adopted by the sole initial Member as the Code of Regulations of the Corporation effective as of the 11th day of March, 1997.

SOLE INITIAL MEMBER:

KINGSWOOD III CO.,
An Ohio Corporation

By:



Hisham A. Shtayyeh, President