

BY-LAWS  
OF  
STONE FALLS OWNERS ASSOCIATION

Article I.      Name and Location

The name of the corporation is STONE FALLS OWNERS ASSOCIATION, hereinafter referred to as the "Association." The principal office of the corporation shall be located in the City of Beavercreek, Greene County, Ohio, but meetings of Members and Trustees may be held at such places within the State of Ohio as may be designated by the Board of Trustees.

Article II.      Definitions

Section 1. "Association" shall mean and refer to STONE FALLS OWNERS ASSOCIATION, its successors and assigns.

Section 2. "Property" shall mean and refer to that real property described or referenced in the Declaration of Covenants, Conditions, and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association in accordance with the provisions of said Declaration.

Section 3. "Common Area" shall mean all real property controlled by the Association.

Section 4. "Lot" shall mean and refer to the lots shown upon any recorded record plan of a subdivision of the properties with the exception of the Common Area. The term shall contemplate that the lot is improved with a single family detached home.

Section 5. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any lot which is subdivided from a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to Oberer Development Co., its successors and assigns.

Section 7. "Declaration" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any lot which is subdivided from a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration.

Section 9. "Recorded" shall mean duly recorded in the Office of the Recorder of Greene County, Ohio, unless otherwise clearly indicated.

Article III.      Meetings of Members

Section 1. Annual Meeting: The first annual meeting of the Members shall be held within one year from the date of Incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 p .M. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 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-FOURTH (1/4th) of all of the membership votes. A special meeting may also be called by the Declarant.

Section 3. Notice of Meetings: 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 a copy of such notice at least 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 the case of a special meeting, the purpose of the meeting.

Section 4. Quorum: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast the votes of the Developer (Class B member) and the majority of the votes of Class A members, shall constitute a quorum for any action except as otherwise provided in Articles of Incorporation, the Declaration, or these By-laws. If, however, such quorum shall not be present or represented at any meeting, the Members 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. The Members at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of the holders of enough shares to leave less than a quorum.

Section 5. Proxies: At all meetings of 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 the conveyance by the Member of his lot.

Section 6. Notice and Quorum for Assessments: Written notice of any meeting called for the purpose of taking action concerning assessments as provided in the Declaration shall be sent to all Members not less than FIFTEEN (15) nor more than THIRTY (30) days in advance of the meeting. At the first such meeting called, the initial presence of Members or of proxies entitled to cast SIXTY PERCENT (60%) of all votes shall constitute a quorum. If the required quorum is not present at the commencement of the meeting, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be ONE-HALF (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The Members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 7. Suspension of Voting Privileges: No Member shall be eligible to vote or 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 assessments due the Association.

Section 8. Voting: The Association shall have TWO (2) classes of voting membership; Class A Members and Class B Members. The Class A Members shall be all of the Owners, except the Developer, of lots upon which is constructed a single family detached home, and shall be entitled to ONE (1) vote for each such lot so owned. The Class B Member will be the Developer and shall be entitled to THREE (3) votes for each lot owned. The Class B Membership shall cease and be converted to a Class A Membership when the Class A Members' votes equal or exceed the Class B votes, or on December 31, 2004.

#### Article IV. Board of Trustees: Selection: Term of Office:

Section 1. Number: Initially the affairs of this Association shall be managed by a Board of THREE (3) Trustees, who need not be Members of the "Association".

Section 2. Term of Office: At the first annual meeting the Members shall elect Three (3) Trustees for a term of ONE (1) year; at each annual meeting thereafter, the Members shall elect Trustees for a term of ONE (1) year.

Section 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, on the vacancy of the office, his successor shall be selected by the remaining Members of the Board and the successor shall serve for the unexpired term of his predecessor.

Section 4. Compensation: No Trustee shall receive compensation for any service he may render to the Association. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 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 of 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 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 of 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 prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make any such 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 shall be made in a manner consistent with Article IV hereof.

Section 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. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 3. Declarant's Trustees: As long as the Class B membership exists, the Developer shall, at the annual meeting advise the Chairman of the meeting of the persons it desires to have appointed or elected as Trustees, not exceeding a majority of the whole Board, and any such persons shall be deemed elected Trustees of the Board. So long as the Class B Member exercises its prerogatives hereunder, it shall not cast its vote for the other nominees for Trustees.

## Article VI. Meetings of Trustees

Section 1. Regular Meetings: Regular meetings of the Board of Trustees shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then the meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Social Meetings: Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any two Trustees, after not less than THREE (3) days notice to each Trustee. Said notice requirement may be waived by any Trustee entitled thereto.

Section 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 Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## Article VII. Power and Duties of the Board of Trustees

Section 1. Powers: The Board of Trustees shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area, 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 any or all other of the rights and privileges of membership in the Association of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association.
- (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, 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.
- (e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 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-FOURTH (1/4th) of the Members who are entitled to vote.
- (b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
- (c) As more fully provided in the Declaration, to:
  - (i) fix the amount of the annual assessment against each lot at least THIRTY (30) days in advance of each annual assessment period;
  - (ii) send written notice of each assessment to every Owner subject thereto at least THIRTY (30) days in advance of each annual assessment period; and
  - (iii) send written notice of each assessment to every Owner subject thereto at least THIRTY (30) days in advance of each annual assessment period; and

- (iv) foreclose the lien against any property for which assessments are not paid within THIRTY (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.
- (d) Issue, or to cause an appropriate Officer to issue, upon demand by any Member, a certificate setting forth whether or not any assessment has been paid. A reasonable charge 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 (if appropriate) on Property owned by the Association.
- (f) Cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- (g) Cause the Common Area to be maintained.
- (h) Perform the duties imposed on the Association by the Declaration and as permitted by the Non-Profit Corporation Act of the State of Ohio.

## Article VIII. Officers and Their Duties

Section 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 and the Board may from time to time by resolution create.

Section 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 3. Term: The Officers of this Association shall be elected annually by the Board and each shall hold office for ONE (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments: The Board may appoint 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 5. Resignation and Removal: Any Officer may be removed from office with or without cause by a vote of all of the Members of the Board, with or without a meeting. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignations 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 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 7. Multiple Offices: The office of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 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; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all promissory notes.
- (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 of 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 the 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 accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall co-sign all checks and promissory notes of the Association ( co-signing of checks shall be with any other officer as the Board of Trustees directs from time to time); keep proper books of account; cause an annual audit of

the Association books to be made by a 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 membership at its regular annual meeting, and deliver a copy of each to the Members.

#### Article IX. Committees

The Board of Trustees of the Association shall appoint such committees as they deem appropriate in carrying out the purpose of the Association.

#### Article X. 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. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principle office of the Association, where copies may be purchased at reasonable cost.

#### Article XI. Assessments

As more fully provided in the Declaration, each Owner is obligated to pay to the Association assessments (Common Expenses) which are secured by a continuing lien upon the property against which assessment is made. Any assessments which are not paid when due, shall be delinquent. If the assessment is not paid within THIRTY (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of TEN PERCENT (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the Lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

#### Article XII. Indemnification Provisions

In addition to any other right or remedy to which the persons hereinafter described may be entitled, under the Articles of Incorporation, By-laws, Declaration, any other agreement, or by vote of the Members or otherwise, the Association shall indemnify any Trustee or Officer of the Association or former Trustee or Officer of the Association, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a Trustee or Office of the Association, against expenses (including attorney fees), judgment, fines and amounts paid in settlement actually and reasonable incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action that was believed not to be unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

#### Article XIII. Corporate Seal

The Association shall not adopt a seal.

#### Article XIV. Amendments

Section 1. Vote: These By-laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

Section 2. Conflict with Declaration: In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-laws, the Declaration shall control.

#### Article XV. Fiscal Year

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.

IN WITNESS WHEREOF, we, being all of the Trustees of STONE FALLS OWNERS ASSOCIATION have hereunto set our hands this 17<sup>th</sup> day of December, 1996.

## ARTICLES OF INCORPORATION OF STONE FALLS OWNERS ASSOCIATION

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, not for profit, under Sections 1702.011 et seq. of the Revised Code of Ohio, do hereby certify:

**FIRST)** The name of said corporation shall be STONE FALLS OWNERS ASSOCIATION.

**SECOND)** The place in Ohio where the principal office of the corporation is to be located in the City of Beavercreek, Greene County.

**THIRD)** This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation of the common area owned by the Association and to promote the health, safety and welfare of the Members of the Association and for these purposes to:

- a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Stone Falls Subdivision, hereinafter called the "Declaration," applicable to the property and recorded or to be recorded in the Office of the Recorder of Greene County, Ohio, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length.
- b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses, incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.
- c) Acquire (by gift, purchases, 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.
- d) Dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.
- e) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes and subject to such conditions as may be agreed to by the Members.
- f) 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.

**FOURTH)** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot and each occupant of a dwelling which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may be separated from ownership of any Lot which is subject to assessments by the Association or from occupancy of a dwelling.

**FIFTH)** The Association shall have two classes of voting membership.

CLASS A. Class A members shall be all Owners, except the Declarant, of lots upon which is constructed a dwelling, and shall be entitled to One ( 1 ) vote for each such Lot so owned.

CLASS B. The Class B Member shall be the Declarant, and shall be entitled to Three (3) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A upon the happening of either of the following events, whichever occurs earlier:

When Class A memberships are all in existence and the total votes outstanding equals or exceeds the total votes outstanding in the Class B membership; or on December 31, 2004.

**SIXTH)** The affairs of this Association shall be managed by a Board of Three (3) Trustees who need not be Members of the Association. The names and addresses of the persons who are to act in the capacity of Trustee until the selection of their successors are:

George R. Oberer, Sr .	4324 Webster Street Dayton, OH 45414
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George R. Oberer, Jr .	4324 Webster Street Dayton, OH 45414
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Alan B. Schaeffer	2700 Kettering Tower 40 N. Main Street Dayton, OH 45423
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**SEVENTH)** The Association may be dissolved with the assent given in writing and signed by not less than Two-

Thirds (2/3rds) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

**EIGHTH)** Amendment of these Articles shall require the consent of 75% of the entire membership.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Ohio, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this 17<sup>th</sup> day of December 1996.

**ORIGINAL APPOINTMENT OF AGENT**

The undersigned, being at least a majority of the Incorporators of STONE FALLS OWNERS ASSOCIATION, hereby appoint Alan B. Schaeffer, a natural person, 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: 2700 Kettering Tower, 40 N. Main Street. Dayton, Montgomery County, Ohio, 45423.

[George R. Oberer, Jr.]
George R. Oberer, Jr., Trustee
[George R. Oberer, Sr.]
George R. Oberer, Sr., Trustee
[Alan B. Schaeffer, Trustee]
Alan B. Schaeffer, Trustee

Date: ,1996

Dayton, Ohio

STONE FALLS OWNERS ASSOCIATION

Gentlemen:

I hereby accept appointment as agent of your corporation and demands may be served.

[Alan B. Schaeffer]
Alan B. Schaeffer