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To: David Homan
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Re: Brookside II Homeowners Association

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From: Leah Bederak per Amy S. Ferguson, Esq.

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Message:

**BYLAWS
OF
BROOKSIDE II HOMEOWNERS ASSOCIATION, INC.**

These Bylaws are adopted by the incorporators of **BROOKSIDE II HOMEOWNERS ASSOCIATION, INC.**, an Ohio not-for-profit corporation (the "Association"), acting pursuant to Ohio Revised Code § 1702.10, in order to provide for the conduct of its affairs and the management of its property. These Bylaws are intended to compliment, clarify and expand the provisions of the Association's Articles of Incorporation (the "Articles") and the Declaration of Covenants, Conditions and Restrictions for Brookside II, filed with the Montgomery County Recorder, as subsequently amended and expanded (the "Declaration"). All Members and any other persons or entities entitled to certain privileges of membership shall be subject to these Bylaws. All capitalized terms used in these Bylaws shall have the meanings assigned in parentheses following their first use or assigned in the Articles.

**ARTICLE I
THE ASSOCIATION**

- 1.01 Name. The Association shall be an Ohio not-for-profit corporation and shall be known as **BROOKSIDE II HOMEOWNERS ASSOCIATION, INC.**
- 1.02 Location. The principal office of the Association shall be located in Springboro, Warren County, Ohio, or such other location as may be designated in writing by the Association.
- 1.03 Membership. Each owner acquiring title to a lot in the Project shall automatically become a Member of the Association as provided in Article II of Exhibit A to the Articles. Each membership shall automatically terminate upon the transfer of title to the Member's lot and the new lot owner(s) shall automatically become a Member of the Association.
- 1.04 Activities of Association. The Association shall engage in activities to benefit the Association and its Members, including but not limited to the following:
- (1) To establish and/or enforce reasonable rules and regulations for the use of:
(i) landscaped "islands" lying within the public rights of way; (ii) easement areas; or
(iii) any areas reserved for common use of the Members.
 - (2) To establish an orderly and efficient system for the payment of, or reimbursement for, all expenses of the Association, and of billing to pay those amounts.
 - (3) To establish and operate arbitration procedures for the settlement of disputes among Members.

- (4) To provide or arrange for any service specifically authorized by the Board of Trustees, including landscape maintenance services.
 - (5) To promulgate and/or enforce rules, regulations or any provision of the Declaration of Covenants, Conditions and Restrictions for the Project as amended and to perform any other acts that it deems necessary to carry out its duly authorized purposes.
 - (6) To purchase, lease, or otherwise acquire, improve, construct, own, hold, use, maintain, operate, exchange, encumber, sell, convey or otherwise dispose of, real and personal property of every kind, nature or description, as necessary or desirable to promote the purposes of the Association.
 - (7) To make and perform contracts of every kind for any lawful purpose without limit as to any amount, with any person, firm, association, corporation, municipality, state, government or municipal or political subdivision.
- 1.05 Voting Rights. All votes shall be cast by Members of the Association as provided in Article II of Exhibit A to the Articles. If the Association holds title to any lot in the Project (whether in its own name or in the name of an agent, designee or nominee acting on behalf of all Members), then the Association may not exercise any of the voting rights appurtenant to that lot.
- 1.06 Proxies, Record Date, Manner of Voting. Votes may be cast in person or by proxy. A person appointed as proxy need not be an owner of a lot within the Project. Proxies must be in writing and filed with the secretary of the Association prior to the appointed time of each meeting or vote. Each proxy shall be revocable and it shall automatically terminate upon the transfer of the appointing Member's interest in the lot or upon the suspension of the appointing Member's voting privileges as provided in these regulations.
- The Board of Trustees may fix a date no more than seven (7) days before the date of any meeting, as the record date for the determination of the Members entitled to vote at that meeting. Only the members of record on the record date shall be entitled to vote at any meeting. If no record date is fixed for a meeting, then any person or entity who is a Member at the time the meeting is convened shall be entitled to vote at that meeting.
- Voting for the election of Trustees shall be by secret written ballot, but all other votes shall be conducted orally, unless otherwise directed by the Board of Trustees.
- 1.07 Place of Meeting. Meetings of the Association shall be held at any place designated by the Board of Trustees.

- 1.08 Annual Meeting. The Members shall hold a regular annual meeting during the month of November each year at a time and place designated by the Board of Trustees. If the Board of Trustees fails to fix a date and time for the annual meeting then it shall be held at 7 p.m., on the second Tuesday of November or, if that day is a legal holiday under Ohio law, then on the next day that is not a legal holiday.
- 1.09 Special Meetings. A special meeting may be called by the President of the Association or the Board of Trustees or by Members possessing at least twenty-five percent (25%) of the voting power of the Association. Calls for special meetings shall be made by delivering a written request to the President or Secretary. The request shall state the time, place and purpose of the special meeting and the persons by whom it is called. The officer to whom the request is delivered shall deliver notice of the special meeting to the Members who are entitled to vote. If the officer does not send notices of the special meeting to the Members within ten (10) days after receiving the request, then the person(s) making the request may call a special meeting by delivering notice as provided in Section 1.10 of this Article I. No business shall be transacted at any special meeting except as stated in the notice or consented to by eighty percent (80%) of the votes that the Members present, either in person or by proxy, are entitled to vote.
- 1.10 Notice of Meeting. Written notice of any meeting of the Members shall be given by, or at the direction of, the Secretary or any other person duly authorized to call the meeting. Notices shall be mailed by U.S. mail, postage prepaid, to each Member entitled to vote, addressed to the Member's address appearing on the books of the Association. Notices shall be mailed at least fifteen (15) days, but not more than thirty (30) days, prior to the date for any meeting and shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Notices shall be mailed only to the Members shown in the records of the Association on the day before the day notice is mailed.
- 1.11 Waiver of Notice. Any Member, either before or after any meeting, may waive any notice required by law, the Articles, the Declaration or these Bylaws. Waivers must be in writing, filed with the Secretary of the Association, and entered upon the records of the meeting. Notice of a meeting will be deemed to have been waived by any Member who attends the meeting and who does not, before or at the commencement of the meeting, protest lack of proper notice.
- 1.12 Quorum. At any meeting of the Members, a quorum shall consist of Members who hold more than twenty percent (20%) of the voting power of the Association, except when a greater number is required by law. In the absence of a quorum, no business may be conducted except that the Members present and entitled to vote shall have the power to adjourn the meeting without notice, other than announcement at the meeting, until a quorum is present or represented. At any reconvened meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

- 1.13 Organization. At each meeting of the Members, the President or, in his or her absence, the Vice President, or in the absence of both, any other person chosen by the majority vote of the Members present and entitled to vote, shall act as chairman. The Secretary, or, in the Secretary's absence, any other person appointed by the chairman, shall act as secretary for the meeting.
- 1.14 Order of Business. The order of business at all meetings of the Members shall be as follows:
- (a) Roll call. THEN IF A QUORUM IS PRESENT
 - (b) Proof of notice of meeting or waiver of notice.
 - (c) Reading of minutes of preceding meeting and subsequent action, unless dispensed with by unanimous consent of the Members present.
 - (d) Report of the Board of Trustees, if any.
 - (e) Report of the officers, if any.
 - (f) Report of the committees, if any.
 - (g) Election of Trustees, if any.
 - (h) Unfinished business, if any.
 - (i) New business, if any.
 - (j) Adjournment.

The order of business at any meeting may be changed by the affirmative vote of Members possessing a majority of the voting power of the Members present and entitled to vote.

- 1.15 Action by Unanimous Written Consent of the Members. Any action that may be authorized or taken at a meeting of the Members may be authorized or taken without a meeting in any writing(s) signed by all of the Members. The writing(s) evidencing any action taken by the unanimous written consent of the Members shall be filed with the records of the Association.
- 1.16 New Members. Any person or entity claiming membership in the Association shall deliver written notice of this fact to the Association. The notice shall include the claimant's full name (and if an entity, the state in which it is organized), the claimant's address for notice, the number of the lot in which the claimant holds a fee simple interest, and the amount of the full or fractional fee interest held by the claimant. Until this notice is delivered to the Association, the person or entity claiming membership may not vote or receive notice of meetings of the Association.
- 1.17 Guests. Guests of Members, when and only when accompanied by a Member, shall be entitled to use any of the Association's facilities, subject to the fees, rules, conditions and regulations as may be adopted by the Board of Trustees.

ARTICLE II
BOARD OF TRUSTEES

- 2.01 **General Powers of Board of Trustees.** The Board of Trustees shall govern the affairs of the Association, shall conduct its business and affairs and shall control and manage its property, except where otherwise required by the Association's Organizational Documents or the law of Ohio.
- 2.02 **Powers of the Board.** The Board of Trustees shall have the power (but not the duty) to:
- (1) Adopt and publish rules and regulations governing: (i) the arbitration of disputes among Members arising out of restrictions on the use of lots; (ii) the use of the Association's recreation and other facilities, including the personal conduct of the Members and their guests while using those facilities; and (iii) the penalties for violating any of the published rules and regulations.
 - (2) Suspend a Member's voting rights and right to use the recreation facilities, if any, during any period in which the Member is in default for payment of any assessment levied by the Association, or as a result of any Member's infraction of the rules and regulations established by the Trustees.
 - (3) Declare the position of any Trustee to be vacant if that Trustee is absent from three (3) consecutive regular meetings of the Board of Trustees, without permission of the board.
 - (4) File a Notice of Lien for unpaid assessments against any lot, if the assessments are not paid within sixty (60) days after the due date, and foreclose said lien on behalf of the Association, or bring an action at law against any party personally obligated to pay the assessments.
 - (5) Employ employees (including, without limitation, an Association facilities manager) as necessary or appropriate to operate the facilities owned by the Association, or to furnish landscape maintenance or other services to the Members, and to prescribe the duties of each employee.
 - (6) Enter into contracts, agreements or any other arrangements necessary or appropriate to operate and maintain the facilities owned by the Association, to maintain any landscaped easement or public right of way areas and to furnish or provide other services the board deems necessary for the Members.
 - (7) Bond all officers and employees with fiscal responsibilities.

- (8) Purchase, lease, or otherwise acquire real or personal property in the name of the Association.
- (9) Take such action as may be necessary in the opinion of the Board, to enforce the rules and regulations promulgated by the Association or provisions of the Declaration of Covenants, Conditions and Restrictions for the Project as amended.
- (10) Do all things necessary to carry out the purposes of the Association.

2.03 Duties of the Board. The Board of Trustees shall have the power and the duty to:

- (1) Keep a complete record of all its acts and the Association's affairs and present a statement to the Members at the annual meeting of the Members, or at any special meeting when such a statement has been specifically requested in writing by Members possessing at least 25 percent of the voting power of the Association.
- (2) Supervise all officers, agents, and employees of the Association and see that their duties are properly performed.
- (3) Fix the amount of the annual assessment for each lot at least thirty (30) days in advance of each fiscal year and to fix any adjustment in the annual assessment if the board determines an adjustment is needed.
- (4) Send written notice of the assessment to every Member at least thirty (30) days in advance of each change in the amount of the annual assessments and levy all those assessments as a lien.
- (5) Require that all facilities owned by the Association and all buildings and landscaped areas located on the Members' lots be well maintained.
- (6) Procure and maintain liability and fire and other hazard insurance on all property owned by the Association.
- (7) Take all other actions necessary or appropriate to achieve the purposes for which the Association was formed.

2.04 Number. There shall be three (3) Trustees. Each Trustee shall be a person who is either a Member or a representative of a Member who is not an individual.

2.05 Term of Office. The initial Trustees named in the Articles of Incorporation shall serve until the next meeting of the Members, at which meeting the Members shall elect three (3) Trustees for three staggered terms ending at the next three (3) successive annual meetings. The person who receives the most votes at the first meeting shall serve for three (3) years, the

person with the next highest vote count shall serve for two (2) years, and the person with the third highest vote count shall serve for one (1) year. At each subsequent annual meeting, the Members shall elect one Trustee who shall sit for a term of three (3) years.

- 2.06 Removal. Any Trustee may be removed from the Board with or without cause, by the affirmative vote of Members possessing two-thirds (2/3) of the voting power of the Members present and entitled to vote at any annual or special meeting of the Members, but only if the intention to consider removal is specifically stated in the notice of the meeting.
- 2.07 Resignation. Any Trustee may voluntarily resign at any time by delivering a written notice of resignation to the other Trustees. Unless the resignation specifies otherwise, it shall be effective on the date specified in the notice, whether or not the resignation has been accepted by the other Trustees.
- 2.08 Vacancies. Any vacancy in the Board of Trustees shall be filled by an appointee of the remaining Trustees. Any Trustee so appointed shall serve only for the unexpired portion of the term of the vacating Trustee.
- 2.09 Compensation. Trustees may be reimbursed for actual expenses incurred in the performance of their duties but no Trustee shall receive compensation from the Association for any service rendered to the Association.

ARTICLE III **NOMINATION AND ELECTION OF TRUSTEES**

- 3.01 Nominating Committee. Prior to each annual meeting of the Members, the Board of Trustees may announce its appointment of a Nominating Committee, consisting of three (3) Members, to serve from the close of the annual meeting until the close of the next annual meeting at which Trustees are elected. The Nominating Committee shall propose persons for election to the Board of Trustees. Nominations may also be made from the floor at any annual meeting.

The Nominating Committee shall nominate any number of persons for election to the Board of Trustees, but not less than the number of vacancies that are to be filled. Nominations may be made only from among Members or representatives of Members entitled to vote.

- 3.02 Election. Election to the Board of Trustees shall be by secret written ballot. At each election, the Members or their proxies may cast as many votes as they are entitled to cast under the provisions of the Articles and these Bylaws for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting shall not be permitted.

ARTICLE IV

MEETING OF TRUSTEES

- 4.01 **Regular Meetings.** Regular meetings of the Board of Trustees shall be held at the times and places designated by the Board of Trustees. The Board of Trustees shall hold at least four (4) such meetings per fiscal year.
- 4.02 **Special Meetings.** Special meetings of the Board of Trustees shall be held when called by the President of the Association or by any two (2) Trustees, after not less than three (3) days notice to each Trustee.
- 4.03 **Quorum.** A majority of the Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required elsewhere in the Organizational Documents.
- 4.04 **Organization.** At each meeting of the Board of Trustees, the President, or, in the President's absence, the Vice President, or in the absence of both, a person chosen by a majority of the Trustees present, shall act as chairman. The Secretary, or, in the Secretary's absence, any person appointed by the chairman of the meeting shall act as secretary of the meeting.
- 4.05 **Action Writing in Lieu of Meeting.** Any action that could be taken at a meeting of the Trustees may be taken without a meeting if authorized in a writing signed by all the Trustees.
- 4.06 **Meetings Through Communications Equipment.** Meetings of the Board of Trustees may be held through any communications equipment if all persons participating in the meeting can hear each other. Each person participating through communications equipment shall be deemed to be present at any meeting held pursuant to this Section 4.06.

ARTICLE V **OFFICERS AND THEIR DUTIES**

- 5.01 **Enumeration of Officers.** The officers of this Association shall include a President, a Vice President, a Secretary, a Treasurer and any other officers elected by the Board of Trustees.
- 5.02 **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.
- 5.03 **Term.** Each officer of the Association shall be elected annually by the Board of Trustees and shall hold office until his successor is elected, unless the officer resigns, or is removed or is otherwise disqualified to serve.

- 5.04 Special Appointments. The Board of Trustees may specially appoint as many officers as the Trustees determine are necessary to carry out the purposes of the Association. Each specially appointed officer shall hold office for the period, have the authority and perform the duties assigned by the Board of Trustees. The Board of Trustees may delegate to any officer the power to appoint any subordinate officers, agents, or committees.
- 5.05 Resignation and Removal. Any officer may be removed from office with or without cause by majority vote of the Board of Trustees. Any officer may resign at any time by giving written notice to the Board of Trustees, the President or the Secretary. Unless the notice specifically requires acceptance, the resignation shall be effective on the date the notice is delivered or on any later date specified in the notice.
- 5.06 Vacancies. The Board of Trustees may appoint a new officer to fill any vacancy in any office. The officer appointed to fill any vacancy shall serve for the remainder of the term of the previous officer.
- 5.07 Multiple Offices. No person shall simultaneously hold more than one (1) office in the Association except that the same person may hold the offices of Secretary and Treasurer and any officer may also serve in any of the special offices created under Section 5.04 of this Article.
- 5.08 Duties. Unless the Board of Trustees directs otherwise, the officers of the Association shall have the duties described in this section.
- (1) President. The President shall preside at all meetings of the Board of Trustees and of the Members; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds, contracts and other written instruments to which the Association is a party; sign all checks and, upon authorization of the Board of Trustees, cosign promissory notes of the Association.
 - (2) Vice President. The Vice President shall act in the place and stead of the President if the President is absent, unable or refused to act.
 - (3) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Trustees and the Members; serve notice of meetings of the Board of Trustees and the Members; keep appropriate current records showing the Members of the Association, their addresses and the lot numbers on which their membership is based.
 - (4) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse funds as directed by the Board of Trustees; keep proper books of account, and upon authorization of the Board of Trustees, cosign all promissory notes of the Association. The Treasurer shall prepare an annual

budget and a statement of the income and expenditures (for the preceding fiscal year) to be presented to the membership at its regular annual meeting; deliver a copy of each statement to the Members prior to the annual meeting; and have the Association's books reviewed by an accountant at the completion of each fiscal year.

The Board of Trustees may, for any reason, delegate the power and duties of any officer to any other officer or to any Trustee. Each officer shall perform any other duties assigned by the Board of Trustees or the President.

ARTICLE VI **BOOKS AND RECORDS**

- 6.01 The books, records and papers of the Association shall be available during reasonable business hours for inspection by any Member. The Articles and Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE VII **AMENDMENT AND REGULATIONS**

- 7.01 These Bylaws may be amended by the affirmative vote of Members possessing not less than two-thirds (2/3) of the voting power of the Members present and entitled to vote at any properly noticed meeting of the Members as long as the notice contains the proposal to amend the Bylaws.

ARTICLE VIII **MISCELLANEOUS**

- 8.01 Conflict Between Articles and Bylaws. In the case of any conflict between the Articles and the Bylaws, the Articles shall control.
- 8.02 Fiscal Year. The fiscal year of the Association shall begin on the first (1st) day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of filing the Articles with the Secretary of the State of Ohio.
- 8.03 Service of Notice on the Board of Trustees. Notices to the Board of Trustees or to the Association may be delivered to any Trustee or officer of the Association, either personally or by regular mail, addressed to the Trustee or officer at his home.

- 8.04 Nonwaiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.
- 8.05 Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Organizational Documents shall be deemed to be binding on all Members, their successors, heirs, and assigns.
- 8.06 Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of these Bylaws, each of which shall be construed to as nearly as possible accomplish the original goals and intentions of these Bylaws.
- 8.07 Grammar. The singular shall be construed to mean the plural when applicable. Any necessary grammatical changes required to make the provisions of these Bylaws apply to corporations, partnerships or individuals shall be assumed.

IN WITNESS WHEREOF, the incorporators of the Association have executed these Bylaws to become effective as of August __, 2004.

Kathy Henline, Incorporator

John E. Buckey, Incorporator

Richard L. Arnos, Incorporator