

# Delinquent Dues, Lawn, Landscape and Property Liability Escrow Agreement

This Delinquent Dues, Lawn, Landscape and Property Liability Escrow Agreement, dated as of [ ] (this "Agreement"), is by and among Wedgewood Hills Homeowners Association (the "Association"), and [ ], an individual (the "Homeowner"), and a[n] [ ], as escrow agent (the "Escrow Agent"). The Association, the Homeowner, and the Escrow Agent are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

## RECITALS

WHEREAS, the Association and the Homeowner agree that it is in the best interest of the Association to enter into this Agreement, pursuant to which, among other things, the Homeowner has agreed to pay into the escrow account created hereby the total sum of Three Thousand Dollars (\$3,000.00) (the "Escrow Amount") to be held and disbursed as provided in this Agreement for the purpose of providing for the upkeep of the landscaping and property in the event a renter of the property fails to sufficiently maintain the lawn, landscaping or property after notification by the Association and to fund delinquent annual homeowners dues to remedy said situation;

WHEREAS, capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms in this Agreement;

WHEREAS, the Association and Homeowner agree that the Escrow Amount shall be deposited into escrow to be held and distributed, along with any income earned thereon, by the Escrow Agent in accordance with the terms of this Agreement;

WHEREAS the Association and the Homeowner wish to appoint the Escrow Agent to act as escrow agent in connection with this Agreement; and

WHEREAS the foregoing recitals are representations and statements of fact made by the Association and the Homeowner and not by the Escrow Agent.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Appointment of Escrow Agent.

The Association and the Homeowner hereby appoint the Escrow Agent to act as the escrow agent hereunder, to hold in escrow the Escrow Funds (as hereinafter defined) and to direct the disposition thereof in accordance with the terms and conditions of this Agreement, and the Escrow Agent accepts such appointment.

## 2. Escrow Deposit.

The Purchaser hereby remits to the Escrow Agent cash in an amount equal to the Escrow Amount into an escrow account (the "Escrow Account") by wire transfer of immediately available funds to or to the order of the Escrow Agent in its capacity as escrow agent hereunder. The Escrow Agent acknowledges receipt from the Homeowner of the Escrow Amount. The Escrow Amount shall be held in a segregated interest bearing trust account of the Escrow Agent. The funds in the Escrow Account, together with all interest, dividends, income, capital gains and other amounts earned thereon or derived therefrom in connection with the investments made on such amounts pursuant to Section 3 hereof ("Escrow Income") are hereinafter referred to as the "Escrow Funds". The Escrow Funds shall be held as trust funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Party hereto. The Escrow Agent will disburse monies according to this Agreement only to the extent that monies have been deposited with it and have actually cleared.

## 3. Escrow Deposit.

(a)

The Homeowner hereby remits to the Escrow Agent cash in an amount equal to the Escrow Amount by wire transfer of immediately available funds to or to the order of the Escrow Agent in its capacity as escrow agent hereunder to be used to satisfy any Losses incurred or sustained by, or imposed upon, the Association that are recoverable by the Association against Homeowner's tenant.

(b)

The Escrow Agent acknowledges receipt from the Homeowner of the Escrow Amount. The Escrow Amount shall be held in a segregated interest bearing trust accounts of the Escrow Agent. The funds in the Escrow Account, together with all interest, dividends, income, capital gains and other amounts earned thereon or derived therefrom in connection with the investments made on such amounts pursuant to Section 3 hereof ("Escrow Income") are hereinafter referred to as the "Escrow Funds". The Escrow Funds shall be held as trust funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Party hereto. The Escrow Agent will disburse monies according to this Agreement only to the extent that

monies have been deposited with it and have actually cleared. Homeowner acknowledges and agrees that in the event of any disbursement of monies according to this Agreement, Homeowner shall promptly remit to Escrow Agent cash in an amount equal to the amount disbursed from the Escrow Amount in order to maintain the balance of the Escrow Amount at Three Thousand Dollars (\$3,000).

## 2. Escrow Deposit.

(a)

The Homeowner hereby remits to the Escrow Agent cash in an amount equal to the Escrow Amount into an escrow account (the "Escrow Account") by wire transfer of immediately available funds to or to the order of the Escrow Agent in its capacity as escrow agent hereunder to be used to satisfy any Losses incurred or sustained by, or imposed upon, the Association that are recoverable by the Association against the Homeowner's tenant pursuant to and in accordance with the provisions of Section 6 of this Agreement.

(b)

The Escrow Amount shall be held in a segregated interest bearing trust accounts of the Escrow Agent. The funds in the Escrow Account, together with all interest, dividends, income, capital gains and other amounts earned thereon or derived therefrom in connection with the investments made on such amounts pursuant to Section 3 hereof ("Escrow Income") are hereinafter referred to as the "Escrow Funds". The Escrow Funds shall be held as trust funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Party hereto. The Escrow Agent will disburse monies according to this Agreement only to the extent that monies have been deposited with it and have actually cleared.

## 3. Investment of Escrow Funds.

(a)

Until released in accordance with this Agreement, except as the Association and the Homeowner may otherwise jointly direct the Escrow Agent in writing, the Escrow Funds shall be invested and reinvested in:

(i)

United States Treasury Securities;

(ii)

one or more money market accounts or certificates of deposit (having a duration of no more than thirty (30) days) with any bank or trust company organized under the laws of the United States or any agency or instrumentality thereof or under the laws of any state thereof which has a combined capital and surplus of not less than Five Hundred Million Dollars (\$500,000,000);

(iii)

other investments, such as commercial paper with a maturity of not more than thirty (30) days and rated P-1 by Moody's Investor Service, Inc. or A-1 by Standard & Poor's Corporation, as may be specifically approved in writing by the Seller and the Purchaser.

(b)

The Parties acknowledge that all payments made from the Escrow Funds shall be subject to applicable withholding laws or regulations then in force unless the Association provides the Escrow Agent with such properly completed Internal Revenue Service form or forms, satisfactory in form and content to the Escrow Agent and its counsel, acting reasonably, which permit the Escrow Agent to make such payments without withholding taxes with respect to amounts paid to the Association under this Agreement or with respect to any Escrow Income.

(i)

The Escrow Agent shall report the amounts of all Escrow Income with respect to the Escrow Funds during each calendar year (A) to all applicable taxing authorities as income of the Association by January 31 of the succeeding calendar year, and (B) to the Association and the Homeowner within ten (10) days of a written request for such information from the Association or Homeowner.

(c)

The Escrow Agent shall liquidate any investments held in order to provide funds necessary to make required payments under this Agreement. The Parties acknowledge and agree that the Escrow Agent shall not provide supervision, recommendations or advice relating to either the investment of moneys held in the Escrow Account or the purchase, sale, retention or other disposition of any investment described herein. The Escrow Agent

shall not be responsible for any loss, diminution in value or failure to achieve a greater profit as a result of any investment made in accordance with this Agreement or for the failure of the Association or the Homeowner to give the Escrow Agent instructions to invest or reinvest the Escrow Funds or any portion thereof. Any loss or expense incurred as a result of an investment shall be borne solely by the applicable Escrow Account(s).

(d)

If the Escrow Agent does not receive written instructions from the Association and the Homeowner jointly directing the investment of the Escrow Funds, the Escrow Agent shall automatically and forthwith invest such funds as described in Section 3(a)(iii) until the Escrow Agent has received contrary joint written instructions from the Association and the Homeowner.

(e)

Joint written investment instructions delivered to the Escrow Agent, if any, shall specify the type and identity of the investments to be purchased and/or sold and shall also include the name of the broker-dealer, if any, which the Association and the Homeowners jointly direct the Escrow Agent to use in respect of such investments, any particular settlement procedures required (which settlement procedures shall be consistent with industry standards and practices), and such other information as the Escrow Agent may reasonably require; provided, however, that, in any case, any investments shall be with such maturities as the Association and the Homeowner may determine are compatible with the payments which may be required hereunder.

(f)

The Escrow Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent or any of its affiliates may receive compensation with respect to any investment directed hereunder, including, but not limited to, charging an agency fee in connection with each transaction.

(g)

In the event that funds transfer instructions are given whether in writing, by facsimile or otherwise, the Escrow Agent is authorized, but not obligated, to seek confirmation of such instructions by telephone call-back to the Association and the person or persons designated on Exhibit A

hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers listed in Exhibit A hereto for call-back shall be changed only by notice given as provided in Section 17. If the Escrow Agent is unable to contact any of the authorized representatives identified on Exhibit A hereto, the Escrow Agent is authorized to seek confirmation from the President of the Association ("Executive Officer"). Such Executive Officer shall deliver to the Escrow Agent a fully executed incumbency certificate in form and substance satisfactory to the Escrow Agent, in its sole and absolute discretion, and the Escrow Agent may rely upon the confirmation of anyone purporting to be such officer. The Escrow Agent and the beneficiary bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Association to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Escrow Agent may apply any applicable Escrow Funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The Parties to this Agreement acknowledge that these security procedures are commercially reasonable.

#### 4. Release of Escrow Funds.

The Escrow Funds shall only be distributed and released in accordance with Sections 5, 6 or 7 hereof.

#### 5. Escrow Release Date

Promptly after [ ] (the "Escrow Release Date"), but in any case within ten (10) Business Days of such date, the Escrow Agent shall deliver all Escrow Funds remaining in the Escrow Account, if any, to the Association by wire transfer to an account or accounts designated by the Association, subject to Section 6(c).

#### 6. Indemnification.

With respect to claims for indemnification:

(a)

At any time and from time to time on or prior to the Indemnity Escrow Release Date, if the Association makes a claim for indemnity (a "Claim" and, the Homeowner party, a "Claiming Party"), the Claiming Party shall deliver to the Escrow Agent and the other party to this Agreement (the "Non-Claiming Party") a written notice, in the form attached as Exhibit B

hereto (a "Claim Notice"), setting forth in reasonable detail the amount, nature, calculation and basis of the Claim by the Claiming Party. If the Escrow Agent has not received a Dispute Notice (as defined in Section 6(b) below) within ten (10) Business Days following the Escrow Agent's and the Non-Claiming Party's receipt of the Claim Notice ("Dispute Period"), then, on or before the second (2nd) Business Day following the last day of the Dispute Period relating to such Claim, the Escrow Agent shall release, by wire transfer of immediately available funds to an account or accounts designated by the Claiming Party, an amount of Escrow Funds from the Escrow Account equal to the amount of such Claim. For purposes of this Agreement, a "Claim" for indemnity by the Association means expenses incurred or assumed by the Association in enforcing the obligations of residents or unilaterally assuming the enforcement of such obligations of residents with respect to delinquent dues, lawns in disrepair, or property or other landscaping issues under the Association's Code of Regulations and Declaration of Covenants, Easements, Restrictions and Assessments, in each case as then may be in effect.

(b)

If the Non-Claiming Party in good faith delivers to the Escrow Agent and the Claiming Party a written objection to any Claim or portion thereof or the amount of such Claim, in the form attached as Exhibit C hereto (such written objection, a "Dispute Notice"), within the Dispute Period relating to such Claim, then the Escrow Agent shall not distribute to the Claiming Party any portion of the Escrow Funds in the Escrow Account with respect to such Claim until the Escrow Agent receives either (A) a joint written instruction, in the form attached as Exhibit D hereto, executed by the Association and the Homeowner authorizing the release to the Claiming Party of the portion of the Escrow Funds in the Escrow Account that is agreed upon as the amount recoverable in respect of the Dispute Notice (such written instruction, a "Dispute Resolution Joint Instruction"), or (B) a final and non-appealable order of a court of competent jurisdiction directing the release to the Claiming Party of the portion of the Escrow Funds in the Escrow Account that is determined to be the amount recoverable in respect of the Dispute Notice; provided, however, that if the Non-Claiming Party objects in part to the amount of the Claim, the Escrow Agent shall, after the lapse of the aforementioned Dispute Period, deliver to the Claiming Party an amount from the Escrow Funds equal to the portion of the Claim not objected to by the Non-Claiming Party. Upon receipt of a Dispute Resolution Joint Instruction or such final and non-appealable order, as the case may be, the Escrow Agent shall release to the Claiming Party such amount of the Escrow Funds in the Escrow Account in accordance with such Dispute Resolution Joint Instruction or final and non-appealable order.

(c)

With respect to the release of Escrow Funds remaining after the Escrow Release Date, the Escrow Agent shall release to the Homeowner, by wire transfer to an account or accounts designated by the Homeowner, any remaining balance of the Escrow Funds in the Escrow Account in excess of the amount of all Unresolved Claims made by the Association. If there are no Unresolved Claims made by the Association, this Agreement shall terminate. If there are Unresolved Claims made by the Association, this Agreement will terminate upon the resolution of the last remaining Unresolved Claim made by the Association in accordance with the terms of this Agreement. For purposes of this Agreement, the term "Unresolved Claim" shall mean any Claim that is the subject of a Dispute Notice that has not been resolved or satisfied as of the Escrow Release Date in accordance herewith or a Claim that was properly and timely asserted in a Claim Notice under this Agreement but is otherwise unsatisfied as of the Escrow Release Date, including any Claim for which a Claim Notice has been delivered but for which the Dispute Period has not expired as of the Escrow Release Date.

(c)

With respect to the release of Escrow Funds remaining after the Escrow Release Date, the Escrow Agent shall release to the Homeowner, by wire transfer to an account or accounts designated by the Homeowner, the remaining balance of the Escrow Funds in the Escrow Account without regard to the amount of Unresolved Claims. For purposes of this Agreement, the term "Unresolved Claims" shall mean the aggregate amount, as of the Escrow Release Date, of all Claims that are the subject of a Dispute Notice that have not previously been resolved or satisfied in accordance herewith and Claims that were otherwise properly and timely asserted in a Claim Notice under this Agreement but are otherwise unsatisfied as of the Indemnity Escrow Release Date, including any Claims for which a Claim Notice has been delivered but for which the Dispute Period has not expired as of the Indemnity Escrow Release Date.

(d)

If, at any time during the term of this Agreement, the amount of any payment required to be made by the Escrow Agent to the Claiming Party pursuant to Section [6.\(b\)](#) with respect to a Claim Notice exceeds the amount of Escrow Funds in the Escrow Account, the Escrow Agent shall pay to the Claiming Party the entire amount of the Escrow Funds (including any Escrow Income) in the Escrow Account, subject to the terms and conditions set forth herein.

7. Final and Non-appealable Order.

Notwithstanding any other provision in this Agreement to the contrary, the Escrow Agent shall disburse the Escrow Funds (or any portion thereof) in accordance with a notice from either the Association or the Homeowner of a final and non-appealable order from a court of competent jurisdiction, along with a copy of the order, pursuant to which such court has determined whether and to what extent the Association or the Homeowner is entitled to distribution of the Escrow Funds (or any portion thereof).

8. Inspection Rights and Account Statements.

The Association and the Homeowner shall have the right to inspect and obtain copies of the records of the Escrow Agent pertaining to this Agreement and to receive monthly reports of the status of the Escrow Account. On or before the tenth (10<sup>th</sup>) Business Day following the end of each month during the term of this Agreement, the Escrow Agent shall deliver an account statement to the Association and the Homeowner with respect to the Escrow Account for the prior month, which statement shall include the account balances, disbursements made pursuant to Sections 5 and 6 hereof, Escrow Income earned during the preceding month and the status of any Unresolved Claims.

9. Termination.

Upon disbursement in full of the Escrow Funds in accordance with Sections 5, 6 or 7 of this Agreement, this Agreement shall terminate, and all rights, responsibilities and other obligations of the Escrow Agent shall be deemed to have been satisfied; provided, however, the provisions of this Section 10, Section 13, and Sections 15 through 29 shall survive the termination of this Agreement.

10. Conditions to Escrow; Liability of the Escrow Agent.

The Escrow Agent agrees to hold the Escrow Funds in the Escrow Account and to perform its duties hereunder in accordance with the terms and provisions of this Agreement. The Association and the Homeowner agree that the Escrow Agent does not assume any responsibility for the failure of the Association or the Homeowner to perform in accordance with this Agreement. The acceptance by the Escrow Agent of its responsibilities hereunder is subject to the following terms and conditions, which the parties hereto agree shall govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

(a)

The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and the Escrow Agent shall under no circumstances be deemed a fiduciary for

any of the other Parties to this Agreement. The Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact not specifically set forth herein. The Escrow Agent shall not be required to take any action hereunder requiring any expense to be incurred by the Escrow Agent unless the payment of such expense is made or provided for in a manner reasonably satisfactory to it or to take any legal action or commence any proceeding in connection with the Escrow Funds, any account into which the Escrow Funds are deposited, this Agreement or the Purchase Agreement, or to appear in, prosecute or defend any such legal action or proceeding.

(b)

The Escrow Agent shall be protected in acting upon any written notice, consent, receipt or other paper or document furnished to it, as to its due execution and validity and effectiveness of its provisions and as to the truth and accuracy of any information therein contained, which the Escrow Agent in good faith believes to be genuine and what it purports to be. Should it be necessary for the Escrow Agent to act upon any instructions, directions, documents or instruments issued or signed by or on behalf of any corporation, fiduciary or individual acting on behalf of another Party hereto, which the Escrow Agent in good faith believes to be genuine, it shall not be necessary for the Escrow Agent to inquire into such corporation's, fiduciary's or individual's authority.

(c)

The Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for anything which it may do or refrain from doing in connection herewith, except in the case of its gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to, lost profits) even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(d)

The Escrow Agent may consult with, and obtain advice from, legal counsel in the event of any question as to any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel. The reasonable and documented costs of such counsel's services shall be paid to the Escrow Agent in accordance with Section 15 below.

(e)

In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive, claims or demands from the Association or the Homeowner which, in its opinion, conflict with any instructions of the provisions of this Agreement, it shall be entitled to refrain from taking any action until it shall be directed otherwise in writing jointly by the Association or the Homeowner or by a final and non-appealable order of a court of competent jurisdiction. The Escrow Agent shall have the option, after ten (10) Business Days' notice to the Association and the Homeowner of its intention to do so, to file an action in interpleader requiring the Association and the Homeowner to answer and litigate any claims and rights among themselves.

(f)

The Escrow Agent is authorized, in its sole discretion, to comply with any writ, order, judgment or decree issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. In the event that the Escrow Agent is served with any writ, order, judgment or decree which counsel to the Escrow Agent advises is binding upon the Escrow Agent, the Escrow Agent shall have the authority to rely upon and comply with any such writ, order, judgment or decree without the need for appeal or further action; and if the Escrow Agent complies with any such writ, order, judgment or decree, it shall not be liable to any of the other Parties hereto or to any other person or entity by reason of such compliance even though such writ, order, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(g)

Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its escrow business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor escrow agent hereunder and vested with all of the title to the whole property or trust estate and all of the trusts, powers, immunities, privileges, protections and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## 11. Resignation or Removal of Escrow Agent.

▪ (a)

The Escrow Agent reserves the right to resign at any time by giving fifteen (15) Business Days' written notice of resignation to the Association and the Homeowner, specifying the effective date of such resignation. On the effective date of such resignation, the Escrow Agent shall deliver this Agreement together with the Escrow Funds (including any Escrow Income earned thereon) and any and all related instruments or documents to any successor escrow agent agreeable to the Association and the Homeowner. If a successor escrow agent has not been appointed or has not accepted such appointment prior to the expiration of a period of thirty (30) Business Days following the date of the notice of such resignation, the Escrow Agent may, but shall not be obligated to, apply to a court of competent jurisdiction for the appointment of a successor escrow agent. Any such resulting appointment shall be binding upon all of the Parties to this Agreement. Notwithstanding the foregoing, the Escrow Agent or any successor escrow agent shall continue to act as Escrow Agent until a successor is appointed and qualified to act as the Escrow Agent hereunder.

(b)

The Escrow Agent may be removed (with or without cause) and a new escrow agent may be appointed upon mutual agreement of the Association and the Homeowner. In such event, the Association and the Homeowner shall deliver a joint written notice to the Escrow Agent of such removal, together with joint written instructions authorizing delivery of this Agreement together with the Escrow Funds (including any Escrow Income earned thereon) and any and all related instruments or documents to a successor escrow agent.

(c)

Upon delivery of the Escrow Funds to a successor escrow agent in accordance with this Section [12.](#), the Escrow Agent shall thereafter be discharged from any further obligations hereunder. All power, authority, duties and obligations of the Escrow Agent shall apply to any successor escrow agent.

## 12. Indemnification of Escrow Agent.

The Association and the Homeowner shall, jointly and severally, indemnify and hold the Escrow Agent harmless from and against any liability, loss, damage or expense, as well as the costs and expenses, including reasonable attorneys' fees and disbursements, of defending against any claim or liability arising under this Agreement (an "Indemnified Expense"), that the Escrow Agent may incur in connection with this Agreement and its performance hereunder or in connection

herewith, except to the extent such liability, loss, damage or expense arises from its gross negligence or willful misconduct. The indemnification provided for under this Section 12 shall be allocated and paid in the same manner as fees and expenses under Section 14 below and shall survive the resignation or removal of the Escrow Agent; provided, however, that if the Indemnified Expense is incurred because of the fault of either the Association or the Homeowner, then, as between the Association and the Homeowner, the Party at fault shall be responsible for the cost and shall indemnify the other Party for any loss, cost or expense (including reasonable attorneys' fees, costs and disbursements) incurred as a result.

### 13. Representations.

Each Party represents and warrants to each of the other Parties that: (i) such Party is duly formed or organized, validly existing and in good standing under the laws of its jurisdiction of formation or organization; (ii) such Party has the requisite capacity and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; and (iv) this Agreement has been duly authorized, executed and delivered by such Party, does not conflict with any other agreement by which such Party or its assets are bound, and assuming that this Agreement constitutes a legal, valid and binding obligation of each of the other Parties, this Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, moratorium, reorganization or similar laws affecting the rights of creditors generally and the availability of equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### 14. Fees and Costs.

The Escrow Agent initially agrees to serve as escrow agent at no charge, but in the future may serve as Escrow Agent with a fee in accordance with any fee schedule attached as Exhibit F hereto. Each of the Association and the Homeowner shall pay fifty percent (50%) of the fees and expenses (including reasonable and documented attorneys' fees) of the Escrow Agent for the services to be rendered by the Escrow Agent pursuant to this Agreement.

### 15. Business Days.

If any date on which the Escrow Agent is required to make an investment or a delivery pursuant to the provisions hereof is not a day on which the Escrow Agent is open for business, then the Escrow Agent shall make such investment or delivery on the next succeeding Business Day.

### 16. Notices.

Any notice, demand, consent or other communication required or permitted to be given under this Agreement shall be in writing and be given (and deemed to have been duly given upon delivery or receipt):

(a)

by delivery by hand;

(b)

by prepaid overnight courier service (with written proof of delivery);

(c)

by certified or registered mail (with written or electronic proof of delivery), postage prepaid and return receipt requested;

(d)

by facsimile (with written telephonic confirmation of delivery); or

(e)

by email or other electronic delivery of Adobe portable document format files ("PDF Files") (with electronic proof of delivery);

in each case, addressed as follows:

(i)

if to the Association, to:

[\[Name\]](#)

[\[Address\]](#)

Telephone: [\[\\_\\_\\_\\_\\_\]](#)

Facsimile: [\[\\_\\_\\_\\_\\_\]](#)

Email: [\[\\_\\_\\_\\_\\_\]](#)

(ii)

if to the Homeowner, to:

[\[Name\]](#)

[\[Address\]](#)

Telephone: [\[\\_\\_\\_\\_\\_\]](#)

Facsimile: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

(iii)

if to the Escrow Agent, to:

[Name]  
[Address]  
Telephone: [ \_\_\_\_\_ ]  
Facsimile: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

with a copy (which shall not constitute notice to the Escrow Agent) to its counsel:

[Name]  
[Address]  
Telephone: [ \_\_\_\_\_ ]  
Facsimile: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

or to such other address, facsimile number or email address for a Party as shall be specified in a notice given by such Party to each other Party in accordance with this Section 16. Nothing in this Section 16 shall be deemed to constitute consent to the manner or address for service of process in connection with any legal or administrative arising out of or in connection with this Agreement.

## 17. Construction of Agreement.

The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. Except where expressly stated otherwise in this Agreement, the following rules of interpretation apply: (a) "either" and "or" are not exclusive, and "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words ", but not limited to, or ", without limitation,"; (b) "hereof," "hereto," "hereby," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole, and not to any particular provision; (c) "date hereof" refers to the date set forth in the initial caption of this Agreement; (d) "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if;" (e) definitions are applicable to the singular as well as the plural forms of such terms; (f) pronouns shall include the corresponding masculine, feminine or neuter forms; (g) references to a Person are also to such Person's permitted successors and assigns; and (h) references "Article" or "Section" refer to an Article or Section of

this Agreement; and Article, Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof. No summary of this Agreement prepared by any Party shall affect the meaning or interpretation of this Agreement. This Agreement is the product of negotiation by the Parties having the assistance of counsel and other advisers. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Accordingly, neither this Agreement nor any provision hereof shall be construed more strictly against one Party than against any other merely by virtue of the fact that it may have been prepared by one of the Parties or counsel for one of the Parties.

18. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one agreement. Photocopies, facsimile, email or other electronic transmissions of PDF files of executed documents and signatures shall be deemed original documents and signatures and shall be fully binding on the Parties to the same extent as original documents with original signatures.

19. Entire Agreement.

This Agreement and, to the extent referred to herein or applicable hereto, the Purchase Agreement, together with the other agreements, documents and instruments referred to herein or therein or attached hereto or thereto, embody the complete agreement and understanding among the Parties with respect to the subject matter hereof and supersede and preempt any prior understandings, agreements or representations by or among the Parties, written and oral, that may have related to the subject matter hereof in any way.

20. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio applicable to contracts to be made and performed entirely therein without giving effect to the principles of conflicts of law thereof or of the laws of any other jurisdiction.

21. Jurisdiction; Venue.

(a)

Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the state and Federal courts of

the State of Ohio for any action or proceeding arising out of or relating to this Agreement or the other agreements, documents or instruments delivered in connection with, arising out of, or, relating or incidental to, the negotiation, documentation administration, performance or consummation of the transactions contemplated hereby, or for recognition or enforcement of any judgment relating thereto; and each Party hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in such courts, (ii) agrees that any claim in respect of any such action or proceeding may be heard and determined in such Ohio state court or, if no such state court has proper jurisdiction, in such Federal court, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such Ohio state or Federal court, and (iv) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such Ohio state or Federal court.

(b)

Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c)

Each Party irrevocably consents to the service of process outside the territorial jurisdiction of the courts referred to in this Section 21 in any such action or proceeding by mailing copies thereof by registered United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 16. However, the foregoing shall not limit the right of a Party to effect service of process on the other Party by any other legally available method.

## 22. Arbitration.

a.

Any and all disputes, controversies or claims (each a "Dispute") arising out of, relating to or in connection with this Agreement, including, without limitation, any dispute regarding its arbitrability, validity or termination, or the performance or breach thereof, shall be exclusively and finally settled by an arbitrator (the "Arbitrator") in an arbitration administered by the American Arbitration Association ("AAA"). Any party may initiate arbitration by notice to the other party (a "Request for Arbitration"). The arbitration shall be conducted in accordance with the AAA rules governing commercial arbitration in effect at the time of the arbitration,

except as they may be modified by the provisions of this Agreement. The place of the arbitration shall be Columbus, Ohio. The arbitration shall be conducted by a single Arbitrator appointed by Association and Homeowner within fifteen (15) days after delivery of the Request for Arbitration. In the event Association and Homeowner fail to appoint a person to serve as Arbitrator within fifteen (15) days after delivery of the Request for Arbitration, the AAA shall appoint an appropriate Arbitrator within five (5) days after the expiration of such fifteen (15) day period. Any individual will be qualified to serve as an Arbitrator if he or she shall be an individual who has no material business relationship, directly or indirectly, with any of the parties to the action. The arbitration shall commence within thirty (30) days after the appointment of the Arbitrator; the arbitration shall be completed within sixty (60) days of commencement, and the Arbitrator's award shall be made within thirty (30) days following such completion. The parties may agree to extend the time limits specified in the foregoing sentence.

b.

The Arbitrator will render an award and a written opinion in support thereof. Such award shall include the costs related to the arbitration and reasonable attorneys' fees and expenses to the prevailing party. The Arbitrator also has the authority to grant provisional remedies, including, without limitation, injunctive relief, and to award specific performance. The parties waive, to the fullest extent permitted by law, any rights to appeal, or to review of, any Arbitrator's award by any court. The Arbitrator's award shall be final and binding, and judgment on the award may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, any party to this Agreement may seek injunctive relief, specific performance, or other equitable remedies from a court of competent jurisdiction without first pursuing resolution of the dispute as provided above. Each party to this Agreement irrevocably submits to the non-exclusive jurisdiction and venue in the courts of the State of Ohio and of the United States sitting in the State of Ohio in connection with any such equitable proceeding, and waives any objection based on forum non conveniens.

c.

Each party shall bear its own costs and expenses and an equal share of the Arbitrator's and administrative fees of arbitration.

d.

The parties agree to maintain confidentiality as to all aspects of the arbitration, except as may be required by applicable law, regulations or

court order, or to maintain or satisfy any suitability requirements for any license by any state, federal or other regulatory authority or body, including professional societies and organizations; provided, that nothing herein shall prevent a party from disclosing information regarding the arbitration for purposes of enforcing the award. The parties further agree to obtain the Arbitrator's agreement to preserve the confidentiality of the arbitration.

23. Waiver of Jury Trial.

EACH PARTY DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY IRREVOCABLY WAIVE ANY AND ALL OF SUCH PARTY'S RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR RELATING OR INCIDENTAL HERETO, INCLUDING, BUT NOT LIMITED TO, THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

24. Remedies.

The Parties agree that (a) irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms hereof or were otherwise breached, and (b) each Party will be entitled to specific performance of the terms hereof in addition to any other remedy to which such Party is entitled at law or in equity without the posting of any bond. For the avoidance of doubt, any Party may contemporaneously commence an action for specific performance or injunctive or other equitable relief and seek any other form of remedy at law or in equity that may be available for breach under this Agreement or otherwise in connection with this Agreement or the transactions contemplated hereby (including monetary damages).

25. Cumulative Rights.

Each right, power and remedy of each of the Parties now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every other right, power and remedy provided for in this Agreement, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right or remedy.

26. Amendment; Waiver.

The rights and obligations of the Parties under this Agreement may be waived (either generally or in a particular instance, either retroactively or prospectively, and either for a specified period of time or indefinitely) or amended if and only if

such waiver or amendment is consented to in writing by each of the Parties hereto. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. The failure to enforce any provision of this Agreement shall not be deemed to be a waiver of such provision.

#### 27. Severability.

Each provision of this Agreement is intended to be severable. If any term or provision hereof is held by a court of law to be in violation of an applicable local, state or federal ordinance, statute, law administrative or judicial decision, public policy or for any other reason, and if such court should declare such provision of this Agreement to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest extent that is legal, valid and enforceable, the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained herein, and the rights, obligations and interests of the Parties under the remainder of this Agreement shall continue in full force and effect. If any provision is held to be unenforceable, the court making such determination shall have the power to, and shall, modify such provision to the minimum extent necessary to make such provision, as so modified, enforceable, and such provision shall then be applicable in such modified form. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event that such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

#### 28. Successors and Assigns.

Except as provided in Section 11.g, neither this Agreement nor any of the rights or obligations of any Party under this Agreement shall be assigned, in whole or in part (by operation of law or otherwise), by any Party without the prior written consent of the other Parties. Subject to the foregoing, this Agreement shall bind

and inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

- 29. Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

[Signature page follows]

- IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

WEDGEWOOD HILLS HOMEOWNERS' ASSOCIATION

By: \_\_\_\_\_

Name:

Title:

HOMEOWNERS

By: \_\_\_\_\_

Name:

The undersigned hereby accepts the terms and provisions of the foregoing Escrow Agreement and agrees to accept, hold, deal with and dispose of any property comprising the Escrow Funds in accordance with the foregoing Escrow Agreement.

ESCROW AGENT

\_\_\_\_\_,  
as Escrow Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Exhibit A

Designated Persons

Exhibit B

Claim Notice

Pursuant to Section 6(a) of the Escrow Agreement, dated as of [\_\_\_\_\_] (the "Escrow Agreement"), by and among the Wedgewood Hills Homeowners' Association ("Association"), \_\_\_\_\_, ("Homeowner"), and [\_\_\_\_\_] a [\_\_\_\_\_] ("Escrow Agent"), the Association hereby certifies to the Escrow Agent and Homeowner that the Association has a good faith claim under Section [\_\_\_] of the Agreement for indemnification by Seller as follows: [specify in reasonable detail the amount and nature of the claim]

The Escrow Agent is hereby instructed, subject to the provisions of Section 6(b) of the Escrow Agreement, to disburse the amount indicated above as follows: [\[insert appropriate information\]](#).

All terms beginning with initial capital letters not otherwise defined in this certification have the same meaning as set forth in the Escrow Agreement.

- Dated: [\_\_\_\_\_].

WEDGEWOOD HILLS HOMEOWNERS' ASSOCIATION

By: \_\_\_\_\_

Name:

Title:

Exhibit C

Dispute Notice

Pursuant to Section 6(b) of the Escrow Agreement, dated as of [\_\_\_\_\_] (the "Escrow Agreement"), by and among Wedgewood Hills Homeowners' Association, \_\_\_\_\_ (Homeowners"), and [\_\_\_\_\_] a [\_\_\_\_\_] ("Escrow Agent"), the Homeowner hereby objects to Association's certification dated [\_\_\_\_\_] (the "Claim Notice"): [specify basis for objection]. The Escrow Agent is hereby instructed not to disburse to Association \$[\_\_\_\_\_] of the amount requested in the Claim Notice, except in accordance with the provisions of Section 6 of the Escrow Agreement.

All terms beginning with initial capital letters not otherwise defined in this certification have the same meaning as set forth in the Escrow Agreement.

Dated: [\_\_\_\_\_].

HOMEOWNER

By: \_\_\_\_\_

Name:

Title:

Exhibit D

Dispute Resolution Joint Instruction

Pursuant to Section 6(b) of the Escrow Agreement, dated as of [\_\_\_\_\_] (the "Escrow Agreement"), by and among Wedgewood Hills Homeowners' Association, \_\_\_\_\_ ("Homeowner"), and [\_\_\_\_\_] a [\_\_\_\_\_] ("Escrow Agent"), Seller and Purchaser hereby certify to the Escrow Agent that the disputed amount set forth in Seller's Dispute Notice, dated [\_\_\_\_\_] is to be disbursed as follows:

1.

\$[\_\_\_\_\_] to Association; and

2.

\$[\_\_\_\_\_] to Homeowner.

The Escrow Agent is hereby instructed to disburse the Escrow Funds from the Escrow Account as indicated above.

All terms beginning with initial capital letters not otherwise defined in this certification have the same meaning as set forth in the Escrow Agreement.

Dated: [\_\_\_\_\_].

WEDGEWOOD HILLS HOMEOWNERS ASSOCIATION

By: \_\_\_\_\_

Name:

Title:

HOMEOWNER

By: \_\_\_\_\_

Name:

Exhibit F

Fee Schedule