

# **Annehurst Residence Association Revised Warranty Deeds with Commentary May 2014**

The proposed Warranty Deeds have been broken down into the seven sections shown below. After each section a brief commentary to summarize the section has been added. In addition there is much detail given in the presentation from the April 24 meeting that is available at [annehurst.com](http://annehurst.com). When applicable the appropriate pages of the document are noted.

## **Section 1: Deed Alignment**

***WHEREAS**, the Easements, restrictions, reservations and conditions for the Annehurst Village Residents Association (collectively "the Warranty Deeds") were recorded at Franklin County Recorder's County Records: Vol. 3363 Pg. 55 ("Warranty Deeds I"); Vol. 2899 Pg. 538, Vol. 2737 Pg. 189, Vol. 2985 Pg. 263, Vol. 3065 Pg. 7, Vol. 3193 Pg. 417, Vol. 3206 Pg. 623, Vol. 3270 Pg. 217, and Vol. 3584 Pg. 676 (collectively "Warranty Deeds II"); and Vol. 2608 Pg. 63, Vol. 2636 Pg. 668, and Vol. 2705 Pg. 108 (collectively "Warranty Deeds III").*

***WHEREAS**, Annehurst Village Residents Association (the "AVRA") is a corporation consisting of all Owners in the Association and as such is the representative of all Owners, and*

***WHEREAS**, Article I, Section (h) of said Warranty Deeds authorizes amendments, and*

***WHEREAS**, Owners representing a majority of the AVRA's lot owners have executed a written instrument agreeing to change the covenants in the Warranty Deeds, which is attached hereto as Exhibit A, and*

***WHEREAS**, the proceedings necessary to amend the Warranty Deeds as required by Chapter 5312 of the Ohio Revised Code and the Warranty Deeds for the AVRA have been complied with in all respects.*

***NOW THEREFORE**, the Warranty Deeds for the AVRA are hereby amended to the following:*

***DELETE IN ITS ENTIRETY THE CERTIFICATE OF AMENDMENT OF DEED RESTRICTIONS OF ANNEHURST VILLAGE RESIDENTS ASSOCIATION** recorded at Franklin County Recorder's County Records: Instrument Number 200008080158423.*

***DELETE ARTICLE I, SECTION (h) OF THE WARRANTY DEEDS I, II and III** in its entirety. Said deletion is to be taken from Page 2 of the Warranty Deeds I, II and III.*

## **Commentary:**

The current Warranty Deeds for each member are similar in nature but not identical. The AVRA phase includes 12 phases of construction. This language aligns all of the current Warranty Deeds and sets the stage for the other revisions.

To view the warranty deeds attached to your home please go to:  
<http://www.annehurst.com/annehurst-resources/property-info-deed-restrictions/>

## Section 2: Voting Rules

**INSERT a new ARTICLE I, SECTION (h). Said new addition, to be added on Page 2 of the Warranty Deeds I, II and III as follows:**

*These reservations, restrictions, conditions, easements, charges agreements, covenants, obligations, rights, uses and provisions shall bind the Grantee, its successors and assigns, and shall be considered covenants running with the land and is permitted to be amended at any time and from time to time by the written consent of at least 51% of the then Owners in good standing; provided however, that the percentage of votes necessary to amend a specific clause of these Warranty Deeds shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. A copy of such amendment or modification, together with a duly authenticated certificate of the Secretary of the Board stating that the required number of written consents of Owners were obtained and are on file in the office of the AVRA, shall be recorded in the office of the Recorder of Franklin County, Ohio. Any amendment shall be effective upon such recordation.*

### Commentary:

This section stipulates that any changes to the Warranty Deeds can only be made with 51% of all members approving via written vote.

### Committee Comments:

Recommended that the 51% be achieved through a "written" consent, and not an "affirmative vote or written consent," further stating that votes be "written and verifiable."

## Section 3a: Membership.

**DELETE ARTICLE II OF WARRANTY DEEDS I, ARTICLE III OF WARRANTY DEEDS II, AND ARTICLE IV, OF WARRANTY DEEDS III in its entirety.** Said deletion is to be taken from Pages 2 and 3 of the Warranty Deeds I, Page 3 of the Warranty Deeds II, and Page 3 and 4 Warranty Deeds III.

**INSERT a new ARTICLE II IN WARRANTY DEEDS I, a new ARTICLE III IN WARRANTY DEEDS II, AND a new ARTICLE IV IN WARRANTY DEEDS III.** Said new addition, to be added on Pages 2 and 3 of Warranty Deeds I, Page 3 of the Warranty Deeds II, and Pages 3 and 4 of Warranty Deeds III, as follows:

*Effective the date of recording of this Amendment, each lot which is subsequently conveyed is subject to a membership fee payable by each duly elected member to the AVRA in the amount of Five Hundred Dollars (\$500.00), and shall apply to each successive Grantee in said Association and such fee, requirement and lien shall apply to each parcel or lot in said Annehurst Village subdivision, which fee is an obligation and charge payable at the time of transfer to each such successive Grantee of such lot or parcel of land conveyed. And the AVRA shall have a first and best lien on said premises to secure the payment of all and each charge and obligation due and to become due subject only to the lien of the State of Ohio for taxes and the lien of any first mortgage (but not to any junior or second mortgage) on said property.*

### Commentary:

This section stipulates that the fee paid at the time of closing to become an AVRA member will be \$500. In addition each new member will receive a free pool membership to be used within the first 2 pool seasons.

### Committee Comments:

Supported an increased membership fee "as high as \$500," and recommended that new homeowners receive a free pool membership with their paid closing fee.

## **Section 3b: Annual & Special Assessments.**

*Each Member for each Member's Lot owned by such Member, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, covenants and agrees and shall be deemed to have covenanted and agreed to pay to AVRA: (a) An Annual Assessment for the items set forth herein below; and (b) Default Assessments which may be assessed against a Member's Lot pursuant to the Annehurst Village Documents for failure to perform an obligation under the Annehurst Village Documents or because the AVRA has incurred an expense on behalf of the Member under the Annehurst Village Documents. The Annual and Default Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Member's Lot against which each such Assessment is made until paid. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Member's Lot at the time when the Assessment fell due. All payments shall be applied first to costs and attorney fees, then to interest and then to delinquent Annual Assessments. No Member may waive or otherwise exempt himself from liability for Assessments for any reason. The Assessments levied by the AVRA shall be used to promote the health, safety, and welfare of the Members and occupants of Annehurst Village and for the acquisition, improvement and maintenance of the AVRA Properties.*

*The Board shall prepare a budget prior to the beginning of each fiscal year estimating its net cash flow requirements for the next year and an estimate for the total Assessments to be charged and distribute them to the Members at least 30 days prior to the annual meeting of the Board. The Members shall have the opportunity to discuss them at the annual meeting prior to their final approval. On or before June 15 of each year, the Board shall approve the budget in final form, and shall determine, levy, and assess the AVRA's Annual Assessment for the following year, but in no case may the Board increase the Annual Assessment more than 5% without the written approval of 51% of all Members in good standing. The Annual Assessment shall not be adjusted more than once in a fiscal year nor shall any increase be construed to take effect retroactively, unless otherwise approved in writing by 51% of all Members in good standing. The AVRA Bylaws shall provide the manner, time, place, conduct and voting procedures for meetings of the Members. Each budget shall include funds for establishing and maintaining reserves for periodic repairs, replacement and maintenance of those improvements on the AVRA Properties which must be replaced on a periodic basis, and for taxes, capital improvements and deficiencies from the prior year's Maintenance Fund and other purposes and shall include any expected income and surplus from the prior year's Operating Fund.*

*The Board shall for each year, commencing with the fiscal year 2014, fix and assess an Annual Assessment against each Member which shall be equal to the Annual Assessment then being levied by the AVRA divided by the total number of Members. In addition, every five years the Board shall contract with a qualified engineer for an independent reserve study to assist in establishing an equal Annual Assessment for each Lot. The Annual Assessment for fiscal year 2014 for each Lot shall be \$60.00.*

*As soon as shall be practicable in each fiscal year, the AVRA shall cause to be sent to each Member a written statement providing the amount of the Annual Assessment for each member for the year in question.*

*The Annual Assessments provided herein shall commence as to a Member on the day of the closing of the conveyance of a Property to a Member. The first Annual Assessment shall be prorated according to the number of days remaining in the fiscal year. Assessments shall be payable annually in advance on the first day of the fiscal year.*

### **Commentary:**

This details the Annual Assessment that will be collected. The following are the major points..

- The Annual Assessment will be set at \$60.
- The assessment may increase no more than 5% annually (over the previous years rate). This increase is at the discretion of the Board of Trustees but must be based on need as indicated by the annual budget
- The assessment may decrease at any time at the discretion of the Board of Trustees as indicated by the annual budget.
- Any other changes to the Annual Assessment would require a 51% vote of all members in good standing.
- The assessment can only be adjusted once annually.
- Every five years an engineering study will be conducted.
- The assessment is prorated based on the fiscal year for new members.

In addition all members in good standing will receive (2) free family passes and be able to use the pool by paying a guest rate.

**Committee Comments continued on next page**

## **Committee Comments:**

Supported a fixed annual fee that would be reviewed for renewal after 5 years. They suggested annual fees from \$50 to \$100. They were very concerned about placing controls increasing the annual fee. They also recommended that day passes be given to each member paying their annual fee.

For annual dues it was recommended that all members have access to the pool without having to pay for a membership either through free passes or the ability to pay a guest rate.

## **Section 3c: Delinquent Accounts.**

*All monetary fines assessed against a Member pursuant to the Annehurst Village Documents, or any expense of the AVRA which is the obligation of a Member or which is incurred by the AVRA on behalf of the Member's Lot pursuant to the Annehurst Village Documents, shall be a Default Assessment and shall become a lien against such Member's Lot which may be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Default Assessments shall be sent to the Members subject to such Assessment at least 30 days prior to their due date.*

*Any Annual or Default Assessment, which is not paid within 30 days of its due date shall be delinquent. In the event that an Annual Assessment becomes delinquent, the AVRA, in its sole discretion, may take any or all of the following actions:*

*Assess a late charge of not less than 5% of the delinquent amount;*

*Assess an interest charge from the date of delinquency at 1-1/2% per month or the maximum rate allowed by law;*

*Suspend the voting rights of the Member during the period of delinquency;*

*Bring an action at law against any Member personally obligated to pay the delinquent installments;*

*File a statement of lien with respect to the Member's Lot and foreclose on the Lot as set forth in more detail below; and Suspend the rights of the Member to use the AVRA Properties and the Common Area during any period of delinquency.*

*The AVRA may file a statement of lien by recording with the Recorder of Franklin County, Ohio, a written statement with respect to the Member's Lot, setting forth the name of the Member, the legal description of the Member's Lot, the name of the AVRA and the amount of delinquent Assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice President of the AVRA, and which shall be served upon the Member by mail to the address of the Member's Lot or at such other address as the AVRA may have in its records for the Member. Thirty days following the mailing of such notice, the AVRA may proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Ohio. Such lien shall be in favor of the AVRA and shall be for the benefit of all other Members. In either a personal or foreclosure action, the AVRA shall be entitled to recover as a part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.*

*The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a recorded First Mortgage and to any refinancing loan to refinance any such purchase money loan, provided that any such refinancing is evidenced by a First Mortgage of record. No sale or transfer shall relieve a Lot from liability for any Assessments or from the lien thereof. However, sale or transfer of any Lot pursuant to a decree of foreclosure or by a public trustee's foreclosure, or any other proceeding or deed in lieu of foreclosure, for the purpose of enforcing a First Mortgage, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of, any Assessments made thereafter.*

*The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Member an Assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay Assessments. In such event, each Member shall continue to pay the Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made at which time any shortfalls in collections may be assessed retroactively by the AVRA.*

**Commentary and Committee Comments continued on next page**

### **Commentary:**

This section details how delinquent member accounts will be handled. An account will be delinquent after 30 days of non-payment.

Various methods up collecting can be used up to and including the placing of a lien on the property.

### **Committee Comments:**

The committee felt it was important to clearly define how delinquent accounts would be addressed.

## **Section 4: Pool Membership Fees**

***INSERT a new ARTICLE VII IN WARRANTY DEEDS I, a new ARTICLE VIII IN WARRANTY DEEDS II, AND a new ARTICLE IX IN WARRANTY DEEDS III. Said new addition, to be added 4 on Pages 4 and 5 of Warranty Deeds I, Pages 4 and 5 of the Warranty Deeds II, and Pages 5 and 6 of Warranty Deeds III, as follows:***

*In that the cost of pool facility maintenance, repair, operation and other related costs will exceed the allocated expenses in the Annual Budget of the AVRA, the Board of Trustees shall charge and collect, in any year, a reasonable pool membership fee for members of the AVRA to use the pool during that season. The pool membership fee shall be determined by the Board of Trustees each year.*

### **Commentary:**

This section has been created to allow the Board the set rates and collect membership fees for the use of the pool. These fees are used for operational costs, like electric, gas, pool chemicals and staff wages during the 3 month operational period.

### **Committee Comments:**

Recommended that the AVRA board of trustees explore additional fee schedules – specially add rates that will attract more members to take advantage of the pool.

## **Section 5: Indemnification**

***INSERT a new ARTICLE VIII IN WARRANTY DEEDS I, a new ARTICLE IX IN WARRANTY DEEDS II, AND a new ARTICLE X IN WARRANTY DEEDS III. Said new addition, to be added on Pages 4 and 5 of Warranty Deeds I, Pages 4 and 5 of the Warranty Deeds II, and Pages 5 and 6 of Warranty Deeds III, as follows:***

*The AVRA shall indemnify every officer, trustee and committee member against any and all expenses, including attorney fees, reasonably incurred by or imposed upon such officer, trustee, or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Trustees) to which he or she may be a party by reason of being or having an officer, trustee, or committee member. The officer, trustees, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and trustees shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the AVRA (except to the extent that such officers or trustees may also be Owners), and the AVRA shall indemnify and forever hold each such officer and trustee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, trustee, or committee member, or former officer, trustee, or committee member may be entitled.*

**Commentary:**

This section has been added to indemnify (protect) the AVRA Board and any other members acting on it's behalf from liability due to its actions. This protection does not apply if one of these persons does something illegal, in bad faith, etc... This is a requirement of the Ohio Revised Code.

**Committee Comments:**

Recommended that the AVRA board of trustees explore additional fee schedules – specially add rates that will attract families

**Section 6: Duty to Maintain Insurance**

***INSERT a new ARTICLE IX IN WARRANTY DEEDS I, a new ARTICLE X IN WARRANTY DEEDS II, AND a new ARTICLE XI IN WARRANTY DEEDS III. Said new addition, to be added on Pages 5, 6 and 7 of Warranty Deeds I, Pages 5, 6 and 7 of the Warranty Deeds II, and Pages 6.7 and 8 of Warranty Deeds III, as follows:***

*Duty to Maintain Hazard Insurance. The AVRA shall obtain insurance for all insurable improvements owned by the AVRA in an amount equal to the full replacement value thereof (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage) which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment. Such policy shall include, if applicable, a standard form of mortgagee clause, a "Demolition Cost Endorsement" or its equivalent, and an "Increased Cost of Construction Endorsement" or the equivalent. In addition, such policy shall afford protection against at least the following:*

*.....Through.....*

*9) No policy may be cancelled, invalidated, or suspended on account of the conduct of any member of Board of Trustees, officer, agent or employee of the AVRA or its duly authorized Manager without prior demand in writing delivered to the AVRA to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the AVRA, its Manager, any Owner, or Mortgagee*

**Commentary:**

This section has been added to specify the requirements of all insurances held by the AVRA for it's members and common areas. This is also a requirement of the Ohio Revised Code.

**Committee Comments:**

Indicated support for these provisions.

## **Section 7: Power to Adopt Rules**

*Power to Adopt Rules and Regulations. Effective with the recordation of these Amendments, the AVRA Board of Trustees from time to time and subject to the written consent of at least 51% of the then-Owners in good standing may adopt, amend and repeal rules and regulations deemed necessary, desirable or advisable to promote the health, safety or welfare of the Owners and residents of property within Annehurst Village, to be known as the "Annehurst Village Rules."*

*Notice of the adoption, amendment or repeal of any Annehurst Village Rules shall be given in writing to each Owner at the address provided by each owner for notices to the Owners and copies of the currently effective Annehurst Village Rules shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with the Annehurst Village Rules and shall see that the tenant, occupant, family member or contract purchaser of an Owner who resides on the Owner's Lot and any natural person who is a guest or invitee of such Owner or of such person shall comply with the Annehurst Village Rules. In the event of any conflict between the Annehurst Village Rules and the provisions of the Warranty Deeds, the provisions of the Warranty Deeds shall prevail.*

### **Commentary:**

This section has been added to allow the AVRA to make rules. Currently there are no rules being adopted but should the need arise in the future the members would have a mechanism to do so.

### **Committee Comments:**

It was felt strongly that Westerville and the State of Ohio provide sufficient rules on neighborhood maintenance and acceptable standards – and that any new rule be "approved by 51% of members in good standing."