

4/11/88

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND
RESERVATION OF EASEMENTS
FOR
HUTTENBAUER FARMS OWNERS' ASSOCIATION, INC.

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS ("Declaration") is made this ~~12th~~ day of April, 1988, by TOWNE-HUTTENBAUER ASSOCIATES, an Ohio/partnership (the "Developer"), under the following circumstances:

A. Developer is the owner of certain real property located in Hamilton County, Ohio, more particularly described in Exhibit A attached hereto and made a part hereof and may acquire other lands in the vicinity thereof and subject them to this Declaration, as provided herein (the "Property").

B. Developer desires that the Property shall be held, sold, and conveyed subject to the covenants, conditions and restrictions and reservation of easements contained herein.

NOW, THEREFORE, in consideration of the premises and for the purposes of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer hereby declares that the Property shall be held, sold and conveyed subject to this Declaration and the liens provided for herein.

SECTION 1

DEFINITIONS

The words in this Declaration which begin with capital letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the meanings set forth in this Section 1.

1.1 Annual Meeting. "Annual Meeting" means the annual meeting of the Association held in December of each year upon such date as may be selected by the Board. In the year in which this Declaration becomes effective, the Annual Meeting shall be held on such date as the initial Board shall determine.

1.2 Assessment. "Assessment" means the charge established by Section 2 of this Declaration.

1.3 Association. "Association" means Huttenbauer Farms Owners' Association, Inc., an Ohio nonprofit corporation, which owns, operates and maintains the Common Facilities, and any successor organization which owns, operates and maintains the Common Facilities.

1.4 Board. "Board" means the Board of Trustees of the Association established pursuant to its Articles of Incorporation, Bylaws (if any) and this Declaration.

1.5 Class A Members. "Class A Members" means those members of the Association consisting of all Owners except, during the Development Period, Developer.

1.6 Class B Member. "Class B Member" means, during the Development Period, Developer, as a member of the Association.

1.7 Common Facilities. "Common Facilities" means the entrance way real property being an easement more particularly described in Exhibit B hereto including all real and personal property, including easements and licenses, if any, benefiting all or any part of the Common Facilities, and any additional real and/or personal property from time to time owned by or leased to the Association for the common use and enjoyment of the Owners, including Structures, Improvements, other facilities and related fixtures, equipment and furnishings.

1.8 Constituent Documents. "Constituent Documents" mean the Declaration, the Recorded plat of subdivision for the Property, the Association's Bylaws (if any), the Association's Articles of Incorporation, the management agreement, if any, entered into between the Association and any professional manager of the Property, and any other basic documents used to create and govern the Property.

1.9 Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements as the same may from time to time be amended in the manner prescribed herein.

1.10 Default. "Default" means any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

1.11 Design and Use Standards. "Design and Use Standards" means the design and use standards to be adopted by the Board pursuant to Section 5.8 of this Declaration as the same may from time to time be amended.

1.12 Developer. "Developer" means Towne-Huttenbauer Associates, its successors and assigns.

1.13 Development Period. "Development Period" means the period commencing on the date on which this Declaration is recorded in the Hamilton County, Ohio Recorder's office and terminating on the earlier to occur of (a) the date ten (10) years after such date, or (b) 120 days after 90% of the total number of Lots (64) developer plans to include as a part of the Property have been conveyed to third parties.

1.14 Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single person, a family or a family-sized group of persons.

1.15 Lot. "Lot" means each of the parcels of land shown as such upon the recorded plat of the Property, including the Lot upon which the entrance way sign and landscaping will be [located] as part of the Common Facilities. Unless otherwise indicated, the term "Lot" shall be deemed to include the parcel of land as well as the entrance way or other improvements constructed thereon and all rights, privileges and easements appurtenant thereto.

1.16 Maintenance Standards. "Maintenance Standards" mean those standards adopted by the Board pursuant to Section 7 of the Declaration as the same may from time to time be amended.

1.17 Members. "Members" means all Class A Members and the Class B Member.

1.18 Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.19 Property. "Property" means that certain land in Hamilton County, Ohio, particularly described in Exhibit A to this Declaration plus any land annexed or submitted to this Declaration pursuant to Section 9 herein together with all improvements now or hereafter located thereon.

1.20 Resident. "Resident" means any person who has a place on the Property in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning. A person shall not lose his status as a Resident by leaving his place of habitation temporarily with the intention of returning.

1.21 Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, the Design and Use Standards and the Maintenance Standards and all notices, rules and regulations issued in accordance with this Declaration.

1.22 Structure. "Structure" means:

(a) any thing or object (other than trees, shrubbery, landscaping and hedges which are less than two feet high) the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation, porch, shed, covered or uncovered patio, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement; and

(b) any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property.

1.23 Tenant. "Tenant" means any person occupying any Parcel pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

1.24 Trustee. "Trustee" means any person elected or appointed to the Board pursuant to Section 4 of this Declaration.

SECTION 2

THE ASSESSMENT

2.1 Establishment of Assessment. There is hereby established for the benefit of the Association, as a charge on each lot, an annual Assessment. The Assessment shall be payable in one annual installment, in arrears on the first day of February. The obligation to pay the Assessment shall commence on the first day of the first calendar month after any Dwelling Unit is first occupied by an Owner, Resident or Tenant. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year during which the Lien for the Assessment commences. The obligation to pay the Assessment shall not in any manner be dependent upon, or discharged or otherwise affected by, use or non-use of the Common Facilities. Subject to the specific provisions of this Declaration relating to subordination of the Assessment created hereunder (including without limitation, the subordination of such Lien to the Lien of a first mortgage) and notwithstanding the date on which the Assessment is implemented, such Lien shall have priority over all liens and encumbrances on any lot or any part thereof or interest therein arising after this Declaration is recorded.

2.2 Covenant for Assessment. Each owner of a Lot, by (i) acceptance of a deed or other instrument of conveyance therefor, or, (ii) execution of this Declaration, shall be deemed to covenant to pay or secure the payment of the Assessment to the Association.

2.3 Purpose of Assessment. The Assessment is established for the benefit and use of the Association and shall be used in covering all of the cost of the Association's operation, insurance, maintenance and repair obligations including, without limitation thereto, the cost of repairing and maintaining the entrance way and improvements thereon; real estate taxes and assessments on the Common Facilities; the cost of operation, maintenance and repair of Common Facilities; the cost of supplying water; the cost of reasonable reserves for contingencies, replacements and working capital and all other costs incurred by the Association in the exercise of its powers and duties pursuant to this Declaration. Either the basic Assessment or a special Assessment may also be used in covering the cost of any capital addition or capital improvement to the Common Facilities to the extent that the cost of same, exclusive of reserve funds available and budgeted for such purposes, does not exceed \$2,000, and may be used to cover the cost of any other capital addition or capital improvement that is authorized by the Board and approved by the Class A Members and the Class B Member in accordance with Section 8.3 hereof. The Assessment shall not be used for any other purpose. The amount of any operating deficit incurred in any calendar year shall be paid by means of a special Assessment sufficient in amount so as to allow the Association to satisfy such deficit in full, such special Assessment to be announced by the Board as soon as possible after the completion of a final accounting for the year during which the deficit occurred and to be paid within 30 days after the announcement and notification to all Members of such special Assessment. Any such special Assessment as to a calendar year shall for all purposes of this Declaration be considered to be part of the Assessment for such year, and no consent of Members shall be required with respect to such special Assessment.

2.4 Amount of Assessment. The amount of the Assessment shall be determined from year to year in accordance with the following:

2.4.1. The annual Assessment shall be determined by the Board in an amount which the Board estimates will be adequate to pay all costs described in Section 2.2 hereof for the current year and any unpaid deficits for prior years. The Board shall determine the Association's budget and the amount of the Assessment for the immediately following year on or before December 1st of each year and shall give written notice to all

Members of the Assessment applicable to their Lot not later than December 15th. The failure of the Board to meet these deadlines shall have no effect upon the obligations of the Owners to pay the Assessments when determined. Except as to the Individual Assessments described in Section 2.5, Lots shall be assessed on an equal basis, regardless of any variations in the sizes or value of Lots thereon. If during the course of the year, the Board determines that the amount of the Assessment is or will be inadequate to cover all such costs described in Section 2.3 hereof, the Board may adjust the amount of the Assessment by giving written notice to the Members not less than twenty (20) days before the effective date of the adjustment.

2.4.2. In addition to the annual Assessment, the Board may levy, in any calendar year, a special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement included or to be included in the Common Facilities, including fixtures and personal property related thereto, provided that any such special Assessment shall have been approved in accordance with Section 8.3 hereof.

2.4.3. If the Developer so determines, a working capital fund may be established for the initial months of the project operation to insure that the Board will have the cash available to meet unforeseen expenditures, to prepay certain items or to acquire equipment or services deemed necessary or desirable by the Developer. This initial working capital fund, if any, may consist of a contribution collected by the Developer and transferred to the Association at the time of closing of the sale of each Lot to a Class A Member. The amount of this contribution shall not exceed two months of the initial Assessment for the Lot being sold as determined pursuant to this Section 2.4. The Association shall maintain this working capital fund, together with sums allocated pursuant to the budget for the annual Assessment to the working capital fund, in a segregated account for the Association's benefit and use. Contributions to the working capital fund shall not be deemed an advance payment of any Assessment.

2.5 Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, Tenants, guests or invitees, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be added to and become a part of the Assessment against all Lots owned by the Owner responsible for such cost.

2.6 Payment. Unless otherwise established by the Board, the Assessment shall be paid in annual installments not more than ten (10) days after the due date established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules as it shall deem appropriate. Additionally, if an Owner is in default in payment of an installment of the Assessment, the Board may accelerate the remaining installments of the Assessment for the calendar year during which the default occurs by giving notice to the Owner, in which event the unpaid balance of the Assessment shall become due upon the date designated in the notice, but not less than ten (10) days after delivery of the notice to Owner, or not less than twenty (20) days after the mailing of the notice to the Owner by certified mail, whichever occurs first.

2.7 Penalty For Late Payment. For each Lot as to which any installment of any Assessment is not paid within the period provided by the Board, there shall be added to the installment a penalty of 10% thereof, and interest at the rate of 15% per annum (or, if less, the maximum rate allowable by law) from the due date on the amount of such installment plus penalty until paid. Said penalty and interest shall also be computed on and added to the total of accelerated installments due if the Board exercises its right to accelerate under Section 2.6 above.

2.8 Covenant of Payment. Developer, so long as it continues to be the Owner of any Lot, hereby covenants to pay or secure the payment of the Assessment for such Lot as provided in this Section 2. Each succeeding Owner of any Lot, by acceptance of a deed or other instrument of conveyance therefor, shall be deemed to covenant to pay or secure the payment of the Assessment to the Association.

2.9 Creation of Lien and Personal Obligation of Assessment. All Assessments shall be a charge and lien on each Lot to the extent and for the period provided in Section 2.10, and shall also be the personal obligation of the Owner of each Lot against which they are made.

2.10 Liens. If an installment of the Assessment on any Lot is not paid within the period established by the Board pursuant to Section 2.6, the amount thereof together with any interest, costs, penalties and reasonable attorneys' fees thereon shall constitute a lien on such Lot in favor of the Association prior to all other liens and encumbrances whatsoever, excepting (a) real estate taxes and assessments and liens of record in favor of the United States of America, the State of Ohio, and all other political subdivisions or governmental instrumentalities of

the State of Ohio to the extent made superior by applicable law, and (b) all bona fide recorded first mortgages and the rights of any first mortgagee who comes into possession of a lot pursuant to mortgage foreclosure or by deed in lieu thereof. The Association may record a notice of lien with the Recorder of Hamilton County, Ohio in any legally recordable form, including by affidavit as provided in Section 5301.252 of the Ohio Revised Code or any similar section hereafter enacted. Nonpayment of an installment of the Assessment on any Lot shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate.

2.11 Evidence of Payment. Upon the request of the Owner or any mortgagee or Tenant of any Lot or any prospective purchaser, mortgagee, or Tenant thereof, the Board or its designated representative shall furnish written evidence of the amount of the Assessment with respect to such Lot for the current year and the amount of any unpaid Assessment, penalty and interest, if any. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Lot. The Board may impose a reasonable charge for furnishing such written evidence.

2.12 Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of Ohio. In any such enforcement proceeding, the amount which may be recovered by the Association shall include all costs of such proceeding, including reasonable attorneys' fees. In any such foreclosure sale, the Association may become the purchaser.

2.13 Subordination of Lien to First Mortgage. When the mortgagee of a first mortgage of record, or other purchaser of a Lot as a result of judicial execution, acquires title to the Lot as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his or its heirs, successors and assigns, shall not be solely liable for the share of the assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Any lien against such Lot shall be cancelled and voided, and shall become unenforceable. Such unpaid share of assessments shall be deemed to be common expenses collectible from all of the Lots, including that of such acquirer, his or its heirs, successors or assigns.

SECTION 3

ASSOCIATION FUNDS

3.1 Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and for periodic maintenance, repair and replacement of the Common Facilities. All amounts placed in the reserve for contingencies and replacements shall be contributions to the capital of the Association, and the portion of each monthly Assessment payment made by each Owner which is allocable to the reserve for contingencies and replacements shall be separately designated for that purpose on the records of the Association. Extraordinary expenditures not originally included in the annual budget which may be necessary for the year shall be charged first against such reserve. If the reserve proves inadequate for any reason, the extraordinary expenditures shall be assessed to the Owners as part of the Assessment determined under Section 2 of this Declaration. The Board shall serve notice of such further Assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further Assessment shall become effective with the next regular Assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of further Assessment unless the Board elects to prorate the additional Assessment over a period of more than one month. All Owners shall be obligated to pay the adjusted amount.

3.2 Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the costs and necessary reserves, as herein provided, whenever the same shall be determined. In the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly Assessments at the existing rate established for the previous period until the assessment payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

3.3 Books and Records of Association. The Association shall keep full and correct books of account. The Association shall make available to Members, Owners, Tenants and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

3.4 Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special Assessments as may be levied hereunder against less than all of the Owners, and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of the Association and all of its Members. The Board may, in its discretion, take any action which it deems necessary as to the collection, holding, disbursement or categorization of such reserve funds in order to comply with the provisions of the Internal Revenue Code, U.S. Treasury Regulations issued thereunder, and/or any ruling by the Internal Revenue Service as to the non-inclusion of such funds in the taxable income of the Association.

SECTION 4

ASSOCIATION MEMBERSHIP, MEETINGS AND BOARD

4.1 Members. During the Development Period, the Association shall have Class A Members (being all Owners except Developer) and a Class B Member (Developer). After the Class A Members are entitled to elect all of the Board, the Class B membership shall terminate and Developer, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner.

4.2 Voting Rights.

4.2.1. Each Class A Member shall be entitled to one vote for each Lot owned by such Class A Member; provided that any Class A Member (i) with respect to whom a notice of Default has been issued by the Board pursuant to this Declaration, or (ii) who has had his right or privilege of use and enjoyment of the Common Facilities suspended pursuant to this Declaration, shall not be entitled to vote during any period in which any such Default or suspension continues; and further provided that if a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Class A Member as to such Lot for purposes of this Section.

4.2.2. The Class B Member shall have one vote for each Lot owned by it.

4.2.3 Unless otherwise expressly set forth by law, this Declaration, or the Bylaws, if any, of the Association, the affirmative vote of 51% of the voting power of the Members voting on any matter at a meeting of Members shall be sufficient to determine that matter, provided that any quorum requirement is met at the time of completion of that vote.

The Board may make such rules, consistent with the terms of this Declaration and the Association articles and regulations, as it deems advisable with respect to any meeting of members, proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of members for voting purposes, voting by proxy, and other matters concerning the conduct of meetings and voting.

4.3 Annual Meeting. In 1988 the Annual Meeting shall be held on such date as the Board shall determine. Thereafter, the Annual Meeting shall be held in December of each year on such date and at such time and place as the Board shall determine. Each Annual Meeting shall be open to all Owners. Except as otherwise provided in this Declaration, each Member of the Association, regardless of class, shall be entitled to vote on each matter properly submitted to the Members. If the Board shall so determine, voting in elections and voting on other matters at the Annual Meeting may be conducted by mail or by proxy.

4.4 Special Meetings. Special meetings of Members may be called at any time by the President or by the Board of Trustees. Special meetings shall be called by the President upon written request, delivered to the President in person or by certified mail, of Members having at least 25% of the voting power of all Members. Upon receipt of this request, the President shall immediately cause written notice to be given of a meeting to be held on a date not less than seven nor more than thirty days after receipt of this request. If written notice is not given within ten days after the delivery of the request, the Members making the request may call the meeting and give written notice of it.

4.5 Notice of Meetings. Written notice shall be given not less than seven nor more than thirty days before a meeting. The Secretary or other person(s) required or permitted to give notice shall give written notice to each Member of record as of the day on which notice is given.

Notice of a meeting of Members shall specify the date, time, and place of the meeting, and shall specify the purpose(s) of a special meeting. Notice of the date, time, place, and purpose(s) of any meeting of Members may be waived by any Member, before or after the meeting, by a writing filed with the records of the Association. The attendance of any Member at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice, shall be deemed a waiver by the Member of notice of the meeting.

4.6 Quorum; Adjournment. Except as may be otherwise provided by law or by the Declaration, there shall be a quorum at any meeting of Members where Members who hold 25% of the total voting power of all Members in good standing are present, in person or by proxy. For a vote on any matter to be valid, the quorum requirement must be met at the time of completion of that vote. Whether or not a quorum is present, the Members entitled to exercise a majority of the voting power represented at a meeting of Members may adjourn that meeting. Notice of the adjournment need not be given if the time and place to which the meeting is adjourned are fixed and announced at the meeting.

4.7 Action by Association Members without a Meeting. Any action which may be authorized or taken at a meeting of the Members of the Association may be authorized or taken without a meeting in a writing or writings signed by Members who would be entitled to notice of a meeting of Members held for such purpose, who hold not less than fifty-one percent (51%) of the total voting power in the Association, and who are required signatories under any other provision of the Declaration, which writing or writings shall be filed with the records of the Association. Written notice of any action proposed to be taken by such written consent of Members shall be sent to all parties who are entitled to notices under the Declaration not less than five (5) days prior to commencing the circulation of the action for written consent among the Members.

4.8 Voting by Mail by Association Members. Any Association Member may cast his written vote by mail on any proposal voted upon at any meeting of the Members of the Association by sending such written vote to the Association office not earlier than ten days prior to the date of such meeting and not later than three days prior to the date of such meeting by U.S. mail, postage prepaid. Such written votes shall be filed with the records of the Association, and, in no event, shall any action be taken or approved by the Association with the approval of any less than the percentage of voting power required by the provisions of the Declaration or without the consent of any party that is required by any of said provisions. Members who have voted by mail shall not be counted in determining whether the quorum has been met.

4.9 Board of Trustees. Until the first Annual Meeting, the initial Board shall consist of three Trustees appointed by the Class B Member who shall serve until their respective successors are elected and qualified. Trustees appointed by the Developer need not be members of the Association.

Except as otherwise hereinafter provided and except for the initial Board of three, Trustees shall be elected for two-year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the initial Board before the first Annual Meeting, by reason of death, resignation, removal, or otherwise, shall be filled by a person appointed by the Developer. Any such vacancy occurring thereafter shall be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Trustees representing the same class of members who elected the Trustee whose position has become vacant. Any Trustee appointed or elected to fill a vacancy shall serve as such until the expiration of the term of the Trustee whose position he was appointed or elected to fill.

At the first Annual Meeting, the Class B Member shall elect one Trustee for a two-year term and one Trustee for a one-year term. Thereafter, at each Annual Meeting the Class B Member, so long as it continues to be a Class B Member, shall elect one Trustee for a two-year term.

At the first Annual Meeting, the Class A Members shall elect one Trustee for a two-year term. At the expiration of the term of such Trustee and at the expiration of the term of each successor of such Trustee, the Class A Members shall, at the Annual Meeting, elect a successor Trustee for a two-year term.

After the termination of the Development Period, all Trustees shall be elected by the Class A Members. All Trustees elected by the Class A Members both before and after the termination of the Development Period must be Owners. The Developer shall transfer control of the Board to the Class A Members at a meeting of the Members held no later than 120 days after the end of the Development Period. At this meeting all Developer-appointed Trustees shall be deemed to be removed from office, and the Class A Members, including the Developer if it is then an Owner, shall elect a Trustee to fill each vacancy, which Trustee shall serve as such until the expiration of the term of the Trustee whose position he was elected to fill. After this meeting, all Trustees shall be elected by the Class A Members.

Notwithstanding anything above to the contrary, the Class B Member may, at any Annual Meeting, relinquish to the Class A Members the Class B Member's right to elect one or more Trustees at such Annual Meeting pursuant to this Section 4.9.

Trustees shall serve without compensation.

4.10 Board Meetings. Unless waived by the Board, regular meetings of the Board shall be held no less often than semi-annually, on the date and at the time and place fixed from time to time by the Board. Special meetings of the Board may be held at any time when called by the President or any two Managers.

4.11 Notice of Meetings; Attendance by Members. Notice of the date, time, and place of organizational, regular, and special meetings of the Board shall be given to each Trustee by personal delivery, mail, telegram, or telephone at least two days before the meeting. The notice need not specify the purpose(s) of any meeting. Notice of the date, time, and place of any meeting may be waived by a Trustee, before or after the meeting, by a writing filed with or entered upon the records of the meeting. Attendance of a Trustee at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice shall be deemed a waiver by the Trustee of notice of the meeting.

No notice need be given to non-Trustee Member owners of organizational, regular, or special meetings of the Board. However, a non-Trustee Member may attend any organizational, regular, or special meeting of the Board, but may not participate in any such meeting unless given permission to do so by the President or other officer of the Association who is presiding at the meeting. A non-Trustee Member may not vote at a meeting of the Board.

4.12 Quorum; Adjournment. A majority of the Trustees then in office shall constitute a quorum for any meeting, provided that the quorum requirement must be met at the time of completion of a vote on any matter for that vote to be valid. Whether or not a quorum is present, a majority of the Trustees present at a meeting may adjourn that meeting. Notice of the adjournment need not be given if the time and place to which the meeting is adjourned are fixed and announced at the meeting.

4.13 Voting Power. At any meeting of the Board at which a quorum is present, all matters shall be determined by a majority vote of those voting on the matter, except as may be otherwise expressly provided in the Declaration. The President may cast an additional vote to break a tie vote on any matter.

4.14 Action by Board Without A Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting in a writing or writings signed by all the Trustees, which writing(s) shall be filed with Board records.

4.15 Officers.

4.15.1. The Association shall have a President, Vice President, Secretary, and Treasurer. The Board may create other offices from time to time. The President, Vice President, Secretary, and Treasurer shall be Trustees. Any other officer need not be a Trustee, but shall be Member. The same person may hold two or more offices, but no officer shall execute an instrument in more than one capacity if the signatures of two or more officers are required by law, the Association's Articles of Incorporation, or the Declaration.

4.15.2. The Board shall elect the officers at each Annual Meeting, or at the special meeting at the end of the Development Period, and the persons so elected shall take office upon election.

4.15.3. An officer shall serve for a one-year term and until a successor is elected, or until the officer's earlier resignation, removal from office, or death. An officer may be re-elected for additional terms.

4.15.4. The Board may remove any officer at any time, with or without cause. Any officer may resign at any time by oral statement made at a meeting of the Board or by written notice delivered to the Secretary. The resignation shall take effect immediately or at the time specified by the resigning officer. Any vacancy in any office may be filled by the Board.

4.15.5. The powers and duties of officers shall be as the Board may determine from time to time, consistent with this Declaration.

4.16 Fidelity Bonds. The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be an item included in the annual Assessment.

4.17 Right of Action. The Association and any Owner shall have the right of action against any other Owner(s), and any Owner shall have a right of action against the Association, for any failure to comply with the provisions of any Constitution, Document, and for any failure to comply with Association decisions made pursuant thereto.

SECTION 5

ARCHITECTURAL REVIEW

5.1 Alteration of Structures. Except with respect to the initial construction of Dwelling Units and accessory Structures by builders and Common Facilities by the Developer, no Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot, nor shall any Structure on any Lot be remodeled, painted or altered or expanded in any way which changes the exterior appearance thereof, unless detailed plans and specifications therefor shall have been submitted to and approved in writing by the Board. Such plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to any or all of the following: a site plan; proposed landscaping; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; and evidence of conformity with building codes. The Board shall either (i) approve the plans and specifications, (ii) disapprove them or (iii) approve them with conditions or qualifications.

5.2 Approval of Plans and Specifications. The Board shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) if it finds that they (a) comply with the requirements of Section 5.1 and (b) conform to the Design and Use Standards (as set forth in Section 5.8), and will further the purposes outlined in Section 5.8. Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Board and a copy bearing the written approval of the Board shall be returned to the applicant. Approval by the Board of plans and specifications with respect to any Lot shall not impair the Board's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Section) or to amend the Design and Use Standards. The Board's approval of any plans and specifications shall not constitute a representation or warranty as to the quality of the plans and specifications or their compliance with applicable laws and codes.

5.3 Disapproval of Plans and Specifications. If plans and specifications (whether schematic, preliminary or detailed) submitted to the Board with respect to any Lot do not comply with (a) the Design and Use Standards (and/or will not further the purposes outlined in Section 5.8) or (b) the requirements of Section 5.1 as to the information required to be included in the plans and specifications, the Board shall either disapprove in the plans and specifications, or approve them subject to such conditions and qualifications as the Board may deem necessary to achieve compliance.

5.4 Failure of the Board to Act. If the Board shall fail to act upon any plans and specifications submitted to it within thirty (30) days after submission thereof, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the Board shall be required. If construction of a structure is not commenced on a lot on or before six (6) months from the date of submission of plans and specifications, then such "deemed approval" shall be automatically cancelled and a new submission shall be required.

5.5 Violations. If any structure situated upon any lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the approved plans and specifications, the Board shall give notice of a Default to the Owner of the lot involved, provided, however, that the Board may, upon such conditions as it may determine, waive any such Default if it finds that such Default does not substantially conflict with the policies of the Board or the Design and Use Standards.

5.6 Right of Entry. The Board through its authorized officers, employees, and agents, shall have the right to enter upon any lot at all reasonable times for the purpose of ascertaining whether such lot or the construction, erection, placement, remodeling, or alteration of any structure thereon is in compliance with the provisions of this Section, without the Board or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

5.7 Fees. The Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Board.

5.8 Design and Use Standards.

5.8.1. In order to assure the continued maintenance development of the property as a residential community of high aesthetic quality, the Board may adopt and may, from time to time, amend Design and Use Standards for the improvement, maintenance, and alteration of and construction of all structures subsequent to initial construction of a Dwelling Unit and related structures on the property in furtherance of the following purposes: (A) the compliance with all zoning and similar governmental regulations; the promotion of the health, safety and welfare of all Owners and Tenants; the preservation, beautification and maintenance of the property and all structures thereon, as a development of high quality; the preservation and

promotion of environmental quality; and the assurance of adequate water, sewage and drainage facilities and other utilities and services. The Design and Use Standards shall not apply to initial construction of Dwelling Units by builders and construction of Common Facilities by the Developer.

5.8.2. The Design and Use Standards may establish requirements relating to land use, architectural features, site planning, lighting, landscaping and signage. The Design and Use Standards may include, but shall not be limited to, provisions as to the following subject matters: the permitted uses of Lots and Structures; provided, however, that no standards shall permit any use or activity which is prohibited by any applicable zoning laws; the placement of Structures on Lots, including front, side and rear yard requirements; the specification of materials, design, architectural style, color schemes, screening structures and other details affecting the exterior appearance of Structures; the subdivision of Lots; the reservation of utility, visual and other easements; the installation, location and maintenance of utility lines and facilities, including water, gas, electricity, sanitary and storm sewage, telephone, cable television and other communication systems; the planting and preservation of gardens, trees and other landscaping; the size and location of driveways; the size, construction materials, color and design schemes, and location of fences, walls, walks and outdoor furniture; the character, location and direction of exterior lighting; any activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight, or which may be or become a nuisance or annoyance to the community; and any activity which impairs the purposes outlined in Section 5.8.1.

5.8.3. The Design and Use Standards shall not prevent Developer or another Owner from imposing additional restrictions on any Lot provided that such restrictions have been included in the Plans and specifications (or are included in amended plans and specifications) for the Lot and approved by the Board. The Design and Use Standards shall not be construed as permitting any action prohibited by (a) any applicable zoning or other statute, ordinance, resolution, regulation or order of the State of Ohio or any political subdivision or governmental instrumentality of the State of Ohio or (b) any other applicable covenant, condition, restriction or reservation of easement contained in any recorded instrument. If any inconsistency exists between or among any provision of the Design and Use Standards, the Maintenance Standards, governmental requirements or recorded instruments with respect to any Lot, the more restrictive provision shall apply.

5.9 Approval of Plans by Developer. Each contract to sell lots entered into by the Developer provides (i.e. requires) that each purchaser of a Lot secure the Developer's approval of a site plan and plans and specifications prior to commencement of construction of a Dwelling Unit and other improvements and structures on a Lot. In addition to other remedies available to the Developer under such contract(s), and at law or in equity, the Developer shall have all legal and equitable remedies available under this Declaration and particularly Section 11.2 of this Declaration to enforce the "plan approval" and other provisions of such contracts against the purchaser(s) thereunder and successors in title to the purchaser(s) thereunder with regard to each Lot.

SECTION 6

COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY

6.1 Purposes. In order to promote the health, safety and welfare of all Owners, Tenants and Members, and to preserve, beautify and maintain the Property and all Structures thereon as a subdivision of high quality and to preserve and promote a good environmental quality, the following covenants, restrictions and limitations as to use and occupancy are hereby adopted, declared and established. These covenants and restrictions are in addition to the Design and Use standards.

6.2 Covenants and Restrictions. The following are the covenants and restrictions and limitations as to use and occupancy to which the Property is hereby subjected:

6.2.1. Purpose of Property. Except as otherwise provided in this Declaration, no part of the Property other than Community Facilities shall be used for other than residential housing and any Dwelling Unit constructed on a Parcel shall be used only as a residence for a single family. Only one single family Dwelling Unit with an attached garage (no detached garages) shall be permitted to be constructed and to remain on each Lot. Dwelling Units shall not exceed two stories in height. To the extent permitted by law, an Owner of a Parcel may use a portion of a Dwelling Unit located thereon for his office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or Resident; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of said Owner's parcel. No Structures of a temporary character, trailer, tent, basement, shack, garage, barn or other outbuilding shall be used or erected on any Lot at any time as a residence.

6.2.2. Parking. No parking spaces nor other part of the Community Facilities nor any parcel upon which a Dwelling Unit is constructed shall be used for parking of any trailer, truck, boat, or anything other than operative automobiles, motorcycles or scooters; provided, however, that the Board may, pursuant to rules and regulations provided for herein, permit parking of such vehicles elsewhere upon the Property so long as the streetscape remains ecological and aesthetically pleasing. Any of such vehicles may, however, be stored or parked in an enclosed garage. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camper, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pick-up truck or van which is used as a principal vehicle by an Owner of a Dwelling Unit or his family. It is provided, however, that vehicles being used for the purpose of construction, delivery or repair work upon any parcel or Dwelling Unit may be permitted to park on the Property.

6.2.3. Nuisances. No activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight shall be conducted on any lot, nor shall anything be done within any structure, either willfully or negligently, or on any Common Facilities, which may be or become an annoyance or nuisance to the other Owners, Residents or Occupants. Unless otherwise determined by the Board, grass and weeds shall be kept cut to a height of less than six inches so as not to constitute a nuisance.

6.2.4. Trash. Except for the immediate purpose of trash and garbage collection and removal, trash, garbage, or other waste shall not be kept upon a lot except in sanitary containers screened from visibility from the streets and drives of the Property, at locations approved by the Board.

6.2.5. Mailboxes, Numerals, and Letters. The design, size, shape and color of mailboxes and the numerals and letters thereof and numerals and letters identifying Units shall be subject to approval as to design, style, location, color, and size by the Board. The Board may maintain one or more approved designs which may be selected by Owners at the time of, or in conjunction with, the submission of plans and specifications.

6.2.6. Easements. Easements for location, installation, use, maintenance, repair and replacement of utilities and drainage facilities are reserved on the recorded plat for each Lot. Owners and Tenants may not obstruct or interfere with any such easements including the natural flow of surface water which shall, at all times, be kept free from obstruction.

6.2.7. Hazardous Uses and Wastes. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his parcel which would be in violation of any law. No waste shall be committed on the Community Facilities.

6.2.8. Exterior Surfaces of Buildings. Except for shutters and similar amenities, Owners shall not cause or permit antennas or electronic receiving or transmitting devices of any kind, or anything to be hung, built, located or displayed on the outside of windows or placed on the outside walls or roof of a Dwelling Unit.

No sign shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board with the exception of signs advertising a parcel for sale or rent or signs used by the Developer or builders to advertise the property during the construction and sales period. No satellite dishes or similar items may be built, or located upon any Lot.

6.2.9. Animals and Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, accepted or permitted to remain on or kept on any parcel including the Community Facilities except dogs, cats, or other household pets, provided that they are not kept, bred, or other maintained for any commercial purpose. Any such pet or pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon seven (7) days written notice from the Board. No such pets may be allowed to run unattended.

6.2.10. Prohibited Activities. Except as otherwise provided in this Declaration, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property.

6.2.11. Laundry or Rubbish in Community Facilities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Community Facilities. The Community Facilities shall be kept free and clear of rubbish, debris and other unsightly materials.

6.2.12. Rental of Dwelling Units. Leases of Dwelling Units shall be subject to this Declaration. Dwelling Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as rental for any period less than ninety (90) days.

6.2.13. Obligation to Keep Premises in Good Repair. Each Owner during his period of ownership and, during his tenancy, each Tenant leasing a Parcel, shall keep each Parcel owned or leased by him and all structures thereon in such maintenance, repair and appearance as shall comply with the provisions of this Declaration and applicable laws and ordinances.

6.2.15. Swimming Pools. No Swimming Pool a side of which extends in height over one (1) foot above the finished grade of a Parcel shall be constructed, erected, placed or permitted to remain upon any Parcel. This section shall not prohibit the construction, erection or placement of a diving board, slide, fence or other equipment appurtenant to an otherwise conforming swimming pool.

6.2.16. Fences. Fences, walls and hedges are structures and must be approved pursuant to the provisions of Section 5. Additionally, no fences, walls or hedges shall be permitted to extend nearer to any street than the rear building line, except for any retaining wall or other wall required by the contour of the Lot. No chain link or other metal fences may be erected or located on any Lot.

6.2.17. Minimum Square Footage Requirements. Dwelling Units, exclusive of garages, porches, patios, decks and basements, shall be constructed to include minimum of 2,400 square feet of floor space for each one story or bi-level type Dwelling Unit, and 2,700 square feet of floor space for each two story Dwelling Unit.

6.3 Failure to Comply. Failure to comply with the covenants and restrictions as to use and occupancy shall constitute a Default.

SECTION 7

MAINTENANCE STANDARDS

7.1 Adoption and Amendment. In furtherance of the purposes outlined in Section 5.8.1, the Board shall have the right to adopt, and may from time to time amend, Maintenance Standards pertaining to the maintenance, repair and appearance of all lots, and the exterior of all structures thereon. If any provision of any applicable building inspection, or similar maintenance statute, ordinance, resolution, regulation or order of the State of Ohio, any other political subdivision or governmental instrumentality of the State of Ohio, or the Board, is more stringent with regard to a lot than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards. The Maintenance standards shall provide, among other things, that:

(a) except as otherwise hereinafter provided, the Association shall be responsible for maintenance, repair and replacement of the Common Facilities and all structures thereon.

(b) each Owner shall maintain, repair and replace at his expense all portions of the Common Facilities which may be damaged or destroyed by reason of his own intentional or negligent act or omission or by the intentional or negligent act or omission of any invitee, lessee, licensee, employee, agent, family member or guest of such Owner;

(c) the obligation of the Association and of the Owners to repair, maintain and replace the portions of the property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the property;

(d) notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Association or by any Owner in performing its or his obligation hereunder;

(e) except as otherwise provided above in Section 7.1(a), each Owner shall maintain, repair and replace at his expense all portions of each structure on each lot (including all other structures thereon) owned by him and all internal and external installations of such lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the boundaries of or serving the lot;

7.2 Obligation to Keep Premises in Good Repair. Each Owner during his period of ownership and, during his tenancy, each Tenant leasing a lot, shall keep each lot and all structures thereon owned or leased by him in such maintenance, repair and appearance as shall comply with the Maintenance Standards.

7.3 Periodic Inspection. Periodically as needed, the Association may inspect each lot and the exterior of the structures thereon to determine whether such lot and the structures thereon comply with the Maintenance Standards. After each such inspection, the Association shall, if any defects are found, issue an inspection report to the Owner with a copy to the Tenant, if applicable, listing such defects, if any, and the reasonable time within which they may be corrected. Such Owner shall correct such defects or cause them to be corrected within such reasonable period as is stated in the inspection report.

7.4 Drainage Swales. Neither the Owner nor anyone claiming under the Owner shall, except in an emergency, alter the location or grade of any open storm water drainage way on any lot without the prior written consent of the Association.

7.5 Right of Entry. The Association, through its authorized officers, employees, and agents, shall have the right to enter upon any lot and/or structure at all reasonable times and upon reasonable advance notice for the purpose of making inspections required by this section without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such entry or such action or actions. Any bona fide utility company, through its authorized officers, employees, and agents, shall have the right to enter upon the Common Facilities or upon any utility easements located on any lots, for the purpose of installing, repairing or servicing any of its equipment, or for reading meters, without Board approval; provided, however, that if any such activities by the utility require alteration to or displacement of any waterscaping, landscaping, grass, sidewalks, fences, garages, or other structures, then the prior approval of the Board shall be required.

7.6 Failure to Comply. Failure to comply with the Maintenance standards or to correct the defects listed in any inspection report issued by the Association or to pay any fee hereunder shall constitute a Default.

SECTION 8

COMMON FACILITIES AND EASEMENTS

8.1 Rights of Enjoyment in Common Facilities. Except as herein otherwise provided, each Owner shall have a right and nonexclusive easement for use and enjoyment of the Common Facilities, and such right and easement shall be appurtenant to, and shall pass with the title to, his Lot. Initially, it is intended that the only Common Facilities will be the easement across Lots 1 and 64 for the entrance way Structures including, signage, landscaping and amenities. Only representatives of the Association, its agents and contractors and the Developer and its agents, employees, and contractors may enter upon Lots 1 and 64. Such entry shall be for the purpose of constructing, maintaining, altering, improving, repairing and replacing the entrance way Structures, including signage, landscaping and amenities. Each Tenant shall have a nontransferable right to use and enjoy the Common Facilities, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

8.1.1. The right of the Board, with the approval by (a) 75% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (b) the Class B Member voting in person or by proxy at such meeting, to borrow money for the purpose of constructing, equipping, improving and maintaining Common Facilities and in aid thereof to mortgage the Common Facilities.

8.1.2. The right of the Board to adopt and enforce and from time to time amend reasonable rules and regulations pertaining to the use of the Common Facilities, including regulations limiting guests of Owners and Tenants who may use the Common Facilities at any one time.

8.1.3. The right of the Board to suspend the right of any Owner or the privilege of any Tenant to use such of the Common Facilities that are recreational in nature as determined by the Board for any infraction of the rules and regulations relating to the Common Facilities for a period not to exceed sixty (60) days for each such infraction, or for nonpayment or delinquency of the Assessment against such Owner's Lot for a period not to exceed the period of such nonpayment or delinquency.

8.1.4. Such rights as the Board may have to grant easements or rights of way to any public utility corporation or public agency.

8.1.5. All applicable provisions of valid agreements of the Association relating to the Common Facilities.

8.1.6. Such rights as the Board may have under the Declaration to convey or lease all or any part of the Common Facilities.

8.1.7. All other easements, restrictions and rights to which the Property is subject.

8.1.8. The right of the Association to grant permits, licenses, and easements over the Common Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

8.2 Subordination to Mortgage or Other Lien. The rights and privileges provided in this Section shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Facilities.

8.3 Construction of Common Facilities. The Association shall not construct any capital addition or capital improvement to the Common Facilities or annex any additional Common Facilities (other than as provided below in Section 8.4) unless such addition, improvement, or annexation shall have been authorized by the Board. If the cost of such addition, improvement or annexation exceeds \$2,000, it must also be approved by (a) 75% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (b) the Class B Member voting in person or by proxy at such meeting. Written notice of any such meeting shall be sent to all Members not less than 15 days and not more than 60 days prior to the meeting date.

8.4 Additional Common Facilities. The Developer may from time to time, during the Development period, convey to the Association for nominal or other appropriate consideration, and the Association may accept conveyance of any land owned by the Developer along with any structure, improvement, or other facility including related fixtures, equipment and furnishings located thereon.

8.5 Conveyance or Lease of Common Facilities. Upon authorization by the Board and upon the approval by (a) 75% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (b) the Class B Member voting in person or by proxy at such meeting, the Association may at any time convey or lease all or a part of the Common Facilities to any public agency, authority, or utility or to any private entity, upon such terms and conditions as shall be agreed upon by the other party and Board, including, without limitation, terms and conditions providing for the use of such Common Facilities by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Facilities and the assessments of Owners and/or Tenants for the costs of such maintenance and repair.

8.6 Maintenance and Management of Common Facilities. The Association shall provide for the management of all Common Facilities and shall keep all Common Facilities in such Maintenance, repair and appearance as shall comply with the Maintenance Standards. The Association may fulfill this responsibility by contracting with any professional management company (including, without limitation, Developer or an affiliate or associate of Developer) for the management, maintenance and repair of the Common Facilities upon such terms and conditions including terms as to reasonable compensation as shall be agreed upon by the Association and the manager. Notwithstanding the foregoing, any such contract with Developer or an affiliate or associate of Developer shall (i) not exceed one year in duration, and (ii) be terminable by the Association on thirty (30) days notice after the Development Period.

8.7 Payment by First Mortgagees of Obligations and Reimbursement for Same. In the event that the Association shall (a) default with regard to payment of taxes or other obligations which may become a charge against the Common Facilities, or fail to pay premiums for insurance in accordance with Section 10 and shall not in good faith contest liability for payment of same, first mortgagees of Lots shall, upon prior written notice of intent to do so to the Association, jointly or severally, have the right to pay such amounts, whereupon such participating first mortgagees shall be entitled to reimbursement from the Association for payment of such amounts.

8.8 Use of Common Facilities by Developer. Developer and its affiliates and associates shall have the same rights of use and enjoyment of the Common Facilities as the Class A Members during the Development Period, and shall have the right to use the Common Facilities for promotional, sales and similar purposes until all of the Lots have been sold.

8.9 Easements.

(a) Encroachments. In the event that, by reason of the construction, settlement or shifting of any of the Dwelling Units or other buildings located on Lots or by reason of the partial or total destruction and rebuilding of the buildings, any part of the Common Facilities presently encroaches or shall hereafter encroach upon any part of a Lot; or any part of a Dwelling Unit presently encroaches on or shall hereafter encroach upon any part of the Common Facilities or any other Lot; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Dwelling Unit presently encroach or shall hereafter encroach upon any part of any Dwelling Unit or Lot, valid easements for the maintenance of each encroachment and for the use of such adjoining space are hereby established. These easements shall exist during the term of this Declaration for the benefit of such Lot or Dwelling Unit and the Common Facilities, as the case may be. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the willful conduct of said Owner

(b) Easements for Certain Utilities. The Association may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, use, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Facilities, and each Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge, deliver and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

(c) Reservation of Sewer and Utility Easements. Developer hereby reserves easements and the right to grant easements for the installation, maintenance, use, repair and replacement of utilities, drainage facilities, storm and sanitary sewers, as the same appear on the record plat of the Property, and to cut and grade slopes in and along Lot boundaries at streets and drives built within the Property.

(d) Easements to Run with Land. All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof.

SECTION 9

COVENANT FOR STAGED DEVELOPMENT

9.1 Staged Development. The Developer hereby reserves the right at any time within the Development Period to submit, make subject to or annex to this Declaration additional lands.

9.2. Supplemental Declaration for Staged Development. Additional lands may be subjected, annexed or submitted to this Declaration by filing of record a supplemental declaration which shall incorporate and extend this Declaration to such lands. Owners of parcels subject to such supplemental declaration shall be Owners as defined by this Declaration.

SECTION 10

INSURANCE, DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

10.1 Insurance of Community Facilities. The Association shall at all times keep all structures, if any (exclusive of land, lakes, foundations, excavations, ditches, changes in grade of six inches or more and other items normally excluded from insurance coverage) owned by the Association insured against loss or damage by fire, lightning and such other perils as are at this time comprehended within the term, "extended coverage" and including vandalism and malicious mischief, sprinkler leakage, debris removal, cost of demolition and windstorm damage in an insurance company authorized to do business in the State of Ohio in an amount not less than 100% of the current replacement cost thereof without deduction for depreciation; provided, however, that nothing in this Article shall be construed to require an Owner to maintain any hazard insurance on an individual Dwelling Unit or to pay any mandatory assessment for such purpose. The Association may also maintain such additional insurance coverage as may from time to time be required by holders of first mortgages. The named insured shall be the Association.

10.2 Provisions in Fire and Extended Coverage Insurance Policies. Every fire and extended coverage insurance policy purchased by the Association shall provide:

(a) For the release by the issuer thereof of any and all rights of subrogation or assignment of all causes and rights of recovery against the Association, any Owner, Member or his family, Owner's Tenant or other occupant of a structure for a recovery against any one of them for any loss occurring to the insured property resulting from any of the periods insured against under such insurance policy.

(b) That the insurer shall annually appraise structures and notify the Association of any under-insurance.

10.3 Public Liability Insurance. The Association shall insure itself, all Owners and their respective families and other persons residing with them in the property, and all persons lawfully in possession of or in control of any part of the Community Facilities against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the use of the Community Facilities. Such insurance shall afford protection to a limit of not less than \$1,000,000.00 with regard to bodily injury, disease, illness or death suffered by any one person and to the limit of not less than \$1,000,000.00 with regard to any one occurrence, and to the limit of not less than \$1,000,000.00 with regard to damage to, or destruction of, property arising out of any one accident.

10.4 Insurance Premiums. Insurance premiums for the policies referred to herein and for such other policies as the Association shall determine from time to time to be desirable shall be paid from Assessments established in Section 2.

10.5 Damage or Destruction and Restoration of Buildings.

(a) Sufficient Insurance. In the event a structure owned by the Association, or any portion thereof, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies carried by the Association insuring against such loss or damage and payable by reason thereof shall be sufficient as determined by the Board to pay the cost of repair, restoration or reconstruction, then such repair, restoration or reconstruction may, with concurrence of the mortgagee of such structure, if any, be undertaken by the Association and the insurance proceeds may be applied by the Association in payment therefor, subject, however, to the provisions of Section 10.6 herein.

(b) Insufficient Insurance or Uninsured Casualty. In the event that a structure owned by the Association, or portion thereof, shall suffer damage or destruction from any cause which is not insured against or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, such repair, restoration or reconstruction shall be considered a capital improvement and shall be subject to the provisions of Articles VI and VII.

10.6 Procedure for Reconstruction, Restoration and Repair. As soon as reasonably possible after a casualty causing damage or destruction to a structure owned by the Association, the Association shall proceed to restore, repair or reconstruct the structure, subject to the provisions of this Declaration, to at least substantially the same condition in which the structure existed immediately prior to the casualty.

Specific procedures for reconstruction, restoration and repair not provided for in this section, elsewhere in this Declaration or any amendments thereto shall be determined by the Board from time to time.

10.7 Notice to First Mortgagees. The Association will notify any first mortgagee of a Parcel who requests the same, in the event that the Community Facilities shall be damaged in an estimated amount exceeding \$10,000.00.

10.8 Payment by First Mortgagees of Obligations and Reimbursement for Same. In the event that the Association shall (a) default with regard to payment of taxes or other obligations which may become a charge against the Community Facilities, or (b) fail to pay premiums for insurance in accordance with this Section, and shall not in good faith contest liability for payment of same, first mortgagees of Parcels shall, upon prior written notice of intent to do so, to the Association, jointly or severally have the right to pay such amounts, whereupon such participating first mortgagees shall be entitled to reimbursement from the Association for payment of such amounts.

SECTION 11

ENFORCEMENT

11.1 Curing Defaults; Lien. In the event of any Default with respect to any Lot under this Declaration, the Board shall give written notice to the Owner thereof, with a copy of such notice to each Tenant in Default and a copy to any first mortgagee of the Lot who has requested to receive such notices, setting forth with reasonable particularity the nature of such Default, and the specific action or actions required to remedy the Default. If the Owner or Tenant shall fail to take the specific action or actions within thirty (30) days after the mailing of the notice, the Board may, but shall not be required to exercise any or all of its rights hereunder. The Board may exercise without notice any of its rights hereunder with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot shall be a binding personal obligation of the Owner thereof which shall be payable on demand. If the Owner fails to pay such costs within 30 days after demand, the Association shall enter the amount of the obligation, the name of the Owner as it appears on its records and the description of the Lot in a lien record book to be maintained by the Board at its main office, together with the date of such entry. The Association shall have a prior lien on such Lot for such amount until paid and such lien shall have priority from the date of such entry over all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments, liens of record as of the date of such entry and liens of the United States of America, the State of Ohio, and all other political subdivisions or governmental instrumentalities of the State of Ohio to the extent made superior by applicable law, all bona fide recorded first mortgages and the lien of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The lien provided in this section shall be recordable and shall be enforceable as provided in section 2 hereof.

11.2. Remedies. Nothing contained in this Section 11 shall be deemed to affect or limit the rights of Developer, the Association, any Owner, Resident or Tenant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the restrictions, or recover damages for any Default. It is hereby declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.

11.3 Right and Easement of Entry. The Association, through its authorized officers, employees, and agents, shall have the right and easement to enter upon any Lot at all reasonable times and to do anything thereon necessary to perform the action or actions specified in the notice to the Owner to abate, remedy, extinguish, remove or repair a Default, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of each entry or such action or actions as are carried out in accordance with the provisions of this Section 11, provided that no summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.

11.4 No Waiver. The failure of Developer, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to insist upon compliance with any of the Restrictions, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right or privilege, including the right to cure Default, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

11.5 Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations regarding the administration, interpretation and enforcement of the Restrictions. Each such rule and regulation shall be consistent with and designed to further the purposes outlined in Section 5.8 of this Declaration.

SECTION 12

DURATION, AMENDMENT AND TERMINATION

12.1 Duration. The Restrictions shall be covenants running with the land and shall bind the Property and every part thereof, and shall (regardless of whether any such beneficiary owns an interest in any lot) inure to the benefit of and be enforceable by, the Board and each Owner and Tenant and their legal representatives, heirs, devisees, successors and assigns, and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded in the Recorder's Office of Hamilton County, Ohio. Thereafter the Restrictions shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Section 12.

12.2 Amendment or Termination. Prior to the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by the Developer and approved by the Owners of at least 75% of all Lots. After the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by the Owners of at least 75% of all Lots.

The President of the Board shall determine whether the persons who have approved of any amendments or termination of this Declaration constitute Owners of at least 75% of all Lots. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded (a) the written instrument of amendment or termination executed in properly recordable form by the President of the Association and Developer, if during the Development Period, and (b) the certificate of the President of the

Association that the Owners of at least 75% of all Lots have approved such instrument.

The Board shall maintain such copies filed with it by the President as a permanent record and shall make copies thereof available to any Owner at a reasonable cost.

Notwithstanding anything above to the contrary, this Declaration may be amended at any time during the Development period without the vote of Owners by a written instrument executed by Developer for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Developer's original intent; making any changes necessary or desirable to meet the requirements of any institutional lender, Federal National Mortgage Association, or other agency which may insure loans on a lot; provided, however, that no such amendment shall materially affect any Owner's interest in the Association or right, if any, to use the Common Facilities. Each Owner and his or her mortgagees, by acceptance of a deed to a lot or a mortgage encumbering such lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Developer as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Developer, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Developer to be necessary or proper to effectuate the provisions of this paragraph.

SECTION 13

MISCELLANEOUS

13.1 No Reverter. No covenant, condition, restriction or reservation of easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

13.2 Notices. Any notice required or permitted to be given to an Owner or Tenant by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to his or her last address as it appears on the records of the Association.

13.3 Construction. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

13.4 Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

13.5 Headings. The headings of the sections and sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

13.6 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

13.7 Notice to and Rights of First Mortgagees, Insurers, and Guarantors. Any holder, insurer, or guarantor of any first mortgage may designate a representative to attend any Owners' or Members' meeting. Any first mortgagee, insurer, or guarantor shall, upon written request to the Association specifying its name and address and the lot number or address, be provided timely written notice of the following:

13.7.1. Any condemnation or casualty loss which affects a material portion of the property or which affects any lot held, insured, or guaranteed by the first mortgagee, insurer, or guarantor;

13.7.2. Any delinquency which remains uncured for sixty (60) days in the payment of Assessments or charges owed by an Owner of a lot held, insured, or guaranteed by the first mortgagee, insurer, or guarantor, or any Default which remains uncured for sixty (60) days;

13.7.3. Any lapse, cancellation or material modification of any insurance policy maintained by the Association;

13.7.4. Any proposed action which would require the consent of a specified number of first mortgagees under Section 13.8;

13.7.5. Any notice which must be provided to Members or Owners under any of the Constituent Documents;

13.7.6. Notice of termination of the Development Period;

13.7.7. Any material amendment to any of the Constituent Documents;

13.7.8. The effectuation of any decision by the Association to terminate professional management and assume self-management of the Property.

13.8 Consent of First Mortgagees.

13.8.1 Notwithstanding compliance with the other provisions of this Declaration with regard to such unless at least 75% of the first mortgagees (based upon one vote for each first mortgage) of Lots have given their prior written approval, the Association shall not be entitled to:

13.8.1.1. by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Facilities having a fair market value of more than \$5,000.00, as determined by the Board. The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause;

13.8.1.2. fail to maintain fire and extended coverage on insurable Common Facilities and Structures in accordance with Section 10;

13.8.1.3. use hazard insurance proceeds for losses to any Common Facilities or Structures for other than the repair, replacement or reconstruction of such improvements, and expenses related thereto.

13.8.2. Notwithstanding compliance with the other provisions of this Declaration with regard to such actions, unless at least 51% of the first mortgagees (based upon one vote for each first mortgage) of Lots have given their prior written approval, the Association shall not be entitled to:

13.8.2.1. restore or repair the Property, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and to its former condition;

13.8.2.2. elect to terminate the legal status of the Property after substantial destruction or substantial taking in condemnation of the Property.

13.9 Conflict. In the event of a conflict between the Restrictions or any one or more of them and other private restrictions which may be recorded before or after this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

13.10 Covenants Running with Land. This Declaration and all amendments hereto (a) shall be, and shall be construed as, covenants running with the land, (b) shall be binding upon Developer, any mortgagee, the Association, its Members, each Owner, each Tenant and all claiming under each Owner or Tenant, and (c) shall (regardless of whether or not any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by (i) Developer, (ii) the Association, and (iii) each Owner and all claiming under each Owner.

13.11 Availability of Documents. The Association shall make available to Members, Owners, and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, Regulations, and other rules concerning the Property. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

13.12 Termination of Regime or Amendment of Documents Not Caused by Destruction, Damage, or Condemnation. The provisions of this Section do not apply to terminations or amendments which result from damage to or destruction or condemnation of the Property, which eventualities are covered by Sections 13.8.2.1 and 13.8.2.2.

13.12.1. The consent of Owners of Lots to which at least 75% of the votes of the Association are allocated, and the approval of at least 51% of first mortgagees (based upon one vote for each first mortgage) shall be required to add or amend any material provisions of the Constituent Documents which establish, provide for, govern or regulate any of the following: voting, Assessments, Assessment liens, or subordination of such liens; reserves for maintenance, repair, and replacement of the Common Facilities; insurance or fidelity bonds; rights to use of the Common Facilities; responsibility for maintenance and repair of the several portions of the Property; expansion or contraction of the Property or the addition, annexation, or withdrawal of property to or from the Property; boundaries of any Lot; interest in Common Facilities; imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot; any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, insurers, or guarantors of first mortgages on Lots. Such an addition or amendment shall not be considered material if made to correct a technical error, or only to clarify. If a first mortgagee receives a written request to approve such an addition or amendment, and does not deliver or post a negative response to the requesting party within thirty (30) days, it shall be deemed to have approved such addition or amendment.

13.13 Right of Entry. The Association shall have a reasonable right of entry upon any lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Property.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

TOWNE-HUTTENBAUER ASSOCIATES, AN
OHIO PARTNERSHIP
By: Landen Farm Company, Managing
Partner

1 Wm. W. Marshall

By: 2

Richard E. Winkler

Marvin Rosenberg, Secretary of
Landen Farms Corporation,
General Partner of Landen Farm
Company

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 11th day of June, 1988 by Marvin Rosenberg, Secretary of Landen Farm Corporation, which is General Partner of Landen Farm Company, Managing Partner of Towne-Huttenbauer Associates, an Ohio partnership, on behalf of the partnership.

Richard E. Winkler
Notary Public

RICHARD S. WINKLER
Notary Public
My Commission Expires April 6, 1992

EXHIBIT "A"

Situate in Section 31, Town 4, Range 2, and Section 36, Town 5, Range 1, Symmes Township, Hamilton County, Ohio and being Lots 1 through 64 of Fransabet East Subdivision Block A, as recorded in Plat Book 270, pages 41 and 42 of the Hamilton County, Ohio Recorder's Office.



McGill, Smith, Punshon
International, Inc.

Engineers, Architects, Planners, Surveyors and Landscape Architects

11231 Cornell Park Drive
Cincinnati, Ohio 45242 - 1811
(513) 489-0731
Telex 241468

Amelia, Ohio

Cincinnati, Ohio

Crestview Hills, Ky

DESCRIPTION FOR: Towne Huttenbauer Associates

LOCATION: Fransabets East Subdivision
(Decorative Wall & Landscape Easement)

Situate in Section 31, Town 4, Range 2, and Section 36, Town 5, Range 1, Symmes Township, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the northwest corner of Section 36, thence with the west line of said Section 36, South 00 04'00" West, 51.91 feet to a point;

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Thence South 89 56'00" East, 40.00 feet to a point in the east right of way line of Snider Road and the real point of beginning; said point also being North 00 04'00" East, 46.99 feet from the southwest corner of lot 64 of Fransabets East Subdivision Part 1, as recorded in Plat Book 270, Pages 41 & 42 Hamilton County Recorders Office;

Thence along said east line North 00 04'00" East, 79.47 feet to a point;

Thence along an arc deflecting to the right, having a radius of 14.00 feet, a distance of 21.61 feet, the chord of said arc bears North 44 17'00" East, 19.53 feet to a point in the south right of way of Hambletonian Drive;

Thence along said south line North 88 30'00" East, 56.07 feet to a point;

Thence South 01 30'00" East, 37.50 feet to a point;

Thence South 88 30'00" West, 35.00 feet to a point;

Thence South 44 17'00" West, 20.07 feet to a point;

Thence South 00 04'00" West, 42.17 feet to a point;

Thence North 89 56'00" West, 21.71 feet to the point of beginning.

Containing 0.089 acres of land.

Subject to all highways and easements of record.

Prepared by: MCGILL, SMITH, PUNSHON
Date: March 7, 1988