

DECLARATION OF RESTRICTIONS, COVENANTS, AND EASEMENTS  
FOR SAND RUN ALLOTMENT PHASE I

This Declaration is made and entered into the day and year set forth above the signature line below by SAND RUN OF AKRON, INC., an Ohio corporation, which with its successors and assigns is herein called "Declarant".

WHEREAS, Declarant is the owner of certain real property situated in the City of Akron, County of Summit and State of Ohio, which is more fully described in Exhibit A, which is attached hereto and incorporated herein by reference and set forth on the plat recorded in Plat Cabinet 11, Slides 53-54 of the Record of Plats of Summit Count, Ohio (herein called the "Property"),

NOW THEREFORE, Declarant does hereby certify and declare that it has been established, and does establish hereby, (a) a general and uniform plan for the improvement, development, ownership, use, maintenance and sale of the Property, and (b) the manner, provisions, conditions, easements, restrictions, and covenants upon and subject to which the Property shall be used, improved, occupied, owned, maintained, sold, and conveyed. Declarant hereby further declares that Property shall be used, improved, occupied, owned, maintained, sold and conveyed perpetually (except as provided below) subject to the provisions, conditions, easements, restrictions and covenants set forth herein, all of which are, and each of them, impressed and imposed upon each and every part of Property and shall run with the land and all of which shall apply to, be binding upon and inure to the benefit of Declarant, and any person thereof, including, but not limited to, any mortgagees having any lien upon all or any portion of the Property. Acceptance of a deed for all or any portion or any interest in the Properties or acceptance of any interest in all or any portion of the Properties shall constitute the recipient's acceptance of and covenant to be bound by and to perform all of the provisions hereof including, but not limited to, the right of the Developer and Association and to create and impose a lien on the interest in the Property so acquired and to enforce it, as provided below, whether or not the provisions hereof are expressly set forth in or are referred to in any deed or other instrument.

ARTICLE I  
DEFINITIONS

Section 1. The following words when used in the Declaration (unless the context shall prohibit) have the following meanings:

(a) "Association" shall mean and refer to the Sand Run Homeowners Association, an Ohio not-for-profit corporation, formed for the purposes of maintaining and administering the Common Properties, providing services of general benefit to the Owners of Lots and the Developer, administering and enforcing the provisions hereof, and collecting and disbursing the assessments and exercising the other functions hereinafter provided.

T.N.N.  
12-06-96

TRANSFER NOT NECESSARY

James B. McCarthy County Auditor

MILLER EXAMINING BOX

(b) "Common Properties" shall mean and refer to those areas of the land designated as "Common Property" and "Common Area" on any recorded plat of the Property or any part thereof.

(c) "Developer" shall mean and refer to, the single part, being initially Declarant and its successors and assigns and any other individual or entity (which or who acquire(s) for purposes of development or resale of all or any of the Lots or all or any portion of the real estate described on Exhibit B, which attached hereto and incorporated herein by reference), provided that if two or more entities fall within the definition of Developer only one, as designated by Declarant or a successor Developer, shall be the Developer, as defined herein.

(d) "Lot" shall mean and refer to any subplot, together with all improvements thereon, shown upon any recorded subdivision plat of the Property.

(e) "Owner" shall mean and refer to any and all owner or owners of record, whether any individual or an entity, of a fee or undivided fee simple title to any Lot at any time during the term of these Covenants and Restrictions but shall not mean or refer to the Developer or mortgagee unless and until such mortgagee has acquired such title pursuant to foreclosure or by deed or any proceeding in lieu of foreclosure.

(f) "Member" shall mean the Developer and all those Owners or others who are Members of the Association as provided herein.

ARTICLE II  
PROPERTY SUBJECT TO COVENANTS  
AND RESTRICTIONS; ADDITIONS

Section 1. Property Subject to Covenants and Restrictions. The property subject to these Covenants and Restrictions is the Property and any additional real property added thereto pursuant to Section 2 of this Article; provided, however, that the Developer reserves the right with respect to those areas of land as the Developer may choose in any real property added pursuant to said Section 2, to build thereon such single-family townhouses or such other single-family cluster housing or multi-family housing as may be permitted by law and is consistent with these Covenants and Restrictions and to impose thereon such additional, complementary or modified easements, covenants and restrictions as may be necessary or desirable to reflect the different character of such areas and the structures built thereon and as are not materially inconsistent with the scheme of these Covenants and Restrictions.

Section 2. Additions to the Property.

(a) Additional property, may, upon approval by the Developer prior to conveyance of the Common Properties to the Association and thereafter by the

Association, become subject to these Covenants and Restrictions provided that any such proposed addition is adjacent to the Property (or to any property added thereto in accordance with this Article II). Property abutting or located across a street or highway from any portion of the Property, or added property, or located within one thousand (1000) feet from any portion of the Property, or added property, shall be deemed adjacent to it.

(b) Any such addition shall be made by filing of record a deed, agreement or other instrument which shall extend the scheme of these Covenants and Restrictions to such additional property. Such instrument may contain such complementary additions to and modifications of these Covenants and Restrictions as may be necessary to reflect the different character, including, but not limited to, differences related to topography as are not inconsistent with the scheme of these Covenants and Restrictions. In no event, however, shall such instrument revoke, modify, or add to the Covenants and Restrictions established by this Declaration for the Property or any previously added land, nor shall such instrument provide for assessment of the added property at a lower rate than that applicable hereunder to the Property.

(c) Upon merger or consolidation of the Association with another association, the surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall be entered into which would effect or attempt to effect any revocation, modification, or addition to the Covenants and Restrictions established by this Declaration for the Property.

(d) Notwithstanding any contrary provision herein, Declarant may make a parcel or parcels of real estate subject to these Covenants and Restrictions, as provided in this Article II, regardless of whether or not said parcel or parcels have been subdivided with a subdivision plat or otherwise. Declarant may make a parcel or parcels of real estate subject to these Covenants and Restrictions, at any time and from time to time, in any manner in Declarant's sole discretion, but subject to all applicable laws.

### ARTICLE III MEMBERS AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Members. Every Owner automatically shall be a Member of the Association for so long as the individual or entity is an Owner, provided that any such person or entity who holds such interest merely as a security for the payment of money or performance of an obligation shall not be a Member in such case the holder of the equitable interest shall be the Owner. The Developer shall be a Member until it has conveyed every Lot and all of the real estate described on Exhibit B to an Owner (who or which is not a successor Developer) provided, however, that the Developer may resign as a Member at any time. No one may be a Member except Owners and the Developer and the membership may not be severed or partitioned from the ownership interest in a Lot.

Section 2. Voting Rights. Each Member (except the Developer) shall be entitled to one vote for each Lot. If a Lot is owned by more than one owner, the owners shall not be entitled to more than one vote with respect to any such Lot. The Developer shall have four votes for each Lot, owned by it. Notwithstanding any provision of these Restrictions to the contrary, the Developer shall be deemed to initially own all of the Lots and shall have four (4) votes for each of said Lots (regardless of whether or not said Lots have been created) which number shall be reduced by one for each Lot sold to an Owner (who or which is not a successor Developer).

Section 3. Articles and Regulations of Association. The Articles of Incorporation and Code of Regulations of the Association may contain any provisions, not in conflict with these Covenants and Restrictions, as are permitted to be set forth in such Articles and Regulations by the Non-Profit Corporation Law of Ohio as from time to time in effect.

ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON PROPERTIES, EASEMENTS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member or, in the stead of said Member, any lessee thereof or guest of either, shall have a right and easement in and to the Common Properties. Such easement shall be appurtenant to and shall pass with the title to every Lot whether or not expressly referenced in the deed. These easements shall be non-exclusive for the purposes only of access and recreation, all subject to and in accordance with the rules and regulations of the Association promulgated in accordance with the provisions hereof.

Section 2. Title to Common Properties. The Developer shall retain the legal title to the Common Properties until such time as it has completed any improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any other provisions herein, the Developer hereby covenants for itself and its successors and assigns that it shall convey the Common Properties to the Association not later than December 31, 2001.

Section 3. Extent of Members' Easements. The rights and easements created by this Article IV shall be subject to the following:

(a) The right of the Developer and the Association to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage them; in the event of a default upon any such mortgage, the lender shall have a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and

(c) The right of the Developer and Association to adopt uniform rules and regulations (as provided in Article VI) governing the use of the Common Properties, and to suspend the enjoyment rights of any Member, lessee or guest for non-payment of an assessment, during any period such assessment remains in default, or for any infraction of such rules and regulations; and

(d) The right of the Developer and Association to dedicate or convey all or any part of the Common Properties to any municipality or any public agency, authority, or utility, and to construct improvements for any lawful purposes, all subject to such terms and conditions as may be determined at a meeting of the Members by the vote of Members entitled to exercise two-thirds (2/3) of the voting power of the Association (with respect to actions of the Association) and to such terms and conditions as the Developer determines (with respect to the Developer's actions).

Section 4. Party Wall and Encroachment Easements. Every Owner and the Developer and the Association are hereby granted in perpetuity, except as limited herein or by law, the following easements for the benefit of and to be binding upon all foregoing and their respective heirs, successors and assigns, which easements shall be non-exclusive:

(a) If due to the construction, settling, or shifting of any structure or building or due to the partial or total destruction and/or rebuilding of any structure, any part of or any structure or improvement located on the Common Properties now encroaches or shall hereafter encroach upon any Lot or any part of a Lot or any structure or improvement located thereon now encroaches or shall hereafter encroach upon any part of the Common Properties or any other Lot or Lots, easements for the maintenance of such encroachments and for the use of the space and land encroached upon; provided, however, that in no event shall an easement for any encroachment be created for the benefit of any Owner or the Common Properties or any Lot if such encroachment exists due to the intentional acts of any Owner or the Association, with the intent to so encroach; and

(b) Easements into and through each Lot for the benefit of the Association and the Developer and all the owners, individually (provided, however, that the rights of any Owner under these easement may be exercised only by the Association if the Association elects to exercise them) (i) for the purposes of installing, laying, maintaining, repairing, replacing and serving all utility delivery and removal systems, including, but not limited to, water, waste water, sewage, gas, heating, air conditioning, electricity, cable television, and telephone, existing now or existing in the future, under, on, and across the Lots and for ingress and egress to accomplish to above-described purposes after at least a forty-eight (48) hour notice to the Owner or other occupant of a Lot and only between the hours of 8:00 a.m. and 5:00 p.m., provided, however, that said notice and time limitations shall not apply in the event of an emergency threatening health or safety or threatening immediate harm to the structural integrity of any structure located

on the Property and (ii) for the purposes of the exercise of any and all rights and the satisfaction of any and all obligations arising hereunder.

Section 5. Easements for Benefit of Additional Land. Developer hereby reserves and grants for the benefit of every owner, lessee and occupant and every invitee and licensee of the foregoing a perpetual easement appurtenant to all of the land described on Exhibit B under, on, over and across all of the Common Properties for purposes of ingress and egress by any and all vehicles, animals and pedestrians and for the installation, use, maintenance, relocation and repair of all utility pipes, lines, wires and other delivery equipment and appliances. The beneficiaries of this easement shall repair any and all damage arising due to the exercise of any rights under this easement.

## ARTICLE V

### COVENANTS FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of Liens and Personal Obligations of Assessments. Each Owner shall pay the Association assessments. Each Lot is subject to a lien, as hereinafter provided, in favor of the Association, as security for the payment of Assessments levied on the Lot. The assessments include (a) an annual assessment levied in accordance herewith for the purposes of paying taxes and insurance premiums and of operating, maintaining, constructing, repairing and replacing the recreational and landscaped areas and facilities on the Common Properties and the roofs and exterior paint and siding and gutters and other exterior fixtures on the Lots and any structures located thereon, and of administering the affairs of the Association; and (b) special assessments levied in accordance herewith for improvements or other capital expenditures, including the acquisition of additional property for use as Common Properties, for emergency, operating, maintenance, replacement or repair costs, and for other costs and expenses not anticipated in determining the applicable annual assessment. Each such assessment shall be in the same amount for each Lot provided, however, that, if a Lot is conveyed by the Developer to the Owner (hereinafter the "Initial Conveyance") after the date on which an annual assessment is due and payable, the amount of such annual assessment to be paid by such Owner shall be prorated by multiplying the total amount of such annual assessment by a fraction, the numerator of which is the number of days remaining in the year of Initial Conveyance and the denominator shall be the total number of days in the period for which the assessment was levied. If annual and/or special assessments, together with interest thereon as hereinafter provided, are not paid within sixty (60) days after the assessment has become due and payable, said assessments, together with said interest, shall be a charge upon the Lot for which such assessment has not been paid and the Association shall have a lien upon said Lot.

Section 2. Annual Assessments. Each year, the annual assessment for the following year shall be levied by the Board of Managers, prior to the date of the annual meeting of the Members, in such amount as in its discretion shall be reasonably necessary to meet expenses anticipated during the ensuing year and to accumulate reasonable

reserves for future operating and capital expenditures. At said annual meeting of the Members, the amount of the annual assessment for the following year as levied by the Board of Managers may be increased or decreased by the affirmative vote of Members entitled to exercise a majority of the voting power of the Association.

Section 3. Special Assessments. The Association, by action of the Board of Managers (alone without the direct approval of the Owners), may levy a special assessment, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) (in total for all payments for all Lots), applicable to a specified number of years or part of a year. Any such assessment (beyond the Board's sole authority) shall be approved by the affirmative vote of Members entitled to exercise two-thirds (2/3) of the voting power of the Association. Members shall be given written notice thirty (30) days in advance of the date of the meeting at which such vote shall be taken stating that a special assessment for a stated purpose or purposes shall be considered and discussed at such meeting.

Section 4. Due Dates of Assessments; Defaults. Each annual assessment shall be due and payable in twelve (12) equal monthly installments commencing on the second business day after January 1 of the year for which it is levied and, thereafter, on the first day of each month. The due date of any special assessment or installment thereof shall be fixed in the Resolution of the Board or Association authorizing such assessment, and written notice of such special assessment or installment thereof shall be given to each Owner subject thereto thirty (30) days in advance of such due date.

If an annual or special assessment or installment of a special assessment is not paid within sixty (60) days after the due date, it shall be deemed to be in default, and such delinquent assessment or installment shall bear interest from the due date at a rate of interest as may be set by the Board of Managers, not in excess of the highest lawful applicable interest rate. The Association may, after such sixty (60) days, file a notice of lien with respect thereto, stating the amount due, signed by the President of the Association, and duly acknowledged and witnessed, in the office of the Recorder of Summit County, Ohio.

Section 5. Statement of Unpaid Assessments. Statements in respect to existence and amount of unpaid liens and assessments on any Lot shall be provided by the Association to any prospective purchaser or mortgagee of said Lot upon written request to the President or Secretary. Provided the recipient has acted in good faith, the recipient shall not be liable for the payment of any past due assessment not set forth in said statement nor shall the Lot in question be subject to a lien for the past due assessment not set forth.

## ARTICLE VI PROTECTIVE COVENANTS

Section 1. Land Use. Each Lot shall be used only for private, single-family, residential purposes, and only one single-family residence, with garage attached shall be

constructed or erected on any Lot, provided, however, that the Developer or other party, authorized by Developer, may construct upon, occupy, and use any Lot for a model home or sales or construction office and for storage of construction materials and equipment. After a structure containing only a residence for a single-family is erected on a Lot, said structure may not be altered or converted into a multi-family residence.

Section 2. Architectural Control. No building, structure, improvement, or a fixture or any fixture or item intended to be attached to or incorporated on the exterior of any existing building, structure, improvement, or fixture, shall be erected, constructed, reconstructed, placed, altered or suffered to remain upon any Lot unless and until the plans and specifications showing the size, height, type and materials of construction thereof and the location of the same shall have been submitted to and approved in writing as to the harmony of the external design and the location in relation to surrounding structures and topography and the general plan by the Developer (while the Developer is a member) and thereafter by the Association. The general plan shall be the construction of homes with plans and specifications substantially similar to those on file at Developer's principal place of business for the existing residences located on the Lots on the date hereof. Unless approved or disapproved by the Developer (while the Developer is a Member) and thereafter by the Association, within sixty (60) days after submission, any proposal shall be deemed to be rejected.

Section 3. Preservation of Structural Integrity. No Owner may at any time take any action which will materially and adversely affect the structural integrity of any buildings or improvements located on the Property including, but not limited to, actions which materially and adversely affect subjacent support or the integrity of any party wall.

Section 4. Out-Building: Temporary Structures. No out-building shall be built or maintained on any Lot prior to or during or after the erection of the principal structure thereon. No basement, garage, or out-building shall at any time be used as a residence temporarily or permanently, nor shall any residence whatsoever of a temporary character be permitted. Notwithstanding any contrary provision herein, the Declarant or other party, performing work directly associated with the development of any portion of the Property, may, subject to all applicable laws, erect or place and maintain a structure(s) or trailer(s) on properties owned by the party for use in connection with the development of the Property, including, but not limited to structures used or to be used as a storage facility, construction office, sales office, sanitary facility or fabricating facility. Said structure(s) or trailer(s) shall be removed within a reasonable after the party, who or which has erected it, has completed all its work on the Property.

Section 6. General Restrictions. No nuisance, flag, sign, marking, symbols, billboard or advertising device or activity shall be built, placed, conducted, permitted or suffered to remain or continue upon any Lot [except for "for rent" or "for sale" (provided, however, that no "for sale" or "for rent" signs may be erected while Developer is offering for sale any lots or any portion of the land described on Exhibit B) or political campaign signs no larger than three (3) feet by three (3) feet or any Ohio or American flag not larger



than four (4) feet by five (5) feet], nor shall any such Lot be used in whole or in part for any trade or business (except for activities not directly involving the public which are otherwise lawful) or in any way or for any purpose which may endanger the health or unreasonably disturb the quiet of any other Owner. No spirituous, vinous, or fermented liquors shall be manufactured or sold either at wholesale or retail upon any Lot. No more than one cat or dog (not larger than 25 pounds) may be kept upon any Lot, but such pets shall not be permitted to become a nuisance. Such pets may urinate and defecate only in areas designated by the Developer or Association and the Owner shall promptly remove any droppings. No toys, bicycles or any other personal property shall be stored, parked or left upon any Lot except within a garage or residence. No activity or materials which would increase any insurance premium with respect to the Property may be conducted, placed, or stored upon the Property. Notwithstanding any provision of these Restrictions to the contrary, the repair, maintenance and replacement of any common wall between Lots shall be maintained, repaired, and replaced with the cost and expenses therefore borne equally by the adjoining Owners provided, however, that any dispute between Owners with respect to the necessity and cost for such required maintenance, reconstruction, or replacement shall be adjudicated by the Board of Managers, the decision of which shall be conclusive and final and may be entered as a judgment through any court of competent jurisdiction in the same manner and upon the same conditions as an arbitration award and, provided, however, that any damage to a common or party wall, approximately arising due to activities on a Lot or the failure to maintain a building or structure located on a Lot shall be the sole responsibility of the Owner of the Lot on which said activities or with respect to the failure to maintain occurred.

Section 7. Maintenance. Except for the Association's maintenance obligations, each Owner shall maintain, repair and replace all buildings, structures, fixtures and improvements located upon the Lot owned by the Owner, in substantially the same condition as when constructed, except for the interior portions of any building or structure which are not reasonably necessary for the structural integrity of other buildings or structures located on the Properties and which are not visible from the outside of the residence. All of the foregoing required activities shall be subject to the Rules of the Association, promulgated as provided below. At the Association's expense, the Association shall maintain the exterior siding, paint and roofs of all buildings and improvements and landscaping located on the Properties in a uniform manner such that the same remain substantially the same as constructed, except that the color of paint may be changed from time to time and the quality of roofing materials may be upgraded. Notwithstanding any provision of these Restrictions to the contrary, no Owner (except the Developer) may paint or otherwise decorate or cause to be painted, or otherwise decorated any exterior portion of any building or structure located within the Property.

Section 8. Storage and Parking Vehicles. No commercial vehicle, truck, trailer, mobile home, recreational vehicle or trailer (either with or without wheels) shall be stored or kept within the Property, except by the Declarant or any other developer of any portion of the Property in connection with the development of the same. Private automobiles shall

be stored in the garage attached to the residence or parked on paved driveway. No boat shall be stored on any Lot except in an attached garage.

Section 9. Garbage and Refuse Disposal. No portion of the Common Properties and no Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or any other discarded or waste material, except by the Declarant or any other developer of any portion of the Properties in connection with development of the same. Garbage and waste material may not be kept outside any residence except in a sanitary, plastic, clean and covered container.

Section 10. Insurance. The Board of Managers shall choose an insurance company, licensed to do business in Ohio with a Best Insurance Rating of B+ or better for fire and extended coverage and public liability insurance. Each Owner shall obtain, immediately upon acquiring an interest in any Lot, fire and extended coverage insurance for no less than the full insurable value of all buildings and structures located on the Owner's Lot and public liability insurance for an amount not less than a combined single liability limit of Three Hundred Thousand Dollars (\$300,000.00) and upon the contents of any building or structure located on the Lot with a coverage amount as determined by the Owner. Each Owner shall provide evidence to the Association that such insurance is in force and is being maintained. Each such policy shall contain a provision that it shall not be canceled without at least ten (10) days written notice to the Association. If an Owner fails to maintain such insurance, the Association, on behalf of the Owner, may do so. The cost thereof shall be a special assessment with respect to such Owner only and the Lot of the Owner may be subjected to a lien therefor which may be enforced as the lien for any other assessment of the Association. The Association and all the other Owners shall be deemed to have insurable interests, to the extent provided above, in all buildings and structures located on the Property.

Section 11. Rules and Regulations of the Association.

(a) The Association, through the Board of Managers, in good faith, may adopt rules and regulations (herein called "Rules") for regulation of all activities, in, on or about the Common Properties and the Lots, which are the subject of regulation by the Association as provided herein. All Rules shall be adopted in accordance with reasonable procedures adopted by the Board from time to time. The procedures shall, at all times, include publication of a proposed rule and the intention to adopt it, and reasonable opportunity for any Owner or representative of an Owner to appear before the Board in person and to contact the Board in writing to discuss and comment upon the proposed rule and for adoption of the proposed rule at an open meeting of the Board.

(b) The Board may, from time to time, adopt Rules setting reasonable fines proportionate to the offense for violation of these Restrictions, the code of Regulations and the Rules for the levying and collection of such fines as Special Assessments or by other reasonable means.

(c) In addition to any other remedies provided by law or these Restrictions, the Owner who is accused of a violation of these Restrictions or Rules or who is subject to a fine may request a hearing before the Board at which hearing the Owner directly or through a representative may present evidence and argument. The Board shall adopt reasonable rules providing for a hearing mechanism, including, but not limited to, Rules requiring written notice to the Board (requesting a hearing and specifying the disputed matter) within a reasonable period after the dispute arose and specifying a reasonable period thereafter during which a hearing must be held.

(d) Notwithstanding any provision of these Restrictions to the contrary, the Developer, prior to the conveyance of the Common Properties to the Association, may promulgate reasonable Rules at any time or from time to time with respect to all matters with respect to which the Association or the Board would be permitted to promulgate rules pursuant to these Restrictions. In all respects, such Rules promulgated by the Developer shall be deemed to have been promulgated by the Association and the Board.

Section 12. Substantial Damage and Reconstruction. In the event more than fifty percent (50%) of the residences located on the Properties are damaged such that they are no longer reasonably habitable, the Owners holding a majority of the Votes may elect to terminate these Restrictions. Upon such termination, the Association and the Property shall be dissolved and partitioned as provided in Article VII.

#### ARTICLE VII DURATION; AMENDMENT

(a) Each provision of these Covenants and Restrictions shall be a separate covenant, and the holding of any covenant invalid for any cause shall not affect the validity of any other. Failure to enforce any provision shall not constitute a waiver of or any acquiescence or consent to any concurrent or subsequent violation of any such provisions. Said provisions shall remain in force perpetually until they are terminated or changed by consent thereto in writing signed, witnessed, and acknowledged as then required by the laws of Ohio for the conveyance of real estate, by the owners of sixty-five percent (65%) or more of all the Lots subject to such provisions, excluding all mortgagees and lien-holders and purchasers under executory contracts; provided that they may not be terminated prior to December 31, 2030 and provided, however, that the Developer hereby reserves the exclusive right at any time and from time to time until January 1, 2006 to modify, change, alter, add to or rescind any provision of the covenants and restrictions, but not the easements or the general plan for construction of residences, set forth herein by executing an instrument in writing which sets forth any such modification, change, alteration, addition or rescission, or any combination of such actions, and by filing of record said instrument in the Summit County Records; provided further, however, that any such modification, change, alteration, addition or rescission shall be made only if in the judgment of the Developer, the development or lack of development of the Property requires such modification, change, alteration, addition or rescission or if in the judgment

of the Developer the purposes of the general plan of development will be better served by such action.

(b) Upon termination of these Restrictions, the Association shall be dissolved and terminated in accordance with the procedures set forth in the Ohio Revised Code. The Association's assets shall be liquidated and the proceeds (less reasonable expenses of liquidation and less all debts of the Association) shall be distributed to the Owners based on an equal allocation for each Lot. Upon dissolution of the Association, all of the Lots shall be subject to a partition action which may be brought by any Owner with respect to which all Owners shall be parties, brought before the Summit County Court of Common Please or its successor. In the event the Court determines that physical partition is not reasonable, all of the Lots shall be sold at judicial sale in accordance with the then rules and procedures for the same. The proceeds of the sale, after deduction of court costs and the plaintiff's reasonable attorneys' fees, shall be allocated among the Owners in the proportion to which the fair market value of the Lots and all improvements located thereon at the time of the appraisal for the judicial sale bear to total value of the Lots and all improvements located thereon at said time.

#### ARTICLE VIII GENERAL PROVISIONS

Section 1. Notices. Any notice required to be sent to any Owner under the provisions of these Restrictions shall be deemed to have been given when mailed, post paid, by regular mail to the last known address of said Owner as such appears on the records of the Association or delivered to the residence owned by the Owner on the Property.

Section 2. Enforcement. The Developer, any Owner and the Association may enforce the provisions of these Restrictions by injunction and all Owners acknowledge that the failure to enforce any provision of these Restrictions will result in irreparable harm and that there will be no adequate remedy at law, except with respect to the levying and collection of assessments.

Section 3. Indemnity. Each Owner shall indemnify, defend, and hold the Developer, all other Owners and the Association harmless from and against any and all actions, causes of action, claims, demands, liabilities, costs and expenses (including, but not limited to, court costs and reasonable attorneys' fees) arising, directly or indirectly, as a result of any breach of any provision of these Restrictions by the Owner or any failure of the Owner to satisfy any obligation under these Restrictions or as a result of any damage arising, directly or indirectly, by any act or omission of the Owner or any party occupying or located upon the Lot owned by the Owner. Joint Owners of any Lots shall be jointly and severally liable for all obligations under this Section or any other provision of these Restrictions.

Section 4. Miscellaneous. All disputes arising hereunder shall be properly and exclusively venued in the Courts of Summit County, Ohio, and all Owners and all other parties holding or claiming an interest in the Property hereby submit to the personal jurisdiction of the Courts of Summit County, Ohio. All disputes arising hereunder and the interpretation of these Restrictions and any other matters relating thereto shall be enforced and construed in accordance with the laws of the State of Ohio. All titles and captions used herein are for convenience only and shall not enlarge or limit any provision of these Restrictions.

Section 5. Provisions for Benefit of City of Akron. Notwithstanding any contrary provision of these Restrictions, no change in the obligations of the Developer or Association with respect to the maintenance of any buildings, structure or landscaping located on any Lot or the Common Properties may be modified or altered, but any means, without the prior written consent of the City of Akron, Department of Planning and Urban Development or its successor which approval shall be subject to the consent of the City of Akron, Planning Commission or council if either body chooses to exercise said right of consent. The City of Akron shall be deemed to be a third party beneficiary of these Restrictions for purposes of this Section. In the event this provision is violated or the City of Akron has reason to believe it will be violated, the City of Akron shall be deemed to have no adequate remedy at law and will be irreparably harmed. The City of Akron may enforce this section by injunction and temporary restraining order.

IN WITNESS WHEREOF, Declarant hereunto sets its hand by its President, this 23<sup>rd</sup> day of August, 1996.

Signed and Acknowledged  
In the Presence of:

Sand Run of Akron, Inc.

Robert J. Belinger  
Robert J. Belinger  
Alene D. Mutz  
Alene D. Mutz

Michael Orley  
Michael Orley, President

STATE OF OHIO

COUNTY OF

Before me, a Notary Public in and for said county personally appeared the above named Michael Orley, President of Sand Run of Akron, Inc., and acknowledged that he did sign the foregoing instrument, and that the same is his free act and deed, this 23<sup>rd</sup> day of August, 1996.

Robert J. Belinger  
Notary Public

ROBERT J. BELINGER, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R. C.