

EASEMENTS AND RESTRICTIONS

A FIVE (5) FOOT WIDE EASEMENT ON THE SIDE OF EACH LOT AND A TEN (10) FEET WIDE EASEMENT AT THE FRONT AND REAR OF EACH LOT, WHICH SHALL BE USED FOR INSTALLING, OPERATING, MAINTAINING AND SERVICING CABLE AND CONDUITS FOR ELECTRIC (OHIO EDISON CO. , GAS (EAST OHIO GAS CO. , TELEPHONE (OHIO BELL TELEPHONE CO. , CABLE VISION (WARNER CABLE), CITY OF STOW, COUNTY OF SUMMIT AND OTHER PUBLIC UTILITIES, SHALL BE IMPOSED, EXCEPTING HOWEVER, THE EXTERIOR BOUNDARIES OF THE SUBDIVISION IN WHICH CASE THEY SHALL BE TEN (10) FEET IN WIDTH, THE CHARACTER OF THE INSTALLATION AND STRUCTURES WHICH MAY BE CONSTRUCTED, RECONSTRUCTED, REMOVED AND MAINTAINED IN, ON AND THROUGH THESE EASEMENTS SHALL INCLUDE ALL INCIDENTAL APPURTENANCES, SUCH AS CONDUITS, TRANSFORMERS, SANITARY SEWERS, STORM SEWERS, GRASS-LINED SWALES, MANHOLES, WATER MAIN AND ETC.

WHEREAS. Hewitt-Boggs Co., hereinafter called "Developer", is the owner of land in in Stow, Summit County, Ohio, which it intends to develop into a single family residential community.

WHEREAS, Developer, deems it necessary for the efficient preservation of values, aesthetic harmony, and amenities of said community, to impose and provide restrictions, covenants, easements and limitations upon the land in said Highland Chase.

Now, THEREFORE, the following restriction, limitations, covenants and requirements are hereby imposed upon said subdivision by Developer which shall be covenants running with the land, binding upon and insuring to the benefit of the Developer and the respective grantees, their respective successors, purchasers, heirs, executors, administrators, and assigns:

PLAT RESTRICTIONS

A. Single Family Dwellings shall meet the following requirements:

1. Type: Single family dwelling may be a one story, a two story, a split level, or cape cod design.
 - a. A one-story dwelling is structure, the living area being the first floor, constructed with or without a basement and a space between the first-floor ceiling and the roof of inadequate height to permit its use as a dwelling space.
 - b. A two-story dwelling is a structure, the living area of which is on two levels connected by a stairway, constructed with or without a basement.
 - c. A split-level dwelling is a structure, the living area of which is one, two, or more levels by stairways constructed with or without a basement.
 - d. A cape cod dwelling is a structure, the living area of which is on two levels connected by a stairway, with or without a basement. The upper level is constructed within the gable portion of the roof. Window penetrations are made by the use of dormers.
2. Living Area: The living area of any dwelling shall not be less than the square footage hereinafter set forth. "Living Area" shall not include garages, attics, basements, breezeways, utility rooms, patios or any enclosed area not heated for year-round living. That portion of a basement which is exposed at ground level due to a sloping lot completed to a living area with full windows and doors may count for up to 400 square feet of living area provided the requirements of section 153.144 of the Codified Ordinances of the City of Stow are met.
 - a. The area of any dwelling shall be computed on outside foundation of the first floor and the exterior dimensions of the second floor. In the case of a Cape Cod design, a second-floor area shall be computed from the outside dimension of the knee walls. In the case of open ceilings to the second floor, the upper open space may be computed as second floor footage so long as the ceiling height is a minimum of 16 feet.

- b. The minimum square footage for each of aforementioned designs, computed as above described, shall be as follows for all lots.
 - i. One Story 1800 square feet
 - ii. Two Story & Cape Cod 2200 square feet with not less than 1200 square feet in the first floor area.
- 3. Garage: No garage shall be erected which is separated from the main building. All garages must be of a minimum dimension of 22 feet by 22 feet (outside dimension.)
- 4. Foundation Walls: All exposed block facing directly on any street shall be covered with a brick veneer. All other exposed concrete block foundation shall be textured, or have a decorative pattern consistent with the architecture of the structure.

LOT RESTRICTIONS

- 1. Side Yards: Each building shall have a side yard along each lot line. The least dimension of each said yard shall be not less than eight (8) feet. Where two or more lots are acquired and used as a single building site, the side yards shall refer only to the lot lines bordering on the adjoining property owner and/or street.
- 2. Front Yards: No building may be erected on any lot nearer than forty (40) feet to the front lot line along Pine Hollow Drive and thirty (30) feet along Hillside Trail.
- 3. Rear Yards:
 - a. No building may be erected on any lot nearer than forty (40) feet to the rear lot line.
 - b. Each lot owner is responsible for the stability and protection of his/her house foundation. Special provisions may be necessary in fill areas and/or on sloping lots.
- 4. Driveways: All driveways shall be paved with concrete, asphalt or brick.

PROHIBITED ACTIVITIES

The following uses and activities shall be prohibited:

- 1. Industrial or manufacturing uses of any kind;
- 2. Commercial agricultural uses;

3. Mining or extraction of any minerals, including the removal of sand or gravel; provided, however, this restriction should not limit or prohibit the extraction of minerals pursuant to leases or rights granted prior to the date of these restrictions. This restriction shall not prohibit the removal of any material in connection with development of the property for permitted use.
4. The keeping, raising, and harboring of cattle, swine, fowl, livestock, other farm animals not normally kept as household pets; provided, however, that nothing in this restriction shall prohibit the keeping of household pets provided they are not kept, bred or maintained for commercial purposes, or kept in a manner as to constitute a nuisance or activity prohibited by law.
5. Temporary structures including but not limited to trailers, basements or incomplete houses, tents, shacks, garages or other out buildings of any kind; provided, however, that this restriction shall not prohibit trailers and temporary structures use in connection with the development of the property.
6. Erection or maintenance of any signs, bill boards, or advertising devices of any kind except (a) signs not larger than eight (8) square feet for offering premises for sale shall be permitted on the premises to be sold (one per lot). (b) Home builders and General Contractor signs, not larger than eight (8) square feet and only during construction (one per lot). Nothing herein contained shall limit Developers right to place an entry sign to the Development. The size and design of said sign shall be within the sole discretion of Developer and subject to Section 153.155 of the Codified Ordinance of the City of Stow.
7. Nuisances and noxious or offensive activities of any kind
8. Storage of mobile home, trailers, commercial trucks and trailers, machinery, equipment, boats and unworking vehicles, unless such is not in view from any street or adjacent residences. Nothing herein contained shall limit use of trucks, trailers, or equipment during construction
9. Hanging of laundry, the front portion of any lot.
10. No fences may be erected or placed or permitted on any lot boundary. Fences may be permitted if required for safety purposes due to unusual topography of the lot or for safety reasons around pool areas. In cases such as these, fences must be installed according to the zoning code and must be constructed for decorative & aesthetic value. Wire mesh type fences are strictly prohibited in all instances.
11. Site lighting which interferes with the comfort, privacy or general welfare of adjacent or other lot owners is prohibited.

12. Pools may be installed, if done so according to the zoning. Pools must be fenced for safety. Pool fences may be located no closer than 10 feet to property line.
13. All garbage or trash containers, oil tanks, gas meters, and bottled gas tanks shall be placed underground or placed in screened areas so that they shall not be visible from the adjoining properties.
14. No unsightly growth shall be permitted to grow or remain upon any lot and no refuse, pipe, or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.
15. No exterior TV antennas or satellite dishes shall be permitted.

ADDITIONAL RESTRICTIONS

The following are additional restrictions, covenants and requirements imposed on each lot:

1. Developer reserves the right to establish grades and slopes on the premises in the subdivision and to fix the grade at which any building or structure shall be hereafter erected or placed, so that the same may conform to the grade of the lots on either side; having due regard for natural contours and drainage of the land. Grades and slopes must be approved by the Stow City Engineer.
2. Each Lot Owner is responsible for maintaining the drainage courses that are not within the drainage easement to the City of Stow.
3. The size, course of flow of streams shall not be altered or modified without the written approval of the governing authorities, including the City of Stow, Director of Public Service.
4. A post light is required ten (10) feet off sidewalk and five (5) feet off driveway. All post lights are to be identical throughout the allotment. The standard and make will be determined by the Developer and all post lights shall be equipped with photoelectric cells.

SUBMITTALS AND APPROVALS

1. No buildings, or structures, or any additions thereto, shall be placed or suffered to remain upon any lot unless and until the size, location, type, shape, height, use, material of construction thereof, the grading plan of the lot, including the grade elevations of said buildings and structures, a plot plan showing the proposed locations of said buildings and structures upon said premises, and the plans of said buildings or structures, shall have been approved in writing by

Developer or Building and Grounds Review Board. No building or structures, or any additions thereto or alterations thereof, except such as conforms to said plans, specifications and details shall be erected, placed or suffered to remain on said premises.

2. At such time as all of the lots in the subdivision have been sold to individuals or entities other than Developer, or an entity controlled by Developer, or at such earlier times as Developer may elect, the right to approve all further construction or other items contained herein shall shift from Developer to a Building & Grounds Review Board (Board) comprised of three (3) lot owners nominated and elected by the majority of lot owners. The lot owner receiving most votes to have a three (3) year term. The lot owner receiving the second most votes to have a two (2) year term and the lot owner receiving the third most votes to have a one (1) year term. Thereafter, said Board shall be comprised of said three (3) members or their successors. Nothing herein contained shall be construed as a diminution in the Developers authority to make all reviews and approvals as contemplated herein until the Board assumes said duties pursuant to the terms hereof.
3. All matters herein requiring the approval of the Developer or the Board by the terms of this instrument, shall be submitted to the Developer or Board in writing, accompanied by such specifications, details and other documents as are reasonably required by it to make a proper decision. In order to ensure that the homes and other buildings will have a uniform high standard of construction, and that the development will be comprised of high quality homes, Developer and Board reserve the right to reject all such plans and specifications as aforesaid for any reasonable grounds, including, but not limited to aesthetic reasons. Developer and Board shall approve or disapprove such written submission or application for approval, in writing within thirty (30) days after its receipt of the same, and a failure by Developer or the Board to so act within said thirty (30) day period shall constitute approval for the submitted plans.
4. It is understood that approval by the Developer or Building and Grounds Review Board shall not be considered approval of the City of Stow and such permits necessary from the City of Stow shall be required in addition to those required by the Developer Board.

HOMEOWNERS ASSOCIATION

1. As lots are transferred from the Developer, or entities owned or controlled by the Developer, all lot owners will become members of the Highland Chase Landowner's Association, which will be formed subsequent to the transfer of the first lot. Each lot owner is required to become a member of the Association pursuant to the terms of hereof, shall participate fully in and become subject to

all of the rules, regulations, assessments and contractual obligations of such association which may be enacted at any time hereafter.

2. Each member of the Homeowner's Association shall pay to said Association a minimum yearly maintenance assessment of fifty dollars (\$50.00), which assessment shall be used to maintain the common areas within the development. The Homeowner's Association shall have the right to increase said yearly assessments as needed and collect said yearly assessment necessary for maintenance.
3. All open spaces in Phases I, II, III, IV & V and Block "A" shall be owned by the Homeowner's Association and all expenses to maintain these spaces shall be divided equally among the homeowner members. The aesthetic easements shall be maintained by the Homeowner's Association.

RESTRICTIONS

MODIFICATIONS & ENFORCEABILITY

Developer reserves for itself, its successors and assigns, the right to amend, change, cancel or add to any or all the aforementioned provisions when it deems such course action advisable; provided, however, that no amendment, change, cancellation or addition shall be made unless an of appropriate instrument signed by the majority of the then owners of the property within Highland Chase agreeing to such amendment, change, cancellation or addition. The restrictions contained herein shall be deemed as covenants running with the land and not part of the property herein described and all persons claiming-under them; and

Invalidation or unenforceability of any one or more of the provisions herein by judgment or court order shall in no manner affect any of the other provisions hereof, and such other provisions shall remain in full force and effect.

Developer reserves the right for himself, his agents, employees, successors and assigns the purpose of carrying out and completing the development of the property, including but not limited to the completion of any dredging, filling, grading or installation of drainage facilities. Entry onto said property for such purposes shall not be deemed trespass.

The provisions herein shall run in favor of and shall be enforceable by any person or entity, and the heirs, assigns and successors of such person or entity, who is or becomes an owner of any lot in this subdivision as well as Developer, his successors and assigns. It is understood and agreed that all of the foregoing are part of a common and general plan for the development of this subdivision and the protection of all present and future

owners of any part of the subdivision. Failure of Developer to enforce any of the restrictions contained herein, shall in no event be construed to be in any manner a waiver of, acquiescence in, or consent to a further or succeeding violation of these restrictions. However, the failure, refusal or neglect of Developer to enforce said restrictions or to prevent violations thereof shall in no event make Developer liable for such failure, refusal or neglect.

Developer or Owner reserve to themselves the right to relocate utility easements in accordance with the requirements of the City of Stow.

DECLARATION OF THE HIGHLAND CHASE LANDOWNERS ASSOCIATION

This Declaration, made as of the 25th day of June, 1996, by and between HEWITT BOGGS Co., INC., an Ohio corporation whose address is P.O. Box 5472, Akron, Ohio 44334, and THE HIGHLAND CHASE LANDOWNERS ASSOCIATION, an Ohio not-for-profit corporation, whose address is P.O. Box 5472, Akron, Ohio 44334

RECITALS

WHEREAS, HEWITT BOGGS CO., INC., hereinafter referred to as Declarant, has submitted or plans to submit for recording the plats for the following subdivisions in the City of Stow, Summit County, Ohio:

Highland Chase Phase 1 Plat Cab. G, Slides 622-627)
Highland Chase Phase 2 (Plat Cab. H, Slides 557-560)
Highland Chase Phase 3 (Plat Cab. H, Slides 561-564)
Highland Chase Phase 4 (Plat Cab. 1, Slides 669-722)
Highland Chase Phase 5 (Plat Cab. L, Slides 971-974);

Note to County Recorder: Please cross-reference the filing of this instrument to the five Highland Chase plats described in the Recitals.

and

WHEREAS, the development of the said subdivisions requires that Declarant shall initiate a property owners association which shall assume and be responsible for the ownership, control, administration, and maintenance of the commonly-owned open space within said subdivisions; and

WHEREAS. Declarant has incorporated The Highland Chase Landowners Association under the laws of the State of Ohio as a non-profit corporation for the purpose of exercising the aforesaid functions.

NOW. THEREFORE, the undersigned Declarant, being the sub-divider of the above-described allotments, does hereby declare that the property embraced within such subdivision plats is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, assessments, charges and liens hereinafter set forth, and The Highland Chase Landowners Association also joins in this Declaration for the purpose of accepting the duties and responsibilities imposed upon it by the herein contained covenants and restrictions.

DEFINITIONS

The terms used in this document shall have these meanings, unless the context requires otherwise.

1. "Articles" and "Articles of Incorporation" mean the articles of incorporation, as the same may be lawfully amended from time to time, filed with the Secretary of State of Ohio, incorporating The Highland Chase Landowners Association as an Ohio on-profit corporation pursuant to the Ohio Revised Code, as amended (the "ORC").
2. "Allotment" means the territory embraced within the various Phases of Highland Chase Allotment, whether considered as an entity or as individual sublots and blocks.
3. "Association" and "Landowners' Association" mean the non-profit corporation created by the filing and approval of the Articles.
4. "Board" and "Board of Trustees" mean those persons who, as a group, serve as the Board of Trustees of the Association.
5. "By-Laws" means the by-laws or code of regulations of the Association, as the same may be lawfully amended from time to time, created under Chapter 1702 ORC.
6. "Common Area" means the part of the Allotment indicated as "Block" or "Open Space" on the Plats, and which is specifically intended to be devoted to the common use of members.
7. "Declaration" means this instrument by which the Common Area is created and submitted to the Association, as this instrument may be lawfully amended from time to time.
8. "Instruments" means this Declaration, the Articles, the By-Laws, the Plats, and all other documents, contracts, or instruments establishing ownership of or exerting control over the Common Area.
9. "Lot" means any building site created in the Allotment, whether as created by the recording of the Plats or as amended by subsequent City of Stow subdivision approval.
10. "Member" means a person owning a fee simple interest in a Lot. If a Lot is owned by more than one Person, the owners shall jointly constitute one "Member" for purpose of this Declaration and shall inform the Secretary of the Association as to which Person shall exercise the voting rights of such Member granted in the Instruments.

11. "Occupant" means an individual lawfully residing at or occupying the Lot, regardless of whether that individual is the owner thereof.
12. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
13. "Plat" means the recorded subdivision plats for the Allotment, as the same may be lawfully amended from time to time. The Plats show the individual lots and blocks in the Allotment, including the Common Area.
14. "Trustee" and "Trustees" means that person or those persons serving at the time pertinent as a trustee or trustees on the Board of Trustees of the Association.

THE PLAN

NOW, THEREFORE, Declarant hereby makes and establishes the following plan for ownership and administration of the Common Area:

ARTICLE I

THE LAND

The Declaration, applies to the land embraced within the subdivision plats located in the City of Stow, Summit County, Ohio, and known as Phases I, 2, 3, 4, and 5 of Highland Chase Allotment.

ARTICLE II

NAME

The name by which the Association shall be known is "The Highland Chase Landowners Association."

ARTICLE III

PURPOSES: RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish the Common Area for the purpose of, as the case may be, permanent open space for the benefit of all Members and occupants and their heirs, successors, invitees, guests, contractors, employees, and assigns; to establish an Association to own and administer the Common Area; to provide for the preservation of the values of the Common Area and Lots; to provide for and promote the benefit, enjoyment and well being of Members and Occupants; to administer and enforce the

covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Common Area is hereby declared to be open space to be held by the Association for the benefit of Members. The Common Area shall be subject to the following restrictions:

- a. Uses of the Common Area. Except as otherwise specifically provided in the Declaration, no portion of the Common Area shall be used for any purpose other than those authorized in Article III, Section 1, hereof. No commercial activity whatsoever shall be allowed. No person shall be permitted to place any structure within the Common Area. The contour of the Common Area in existence after completion of construction of the driveway thereon shall not be changed without the prior written consent of a majority of the Members.
- b. Common Area Uses. The Common Area shall be used in common by Members, their family members and their accompanying invitees, in accordance with the purposes for which it is intended, subject to such rules and regulations as may from time to time be promulgated by the Board.
- c. Nuisances. No noxious or offensive activity shall be carried on, at or within the Common Area, nor shall the Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Member.
- d. Signs. No sign of any kind shall be erected or displayed on the Common Area unless such sign is previously approved by the Board in writing.
- e. Discrimination. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Member in favor of another.
- f. Arbitration. In the event of any dispute between Members as to the application of these restrictions or any rule or regulation to any particular circumstance, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within sixty (60) days thereafter, and give written notice to each party thereof no less than five (5) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No other action may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been completed.

- g. Noise Prohibited. No Member shall make or permit any disturbing noises within the Common Area, nor shall he allow his family, servants, employees, or invitees to make such noises, nor permit any conduct by such persons that will interfere with the rights, comforts, or conveniences of other Members' use and enjoyment of the Common Area or their Lots.
- h. Building or Landscaping. The Association shall be responsible for the landscaping, normal maintenance and beautification of the Common Area. No additional improvements shall be constructed in the Common Area without the affirmative vote of a majority of the Members.
- i. Dumping Prohibited. No lawn waste, branches, trash, petroleum products or other waste shall be discharged in or into the Common Area.
- j. Remedies. For a violation or breach of any of these restrictions by any person claiming by, through or under any Member, or by virtue of any judicial proceeding, the Association shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure promptly to enforce any of the restrictions by any court of competent jurisdiction shall not affect any of the other restrictions. The Board shall have the right and power to levy fines, impose penalties, and enforce such fines and penalties in an amount equal to 150% of the cost to rectifying any violation.

ARTICLE IV

LANDOWNERS ASSOCIATION

Section 1. Membership. Membership in the Association shall be limited to every person who is or becomes a record owner of a fee simple interest in a Lot, subject to the limitations set forth in the definition of the term "Member". The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lots, and transfer of a Member's Lot shall automatically transfer membership to the transferee.

Section 2. Voting Rights. Each Member shall be entitled to one (1) vote for each Lot owned.

Section 3. Board of Trustees. The Board initially shall be those three (3) persons named as the initial Trustees pursuant to the Articles who shall hold office until their death, resignation the election of their respective successors. The Board of Trustees shall have three (3) members.

Section 4. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Area, and assess and collect funds for the payment thereof, and

do all things and exercise all rights provided by the Instruments that are not specifically reserved to Members, including the right to adopt rules and regulations for the orderly administration and health and welfare of the Members. Such rules and regulations shall not be deemed to be an amendment of this Declaration.

ARTICLE V

AGENT FOR SERVICE

The name and address of the person to receive service of process for the Association is James Hewitt, P. O. Box 5472, Akron, Ohio 44334.

In the event this individual for any reason ceases to be registered with the Secretary of State of Ohio as Statutory Agent for the Association, the person so registered shall be the person to receive service of process for the Association.

ARTICLE VI

MAINTENANCE AND REPAIR

Section 1. Association Responsibility. The Association shall maintain and repair the Common Area, including and not limited to trees, roadways, walkways (if any), and any structures located in the Common Area. The Association may delegate the responsibility for maintaining, cleaning, and managing the common Area to the Declarant or to any other person or entity.

Section 2. Individual Responsibility. Each Member shall keep the portion of his Lot which abuts the Common Area free of trash and litter. In the event a Member shall fail to comply with this Article VI, section 2, or the need for maintenance repair of any part of the Common Area is caused by the negligence or intentional act of any Member or invitee thereof, and the cost of maintenance or repair is not covered by insurance, the cost of such maintenance and repair shall constitute a special individual Member assessment, as hereinafter defined, on such Member. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

ARTICLE VII

INSURANCE

Section 1. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering the Common Area, insuring the Association, the Trustees, and the Members, with such limits as the Board may determine, covering claims for personal

and bodily injury, death and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to homeowners' associations generally and those developments similar in location and use of the Common Area, as determined by the Association. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Member or a Trustee because of negligent acts of the Association, other Trustees, the Association, or other Members as appropriate.

Section 2. Other Association Insurance. In addition, the Association may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Association may determine appropriate.

Section 3. Member's Insurance. Any Member may carry such insurance in addition to that provided by the Association pursuant hereto as that Member may determine. A Member may obtain insurance against liability for events occurring within or on his Lot, losses with respect to personal property and furnishings, and losses to improvements owned by the Member. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Trustees, and all other Members.

Section 4. Sufficient Insurance. In the event the improvements, if any, forming a part of the Common Area or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction thereof, such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Board in payment thereof.

Section 5. Insufficient Insurance. In the event, the improvements forming a part of the Common Area or any portion thereof shall suffer damage or destruction from any cause or peril 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, unless the Members shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association may make repairs, restoration or reconstruction of the Common Area so damaged or destroyed at the expense (to the extent not covered by insurance) of all Members. Should any Member refuse or fail after reasonable notice to pay that Member's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Member and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 6. Fidelity Bonds. The Association shall obtain fidelity bond coverage with respect to persons handling Association funds in amounts deemed reasonably necessary by the Board to protect against substantial losses.

ARTICLE VIII

CONDEMNATION

In the event any of the Common Area, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings, or is otherwise sought to be acquired by a condemning authority, all Members shall share equally in the condemnation proceeds.

ARTICLE IX

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment Limitations. Every Member shall have a right and easement of enjoyment in, over and upon the Common Area and a right of access to and from such Member's Lot, which rights and easements shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Area, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Member's Lot by such Member, or any part thereof. Any Member may delegate that Member's right of enjoyment to. The Common Area and to ingress and egress from the Member's Lot to the members of that Member's family and to any occupants on such Member's Lot.

Section 2. Right of Entry for Repair, Maintenance, and Restoration. The Association shall have a reasonable right of entry and access to, over, upon and through any Lot to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Common Area.

Section 3. Easement for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, EMS Governmental personnel, all similar persons, and to the local authorities and public utilities, but not to the public in general, to enter upon the Common Area in the performance of their lawful duties and installation and maintenance of utility services.

ARTICLE X

ASSESSMENT AND ASSESSMENT LIENS

Section 1. Types of Assessments. Each Member, by acceptance of a deed to such Member's Lot (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital

improvements, and (3) special individual Lot assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Members and the best interests of the Common Area.

Section 3. Elements and Apportionment: Due Dates.

a. Annual Operating Assessments.

1. At the time of the filing of this Declaration, and, prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate and prorate among the Members on an equal basis (except as otherwise set forth in this Declaration) the common expenses of the Association which consist of the following:
 - a. the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;
 - b. the estimated next fiscal year's costs for insurance and bond premiums to be obtained and paid for by the Association;
 - c. the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;
 - d. an amount deemed adequate by the Board 'to maintain a reserve for the cost of unexpected repairs and replacement of major improvements for which cash reserves over a period of time in excess of one year should be maintained;
 - e. the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for legal and accounting services, costs of mailing, postage, supplies and materials operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded; and
 - f. an amount for real estate taxes, if any, due from the Association.
 - g. an amount for utility services, if any, used or consumed upon or within the Common Area.
2. The Board shall thereupon allocate equally to each Member such Member's share of all of these items and thereby establish the annual operating assessment for each Member. For administrative convenience, any such assessment may be rounded up to the nearest ten dollars.
3. (3) The annual operating assessment shall be payable in advance, provided that nothing contained herein shall prohibit any Member from prepaying assessments. The due dates of any such installments shall be established by

the Board. Failure to pay any installment when due shall result in a surcharge of 25% of the installment due and shall be relieved on each anniversary date until paid.

4. If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Members on the same basis as heretofore set forth.
5. If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Members.

b. Special Assessments for Capital Improvements.

1. In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements within the Common Area to the extent that reserves therefore are insufficient, provided that new capital improvements not replacing or repairing existing improvements which cost over \$2,500.00 shall not be constructed nor funds assessed therefore without the prior written consent of a majority of the Members. Capital improvements less than \$2,500 shall be within the authority of the Board. Failure to pay any installment when due shall result in a surcharge of 25% of the installment so due and shall be relieved on each anniversary date until paid.
2. Any such assessment shall be prorated equally among all Members and shall become due and payable on such date or dates as the Board determines, following written notice to the Members; provided, however, that Declarant shall be exempt from such assessment as to Lots it owns which are unimproved with residences.

c. Special Individual Lot Assessments.

The Board may levy an assessment against an individual Member, or Members, to reimburse the Association for those costs incurred in connection with such Member or Members properly chargeable by the terms hereof to a particular Member or Members (such as, but not limited to, the cost of making repairs which would be the responsibility of a Member or Members, the cost of insurance premiums separately billed to such Member or Members, and such Member's enforcement and arbitration charges). Any such assessment shall become due payable on such date as the Board determines, and gives written notice to such Member or Members subject thereto. The Board is authorized to charge 150% of the actual cost to remove and/or repair if the Member doesn't rectify the problem after 15 days written notice thereof.

d. Minimum Mandatory Capital Assessment.

The Board may levy an additional assessment for a minimum annual capital assessment in an amount to be determined by the Board and approved by the majority of the Members. The assessment shall be in addition to any necessary operating assessments.

Section 4. Effective Date of Assessments. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Members at least thirty (30) days prior to the due date thereof, if to be paid in installments. Written notice mailed or delivered to a Member at the address set forth on the Association's records shall constitute notice to that Member, unless the Member has delivered written notice to the Association of a different address for such notices, in which event the mailing of the last designated address shall constitute notice to that Member.

Section 5. Effect of Non-Payment of Assessments; Remedies of the Association for Default.

- a. If any assessment or any installment of any assessment is not paid within thirty (30) days after the same has become due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable, and (ii) charge interest on the entire unpaid balance (or on an overdue installment alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), and (iii) charge a penalty equal to up to a quarter of the assessment past due.
- b. Annual operating and special assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association.
- c. At any time after an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, and interest and costs, may be filed with the Recorder of Summit County, Ohio, pursuant to authorization given by the Board. The certificate shall contain a description of the Lot against which the lien exists, the name or names the record owner or owners thereof, and the amount of the unpaid portion of the assessments, and shall be signed by the president or other officer of the Association. A copy of said recorded certificate of lien shall be sent by certified mail, return receipt requested, to the last known address of the owner or owners of such Lot.
- d. The lien provided for herein shall remain valid, unless sooner released or satisfied in the same manner provided by law in the state of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.
- e. Any Member who believes that an assessment chargeable to such Member's Lot (for which a certificate of lien has been filed by the Association) has been improperly charged against such Lot, may bring an action in Court of Common Pleas of the Summit County, Ohio, for the

discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Member, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

- f. Each such assessment together with interest and costs shall also be the personal obligation of the Member who owned the Lot at the time when the assessment fell due. The obligation for delinquent assessments, interest and costs shall not be the personal obligation of that Member's successors in title unless expressly assumed by the successors, provided, however, that the right of the Association to a lien against such Lot, or to foreclose any lien thereon for these delinquent assessments, interest and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.
- g. The Association, as authorized by the Board, may undertake all legal and equitable remedies available to it, including without limitation, filing a lien or liens to secure payment of delinquent assessments, interest and costs, bringing an action at law against the Member or Members personally obligated to pay the same, and an action to foreclose a lien. In any such action, interest and costs of such action (including attorneys fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio.
- h. No Member may waive or otherwise escape liability for the assessments provided for in these Restrictions by non-use of the Common Area, or any part thereof, or by abandonment of such Member's Lot.

Section 6. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein shall be subject and subordinate to the liens of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure, of the mortgage, or lease or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale shall take the Lot free of any claims for unpaid installments of assessments or charges against the Lot which became due and payable prior to the time such holder or purchaser took title to such Lot.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Lot have been paid. This Certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE XI

AMENDMENTS AND TERMINATION

Section 1. Power to Amend. Except as hereinafter provided, amendment of this Declaration or other Instruments shall require the affirmative vote of a majority of the Members.

- a. The consent of 80% of the Members shall be required for any amendment effecting a change in:
 - (i) The liability for common expenses pertaining to the Common Area;
 - (ii) The number of votes in the Association pertaining to any Member;
 - (iii) The fundamental purposes to which the Common Area is restricted; or
- b. The consent of Members exercising not less than 75% of the voting power of Members shall be required to terminate the Association, unless such termination is required by Article XII.
- c. The consent of Members exercising not less than 75% of the voting power of Members shall be required for the dedication of the Common Area as a public right-of-way provided the Members shall agree to pay (or to be assessed for) the cost of improving, if necessary, the road within the Common Area to Summit County local street standards.
- d. In all other amendments, the consent of Members representing not less than 51% of the Lots shall be required.

Section 2. Method to Amend. An amendment to this Declaration (or to the By-Laws), adopted with the consents hereinbefore provided, in a writing executed with the same formalities as the Declaration by two officers of the Association and containing a certification that the amendment was duly adopted in accordance with the foregoing provisions, shall be effective upon the filing of the same with appropriate State of Ohio and County authorities.

Section 3. Termination. In the event the Members properly terminate the Association pursuant to Article XII, the Association shall pay or make provisions for paying all liabilities of the Association and thereafter shall release unto each Member the portion of the easement affecting such Member's Lot.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Common Area, the Lots, the Association, and the Members, their respective heirs, executors, administrators, successors and assigns.

Section 2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant, the Association, and each Member shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the By-Laws now or hereafter imposed by or through the Association's rules and Regulations. Failure by Declarant, the Association or by any Member to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or any subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Member shall have the rights of action against each other for failure to comply with the provisions of the Instruments, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Member who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing or anything contained herein to the contrary, in the event of any dispute between the Association and any Member, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall be submitted to binding arbitration in accordance with and pursuant to the rules of the American Arbitration Association. The decision in such arbitration proceeding shall be conclusive and binding upon the parties and may be entered in any court of competent jurisdiction as a final judgment from which no appeal may be taken. The fees and expenses of arbitration shall be shared by the parties to the dispute in the inverse proportion to the respective amounts of the disputed matters which are resolved or decided in its favor. In the event the dispute does not involve matters dealing with money, the fees and expenses of arbitration shall be shared by the parties thereto as determined by the arbitrator.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment of court shall in no way affect any other provisions, which provisions shall remain in full force and effect.

Section 4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 5. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.