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**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
BRANDONHALL VILLAGE**

FOR PLAT SEE: BOOK 148, PAGE(S) 10

THIS INSTRUMENT PREPARED BY:

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A.J. WAGNER
AUDITOR

DECLARATION

Table of Contents

| | | |
|--------------------------------|--|---|
| RECITALS | | 1 |
| DECLARATIONS | | 1 |
| ARTICLE I | | |
| DEFINITIONS | ..... | 2 |
| 1.01 | General | 2 |
| 1.02 | Additional Property | 2 |
| 1.03 | Amendment and/or Amendments | 2 |
| 1.04 | Articles and Articles of Incorporation | 2 |
| 1.05 | Association | 2 |
| 1.06 | By-Laws | 2 |
| 1.07 | Common Area(s) | 2 |
| 1.08 | Control Period | 2 |
| 1.09 | Declarant | 2 |
| 1.10 | Declaration | 2 |
| 1.11 | Design Review Committee | 2 |
| 1.12 | Development Period | 2 |
| 1.13 | Dwelling Unit | 3 |
| 1.14 | Exhibit | 3 |
| 1.15 | Landscaping Easement(s) | 3 |
| 1.16 | Lot | 3 |
| 1.17 | Majority of Owners | 3 |
| 1.18 | Managing Agent | 3 |
| 1.19 | Member | 3 |
| 1.20 | Owner | 3 |
| 1.21 | Person | 3 |
| 1.22 | Plat | 3 |
| 1.23 | Property | 3 |
| 1.24 | Quorum | 3 |
| 1.25 | Recorded | 3 |
| 1.26 | Rules and Regulations | 3 |
| 1.27 | Walkway Easement(s) | 3 |
| ARTICLE II | | |
| DESCRIPTION OF PROPERTY | ..... | 3 |
| 2.01 | General | 3 |
| 2.02 | Dwelling Units | 4 |
| 2.03 | Common Area | 4 |
| ARTICLE III | | |
| ASSOCIATION | ..... | 4 |
| 3.01 | Organization | 4 |
| 3.02 | Membership | 4 |
| 3.03 | Voting Rights | 4 |
| 3.04 | Administration of Property | 4 |

| | | |
|---|---|-----------|
| 3.05 | Board of Trustees | 5 |
| 3.06 | Declarant's Rights | 5 |
| 3.07 | Delegation to Managing Agent | 5 |
| 3.08 | First Meeting | 5 |
| ARTICLE IV | | |
| CONVEYANCE OF COMMON AREAS | | 5 |
| 4.01 | General | 5 |
| ARTICLE V | | |
| EASEMENT | | 6 |
| 5.01 | Owner's Easements of Enjoyment | 6 |
| 5.02 | Delegation of Use | 6 |
| 5.03 | Easements for Repair, Maintenance and Restoration | 6 |
| 5.04 | Easements for Construction | 6 |
| 5.05 | Easement for Telephone, Utilities and Cable Television | 6 |
| 5.06 | Tie-In Easements | 6 |
| 5.07 | Service Easements | 7 |
| 5.08 | Landscaping Easement(s) | 7 |
| 5.09 | Walkway Easement | 7 |
| 5.10 | Additional Property Easement | 7 |
| 5.11 | Consent to Easements | 7 |
| 5.12 | Easements Shall Run With Land | 7 |
| ARTICLE VI | | |
| ASSESSMENTS | | 7 |
| 6.01 | Creation of Lien and Personal Obligation of Assessments | 7 |
| 6.02 | Purpose of Annual Assessment | 8 |
| 6.03 | Owner's Share of Annual Assessments | 8 |
| 6.04 | Preparation of Estimated Budget | 8 |
| 6.05 | Fiscal Year Option | 9 |
| 6.06 | Reserve for Contingencies and Replacements | 9 |
| 6.07 | Budget for First Year | 9 |
| 6.08 | Failure to Prepare Annual Budget | 9 |
| 6.09 | Books and Records of the Association | 9 |
| 6.10 | Commencement of Assessments | 10 |
| 6.11 | Declarant's Obligations to Pay Assessments | 10 |
| 6.12 | Special Individual Lot Assessment | 10 |
| 6.13 | Non-Use of Facilities | 10 |
| ARTICLE VII | | |
| REMEDIES FOR NON-PAYMENT OF ASSESSMENT | | 10 |
| 7.01 | Acceleration and Late Charges | 10 |
| 7.02 | Lien of Association | 10 |
| 7.03 | Priority of Association's Lien | 11 |
| 7.04 | Dispute as to Common Expenses | 11 |
| 7.05 | Non-Liability of Mortgagee for Past Due Assessments | 11 |
| 7.06 | Liability for Assessments Upon Voluntary Conveyance | 11 |

| | | |
|--|---|----|
| ARTICLE VIII | | |
| REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS | ..... | 11 |
| 8.01 | Abatement and Enjoyment | 11 |
| 8.02 | Involuntary Sale | 12 |
| ARTICLE IX | | |
| ARCHITECTURAL CONTROL | ..... | 12 |
| 9.01 | General | 12 |
| 9.02 | Design Review Committee | 13 |
| ARTICLE X | | |
| USE RESTRICTIONS | ..... | 13 |
| 10.01 | Use | 13 |
| 10.02 | Rental | 13 |
| 10.03 | Exterior of Lots | 13 |
| 10.04 | Common Area | 13 |
| 10.05 | Vehicles | 13 |
| 10.06 | Nuisances | 14 |
| 10.07 | Structural Integrity | 14 |
| 10.08 | Temporary Structures | 14 |
| 10.09 | Signs | 14 |
| 10.10 | Animals | 14 |
| 10.11 | Garbage and Refuse Disposal | 14 |
| 10.12 | Water Supply | 14 |
| 10.13 | Sewage Disposal | 14 |
| 10.14 | Rules and Regulations | 14 |
| 10.15 | Conflict | 14 |
| 10.16 | Arbitration | 15 |
| ARTICLE XI | | |
| MAINTENANCE | ..... | 15 |
| 11.01 | General | 15 |
| 11.02 | Association | 15 |
| 11.03 | Owner | 15 |
| 11.04 | Exterior Surfaces | 15 |
| 11.05 | Failure to Maintain | 16 |
| ARTICLE XII | | |
| LIABILITY AND OTHER INSURANCE | ..... | 16 |
| 12.01 | Liability Insurance | 16 |
| 12.02 | Other Insurance | 16 |
| 12.03 | Notice of Cancellation or Substantial Changes | 16 |
| 12.04 | Annual Review | 16 |
| ARTICLE XIII | | |
| CONDEMNATION | ..... | 17 |
| 13.01 | General | 17 |

| | | |
|--------------------|---|----|
| ARTICLE XIV | | |
| AMENDMENT | ..... | 17 |
| 14.01 | General | 17 |
| 14.02 | Declarant's Rights | 17 |
| 14.03 | Federal Housing Administration and/or Veterans Administration . | 17 |
| 14.04 | Right of First Refusal | 17 |
| 14.05 | Amendment Affecting Declarant's Rights | 17 |
| 14.06 | Mortgage or Mortgagee | 18 |
| | | |
| ARTICLE XV | | |
| ANNEXATION | ..... | 18 |
| 15.01 | Contemplated Annexation by Declarant | 18 |
| 15.02 | Reservation of Right to Annex Additional Property | 18 |
| 15.03 | Reservation of Right to Amend Declaration | 18 |
| 15.04 | Consent and Approval for Annexation Amendments | 18 |
| 15.05 | Power of Attorney Coupled with an Interest | 18 |
| | | |
| ARTICLE XVI | | |
| GENERAL | ..... | 19 |
| 16.01 | Covenants Running with Land | 19 |
| 16.02 | Enforcement | 19 |
| 16.03 | Notice to Mortgagees | 19 |
| 16.04 | Partition | 19 |
| 16.05 | Severability | 19 |
| 16.06 | Gender and Grammar | 19 |
| 16.07 | References | 19 |
| 16.08 | Taxes, Assessments and Charges | 20 |
| 16.09 | Compliance with Requirements | 20 |
| | | |
| SIGNATURES | ..... | 20 |

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, creating covenants, conditions and restrictions, made on the date hereinafter set forth by **BRANDONHALL DEVELOPMENT, INC.**, an Ohio corporation, hereinafter referred to as "Declarant".

RECITALS:

A. Declarant is the owner in fee simple of the following described real estate situated in the City of Miamisburg, County of Montgomery, State of Ohio:

Lots Numbered 6357 through 6388 inclusive, of the revised and consecutively numbered lots of the City of Miamisburg, Ohio.

B. The above described real property is hereinafter referred to as the "Property", and it is the desire and intent of the Declarant to develop such Property as a residential community consisting of Dwelling Units as such term is hereinafter referred to and defined together with Common Areas as such term is hereinafter referred to and defined.

C. Declarant is also the owner and/or has the right to acquire the real property described in Exhibit "B" hereof, and contemplates submitting such property to the provisions of this Declaration by an amendment or amendments hereto.

D. Declarant desires to establish a plan of covenants, conditions, restrictions and private assessments to provide for the preservation of the values and amenities in the Property. To these ends, Declarant is making this Declaration and has caused to be formed Brandonhall Village Homeowners' Association, Inc., an Ohio not-for-profit corporation to own the Common Areas and to enforce and administer the provisions hereof.

DECLARATIONS:

NOW, THEREFORE, Declarant hereby declares that all of the Property, and any additional property to be added to this plan as hereinafter provided shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions and assessments, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such property. These easements, covenants, conditions, restrictions and assessments, unless otherwise specifically limited herein, shall run with such property submitted hereby and any additions thereto, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and additions thereto, and shall inure to the benefit of each Owner or any part thereof.

ARTICLE I
DEFINITIONS

1.01 **General.** The following terms used herein are defined as hereinafter set forth.

1.02 **Additional Property** shall mean property which is described in Exhibit "B" of this Declaration and which, together with improvements thereon, may be added to the Property.

1.03 **Amendment and/or Amendments** shall mean an instrument executed with the same formalities of the Declaration and Recorded for the purpose of amending the Declaration, the By-Laws or any other Exhibits.

1.04 **Articles and Articles of Incorporation** shall mean the articles filed with the Secretary of State of Ohio incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time.

1.05 **Association** shall mean and refer to Brandonhall Village Homeowners' Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

1.06 **By-Laws** shall mean and refer to the By-Laws of the Association which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code.

1.07 **Common Area(s)** shall mean and refer to that part of the Property which shall be conveyed to and owned by the Association for the common use, enjoyment and benefit of the membership of the Association, together with any easements reserved or granted to the Association.

1.08 **Control Period** shall mean a period of time seven (7) years from the date on which this Declaration is Recorded or a period of time until the sale of seventy-five percent (75%) of all Dwelling Units to Owners have been consummated, whichever first occurs. For purposes of such computation, the percentage of Dwelling Units sold shall be determined by comparing the Dwelling Units sold to the total number of Dwelling Units which may be created pursuant to the provisions hereof.

1.09 **Declarant** shall mean and refer to Brandonhall Development, Inc., an Ohio corporation, its successors and assigns.

1.10 **Declaration** shall mean this instrument and unless the context prohibits, any and all Amendments hereto.

1.11 **Design Review Committee** shall mean the committee created and established pursuant to Article VII for the purposes stated therein.

1.12 **Development Period** shall mean a period of time ten (10) years from the date on which this Declaration is Recorded.

1.13 Dwelling Unit shall mean a building situated upon a Lot designed and intended for the use and occupancy by a person or persons as a residence.

1.14 Exhibit shall mean any document or instrument attached to the Declaration.

1.15 Landscaping Easement(s) shall mean the Landscaping Easement(s) depicted on any Plat.

1.16 Lot shall mean and refer to those parcels of real property on which Dwelling Units are to be constructed.

1.17 Majority of Owners shall mean those Owners holding fifty-one percent (51%) of the voting power of the Association.

1.18 Managing Agent shall mean a person or entity retained or employed by the Association to act as a manager or managing agent for the Association.

1.19 Member shall mean and refer to an Owner that is subjected hereto.

1.20 Owner shall mean and refer to the Owner of any Lot on which Dwelling Units have been or are to be constructed thereon and for purposes thereof shall include Declarant.

1.21 Person shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.22 Plat shall mean and refer to any plat or plats of the Property which are Recorded including any re-plats thereof.

1.23 Property shall mean and refer to the real property subject to this Declaration as described in Recital A hereof.

1.24 Quorum shall mean the presence in person or by proxy of a Majority of Owners.

1.25 Recorded shall mean the filing with the Recorder of Montgomery County, Ohio.

1.26 Rules and Regulations shall mean those rules and regulations, as may be amended from time to time, adopted by the Board of Trustees pursuant to the provisions set forth in the Declaration.

1.27 Walkway Easement(s) shall mean the Walkway Easement(s) depicted on any Plat.

ARTICLE II
DESCRIPTION OF PROPERTY

2.01 General. A legal description of the Property subject to this Declaration is set forth in Recital A hereof.

2.02 Dwelling Units. Unless or until amended, Dwelling Units are or are to be constructed on the following described Lots with one (1) Dwelling Unit to a Lot:

Situate in the City of Miamisburg, County of Montgomery, State of Ohio and being Lots Numbered 6357 through 6386 inclusive, of the revised and consecutively numbered lots of the City of Miamisburg, Ohio.

2.03 Common Area. Unless or until amended, the Common Area shall consist of the following described Property.

Situate in the City of Miamisburg, County of Montgomery, State of Ohio and being Lots 6387 and 6388 of the revised and consecutively numbered lots of the City of Miamisburg, Ohio.

ARTICLE III ASSOCIATION

3.01 Organization. The Association was formed as an Ohio not-for-profit corporation pursuant to the provisions of Chapter 1702 of the Ohio Revised Code, by the filing of its Articles with the Secretary of the State of Ohio. On the date of its incorporation, the Association duly adopted a set of administrative operating rules called By-Laws. The By-Laws are attached hereto as Exhibit "A".

3.02 Membership. Each Owner within the Property, upon acquisition of title to a Lot, shall automatically become a Member of the Association. Membership is appurtenant to and shall not be separated from ownership of a Lot. Such membership shall terminate upon the sale or other disposition by such Member of his Lot ownership, at which time the new Owner automatically shall become a Member of the Association. When more than one Person is an Owner of a Lot, all such Persons shall be Members.

3.03 Voting Rights. Each Owner shall be entitled to the number of votes in the affairs of the Association that equals the number of Lots owned by that Owner. If such Lots are owned by more than one Person, each such Person shall have a fraction of a vote equal to his, her or its undivided interest in that Lot.

3.04 Administration of Property. The administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the By-Laws and the Rules and Regulations. Each Owner, tenant, or occupant of a Lot shall comply with the provisions of this Declaration, the Articles, the By-Laws and the Rules and Regulations, decisions and resolutions of the Association or its representative.

3.05 Board of Trustees. The Board of Trustees, elected as provided by the By-Laws, shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, the Articles, the By-Laws and by this Declaration upon the Association, except as otherwise specifically provided; provided however, that in the event any such power, duty, or right shall be deemed exercisable or dischargeable by, or vested in a member of the Board of Trustees, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration, the Articles and the By-Laws.

3.06 Declarant's Rights. During the Control Period the powers, rights, duties and functions of the Association shall be exercised by a Board of Trustees selected by Declarant, with at least two of the persons so selected being Owners other than Declarant, its agents, or representatives. Declarant reserves the right to relinquish such right to control at any time.

3.07 Delegation to Managing Agent. The Association may delegate all or any portion of its authority to discharge its responsibility to a Managing Agent; subject to the limitations that:

- (a) Any such delegation be by a written contract with a term of no longer than one (1) year in duration;
- (b) That any such contract be terminable by either party without cause upon sixty (60) days written notice without any termination charges or other penalties;
- (c) That any such contract entered into by the Declarant prior to the time it releases or relinquishes control of the Association shall terminate when the Declarant releases or relinquishes such control unless such contract is renewed by a vote of the Unit Owners at the meeting called for purposes of turning over control of the Association.

3.08 First Meeting. The first meeting of the Association shall occur within thirty (30) days after the expiration of the Control Period.

ARTICLE IV CONVEYANCE OF COMMON AREAS

4.01 General. Declarant agrees that prior to the time that any Lot is conveyed to any Owner, it will convey the Common Area to the Association, free and clear of all liens and encumbrances except general real estate taxes not then due and payable, easements granted for public utilities or for other public purposes consistent with the intended use of the Property under this Declaration. All improvements to the Common Area shall be fully installed, completed and operational at the time of such conveyance.

ARTICLE V
EASEMENT

5.01 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) The right of the Association to suspend the voting rights and right to use the Common Area, other than for purposes of ingress, egress or parking, for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its Rules and Regulations after hearing by the Board of Trustees.
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two thirds (2/3) of the Members, agreeing to such dedication or transfer has been Recorded.
- (c) The right of the Association to set and establish reasonable fines and penalties for the infraction or violation of the Rules and Regulations.

5.02 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment in and to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property.

5.03 Easements for Repair, Maintenance and Restoration. The Association shall have a right of access and an easement to, over and through each Lot during reasonable hours and upon giving reasonable notice for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair, restoration or servicing of any items, Lots, things or areas of or on the Property, including the removal, correction or abatement of any violation or breach of any attempted violation or breach of the covenants and restrictions herein.

5.04 Easements for Construction. Declarant hereby reserves for itself, a right and easement to enter upon the Common Area to do all things necessary to complete construction and to complete the development of the Property, including the Additional Property which may be subjected hereto.

5.05 Easement for Telephone, Utilities and Cable Television. The Association may hereafter grant easements on behalf of Owners to entities for telephone and utility purposes for the benefit of the Property, and also the installation and maintenance of cable television lines for the benefit of the Property and/or individual Lots.

5.06 Tie-In Easements. Declarant reserves the right and easement over, on and under the Common Area and to any Lots, to use, tie into and extend all existing utility lines for purposes of serving the Additional Property which may be submitted to this Declaration as hereinafter provided.

5.07 Service Easements. An easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all other similar persons, and to the local governmental authorities, but not the public in general, to enter upon the Common Area in the performance of their duties.

5.08 Landscaping Easement(s). The Owner of any Lot on which a Landscaping Easement is depicted on a Plat hereby grants, conveys and assigns to the Association an easement and right-of-way over his Lot for purposes of access to the Landscaping Easement located or situated on such Lot for purposes of performing any required or necessary maintenance to the landscaping placed on such Landscaping Easement by the Declarant and/or the Association.

5.09 Walkway Easement. The Owner of any Lot on which a Walkway Easement is depicted on a Plat hereby grants, conveys and assigns to the other Owners, their family members, guests and invitees an easement and right-of-way over such Walkway Easement for ingress and egress purposes.

5.10 Additional Property Easement. Declarant hereby reserves for itself, a right to grant and/or reserve an easement for ingress and egress over and through the Common Area for itself and for the benefit of any subsequent owner or owners of part or all of the Additional Property.

5.11 Consent to Easements. Each Owner hereby grants, and the transfer of title to an Owner shall be deemed to grant, the Declarant and/or the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Owner and his mortgagee or mortgagees, such instruments as may be necessary to effectuate any easements granted or reserved by the Declarant and/or the Association in this Article.

5.12 Easements Shall Run With Land. All easements and rights described 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 Declarant, and any Owner, purchaser, mortgagee and any other person having an interest in the Property or any part or portion thereof. Failure to refer specifically to any or all of the easements described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said easement but same shall be deemed conveyed or encumbered along with the Lot.

ARTICLE VI **ASSESSMENTS**

6.01 Creation of Lien and Personal Obligation of Assessments. For each Lot owned within the Property, Declarant hereby covenants, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association: (a) annual assessments; and (b) special individual Lot assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest and costs shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made as provided for in Article VII. Each such assessment, together with interest and costs, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due.

6.02 Purpose of Annual Assessment. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and for the maintenance and improvement of the Common Area, and the enforcement of these restrictions. The assessments shall include, without limitation, the following expenses:

- (a) Maintenance and repair of the Common Area.
- (b) Maintenance and repair of the Lots and Dwelling Units which have been assigned to the Association hereunder.
- (c) Taxes and assessments on the Common Area, excluding any easements.
- (d) Water, sewer, electricity, telephone or any other utility service as may be provided to the Common Area.
- (e) Insurance premiums for insurance obtained by the Association.
- (f) Costs for the operation, management and administration of the Association, including without limitation, fees for property management, fees for legal and accounting services, fidelity bonds, cost of mailing and postage.
- (g) A general operating reserve to assure the availability of funds for the purposes hereunder.

6.03 Owner's Share of Annual Assessments. Each Owner's share of the annual assessment shall be equal to a fraction; the numerator of which is the total number of Dwelling Units owned by such Owner, and the denominator of which is the total number of all the Dwelling Units constructed on the Property. As Additional Property is subjected to this Declaration the denominator shall be increased by the number of Dwelling Units constructed on such Additional Property at the time of filing an Amendment hereto adding such Additional Property.

6.04 Preparation of Estimated Budget. On or before December 1st of every year, the Association shall prepare an estimate of the total amounts necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reserve for contingencies and replacements. On or before December 15th each Owner shall be notified in writing as to the amount of such estimate, with reasonable itemization thereof. On or before January 1st of the ensuing year, and the first of each and every month of said year, each Owner shall be obligated to pay to the Association or as it may direct, one-twelfth (1/12) of his share of the assessment made pursuant to this paragraph. On or before the date of the annual meeting in each calendar year, the Association shall supply to all Owners an itemized accounting of the maintenance expenses actually incurred for the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's share of the assessments to the next monthly installment due from the Owners during the current year's estimate, until exhausted, and any net

shortage shall be added according to each Owner's share of the assessments to the installments due in the succeeding six months after rendering of the accounting.

6.05 Fiscal Year Option. In lieu of the calendar year format, the Board of Trustees may elect to adopt a fiscal year. In such event, the requirement for the preparation of the estimated budget shall be the first day of the month immediately preceding the beginning of such fiscal year and notices of such estimate shall be forwarded on or before the fifteenth day of such month. In such event, assessments shall commence on the first day of the fiscal year.

6.06 Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacement. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any Owner's assessment, the same shall be assessed to the Owners according to each Owner's share of the assessments. The Association 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 first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

6.07 Budget for First Year. When the first Board of Trustees hereunder takes office, the Association shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which such election occurs. Assessments shall be levied against the Owners during said period as provided herein.

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

6.09 Books and Records of the Association. The Association shall keep correct and complete books and records of account, specifying the receipts and expenditures relating to the Common Area and other common receipts and expenses, together with records showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Owners; minutes of the proceedings of the Owners and Board of Trustees. Such books and records shall be open for inspection by any Owner or any representative of an Owner duly authorized in writing, at reasonable times and upon request by an Owner. If by terms of a first mortgage an Owner has authorized such mortgagee to inspect such books and records, the presentation to the Secretary of the Association by a representative of such mortgagee of a copy of the mortgage containing such authorization shall constitute written authorization of such inspection. Upon ten (10) days notice to the Board of Trustees and upon payment of a reasonable fee, any

Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

6.10 Commencement of Assessments. Monthly assessments shall begin with respect to each Lot upon the conveyance of title to such Lot by Declarant to an Owner other than Declarant. If any Additional Property is included in the Property, pursuant to the annexation provisions of this Declaration, then the assessments for the Lots herein shall commence upon the conveyance of title to such additional Lots by Declarant to an Owner other than Declarant.

6.11 Declarant's Obligations to Pay Assessments. Notwithstanding any provisions hereof, Declarant shall have no obligation to pay monthly assessments for the Lots owned by it, except that Declarant will pay to the Association a monthly amount equal to the difference between the actual operating expenses of the Association and the aggregate of the monthly assessments paid by the Owners, other than Declarant. Declarant's obligation to pay said deficiency shall cease when Declarant relinquishes control of the Board of Trustees, at which time Declarant shall pay the monthly assessment for each Dwelling Unit owned by it which either has been issued an occupancy certificate, or is being offered for sale or rent.

6.12 Special Individual Lot Assessment. Notwithstanding anything to the contrary herein, if the Association shall incur any cost or expense for or on account of any item of maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission of any Owner, such cost or expense shall be borne by such Owner and not by the Association, and if paid by the Association shall be paid or reimbursed to the Association by such Owner as a special individual Lot assessment forthwith upon the Association's demand.

6.13 Non-Use of Facilities. No Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

ARTICLE VII

REMEDIES FOR NON-PAYMENT OF ASSESSMENT

7.01 Acceleration and Late Charges. If any monthly or other assessment is not paid within ten (10) days after the same has become due, the Board of Trustees, at its option and without demand or notice, may: (a) declare the assessment and if a monthly assessment, such monthly assessment plus all monthly assessments remaining on the then current budget, immediately due and payable; and (b) charge a late charge not to exceed \$20.00 and/or interest on any unpaid balance, at the rate of twelve percent (12%) per annum.

7.02 Lien of Association. The Association shall have a lien upon the estate or interest in any Lot of the Owner thereof for the payment of the portion of the assessments chargeable against such Lot which remain unpaid for ten (10) days after the same have become due and payable from the time a certificate therefor, subscribed by the President of the Association, is Recorded pursuant to authorization given by the Board of Trustees. Such certificate shall contain a description of the Lot, the name or names of the record Owner(s) thereof and the amount of such unpaid portion of the assessments. Such lien shall remain valid for a

period of five (5) years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the court in an action brought to discharge such lien as hereinafter provided.

7.03 Priority of Association's Lien. The lien provided for herein shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association. In any such foreclosure action, the Owner(s) of the Lot affected shall be required to pay a reasonable rental for such Lot during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

7.04 Dispute as to Common Expenses. Any Owner who believes that the portion of assessments chargeable to his Lot for which a certificate of lien has been filed by the Association has been improperly charged against him or his Lot, may bring an action in the Court of Common Pleas for Montgomery County, Ohio for the discharge of such lien.

7.05 Non-Liability of Mortgagee for Past Due Assessments. When the mortgagee of a first mortgage of record acquires title to the Lot as a result of a foreclosure of any lien, such mortgagee shall not be liable for the share of assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such mortgagee. Such unpaid share of assessments shall be deemed to be assessments collectible from all of the Lots, including that of such mortgagee.

7.06 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his Lot for his share of the assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee and his mortgagee shall be entitled to a statement from the Board of Trustees setting forth the amount of all unpaid and current assessments against the grantor due the Association, and such grantee shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

ARTICLE VIII

REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

8.01 Abatement and Enjoinment. The violation of any Rules and Regulations, or the breach of any covenant or provision contained in this Declaration or in the By-Laws shall give the Board of Trustees the right, in addition to the rights hereinafter set forth in this section: (a) to enter upon the Lot or Dwelling Unit upon which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition

that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, the By-Laws and the Rules and Regulations, and the Board of Trustees, or its agents, shall not be thereby deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

8.02 Involuntary Sale. If any Owner, either by his own conduct or by the conduct of any other occupant of his Dwelling Unit, shall violate any of the covenants or restrictions or provisions of this Declaration, the By-Laws or the Rules and Regulations, and such violation shall continue for thirty (30) days after notice in writing from the Board of Trustees, or shall occur repeatedly during any thirty (30) day period after written notice or request from the Board of Trustees to cure such violation, then the Board of Trustees shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Dwelling Unit and thereupon an action in equity may be filed by the Board of Trustees against the defaulting Owner for: (a) a decree of mandatory injunction against the Owner or occupant or, in the alternative; (b) subject to the prior consent in writing of any mortgagee having a security interest in the Lot ownership of the defaulting Owner, a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Dwelling Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Owner in the property shall be sold, subject to the lien of any existing mortgage, at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, masters or commissioners fees and all other expenses of the proceedings, and all such items shall be taxes against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, other than that of the first mortgage, may be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Lot ownership and to immediate possession of the Dwelling Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

ARTICLE IX

ARCHITECTURAL CONTROL AND RESTRICTIONS

9.01 General. No building, fence, wall, patio, deck or other structure or improvement shall be commenced, erected or maintained on the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Trustees. In the event said Board of Trustees, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been

submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

9.02 Design Review Committee. During the Development Period the rights, powers and functions of the Board of Trustees or its delegated committee as set forth in Section 9.01 shall be exercised by Declarant or its representative. Declarant reserves the right to relinquish such right to the Board of Trustees at any time during the Development Period, at its sole discretion.

ARTICLE X

USE RESTRICTIONS

10.01 Use. The Property shall be used for residential purposes and for no other purpose except for purposes reserved to Declarant herein and except as herein specifically provided otherwise. It shall be expressly permissible for Declarant to maintain, during the Development Period, upon those portions of the Property as it deems desirable, those facilities it deems reasonably required, convenient or incidental to the construction and sale of Lots or Dwelling Units, and improvements thereof including, without limiting the generality of the foregoing, a sales office, storage area, models and parking areas.

10.02 Rental. No Lot or any Dwelling Unit thereon shall be rented or leased unless: (a) the lease or rental agreement is in writing; (b) is for a term of at least one (1) year in duration; and (c) the lease or rental agreement specifically provides that the terms of the lease or rental agreement and of the tenancy thereby created shall be subject in all respects to the terms of this Declaration, the Articles and the By-Laws, and any failure to comply therewith shall be a default under the lease or rental agreement. The Owner of any Lot shall provide the Association with a copy of any lease or rental agreement entered into for the lease or rental of any Dwelling Unit prior to the commencement of such lease or rental term.

10.03 Exterior of Lots. Nothing shall be permitted to be hung, displayed or stored on the outside of windows or placed on the outside walls of a Dwelling Unit or on the exterior walls of patios, or otherwise outside of a Dwelling Unit or any part thereof, except in enclosed patios, and no sign, awning, canopy, shutter, radio or television antenna or any other device or ornament shall be affixed to or placed upon the exterior walls, roof or the exterior patio walls, or otherwise on the Lot areas visible to the public, other than originally provided by Declarant or as authorized by the Board of Trustees or its committee, as hereinbefore provided.

10.04 Common Area. No part of the Common Area shall be used by anyone other than the Association for the storage or maintenance of any signs, goods, machinery, material or other item or device, nor shall clothes, sheets, blankets, laundry or other articles of any kind be hung out or exposed on any part thereof visible from the outside, nor shall there be playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Area, except in accordance with the Rules and Regulations.

10.05 Vehicles. No boats, trailers, trucks or other like vehicles shall be permitted to be parked on the Common Area or visible part of any Lot, nor shall mechanical work on vehicles be permitted thereon.

10.06 Nuisances. No noxious or offensive activity shall be carried on or upon any Lot or Dwelling Unit or the Common Area not shall anything be done thereon which may in any way or for any purpose endanger the health or unreasonably disturb the occupant of a Dwelling Unit or interfere with the full use of a Dwelling Unit.

10.07 Structural Integrity. Nothing shall be done on any Lot or in, on or to the Common Area which will impair or change the structural integrity of any improvement located thereon.

10.08 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Lot or on the Common Area at any time as a residence either temporarily or permanently.

10.09 Signs. No sign of any kind shall be displayed to the public view on the Property, except signs used by the Declarant to advertise lots for sale during the Development Period, and professional signs as limited by the Rules and Regulations.

10.10 Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area. Notwithstanding the foregoing, household domestic pets, not in excess of the total of two (2), not bred or maintained for commercial purposes may be maintained on a Lot, provided that: (a) no such animal shall be permitted in any portion of the Common Area, except by a leash maintained by a responsible person; (b) the permitting of attended leashed animals on the Common Area shall be subject to the Rules and Regulations; and (c) the right of a Member to maintain an animal on a Lot shall be subject to termination if the Board of Trustees, in its full and complete discretion, determines that the maintenance of the animal constitutes a nuisance.

10.11 Garbage and Refuse Disposal. No Lot or the Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

10.12 Water Supply. No individual water supply system shall be permitted on any Lot.

10.13 Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

10.14 Rules and Regulations. The Board of Trustees may, by majority vote, adopt reasonable Rules and Regulations and amend the same which the Board of Trustees may deem advisable for the maintenance, conservation, protection and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the Property. Such Rules and Regulations may include reasonable fines and penalties for violations. Written notice of the Rules and Regulations will be forwarded to all Owners and copies thereof shall be available to all Owners.

10.15 Conflict. In the event of any conflict between the Rules and Regulations and the provisions of the Declaration, the provisions of the Declaration shall govern.

10.16 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 of Trustees specifying the dispute. The Board of Trustees shall set a time, date and place for hearing thereon within twenty (20) days thereafter, and give written notice to the party thereof no less than three (3) days in advance. The Board of Trustees 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 action of law may be instituted by the party to such dispute unless arbitration pursuant hereto has first been had.

ARTICLE XI
MAINTENANCE

11.01 General. Subject to the exceptions and provisions hereof, the general allocation of maintenance, repair and replacement between the Association and the Owners are as follows:

- (a) The Association shall maintain, repair and make all necessary replacements to the Common Area and any improvements thereon.
- (b) An Owner shall maintain, repair and make all necessary replacements to the Dwelling Unit.

11.02 Association. The Association shall also be responsible for the following:

- (a) Exterior maintenance upon each Lot, except for any items which are the responsibility of the Owner hereunder.
- (b) Exterior painting of the Dwelling Unit.
- (c) Snow removal on the sidewalks.
- (d) Maintenance of any landscaping placed on a Landscaping Easement by the Declarant or the Association.

11.03 Owner. The Owner of each Lot shall furnish and be responsible for the following:

- (a) All maintenance and replacement of any shrubs, trees and other landscaping or other improvements installed by such Owner of his predecessors on his Lot.

11.04 Exterior Surfaces. Any exterior repair or replacements to be performed by the Owner hereunder shall be subject to the prior approval of the Board of Trustees, or its delegated committee. The Board of Trustees may adopt guidelines or other criteria setting forth standards for such maintenance, repair or replacement. Pursuant to such standards, the Board of Trustees or its committee may require that only certain types and/or manufacturers be used for replacements to the exterior surfaces in order to assure similarity and conformity.

11.05 Failure to Maintain. In the event an Owner shall fail to maintain his Lot and improvements situated thereon, to such an extent that in the opinion of the Board of Trustees the conditions require maintenance, repair or service for purposes of protecting the public safety or residents in or visitors to the Property, or in order to prevent or avoid damage to or destruction of any part, portion or aspect of the value thereof, the Association shall have the right, upon approval of the majority of the Board of Trustees, to enter upon that Lot and maintain, repair or service the same. The cost of such maintenance, repair or service shall be added to and become a special individual Lot assessment, chargeable to the Lots they maintained, repaired or serviced.

ARTICLE XII
LIABILITY AND OTHER INSURANCE

12.01 Liability Insurance. The Association, as a common expense, shall insure itself, the Board of Trustees, all Owners and Members of their respective families and other persons residing with them in the Property, their tenants, and all persons lawfully in the possession or control of any Dwelling Unit, 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 destruction of property occurring upon, in or about, or arising from the Common Area, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident.

Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Lots or Dwelling Units located thereon.

12.02 Other Insurance. The Association as a common expense shall also obtain such additional insurance as the Board of Trustees considers necessary, including without limitation, fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association.

The amount of such fidelity bond shall be equal to, at a minimum, the maximum funds that will be in the custody of the Association at any time such bond is in effect. In addition, such fidelity bond coverage must equal the sum of three (3) months assessments, together with the reserve funds, if any.

12.03 Notice of Cancellation or Substantial Changes. Any insurance coverage obtained by the Association shall contain a provision requiring the insurer to notify the Association and any mortgagee named in the mortgage clause, if applicable, in writing of the cancellation or a substantial change of coverage at least ten (10) days prior to such cancellation or substantial change.

12.04 Annual Review. The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually.

ARTICLE XIII
CONDEMNATION

13.01 General. In the event, that by reason of the exercise by appropriate public authority of the right of eminent domain, any portion of the Common Area is appropriated, the net proceeds received therefrom shall be prorated and distributed among the Owners in the same proportions as their share of the monthly assessments are charged, subject to the right of any holder of the first mortgage to the portion of the proceeds applicable to the Lot mortgaged to such mortgagee.

ARTICLE XIV
AMENDMENT

14.01 General. Unless otherwise provided, this Declaration and the By-Laws may be amended only with the approval of Members exercising not less than seventy-five percent (75%) of the voting power of the entire membership. Any such Amendment shall be in writing and effective on the date when it is Recorded.

14.02 Declarant's Rights. Notwithstanding the foregoing, Declarant hereby reserves the right and power, and each Member by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with title to a Lot and is irrevocable during the Control Period, to amend this Declaration and to execute any and all documents deemed necessary or desirable by Declarant to conform to its present or future development plans, to correct scrivener, typographical and drafting errors, and to conform to requirements of any lending institution, the Federal Housing Administration, or the Veterans Administration.

14.03 Federal Housing Administration and/or Veterans Administration. As long as the Declarant maintains and asserts control of the Board of Trustees, any Amendment annexing Additional Property, dedicating Common Areas, or amending this Declaration, shall require the approval of either the Federal Housing Administration or the Veterans Administration.

14.04 Right of First Refusal. Any Amendment attempting to or giving the Association or any Owners a right of first refusal on the sale, transfer or other disposition of a Lot shall contain a provision exempting such right of first refusal as to any Lot, the title of which is obtained by a first mortgage pursuant to remedies provided in the mortgage, or foreclosure of the mortgage, or a deed to such mortgage in lieu of foreclosure. Notwithstanding any provision hereof, this provision and the requirement herein cannot be amended without unanimous written consent of all Owners and the holders of any first mortgages.

14.05 Amendment Affecting Declarant's Rights. Any Amendment affecting or attempting to affect the Declarant's rights in the Declaration must be consented to by the Declarant in writing. These rights include, without limitation, the right to control the Association and the right to add Additional Property.

14.06 Mortgage or Mortgagee. Any Amendment which adversely affects the value, priority, or the security of any mortgagee of record shall require the written consent of such mortgagee of record. Any Amendment affecting the underwriting requirements of any mortgagee shall require the written consent of such mortgagee and also F.H.L.M.C. or F.N.M.A., if required by such mortgagee. Any Amendment of language specifically referring to mortgagees shall require the written consent of all mortgagees of record.

ARTICLE XV
ANNEXATION

15.01 Contemplated Annexation by Declarant. Declarant is the owner in fee simple of the Additional Property and contemplates constructing thereon additional Dwelling Units and reserving certain portions of it for green space, open areas, parking and other recreational lands and facilities. Declarant further contemplates submitting the Additional Property, with any improvements thereon, to the provisions of this Declaration, so that the same will become in all respects part of the Property.

15.02 Reservation of Right to Annex Additional Property. Declarant hereby reserves the right at any time during the Development Period, to take the action so contemplated in submitting the Additional Property, and to construct thereon a maximum number of additional Dwelling Units equal to that permitted under applicable zoning ordinances, together with Common Areas, so that the same will become, in all respects, part of the Property.

15.03 Reservation of Right to Amend Declaration. Declarant hereby reserves the right to amend this Declaration in the manner hereinafter provided in such respects as Declarant may deem advisable in order to effectuate the generality of the foregoing, the right to amend this Declaration so as to include the Additional Property and the improvements constructed thereon as part of the Property.

15.04 Consent and Approval for Annexation Amendments. Declarant, on its own behalf as the Owner of all Lots in the Property, and on behalf of all subsequent Owners, hereby consents and approves and each Owner and his mortgagee, by accepting a deed conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Article, and all such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

15.05 Power of Attorney Coupled with an Interest. Each Owner and his respective mortgagees, by the acceptance of a deed conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Declarant his attorney-in-fact, coupled with an interest for the purpose of adding the Additional Property to the Property, pursuant to the provisions of this Section. Such Owner authorizes such attorney to execute, acknowledge and record for and in his name an Amendment to this Declaration for the purpose of adding such Additional Property. Such mortgagee authorizes such attorney to execute, acknowledge and record for and in its name a consent to any such Amendment.

ARTICLE XVI

GENERAL

16.01 Covenants Running with Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created by this Declaration 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 Property, and their respective heirs, executors, administrators, successors and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which time it shall automatically extend for successive periods of ten (10) years, unless amended as hereinafter provided.

16.02 Enforcement. In addition to any other remedies provided in this Declaration, Declarant, the Association or any 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 now or hereafter imposed by or through the 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 a 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. The Association shall not deliberately refuse to enforce the provisions hereof or discontinue operations, or attempt to terminate its operation without giving thirty (30) days prior written notice to all of the holders of first mortgage liens on Lots.

16.03 Notice to Mortgagees. Notwithstanding any other provisions hereof, the Association shall notify the holder of the first mortgage lien on the Lot, in writing, of any default by the Owner of such Lot in performance of that Owner's obligations under this Declaration, the Articles or the By-Laws which is not cured within thirty (30) days.

16.04 Partition. There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner or any person acquiring any interest in the Property or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be constructed to prevent judicial partition of any Lot owned in co-tenancy.

16.05 Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall not in any way affect any other provisions hereof, all of which shall remain in full force and effect.

16.06 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 or individuals, male or female, shall in all cases be assumed as though in each case fully expressed herein.

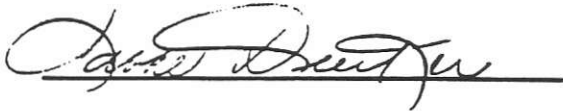
16.07 References. Unless otherwise specified, all references to a particular Article or Section shall refer to such Article or Section of the Declaration.

16.08 Taxes, Assessments and Charges. The first mortgagee of any Lot, either singly or jointly with other holders of first mortgages on any Lot, at its or their option, may pay taxes, real estate assessments or other charges which are in default and which may or have become a charge against the Common Area. The funds so advanced shall be deemed to have been loan to the Association, shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate on any note secured by the mortgagee's mortgage against a portion of the Property, and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by a special assessment against all Owners and shall not require a vote of the Members, anything to the contrary in the Declaration notwithstanding.

16.09 Compliance with Requirements. The Declaration and the plan of ownership commonly known as Planned Unit Development ("P.U.D.") created hereby, has been created and is existing in full compliance with all applicable requirements of local, state and all other applicable ordinances and laws.

IN WITNESS WHEREOF, Brandonhall Development, Inc., an Ohio corporation, by its duly authorized officers, has caused this instrument to be duly executed this 21st day of October, 1991.

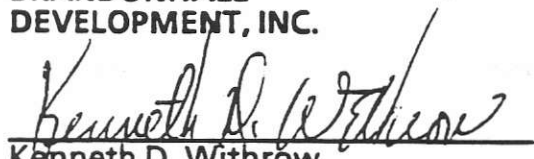
Signed and acknowledged
in the presence of:



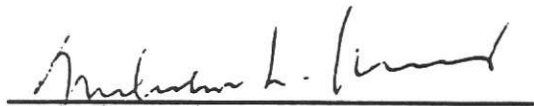


BRANDONHALL
DEVELOPMENT, INC.

By:


Kenneth D. Withrow
President

By:


Malcolm L. Sherwat
Secretary

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 21st day of October, 1991 by Kenneth D. Withrow, President and Malcolm L. Sherwat, Secretary of Brandonhall Development, Inc., an Ohio corporation, on behalf of the corporation.



Notary Public

R. WEISS, Notary Public
In and for the State of Ohio
My Commission Expires August 31, 1994

THIS INSTRUMENT PREPARED BY:

HANS H. SOLTAU
Attorney at Law
6776 Loop Road
Centerville, Ohio 4545