

H7
SP-I

SP-1-00-003543 0047
Montgomery County
Joy Clark, Recorder
\$196.00 01/27/00 13:14:04

gk

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS

FOR

CRAINS RUN OWNERS ASSOCIATION

BY

OBERER DEVELOPMENT CO.,
an Ohio corporation
4324 Webster Street
Dayton, Ohio 45414

DEVELOPER

NO TRANSFER NEEDED
00 JAN 27 PM 12: 04
A.J. WAGNER
AUDITOR

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS	1
SECTION 2. MEMBERSHIP, VOTING RIGHTS, TRUSTEES, ETC.	4
SECTION 3. ASSESSMENTS	4
3.1 Covenant of Payment; Creation of Lien	4
3.2 Annual Assessment and Area Assessments	5
3.3 Purpose of Annual Assessment and Area Assessments	5
3.4 Operating Shortfalls	6
3.5 Amount of Annual Assessment and Area Assessments	6
3.6 Initial Assessment	7
3.7 Individual Assessment	7
3.8 Payment	7
3.9 Personal Obligation	7
3.10 Perfection and Priority of Liens	8
3.11 Enforcement of Lien	8
3.12 Purchaser at Foreclosure Sale	8
3.13 Reserves	8
SECTION 4. COVENANTS AND RESTRICTIONS ON USE AND OCCUPANCY	9
4.1 Purposes/Use Restrictions	9
4.2 Failure to Comply	13
SECTION 5. COMMON PROPERTY	13
5.1 Rights of Enjoyment in Common Property	13
5.2 Subordination to Mortgage or Other Lien	14
5.3 Additional Common Property Constructed by the Association	14
5.4 Maintenance and Management of Common Property	14
5.5 Payment by First Mortgagees of Obligations and Reimbursement for Same	15
5.6 Use of Common Property by Developer	15
SECTION 6. MAINTENANCE	15
6.1 Adoption of Standards	15
6.2 Association Responsibilities	15
6.3 Owner Responsibilities	16

6.4	Repairs Due to Negligence, Etc.	17
6.5	Periodic Inspection.....	17
6.6	Right of Entry	17
6.7	Optional Additional Services	17
SECTION 7.	EASEMENTS	17
7.1	Platted Easements	17
7.2	Drainage Easements	17
7.3	Encroachments.....	17
7.4	Maintenance Easements.....	18
7.5	Reservation of Construction, Sewer, and Utility Easements	18
7.6	Easements for Certain Utilities	18
7.7	Easements Reserved by Developer.....	18
7.8	Easements to Run With Land	19
SECTION 8.	REVIEW OF ALTERATION PLANS	19
8.1	Design Standards	19
8.2	Design Review Committee	20
8.3	Submission of Plans and Specifications	20
8.4	Approval of Plans and Specifications	21
8.5	Disapproval of Plans and Specifications	21
8.6	Failure to Act	21
8.7	Violations.....	21
8.8	Right of Entry	21
8.9	Fees.....	22
8.10	Disapproval of Plans.....	22
SECTION 9.	DAMAGE OR DESTRUCTION AND INSURANCE	22
9.1	Fire and Extended Coverage Insurance	22
9.2	Liability Insurance	22
9.3	Other Association Insurance	22
9.4	Insurance Premiums	22
9.5	Damage or Destruction and Restoration of Buildings	23
SECTION 10.	CONDEMNATION	23
SECTION 11.	ENFORCEMENT.....	24
11.1	Curing Defaults; Lien	24
11.2	Remedies	24
11.3	No Waiver.....	24
11.4	Rules and Regulations	24

SECTION 12.	DURATION, AMENDMENT AND TERMINATION	25
12.1	Duration	25
12.2	Amendment or Termination	25
SECTION 13.	COVENANT FOR STAGED DEVELOPMENT	26
13.1	Right of Staged Development	26
13.2	Supplemental Declaration for Staged Development	26
SECTION 14.	MISCELLANEOUS	26
14.1	No Reverter	26
14.2	Notices	26
14.3	Invalidity	26
14.4	Headings	26
14.5	Gender	26
14.6	Availability of Documents	26

DECLARATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR CRAINS RUN OWNERS ASSOCIATION ("Declaration") is made this 5th day of December, 1999, by OBERER DEVELOPMENT CO., an Ohio corporation ("Developer"), whose address is 4324 Webster Street, Dayton, Ohio 45414, under the following circumstances:

A. Developer is the owner of certain real property known as Crains Run, Section One, located in the City of Miamisburg, Montgomery County, Ohio, more particularly described on Exhibit A attached to this Declaration (the "Property").

B. Developer desires to declare that the Property shall be held, sold and conveyed subject to the provisions of this Declaration.

C. Developer intends to form an Ohio non-profit corporation to be known as the Crains Run Owners Association (the "Association"), which shall be responsible for the administration and enforcement of the provisions of this Declaration.

D. Developer owns or may acquire other real property in the vicinity of the Property that may be annexed to the Property and subjected to this Declaration. This other real property is more particularly described below as the "Additional Property."

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

SECTION 1. DEFINITIONS

In addition to any definitions contained elsewhere in this Declaration, the following terms used in this Declaration shall have the meanings set forth in this Section 1.

1.1 Additional Property. "Additional Property" means the real property described on Exhibit A-1 attached to this Declaration.

1.2 Articles of Incorporation. "Articles of Incorporation" means the articles of incorporation of the Association filed with the Ohio Secretary of State, a copy of which is attached as Exhibit C to this Declaration.

1.3 "Area Assessments." "Area Assessments" means Assessments charged only to a Designated Area of the Property.

1.4 Assessments. "Assessments" means the charges established by Section 3 of this Declaration.

1.5 Association. "Association" means Crains Run Owners Association, an Ohio non-profit corporation, which will own, operate and maintain the Common Property, and any successor organization that owns, operates and/or maintains the Common Property. Except as the context otherwise requires, "Association" shall mean the Board acting on behalf of the Association.

1.6 Board. "Board" means the Board of Trustees of the Association.

1.7 Code of Regulations. "Code of Regulations" means the Code of Regulations adopted by the Association, a copy of which is attached as Exhibit B to this Declaration.

1.8 Common Expenses. "Common Expenses" means those costs and expenses incurred by the Association as described and defined in Section 3.3 of this Declaration.

1.9 Common Property. "Common Property" means all real and personal property owned, under easement, leased or managed by the Association for the common use and enjoyment of the Owners or the Owners of a Designated Area of the Property. This real and personal property includes, but is not limited to, any of the following types of areas, facilities and amenities now or in the future located on or serving the Property:

(a) areas designated as "Open Space," "Common Area," or "Reserve Area" on the recorded plat(s) of the Property, or as easement areas in favor of the Association or the Property generally, together with all improvements and amenities associated with each such area, including, for example, landscaping, woods/natural areas, irrigation systems, hiking/biking trails, identification and directional signs, pavilions, gazebos and other monuments, soccer fields, swimming pools, sports courts, benches, and all utilities (electricity, water, sewer, etc.) necessary for the maintenance and operation of these areas, facilities, and amenities;

(b) private streets within the Property or any Designated Area of the Property;

(c) entrance walls, streetscape (landscaping and fencing), lighting, irrigation and associated utilities for the entrances to the Property and/or at other locations within the Property where the development, its neighborhoods or amenities are identified, within easement areas or reserve areas established for the benefit of the Association;

(d) stormwater detention areas or retention areas located on the Property (in areas designated as Open Space, Common Area, Reserve Area or as private drainage easements) or located off-site but serving the Property through recorded easements, including the ponds, pipes, headwalls, ditches, culverts, landscaping and other facilities located in those areas, to the extent not provided and maintained by public authorities;

(e) drainage lines and facilities located within areas designated as private drainage easements on the recorded plat(s) of the Property, including all storm drains,

inlets, pipes, headwalls, culverts, outlets and associated improvements and landscaping (subject to the obligation of each Owner to maintain the landscaping on his or her own Lot);

(f) trees, plantings, landscaping, lighting and irrigation systems and other improvements within boulevard/island areas of public rights-of-way, to the extent not provided or maintained by a public authority, but only if specifically identified on the plat(s) of the Property or by the Association as Common Property; otherwise the Owners of individual Lots will be responsible for maintaining the landscaping within the public rights-of-way adjoining the Lots to the extent not provided by a public authority;

(g) hiking/biking trails within easement areas designated as such on the recorded plat(s) of the Property; and/or

(h) fencing, landscaping, mounding and other facilities established on or adjacent to the perimeter of the Property pursuant to recorded easements for the benefit of the Association; however, unless otherwise indicated on the recorded easement or otherwise assumed by the Association by a duly authorized written agreement, the responsibility for maintaining landscaping, fencing and mounding located on a Lot shall be borne by the Owner of the Lot.

1.10 Default. "Default" means any violation or breach of, or any failure to comply with, this Declaration or the Code of Regulations, the Rules and Regulations or other standards or regulations adopted pursuant to this Declaration.

1.11 Designated Area. "Designated Area" means a specific group of Lots established from time to time by the Board of Managers pursuant to Section 3.2.

1.12 Developer. "Developer" means the Developer named on the first page of this Declaration, its successors and assigns. However, the rights and obligations of Developer under this Declaration shall inure to the benefit of and be binding against only those to whom such rights and obligations are expressly assigned and assumed.

1.13 Development Period. "Development Period" means the period commencing on the date this Declaration is recorded and terminating on the date which is the earlier of (a) the date 10 years after the date of recordation of the Declaration or (b) the date when Developer has sold and conveyed at least 75% of the total number of Lots that may be created within both the Property and the Additional Property.

1.14 Lot. "Lot" means any sub-divided parcel of the Property upon which a single-family residence has been or may be constructed. Unless the context otherwise requires, the term "Lot" shall be deemed to include both the parcel of land and the residence and other improvements on that land.

1.15 Occupant. "Occupant" means any Owner, tenant, family member or other person lawfully occupying any Lot.

1.16 Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, but shall not include the Association. This term shall include Developer with respect to Lots owned by Developer.

1.17 Property. "Property" means that real property located in Miami Township, City of Miamisburg, Montgomery County, Ohio, more particularly described on Exhibit A to this Declaration. When portions of the Additional Property are subjected to this Declaration pursuant to Section 12, those portions shall then be deemed part of the Property.

1.18 Structure. "Structure" means: any improvement on a Lot or on the Common Property forming a construction for occupancy or use including, but not limited to, any building, garage, porch, shed, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, fence, tennis court, wall, signboard or any other temporary or permanent improvement; and any excavation, fill, ditch, dam or other thing or device that changes the grade of any land by more than six inches or alters the natural flow of waters from, upon or across any Lot or the Common Property.

1.19 Trustee. "Trustee" means any person elected or appointed to the Board of Trustees pursuant to the Code of Regulations.

SECTION 2. MEMBERSHIP, VOTING RIGHTS, TRUSTEES, ETC.

The Association shall be governed by its Trustees, who shall be appointed or elected by the members of the Association in accordance with the voting rights and the other rights and proceedings set forth in the Code of Regulations. All provisions of the Code of Regulations and the Articles of Incorporation of the Association are incorporated into this Declaration by reference and made a part hereof.

SECTION 3. ASSESSMENTS

3.1 Covenant of Payment; Creation of Lien. Each Owner of a Lot, by acceptance of a deed or other instrument of conveyance for that Lot, agrees to pay to the Association the annual assessments, Area Assessments, special assessments and individual assessments (collectively, the "Assessments") provided in this Section 3. The Assessments (and late charges and costs of collection, as provided below) shall be a charge and lien on each Lot and shall also be the personal obligation of the Owner of each Lot, to the extent and for the period provided in this Section 3.

3.2 Annual Assessment and Area Assessments. The Association shall be entitled to collect from all Owners an annual assessment for Common Expenses and other purposes described in Section 3.3. In addition, the Association may from time to time determine that a group of Lots has common characteristics or is especially benefited or primarily served by certain elements of Common Property such that, in the opinion of the Board, the Common Expenses pertaining to those elements of Common Property should be charged only to the Owners of that group of Lots. If the Board makes this determination, it shall declare that group of Lots a "Designated Area" under this Declaration, and shall identify which Common Expenses shall be charged only to the Owners of the Lots in that Designated Area. The Assessments attributable to those identified Common Expenses shall be considered Area Assessments for purposes of this Declaration. The annual assessment and Area Assessments will not commence until one or more Lots have been sold to a bona fide purchaser for value. Until the first Lot is sold to a bona fide purchaser for value, the charges that would normally be paid by the Association will be paid by the Developer. Subsequently, upon the initial sale of a Lot to a bona fide purchaser for value, (a) the annual assessment (and, to the extent then applicable, the Area Assessments) shall commence on all Lots, including those Lots owned by the Developer, and (b) the Developer may convey all Common Property to the Association.

3.3 Purpose of Annual Assessment and Area Assessments. The annual assessment and Area Assessments are established for the benefit and use of the Association and shall be used in covering all of the costs (the "Common Expenses") of the operation, maintenance, and repair of Common Property and the performance of all other duties and obligations to be performed by the Association under this Declaration. The Common Expenses may include, but are not limited to, the costs of employees' wages, materials, equipment, supplies, insurance premiums for the insurance of the Common Property, rental fees for any Common Property leased to the Association, the cost of establishing reserves as provided in Section 3.13, taxes and assessments on the Common Property, management fees, legal and accounting fees, and all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration or the Code of Regulations. The annual assessment and/or the Area Assessments may also be used in covering the cost of any capital addition or capital improvement that is authorized by the Board and, if applicable, approved by the members of the Association in accordance with Section 5.3.

In general, three types of Common Expenses are contemplated by this Declaration:

(a) Common Expenses pertaining to the operation, maintenance and repair of Common Property held for the benefit of all Owners, usable by all Owners, or similar in nature to other Common Expenses provided to other Owners. These Common Expenses will be charged to all Lots equally. Examples include costs associated with entrances, streetscape, drainage, recreational facilities, open space areas, storm water detention areas, and easement rights held by the Association.

(b) Common Expenses relating to Common Property primarily benefiting a Designated Area. Examples would include private streets within a Designated Area, special identification signage for a Designated Area, recreational facilities located such that

their use would be of primary benefit to the Owners in a Designated Area, and the like. Common Expenses of this nature will be charged as Area Assessments to the Owners of Lots in the Designated Area primarily benefited thereby.

(c) Common Expenses relating to the provision of special services to Owners in a Designated Area as part of a lifestyle package provided by the Association. These services may include, for example, lawn mowing, exterior maintenance (painting all wood surfaces, cleaning gutters and the like), maintenance of flower beds, fertilizing lawns and maintaining trees. These Common Expenses may relate not only to the maintenance of Common Property, but also to structures and landscaping on individual Lots in order to provide the lifestyle services in that Designated Area. The determination by the Association to provide lifestyle services shall be binding on the Owners of Lots in the Designated Area served thereby, and such Common Expenses will be charged as Area Assessments against the Owners of Lots in that Designated Area.

The Board's determination as to which Common Expenses are to be charged as part of the annual assessment against all Lots and which Common Expenses shall be charged as Area Assessments against a Designated Area of Lots shall be conclusive and binding on all Owners. The Board shall have the right, based on its review of the experience of the Association, to change the designation of specific Common Expenses as being Area Assessment items as opposed to annual assessment items, or vice versa, and to change the Lots designated as a Designated Area, by adding or deleting Lots, creating new Designated Areas, or discontinuing any or all Designated Areas. The Board shall also have the right to add, remove or modify special services provided to a Designated Area as described in clause (c). After the Development Period, the Board may change the scope of the special services it provides (by adding, removing, or materially changing the services) only with the consent of a majority of the Owners of Lots in the Designated Area served thereby. All other aspects of providing the special services shall be at the direction and control of the Board, including, but not limited to, the costs to be incurred and Common Expenses charged for providing the special services.

3.4 Operating Shortfalls. If in any year the Common Expenses exceed the income from the annual assessment and the Area Assessments, the amount of any operating deficit may, at the Board's sole option, be charged to the Owners by means of a special assessment, or charged against any reserve funds held by the Association. The special assessment may be in the form of a supplemental annual assessment, charged against all Owners, and/or as supplemental Area Assessments charged against the Owners in one or more Designated Areas, as the Board deems appropriate in its sole discretion. No consent of the members of the Association shall be required with respect to this special assessment.

3.5 Amount of Annual Assessment and Area Assessments. The amount of the annual assessment and Area Assessments shall be determined by the Board based on the estimated budget prepared in accordance with the Code of Regulations. The amount of the annual assessment to be charged to the Lots shall be determined by dividing the amount of Common Expenses (except for Common Expenses to be charged separately as Area Assessments) shown on the budget by the total number of Lots subjected to this Declaration at the time of preparation of the budget, all as

determined by the Board in its discretion. The amount of the Area Assessments to be charged to the Lots in each Designated Area shall be determined by dividing the amount of Common Expenses identified by the Board as being subject to the Area Assessment in question by the number of Designated Lots in that area at the time of preparation of the budget, all as determined by the Board in its discretion. The annual assessment shall also be charged to Owners of Lots subjected to the Declaration after the preparation of the estimated budget.

3.6 Initial Assessment. Upon the initial conveyance of a Lot by Developer to a bona fide purchaser for value, the Developer may require the grantee to pay an initial assessment in an amount up to \$250. The initial assessment shall be used as the initial working capital of the Association and not in lieu of any installments of the annual assessment or Area Assessments. The initial assessment is nonrefundable. No initial assessment shall be due on any Lot purchased from an Owner other than the Developer. The initial assessment may be waived at the Board's sole discretion.

3.7 Individual Assessment. If any portion of the Property that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of an Owner or an Occupant claiming under that Owner, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The cost so incurred by the Board shall be assessed as an individual assessment against all Lots owned by the Owner responsible for that cost. To the extent that special services are provided to the Owner of a Lot as provided in Section 6.7, the fee or charge established by the Association in providing these special services shall also be assessed as an individual assessment to the Owner of that Lot. This Declaration may also provide for other circumstances in which individual assessments may be charged.

3.8 Payment. The annual assessment and Area Assessments shall be payable in a single annual installment not more than 10 days after the due date established by the Board. The Board may, at its option, allow for payment of the annual assessment and Area Assessments in monthly or quarterly installments. Any other Assessments shall be due not more than 10 days after the due date established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures as it shall deem appropriate. If an Owner is in Default in payment of any installment of the annual assessment or Area Assessments, the Board may accelerate the remaining installments of the annual assessment and/or Area Assessments for the year during which the Default occurs by giving notice to the Owner. The Board may also establish penalties for late payments of Assessments. The penalties shall not exceed 10% of the overdue amounts.

3.9 Personal Obligation. Any Assessments becoming due and payable during the period that an Owner owns a Lot, together with any related penalties and costs of collection, shall constitute the personal obligation of that Owner and shall remain the personal obligation of that Owner until paid. This personal obligation shall not pass to an Owner's successor in title unless expressly assumed by the successor in title. If the obligation is so assumed by a successor in title, the successor and the former Owner shall be jointly and severally liable for payment of the amounts assumed.

3.10 Perfection and Priority of Liens. If an Assessment on any Lot is not paid within the period established under Section 3.8, the amount unpaid together with any late penalty, costs and reasonable attorney fees, shall constitute a lien on that Lot in favor of the Association. The Association may perfect the lien by recording a notice of lien with the Recorder of Montgomery County, Ohio in any legally recordable form, including an affidavit as provided in Section 5301.252 of the Ohio Revised Code. The transfer of ownership of a Lot shall not affect the ability of the Association to perfect its lien against that Lot with respect to amounts unpaid prior to the transfer of ownership. Nonpayment of any Assessment or an installment of an Assessment shall be deemed and is declared to be a condition or event that creates an interest in real estate. Each lien shall expire 5 years after the filing of a notice of lien, unless preserved by the filing of a new notice of lien or the commencement of foreclosure proceedings. The lien shall be prior to all other liens and encumbrances whatsoever, except real estate taxes and assessments, liens of record in favor of the United States of America, the State of Ohio, or other governmental instrumentalities to the extent made superior by applicable law, and all bona fide recorded first mortgages.

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

3.12 Purchaser at Foreclosure Sale. Any purchaser of a Lot at a foreclosure sale shall automatically become a member of the Association and shall be subject to all of the provisions of this Declaration. When the purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage, the acquirer of title shall not be solely liable for the share of the Assessments chargeable to the acquired Lot that became due prior to the acquisition of title to that Lot. Instead, any unpaid share of the Assessments that became due and payable prior to the date of acquisition shall be deemed to be part of the Assessments collectible from all of the Lots, including that of the acquirer.

3.13 Reserves. The Board shall establish and maintain reasonable reserves in amounts it determines appropriate from time to time for the replacement of major amenities comprising the Common Property. The Board shall also have the right, but not the obligation, to establish reserves for contingencies and working capital in such amounts as it may determine from time to time in its discretion. The Board shall have sole discretion as to the expenditure of any reserve funds.

SECTION 4. COVENANTS AND RESTRICTIONS ON USE AND OCCUPANCY

4.1 Purposes/Use Restrictions. In order to promote the health, safety and welfare of all Owners and Occupants and to preserve, beautify and maintain the Property and all Structures as a subdivision of high quality, and to preserve and promote environmental quality, the following covenants, restrictions and limitations as to use and occupancy of the Property are declared and established.

4.1.1 Permitted Uses. Except as otherwise provided in this Declaration, no Lot shall be used for any purposes except as a residence for a single family or a family-sized group. To the extent permitted by law, an Owner may use a portion of a residence for his or her office or studio (other than a music studio) as long as those activities do not interfere with the quiet enjoyment or comfort of any other Owner or Occupant, and as long as those activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of that Owner's residence. Except as permitted by the preceding sentence, no industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property.

4.1.2 Structures. No Structure shall be maintained on any Lot except in accordance with the provisions of Section 6 and no Structure shall be constructed, remodeled, altered, repaired, reconstructed, and/or restored on any Lot except in accordance with the provisions of Section 8.

4.1.3 Exterior Surfaces; Signs. Owners shall not cause or permit anything to be hung or displayed on the outside walls or windows of a residence or other Structure on a Lot, and no signs shall be affixed to or placed upon the exterior of a Structure, or upon any other area of a Structure that is visible from the street, or upon any other part of a Lot, without the prior consent of the Board, except for (a) one (1) real estate sign as permitted by the Miamisburg Sign Code, or (b) no more than a total of two (2) political signs endorsing either candidates for public office or issues on the ballot as permitted by the sign code of the jurisdiction in which the Property is located. Without limiting the foregoing, signs addressing social, political, business and personal issues, except those specifically permitted by clauses (a) and (b) of the preceding sentence, are prohibited. Further, Owners shall not permit any curtains, shades or other window coverings to be hung inside or outside any windows that will show any colors other than those approved by the Board. Notwithstanding anything to the contrary herein, Developer and its agents shall have the unrestricted right to place "For Sale" or "For Rent" signs on any unsold or unoccupied Lots, the Common Property, or other Structures on the Property, and to use unsold Lots or Structures as models, for promotional purposes and/or as offices in connection with the construction, sale, management, maintenance, repair, remodeling and/or rental of Lots.

4.1.4 Parking. No inoperative or unlicensed vehicles may be parked on the Property or on the streets in violation of the ordinances of the jurisdiction in which the Property is located. No part of the Property, except enclosed garages, if any, shall be used for parking any trailer, truck, boat or anything other than operative automobiles, motorcycles, bicycles, scooters

or other vehicles permitted under this Section. The word "trailer" shall include any trailer coach, house trailer, boat trailer, mobile home, automobile trailer, camp car, camper, recreational vehicle or any other similar vehicle. The word "truck" shall include every type of motor vehicle other than (a) passenger cars and (b) pickup trucks, sport utility vehicles and vans that are used as a primary source of transportation by an Owner or Occupant of a Lot and that are not identified and used as a commercial vehicle. Vehicles being used for the purpose of construction, delivery to or repair work upon any Lot shall be permitted to park on the Property during the time(s) that services are being provided. Short-term visitor parking (less than one week) of prohibited vehicles is permitted. The Association shall have the right to tow away vehicles parked in violation of these provisions after 24 hours notice to the affected Owner or Occupant or by placing a 24-hour notice of intent to tow on the vehicle itself. The costs of towing shall be borne by the Owner, Occupant or other person responsible for the vehicle.

4.1.5 Hazardous Uses and Waste. Nothing shall be done or kept on any Lot or on the Common Property that is unusually hazardous in relation to ordinary residential uses, or that increases the rate of insurance on the buildings or their contents, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Lot or on the Common Property that will result in the cancellation of insurance on the buildings or their contents, or will be in violation of any law. No waste shall be committed on the Common Property.

4.1.6 Animals and Pets. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, is prohibited on any Lot, except that this shall not prohibit the keeping of dogs, cats, caged birds or aquarium fish or other domestic pets provided they are not kept, bred, or maintained for commercial purposes, and provided they are kept according to the Rules and Regulations of the Association. Any pet causing or creating a nuisance or unreasonable disturbance or that is kept in violation of this Declaration or the Rules and Regulations promulgated by the Board shall be permanently removed from the Property upon seven days written notice from the Board. No pet shall be allowed to run unattended. No device or apparatus to which a line, wire or rope is connected for the restraint of animals or pets shall be constructed or permitted upon any part of a Lot or the Common Property.

4.1.7 Nuisances. No activity that may be considered noxious or offensive by reason of odor, sound, appearance or sight shall be conducted on any part of the Common Property, nor shall anything be done on any Lot either willfully or negligently, that may be or become an annoyance or nuisance to the other Owners or Occupants.

4.1.8 Trash. Trash, garbage or other waste shall not be kept upon any part of the Property except in sanitary containers and screened from visibility from the streets of the Property.

4.1.9 Satellite Dishes. Owners shall be permitted to place over-the-air reception devices (such devices and their supporting apparatus being referred to herein as "satellite dishes") on their Lots upon compliance with the following criteria: (i) any satellite dish must be one meter or less in diameter; (ii) the preferred location of any satellite dish shall be in the rear yard, not

visible from the street, unless the placement in the rear yard would impair the reception of an acceptable quality signal or cause an unreasonable delay or expense to the Owner; (iii) installation of equipment that is merely duplicative and not necessary for the reception of video programming is prohibited; (iv) where the satellite dish is located on or immediately adjacent to the residence, the satellite dish shall be painted to blend with the color of the residence, unless painting the satellite dish would result in voiding the manufacturer's warranty, would impair the reception of an acceptable quality signal, or would result in any unreasonable delay or expense; (v) where the satellite dish is not attached to or immediately adjacent to the residence, the Owner shall take reasonable measures to screen or camouflage the satellite dish from view by the installation of shrubbery or other screening measures that do not impose unreasonable delay or expense or preclude reception of an acceptable quality signal; and (vi) satellite dishes shall not be placed within easement areas or on any Common Property.

4.1.10 Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

4.1.11 Fences. Fences complying with the requirements of this Section 4.1.11 shall be permitted. No fence or any portion thereof may be installed on that part of any Lot that is closer to the street than the primary rear wall of the residence on the Lot (i.e., fencing is permitted only in the rear of the residence.) The "primary rear wall" shall be determined by lineal feet of wall area at the rear of the residence and garage walls shall not be included in the calculation of the primary rear wall if the garage extends further to the rear of the residence than does the living area of the residence. Fencing shall be of vinyl or wood material; no aluminum or chain link type fencing will be permitted. Fencing may be of picket or split rail type. Privacy fencing will be permitted only when it is necessary to screen a patio, hot tub or pool area, but shall not be permitted for the screening of the entire rear yard. If the fence is scalloped, a maximum height of 60 inches shall be permitted, with the top of the scallop not to exceed 60 inches in height from the initial grade of the Lot. If the fence is not scalloped, the maximum fence height shall not exceed 48 inches from the initial grade of the Lot. Privacy fences shall be constructed of cedar or pressure treated wood not to exceed 6 feet in height. All fence posts shall be positioned on the inside of the fence for all types of fencing. All corner Lots are classified as "double fronting" Lots. Double fronting Lots must adhere to the 30 foot minimum building setback requirements and no fence shall be permitted to extend beyond the plane of the house. Fencing on double fronting lots shall not exceed 48 inches in height from the initial grade of the Lot. Any fence enclosing a swimming pool and located entirely within 30 feet of such pool may be of a design and construction as is from time to time required by applicable governmental authorities for enclosures of swimming pools. No fence shall obstruct the flow of stormwater. Any fencing that is not in accordance with this Section 4.1.11 shall be prohibited unless the design, height, materials, location and other features of the fence are reviewed and approved by the Design Review Committee prior to construction of said fence.

4.1.12 Mailboxes, Numerals, and Letters. If a standard mailbox or numerals for house numbers are established by the Developer, all residences shall include the standard items. If standards are not established, the design, size, shape and color of mailboxes, the numerals and

letters on the mailboxes, and the numerals and letters identifying residences on the Lots shall be subject to approval as to design, style, location, color and size by the Board.

4.1.13 Basketball Goals. Basketball goals may be placed on a residence, or on a Lot, in any area behind the front plane of the house. Residences with a front entry garage may not affix a basketball goal to the garage or house; in such cases, however, a free-standing basketball goal may be installed perpendicular to the street. In all cases, any basketball goal shall be of high quality backboard material.

4.1.14 Swingsets and Play Equipment. Swingsets made of either galvanized metal or wooden construction may be placed in the rear yard of any Lot. Treehouses, jungle gyms, and other outdoor play equipment that is affixed to a Lot shall be considered a Structure requiring the Board's approval pursuant to Section 4.1.2.

4.1.15 Laundry on Parcels. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any Lot or on the Common Property.

4.1.16 Sheds. A maximum of one (1) storage shed shall be permitted on Lots that are in excess of .20 acres and shall be no more than 120 square feet total. The shed shall be constructed of wood material and painted to match the existing primary structure. The shed shall have roofing material consistent in material and color as that of the existing primary structure. Sheds not in accordance with this Section 4.1.16 shall be prohibited unless the size, design, materials, location and other features of the shed are reviewed and approved by the Design Review Committee prior to construction of said shed.

4.1.17 Decks. The Design Standards developed pursuant to Section 8.1 of this Declaration shall not prohibit installation of decks, but decks shall not extend into side yards (i.e., beyond the artificial line extended from the side plane of each house).

4.1.18 Rental of Lots. No Owner shall lease to another any Lot or Structure on a Lot unless the lease is in writing, is for a period of at least 30 days, is of the entire residence on the Lot and expressly provides that the terms of the lease are subject in all respects to the provisions of this Declaration and the Code of Regulations. Lots shall not be rented for transient or hotel purposes, which shall be deemed to include any rental for a period of less than 30 days.

4.1.19 Impairment of Structural Integrity of Building. Nothing shall be done on any Lot that will impair the structural integrity of any Structure on that Lot or an adjoining Lot.

4.1.20 Use of Common Property. The Common Property shall be used only in accordance with the purposes for which they are intended and no Owner or Occupant shall hinder or encroach upon the lawful rights of other Owners or Occupants. This restriction includes, but is not limited to, the following:

(a) Except as provided in this Declaration, there shall be no obstruction of the Common Property, nor shall anything be stored in the Common Property, without the prior consent of the Association.

(b) In using the Common Property, no Owner or Occupant shall violate any provisions of this Declaration, the Code of Regulations, or the Rules and Regulations.

(c) Nothing shall be altered, constructed in or removed from the Common Property except as otherwise provided in this Declaration or except with the prior consent of the Association.

(d) The Common Property shall be kept free of rubbish, debris and other unsightly materials.

4.2 Failure to Comply. Failure to comply with any of the requirements of this Section 4 shall constitute a Default. A Default by any Occupant or other person residing in, occupying or visiting a Lot or Common Property at the request or with the implied or express permission of the Owner or any other Occupant of the Lot, or committed by any agent, employee, business invitee or contractor of the Owner or Occupant of a Lot, shall be attributed to that Owner and Lot.

SECTION 5. COMMON PROPERTY

5.1 Rights of Enjoyment in Common Property. Each Owner shall have a right and nonexclusive easement for the use and enjoyment of the Common Property. This right and easement shall be appurtenant to, and shall pass with, the title to his or her Lot. Each Owner shall have a perpetual right of ingress and egress across the Common Property to that Owner's Lot, which shall be appurtenant to the ownership of the Lot. Each Occupant shall have a nontransferable right to use and enjoy the Common Property, which right shall terminate when that person ceases to have the status of an Occupant. These rights and privileges shall be subject, however, to the following:

5.1.1 The right of the Board, with the approval by (a) 75% of the votes cast by Members (as defined in the Code of Regulations) who are voting in person or by proxy at a meeting of the Association at which a quorum is present in person or by proxy, and (b) so long as it is the Owner of at least one Lot, the Developer, to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Property and for such purposes to mortgage the Common Property, provided that any mortgage shall be subject to the Unit Owners' rights of ingress and egress across the Common Property.

5.1.2 The right of the Board to adopt, enforce and amend reasonable Rules and Regulations pertaining to the use of the Common Property.

5.1.3 The right of the Board to establish and charge reasonable admission and other fees for the use of any of the Common Property that is in the nature of recreational facilities

(as determined by the Board). In establishing any fee, the Board may establish reasonable classifications of Owners, Occupants and other persons. Each fee must be uniform within each class but need not be uniform between classes.

5.1.4 The right of the Board to suspend the right of any Owner or the privilege of any Occupant to use any of the Common Property that is recreational in nature for any infraction of the Rules and Regulations relating to the Common Property, which period of suspension shall not exceed 60 days per infraction.

5.1.5 The right of the Board to suspend the right of any Owner and the privilege of any Occupant claiming through that Owner to use any of the Common Property that is recreational in nature for the nonpayment or delinquency of any Assessments.

5.1.6 All other easements, restrictions, and rights to which the Property is subject, including, but not limited to, any easements granted or reserved pursuant to Section 7.

5.2 Subordination to Mortgage or Other Lien. Except as set forth in Section 5.1.1, the rights and privileges provided in this Section shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Property.

5.3 Additional Common Property Constructed by the Association. The Association shall not construct any capital addition or capital improvement to the Common Property or any Lot if the cost to the Association of the addition or improvement exceeds \$5,000 unless the addition or improvement has been authorized by (a) 60% of the votes cast by Members who are voting in person or by proxy at a meeting of the Association at which a quorum is present in person or by proxy, or, in the case of capital additions or improvements affecting and to be assessed only against a Designated Area (as determined by the Board in its sole discretion), 60% of the votes cast by Owners of Lots in the Designated Area who are voting in person or by proxy at a meeting of the Association at which a quorum is present in person or by proxy, and (b) so long as it is the Owner of at least one Lot, the Developer. This Section shall not limit Developer's right, at its cost, to perform the initial construction of the capital improvements constituting the Common Property and to construct and annex to the Property additional Lots and Common Property in accordance with Section 13. Capital expenditures for repairs or replacements of Common Property and/or other Structures that the Association is required to maintain shall not be subject to approval of the Owners under this Section.

5.4 Maintenance and Management of Common Property. Except as provided in Section 6, the Association shall provide for the maintenance, repair and management of all Common Property. The Association may fulfill this responsibility and any other duties and obligations of the Association under this Declaration by contracting with any professional management company (including Developer or an affiliate of Developer) upon such terms and conditions as shall be agreed upon by the Board and the manager. Any contract with Developer or an affiliate of Developer shall be terminable by the Association within one year after the expiration of the Development Period.

5.5 Payment by First Mortgagees of Obligations and Reimbursement for Same. If the Association (a) defaults with regard to payment of taxes or other obligations which become a charge against the Common Property, or (b) fails to pay premiums for insurance in accordance with Section 9, and does not in good faith contest liability for payment of the same, any first mortgagee of a Lot may, after giving prior written notice of its intent to do so to the Association, pay those amounts. The first mortgagee shall then be entitled to immediate reimbursement from the Association of the amount so paid.

5.6 Use of Common Property by Developer. In addition to the rights described in Section 5.1, Developer and its affiliates shall have the right during the Development Period to use the Common Property, free of charge, for promotional, construction, management, maintenance, repair, remodeling, rental and sales purposes.

SECTION 6. MAINTENANCE

6.1 Adoption of Standards. In furtherance of the purposes outlined in Section 8.1, the Board may adopt maintenance standards pertaining to the maintenance, repair and appearance of all Lots, and the exterior of all Structures. The maintenance standards shall be adopted in the same manner and be enforceable in the same manner as the Rules and Regulations. If any provision of any applicable building inspection, housing inspection or similar maintenance statute, ordinance, resolution, regulation or order of the State of Ohio, or any other governmental instrumentality, is more stringent with regard to a Lot than a comparable provision of the maintenance standards, the more stringent provision shall be deemed incorporated in the maintenance standards. The Association shall comply with the maintenance standards with respect to the Common Property, and the costs of the Association in meeting the maintenance standards and its responsibilities pursuant to Section 6.2 below, shall be Common Expenses of the Association.

6.2 Association Responsibilities. Except as otherwise provided below, the Association shall be responsible for (a) maintenance, repair and replacement of the Common Property; and (b) cutting, spraying, trimming and maintaining all landscaping, shrubs and trees located on the Common Property. Notwithstanding the foregoing, the Association shall not be required to mow, trim or provide similar types of maintenance of drainage and utility easement areas that are located upon the Lots; that responsibility shall be borne by the Owners of the affected Lots, as provided in Section 6.3. However, the Board's right of entry as provided in Section 6.6 shall include the right to enter upon any Lot to provide needed maintenance for any drainage or utility easement area, or any other swales or similar areas that have an impact on the neighbor drainage pattern, as conditions dictate in order to address drainage issues affecting other areas of the Property. In addition, the Association's responsibility shall include the maintenance of any pipes, culverts, headwalls and other drainage facilities within a drainage easement unless such responsibility has been assumed by a public authority having jurisdiction. Except for the maintenance of drainage or utility easement areas provided by the Association due to the failure of an Owner to fulfill its responsibilities set forth in Section 6.3, the costs incurred by the Association pursuant to this Section shall be a Common Expense.

6.2.1 Hiking/Biking Trails/Driveway Aprons. To the extent that a hiking/biking trail operated by the Association pursuant to a recorded easement passes through a Lot and is crossed by an Owner's driveway, the Owner, rather than the Association, shall be responsible for maintaining, repairing and replacing that portion of the hiking/biking trail which crosses the Owner's driveway.

6.2.2 Street Sign Program. If the Developer installs decorative street signs and posts within the public rights-of-way, the Association shall be responsible for maintaining, repairing and replacing those signs and posts as a Common Expense. If installation or replacement is provided by the governmental authority, the additional charge necessary to upgrade from the standard street signage and posts to the special decorative signage and posts shall be borne by the Association as a Common Expense. Nothing contained herein shall interfere with the obligation of the governmental authority to maintain safety and traffic standards.

6.2.3 Street Trees. If the Developer establishes a street tree program (based on one tree per Lot) then, whether or not the street tree is located in the public right-of-way or on an Owner's Lot, the Association may elect to engage in a maintenance program for the street trees, including fertilizing and pesticide treatments. After the initial installation of street trees, however, except to the extent of the responsibilities specifically assumed by the Association, the responsibility for maintaining and replacing the street tree shall be borne by the Owner of each Lot. If a street tree dies and is not replaced by the Owner, the Association may enter onto the Lot (if necessary), replace the tree and charge the costs as an individual assessment against that Owner and the Owner's Lot.

6.2.4 Boulevard/Island Areas. The Developer or the Association may, by agreement with the public authority having jurisdiction, assume responsibility for maintaining trees, plantings, landscaping, lighting and irrigation systems and other improvements within boulevard/island areas of public rights-of-way and, in conjunction therewith, the Association may be required to maintain liability insurance to protect the public, including the governmental authority, against liability in the case of accident. All costs incurred pursuant to this Section shall be Common Expenses. The public authority responsible for the street may, upon notice to the Association, make such repairs and perform such maintenance as it deems reasonably necessary to eliminate any nuisances and assess the costs of such work to the Owners of the Lots.

6.3 Owner Responsibilities. Each Owner shall maintain, repair and replace, and keep in good condition and repair, at his or her expense, all portions of that Owner's Lot, including the residence and all other Structures on the Lot. The Owner's maintenance responsibilities include the exterior and structural portions of all Structures on the Lot, all internal and external installations of the Lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and also any portion of any other utility service facilities exclusively serving the Lot (whether located on the Lot or on the Common Property). The cost of mowing, trimming and providing similar maintenance of drainage and utility easement areas located upon a Lot shall be borne by the Owner of that Lot. Owners also have the obligation to maintain, repair

and replace any hiking/biking trail where the trail crosses the Owner's driveway, as provided in Section 6.2.1.

6.4 Repairs Due to Negligence, Etc. Each Owner agrees to repair and/or replace at his or her own expense any damage to that Owner's Lot or to any other portions of the Property caused by the negligent or wrongful acts of that Owner or any Occupant or other person claiming under that Owner. The Association may perform those repairs and/or replacements and assess the cost as an individual assessment against that Owner and the Owner's Lot.

6.5 Periodic Inspection. Periodically, as needed, the Association shall inspect each Lot to determine whether the Lot and any other Structures comply with the maintenance requirements in this Declaration.

6.6 Right of Entry. The Board, through its authorized officers, employees and agents, shall have the right to enter upon any Lot at all reasonable times and upon reasonable advance notice for the purpose of making inspections or repairs, maintenance and replacements as required by this Section 6. To the extent that an Owner fails to make a repair or replacement that is the Owner's responsibility under this Section 6, the Association shall have the right to enter upon the Owner's Lot and provide the necessary maintenance, repairs and replacements, and assess the costs so incurred as an individual assessment against that Owner and the Owner's Lot.

6.7 Optional Additional Services. The Association may, from time to time, establish special services available to Owners (at the Owner's option) for an additional charge. For example, the Association may be willing to provide lifestyle services of the type described in Section 3.3(c) to Owners of Lots outside of the Designated Area that receives those services as part of a lifestyle package. The costs incurred by the Association in providing these additional services will be assessed as an individual assessment against that Owner and the Owner's Lot.

SECTION 7. EASEMENTS

7.1 Platted Easements. Easements for installation, maintenance and location of utilities and drainage facilities may be reserved on the recorded plat for the Property. Owners and Occupants shall not (i) obstruct or interfere with any easements or the natural flow of surface water, which shall, at all times, be kept free from obstruction, or (ii) alter the location or grade of open storm water drainage ways.

7.2 Drainage Easements. Each Lot shall be subject to easements 10 feet in width along the side and rear lot lines for the benefit of the Association for the purpose of constructing, installing and maintaining drainage facilities. The obligation mow and to maintain the drainage easement areas shall be borne by each Owner of a Lot as provided in Section 6.3, but the Association also reserves the right to provide any needed maintenance of drainage areas, as provided in Section 6.2.

7.3 Encroachments. If, by reason of the construction, reconstruction, repair, settlement, shifting or other movement of any of the Structures or by reason of the partial or total destruction

Continued at 00 52 A01

and rebuilding of the Structures, any part of the Common Property encroaches upon any part of a Lot or any part of a Structure on a Lot encroaches upon any part of the Common Property or on another Lot; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving one Lot encroach upon any part of any other Lot, valid easements for the maintenance of such encroachments are established. These easements shall exist for the benefit of the affected Lot(s) and the Common Property, as the case may be, so long as the encroachments exist. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if the encroachment occurred due to the willful conduct of that Owner.

7.4 Maintenance Easements. Each Lot shall be subject to easements for access arising from necessity of maintenance or operation of the Property pursuant to the provisions of this Declaration. The Owner of each Lot shall have the permanent right and easement to and through the Common Property for the use of water, sewer, power, television and other utilities now or in the future existing within the Common Property.

7.5 Reservation of Construction, Sewer, and Utility Easements. Developer reserves easements across the Common Property for the construction, installation, and maintenance of utilities, drainage facilities, and storm and sanitary sewers, and to cut and grade slopes in and along parcel boundaries at streets built within the Property.

7.6 Easements for Certain Utilities. The Association may grant easements through the Common Property for utility purposes for the benefit of the Property or other land in the vicinity owned by Developer, including, but not limited to, the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Property; and each Owner grants the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of the Owner, such instruments as may be necessary to effectuate the foregoing.

7.7 Easements Reserved by Developer. Developer reserves the right and easement for itself, its successors and assigns, to enter upon the Common Property in order to install, maintain, repair, replace and use pipes, wires, antennas, cables, towers, conduits and other lines and facilities for the purpose of providing water, sanitary sewer, storm sewer, electrical, gas, telephone, television and other utility or quasi-utility services to part or all of the Additional Property; to enter upon the Common Property to the extent necessary in order to construct residential units and/or other improvements on the Additional Property; and to use all streets and drives within the Common Property for purposes of ingress and egress to the Additional Property. Developer shall have the right to grant to any party having any interest in the Additional Property the right to use, maintain, repair and replace any of the items listed above which now or in the future serve the Additional Property or are located on the Common Property, without the consent of any party having any interest in the Common Property, whether or not the benefited portions of the Additional Property are ever annexed to this Declaration. However, any utilization of the foregoing rights and easements shall not unreasonably interfere with the use and enjoyment of the Common Property; and, if any damage, destruction or disturbance occurs to the Common

Continued from 0051E12

Property as a result of this utilization, the Common Property shall be restored promptly to the condition that existed immediately prior to the utilization at the sole expense of the person or persons making the utilization. In the event that pursuant to the easements created under this Section any portion of the Additional Property is served by roads, utility facilities or the like located on the Common Property, the costs of using, maintaining, repairing and replacing those facilities shall be equitably apportioned between the Owners of parcels of the Property and the owners of the benefited portions of the Additional Property. The annexation of the Additional Property to the Property shall be deemed to satisfy this latter requirement.

7.8 Easements to Run With Land. All easements and rights described in this Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, the Association, and any Owner, purchaser, Occupant, mortgagee and other person now in the future having an interest in any part of the Property or, to the extent applicable, the Additional Property.

SECTION 8. REVIEW OF ALTERATION PLANS

8.1 Design Standards.

8.1.1 Purposes. In order to establish and assure the continued existence of the Property pursuant to the uniform plan for the development of the Property by Developer, the Board shall adopt and may amend design standards (the "Design Standards") for the Property and all Structures in furtherance of the following purposes:

- (a) the continued existence on the Property of a community consisting of well-planned residential, open space and service areas, Structures, and Common Property;
- (b) the promotion of the health, safety and welfare of all Owners and Occupants;
- (c) the preservation, beautification and maintenance of the Property and all Structures as a community of high quality;
- (d) the creation and preservation of adequate open space for the use and enjoyment of all Owners and Occupants;
- (e) the preservation and promotion of environmental quality; and
- (f) the assurance of adequate water, sewage and drainage facilities and other utilities and services.

8.1.2 Subject Matter. The Design Standards may establish requirements relating to land use, architectural features, site planning, lighting, landscaping and signage. The Design Standards may include, but are not limited to, provisions as to the following subject matters:

- (a) the specification of materials, design, architectural style, color schemes and other details affecting the exterior appearance of Structures;
- (b) the reservation of utility, visual and other easements;
- (c) the installation, location and maintenance of utility lines and facilities, including water, gas, electricity, sanitary and storm sewage, telephone, cable television and other communication systems;
- (d) the control of slopes to prevent erosion or sliding problems;
- (e) the planting and preservation of trees and other natural resources;
- (f) the size, minimum cost and location of Structures on the Lots;
- (g) the size, material and location of driveways and parking facilities;
- (h) the size and location of fences and walks; and
- (i) the character, location and direction of exterior lighting and street hardware.

8.2 Design Review Committee. There shall be a design review committee composed of three members who shall be appointed by the Board (the "Design Review Committee"). The members of the Design Review Committee need not be Trustees, Owners or Occupants and may be outside professionals. In the event the Board fails to appoint members to the Design Review Committee, the Board shall constitute the Design Review Committee. Each member of the Design Review Committee shall serve at the pleasure of the Board. Any action taken by a majority of the members of the Design Review Committee, whether at a meeting or (if in writing signed by such a majority) without a meeting, shall constitute the official action of the Design Review Committee and shall be binding on the Association. The Design Review Committee shall act in connection with granting any approvals contemplated in Section 4 of this Declaration and/or reviewing Plans and Specifications, as set forth in this Section 8.

8.3 Submission of Plans and Specifications. No Structure on any Lot shall be constructed, remodeled, altered, repaired, reconstructed, and/or restored in any way that materially changes the exterior appearance, unless plans and specifications shall have been submitted to and approved by the Design Review Committee. Those plans and specifications shall be in such form and shall contain such information as the Design Review Committee may reasonably require.

Prior to submission of plans and specifications for any Structure proposed for any Lot, the Design Review Committee may require, and any applicant may submit for tentative approval by the Design Review Committee, schematic or preliminary plans and specifications. The Design Review Committee shall either (i) approve the plans and specifications, (ii) disapprove them, or (iii) approve them with conditions or qualifications.

The provisions of this Section 8 do not apply to any construction by Developer.

8.4 Approval of Plans and Specifications. The Design Review Committee shall approve plans and specifications (whether schematic, preliminary, or detailed) submitted to it with respect to any Lot if it finds that they (a) comply with the requirements of this Section, and (b) conform to any Design Standards promulgated by the Board. Upon final approval, a copy of the plans and specifications shall be deposited for permanent record with the Design Review Committee. After the receipt of final approval by the applicant, the Design Review Committee shall not revoke its approval. Approval by the Design Review Committee of plans and specifications with respect to any Lot shall not impair the Design Review Committee's right subsequently to approve a requested amendment of such plans and specifications (in accordance with the requirements of this Section). Any improvement approved by the Design Review Committee shall be constructed in a timely fashion.

8.5 Disapproval of Plans and Specifications. If plans and specifications (whether schematic, preliminary or detailed) submitted to the Design Review Committee with respect to any Lot do not comply with the Design Standards or the requirements of this Section as to the information required to be included in the plan and specification, the Design Review Committee shall either disapprove the plans and specifications or approve them subject to such conditions and qualifications as the Design Review Committee may deem necessary to achieve compliance.

8.6 Failure to Act. If the Design Review Committee fails to act upon any plans and specifications submitted to it within 30 days after a satisfactory submission complying with the requirements of Section 8.3, those plans and specifications shall be deemed to have been approved as submitted, and no further action by the Design Review Committee shall be required. This 30-day period may be extended with the consent of the applicant. If construction, remodeling, alteration, repair, reconstruction, and/or restoration of a Structure is not commenced on a Lot on or before 6 months from the date of approval of plans and specifications and completed within a reasonable time after the construction is begun, then any approval shall be automatically cancelled and a new submission shall be required.

8.7 Violations. If any Structure situated upon any Lot shall have been constructed, remodeled, altered, reconstructed, repaired and/or restored other than in accordance with the approved plans and specifications, the Board shall declare in Default the Owner of the Lot. However, the Board may, upon such conditions as it may determine, waive any such Default if it finds that such Default does not substantially conflict with the policies of the Board.

8.8 Right of Entry. The Board and the Design Review Committee, through their authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, remodeling, alteration, repair, reconstruction, or restoration of any Structure is in compliance with the provisions of this Section.

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

8.10 Disapproval of Plans. If the Design Review Committee disapproves plans and specifications submitted to it, the party submitting the disapproved plans and specifications may, within 10 days after the date of disapproval, appeal the Design Review Committee's decision to the Board. The Board, by a majority vote, may overrule the Design Review Committee's decision to disapprove the appealing party's plans and specifications if the Board determines that the Design Review Committee's disapproval was arbitrary or unreasonable. The Board's decision on any appeal shall be final and shall be rendered within 30 days after the date the appeal is filed.

SECTION 9. DAMAGE OR DESTRUCTION AND INSURANCE

9.1 Fire and Extended Coverage Insurance. The Association may maintain insurance coverage on any Structures now or at any time in the future constituting a part of the Common Property, including fixtures and equipment to the extent they are part of the Common Property, all against loss or damage by fire, lightning, cost of demolition, cost of debris removal, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable) and such other risks as are customarily covered with respect to projects similar in construction, location, and use. The Association shall not be responsible for, and each Owner shall separately obtain, appropriate casualty insurance for the Structures on that Owner's Lot.

9.2 Liability Insurance. The Association may insure itself, the Owners and their Occupants, and/or persons lawfully in possession of or in control of any part of the Property, against liability for bodily injury, disease, illness, or death and for injury to or destruction of property occurring in connection with the operation, maintenance, or use of the Common Property in such amount and upon such terms and conditions as the Board may determine. The policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Lots. The policy shall provide for at least 10 days written notice to the Association before the insurer may cancel or substantially modify the policy. The Association may also be required to maintain liability insurance (or include under its general policy) for boulevard/island areas maintained by the Association by agreement with the applicable authority, for the benefit of the public and the public authority.

9.3 Other Association Insurance. The Board may purchase and maintain contractual liability insurance, trustees' and officers' insurance, fidelity bonds for Trustees, officers, employees and managers, and such other insurance as the Board may determine.

9.4 Insurance Premiums. Insurance premiums for the policies of the Association referred to above and for such other policies as the Association shall determine to be desirable shall be Common Expenses paid from the annual assessment established in Section 3.

9.5 Damage or Destruction and Restoration of Buildings.

9.5.1 Sufficient Insurance. If any part or all of a Structure that is insured by the Association shall suffer damage or destruction from any cause or peril insured against, and the proceeds of any policy carried by the Association shall be sufficient as determined by the Board to pay the cost of repair, restoration or reconstruction, then the Association shall undertake the repair, restoration or reconstruction, in which case the insurance proceeds may be applied by the Association for that purpose. When the proceeds of insurance are sufficient to substantially restore the damage, the Board shall effect the repairs, restoration or reconstruction unless, by vote of the Members meeting the same criteria as are set forth in Section 5.3 for the approval of capital improvements, the Members authorize the Board not to effect the repairs, restoration or reconstruction.

9.5.2 Insufficient Insurance. If any part or all of a Structure that is insured by the Association shall suffer damage or destruction from any cause or peril that 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 otherwise provided in this Declaration, the repair, restoration or reconstruction of the improvements may be undertaken by the Association and shall be considered a capital improvement. Without limiting the right of the Association to charge the cost to any responsible Owner, as provided elsewhere in this Declaration, the costs incurred by the Association may be assessed to the Owners as a special assessment. No membership vote under Section 5.3 shall be required with respect to this capital improvement or the resulting special assessment.

SECTION 10. CONDEMNATION

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Property. Each Owner, by acceptance of delivery of a deed for a Lot, appoints the Association as his or her attorney in fact for this purpose.

If part or all of the Common Property is taken or acquired by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of Owners and their mortgagees as their interests may appear.

SECTION 11. ENFORCEMENT

11.1 Curing Defaults; Lien. If any Default occurs with respect to any Lot under the provisions of this Declaration, the Board shall give written notice to the Owner, with a copy of the notice to any Occupant in Default and a copy to any first mortgagee of the Lot who has requested copies of default notices, setting forth in reasonable detail the nature of the Default and the specific action(s) required to remedy the Default, except that no notice of Default shall be required before the Board takes any of the actions set forth in Section 3 for nonpayment of Assessments. If the Owner or Occupant shall fail to take the specific action(s) within 30 days after the mailing of the notice, the Board may, but shall not be required to, exercise any or all of its rights in this Declaration or otherwise available at law or in equity. The Board may exercise without notice any of its rights with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot shall be a binding personal obligation of the Owner and shall be payable on demand. If the Owner fails to pay costs within 30 days after demand, the Association may file a notice of lien in the same manner and which shall have the same priority as the liens for Assessments provided in Section 3.

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

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

11.4 Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations (the "Rules and Regulations") regarding the administration, interpretation, and enforcement of this Declaration and the Code of Regulations. Each Rule and Regulation shall be consistent with and designed to further the purposes outlined in this Declaration. The Rules and Regulations may include, if the Board so elects, establishment of monetary fines for violations of this Declaration, the Code of Regulations or the Rules and Regulations, in such amounts as the Board may deem appropriate.

SECTION 12. DURATION, AMENDMENT AND TERMINATION

12.1 Duration. This Declaration shall be deemed to create covenants running with the land and shall bind the Property and shall inure to the benefit of and be binding upon Developer, the Board, the Association, and each Owner, Occupant and their legal representatives, heirs, successors and assigns, and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded. Thereafter this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Section.

12.2 Amendment or Termination. Except as provided in this Declaration, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by (i) the Member representing at least 75 % of the total votes of the Association and (ii) so long as it is the Owner of at least one Lot, the Developer.

The President of the Board shall determine whether the persons who have approved of any amendments or the termination of this Declaration constitute the Owners of the required percentage of Members. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded (a) the written instrument of amendment or termination executed in properly recordable form by the President of the Association (and the Developer, if the Developer owns at least one Lot), and (b) the certificate of the President of the Association that the Members representing at least 75 % of the total votes of the Association have approved such instrument.

Notwithstanding the above, this Declaration may be amended at any time during the Development Period, without the vote of Owners, by a written instrument executed by the Developer for any of the following purposes: eliminating or correcting any typographical or other inadvertent errors; eliminating or resolving any ambiguity; making minor or non-substantial changes; clarifying or modifying the use restrictions in Section 4.1; clarifying Developer's original intent; and/or making any changes necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Mortgage Corporation, or any other agency that may insure or purchase loans on a Lot. No amendment for these purposes shall materially adversely affect any Owner's interest in his or her Lot, the Association or the Common Property without that Owner's written consent. Each Owner and his or her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering a Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Developer as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Developer, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by the Developer to be necessary or proper to effectuate the provisions of this paragraph.

SECTION 13. COVENANT FOR STAGED DEVELOPMENT

13.1 Right of Staged Development. During the period that commences on the date of recordation of this Declaration and ends on the tenth anniversary of that date, the Developer may submit, make subject to or annex to this Declaration, in one or any number of additional phases, part or all of the Additional Property.

13.2 Supplemental Declaration for Staged Development. The Additional Property may be subjected, annexed, or submitted to this Declaration during the period stated above by filing of record a supplemental declaration executed by Developer with the same formalities as this Declaration which shall incorporate and extend this Declaration to the affected portion(s) of the Additional Property. After the expiration of the ten-year period provided in Section 13.1, the Additional Property may be subjected, annexed or submitted to this Declaration only by filing of record an amendment to this Declaration executed by the Developer and the President of the Board certifying that the required percentage of Owners has approved the amendment. Upon annexation of all or part of the Additional Property, the portion of the Additional Property so annexed shall be deemed part of the "Property" for purposes of this Declaration and the Code of Regulations.

SECTION 14. MISCELLANEOUS

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

14.2 Notices. Any notice required or permitted to be given to an Owner or Occupant by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to that person's last address as it appears on the records of the Association.

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

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

14.5 Gender. Throughout this Declaration, where the context so requires, the masculine gender shall be deemed to include the feminine and neuter, and the singular shall include the plural, and vice versa.

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

SIGNED as of the day and year first above written.

Signed and Acknowledged
in the Presence of:

OBERER DEVELOPMENT CO.

Micky Poole
Micky Poole

By: George R. Oberer, Sr.
George R. Oberer, Sr., President

Elaine Mayrer
Elaine Mayrer

By: Dale P. Voisard
Dale P. Voisard, Secretary

Micky Poole
Micky Poole

Elaine Mayrer
Elaine Mayrer

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 30th day of December, 1999, by George R. Oberer, Sr., President and Dale P. Voisard, Secretary of Oberer Development Co., an Ohio corporation, on behalf of the corporation.

Michele D. Poole
Notary Public

MICHELE D. POOLE, Notary Public
In and for the State of Ohio
My Commission Expires Aug. 4, 2001

Exhibit A - Property
Exhibit A-1 - Additional Property
Exhibit B - Code of Regulations
Exhibit C - Articles of Incorporation

This Instrument Prepared By:

Robert M. Curry, Esq.
THOMPSON HINE & FLORY LLP
2000 Courthouse Plaza, N.E.
P.O. Box 8801
Dayton, Ohio 45401-8801
(937) 443-6511

EXHIBIT A

Description of Property: Crain's Run Subdivision, Section 1

Contains: 25.4139 acres

Date: December 1, 1999

Located in Section 22, Town 2, Range 5 MRS., Miami Township, Montgomery County, State of Ohio of a plat known and recorded as Crains Run Section One in Plat Book 177 Page 11 of the Plat Records of Montgomery County, Ohio.

Description of: Centerville Properties Land

Contains: 199.713 Acre Tract

Date: October 24, 1997

Located in Section 22, Town 2, Range 5, Miami Township, Montgomery County, State of Ohio and being a tract of land described as follows:

Beginning at an iron pin set at the northeast corner of said Section 22, said point of beginning being also the southeast corner of land conveyed to City of Miamisburg by deed recorded in Microfiche No 90-0520D04, also the southwest corner of land conveyed to Long Farm Investors, a Partnership by deed recorded in Microfiche No 70-0440E03, and also the northwest corner of land conveyed to Robert C. Appenzeller by deed recorded in Microfiche No 81-0424E09, all of the Deed Records of Montgomery County, Ohio;

thence with the east line of said Section 22 and the west line of said Appenzeller land, South 04° 59' 40" West for a distance of 1,519.48 feet to a Parker-Kalon nail (PK nail) set at the southwest corner of said Appenzeller land, said nail being also the intersection of the original centerline of Miamisburg Springboro Pike with the centerline of Wood Road and being also the northwest corner of land conveyed to Mi-Spri Partners, an Ohio General Partnership by deed recorded in Microfiche No 91-0127E02 of the Deed Records of Montgomery County, Ohio;

thence still with the east line of said Section 22 and with the west line of said Mi-Spri Partners land and its southwardly extension, said extension being the west line of land conveyed to Jack F. Fritzsche (Hickory Knolls Trailer Court) by deed recorded in Microfiche No 88-0427C04 of the Deed Records of Montgomery County, Ohio, South 05° 10' 41" West for a distance of 1,157.42 feet to a railroad spike found at the northeast of land conveyed to Betty J. Bell & Rodney E. Bell by deed recorded in Microfiche No 94-0694B08 of the Deed Records of Montgomery County, Ohio and at the intersection of the centerline of said Wood Road with the centerline of Crains Run Road (60 feet wide);

thence with the centerline of said Crains Run Road and the north line of said Bell land and its westwardly extension, said extension being the north line of land conveyed to Louise Pascoe by deed recorded in Deed Book 1838, Page 709, the north line of land conveyed to Porter & Stella Sizemore by deed recorded in Microfiche No 83-0112C10, and the north line of land conveyed to Michael T. & Jennifer A. Brennan by deed recorded in Microfiche No 89-0669E12, all of the Deed Records of Montgomery County, Ohio, North 80° 58' 34" West for a distance of 1,483.20 feet to a railroad spike found at the northwest corner of said Brennan land;

thence with the west line of said Brennan land and its southwardly extension, said extension being the west line of said Bell land, South 05° 27' 50" West for a distance of 2,368.99 feet to a stone found at the southwest corner of said Bell land and in the north line of land conveyed to Eric Dean & Amy Louise Napier by deed recorded in Microfiche No 92-530B10 of the Deed Records of Montgomery County, Ohio and by deed recorded Volume 765, Page 527 of the Official Records of Warren County, Ohio;

thence with the north line of said Napier land, North 80° 52' 25" West for a distance of 634.74 feet to a stone found at the northwest corner of said Napier land;

thence with the west line of said Napier land, South 04° 31' 53" West for a distance of 175.39 feet to a point on the Montgomery-Warren County line;

thence with said Montgomery-Warren County line, North 83° 54' 04" West for a distance of 858.87 feet to a point being the southeast corner of land conveyed to Dale & Judy Vaughn by deed recorded in Microfiche No 91-0418A06 of the Deed Records of Montgomery County, Ohio, said point also being the northeast corner of land conveyed to Dale Vaughn by deed recorded in Volume 502, Page 5 of the Official Records of Warren County, Ohio;

thence with the east line of said Vaughn land and its northwardly extension, said extension being the east line of land conveyed to Loren Doyle Armstrong & Donna Marie Armstrong by deed recorded in Microfiche No 84-0375A11, both of the Deed Records of Montgomery County, Ohio, North 05° 42' 37" East for a distance of 2,574.39 feet to a railroad spike found in the centerline of said Crains Run Road at the northeast corner of said Armstrong land, at the

EXHIBIT A-1 (Cont'd)
southeast corner of Crains Glen Subdivision as recorded in Book 110, Page 7 of the Plat Records of Montgomery County, Ohio, and at the southwest corner of land conveyed to Jeannette McCracken by deed recorded in Microfiche No. 74-0580B06 of the Deed Records of Montgomery County, Ohio;

thence with the centerline of said Crains Run Road and the south line of said McCracken land, South 80° 49' 58" East for a distance of 624.43 feet to a PK nail set at the southeast corner of said McCracken land and at the southwest corner of land conveyed to Paul & Muriel Jean Parrett by deed recorded in Microfiche No. 80-0550C02 of the Deed Records of Montgomery County, Ohio;

thence still with the centerline of said Crains Run Road and with the south line of said Parrett land, South 81° 17' 49" East for a distance of 172.51 feet to a PK nail set at the southeast corner of said Parrett land;

thence with the east line of said Parrett land, North 06° 49' 18" East for a distance of 539.60 feet to an iron pin found at the northeast corner of said Parrett land in the south line of land conveyed to Roger Korn, et al. by deed recorded in Microfiche No. 86-0080D04 of the Deed Records of Montgomery County, Ohio;

thence with the south line of said Roger Korn, et al. land, South 82° 29' 44" East for a distance of 403.46 feet to an iron pin set at the southeast corner of said Roger Korn, et al. land;

thence with the east line of said Roger Korn, et al. land, North 06° 53' 09" East for a distance of 776.00 feet to an iron pin set at an angle point in said east line;

thence still with the east line of said Roger Korn, et al. land, South 76° 16' 52" East for a distance of 74.00 feet to an iron pin set at an angle point in said east line;

thence still with the east line of said Roger Korn, et al. land and its northwardly extension, said extension being the east line of land conveyed to J. Douglas Reiter & Valerie Kay Reiter by deed recorded in Microfiche No. 88-0389B04 and the east line of land conveyed to Ralph William Cornett & Esta Lula Cornett by deed recorded in Microfiche No. 89-0305A11, both of the Deed Records of Montgomery County, Ohio and becoming the centerline of said Miamisburg Springboro Pike, North 15° 51' 10" West for a distance of 652.06 feet to an iron pin found at an angle point in the east line of said Cornett land and in the centerline of said Miamisburg Springboro Pike;

thence still with the east line of said Cornett land and the centerline of said Miamisburg Springboro Pike, North 23° 13' 24" West for a distance of 616.19 feet to an iron pin found (with cap stamped "Judge") at the northeast corner of said Cornett land, at the southeast corner of land conveyed to Melody M. Rice & Gwen Rice by deed recorded in Microfiche No. 95-0031E04, and at the southwest corner of land conveyed to Joseph S. Keyes by deed recorded in Microfiche No. 86-0187E11, both of the Deed Records of Montgomery County, Ohio;

thence with the south line of said Keyes land and its eastwardly extension, said extension being the south line of said City of Miamisburg land, North 83° 57' 02" East for a distance of 984.59 feet to a 0.75 inch diameter iron pin found in the north line of said Section 22 and at an angle point in the south line of said City of Miamisburg land;

thence still with the south line of said City of Miamisburg land and with the north line of said Section 22, South 80° 44' 12" East for a distance of 1,207.32 feet to the point of beginning

Containing 199.713 acres, subject however to all covenants, conditions, restrictions, reservations and easements of record pertaining to the above described tract of land



Cosler Engineering

Civil Engineering • Land Surveying

3183D Beaver Vu Drive
Beavercreek, Ohio 45434
(513) 426-9913
Fax (513) 426-3390

**Description of 19.052 Acre Tract
of
Robert C. Appenzeller Land
in
Miami Township, Montgomery County, Ohio**

July 15, 1996

Located in Section 16, Town 2, Range 5, Miami Township, Montgomery County, State of Ohio and being a tract of land described as follows:

Beginning at a stone found at the northwest corner of said Section 16;

thence with the north line of said Section 16, North seventy-four degrees forty-nine minutes forty-seven seconds ($74^{\circ}49'47''$) East for a distance of five hundred thirty-two and 52/100 (532.52) feet to an iron pin set at the northwest corner of land conveyed to Martha Laing Woodward, Trustee by deed recorded in Microfiche No. 90-0314B06 of the Deed Records of Montgomery County, Ohio;

thence with the west line of said Woodward, Trustee land for the following three (3) courses, South four degrees fifty-seven minutes twenty-seven seconds ($04^{\circ}57'27''$) West for a distance of one thousand four hundred thirty-eight and 84/100 (1,438.84) feet to an iron pin set at an angle point in said west line;

thence South thirty degrees twenty-nine minutes forty-one seconds ($30^{\circ}29'41''$) East for a distance of two hundred fifty-four and 07/100 (254.07) feet to an iron pin set at an angle point in said west line;

thence South six degrees fifty-three minutes forty-six seconds ($06^{\circ}53'46''$) East for a distance of sixty-one and 41/100 (61.41) feet to a 0.25 inch diameter "MAG-Nail" set in the original centerline of Miamisburg-Springboro Pike and in the north line of land conveyed to Mi-Spri Partners, an Ohio General Partnership by deed recorded in Microfiche No. 91-0127E02 of the Deed Records of Montgomery County, Ohio;

thence with the original centerline of Miamisburg-Springboro Pike and the north line of said Mi-Spri Partners land, North eighty-four degrees thirty-five minutes twenty-six seconds ($84^{\circ}35'26''$) West for a distance of six hundred sixty and 00/100 (660.00) feet to a 0.25 inch diameter "MAG-Nail" set in the west line of said Section 16 and at the intersection of the centerline of Wood Road with the original centerline of Miamisburg-Springboro Pike;

thence with the west line of said Section 16, North four degrees fifty-seven minutes twenty-seven seconds ($04^{\circ}57'27''$) East for a distance of one thousand five hundred seventeen

and 45/100 (1,517.45) feet to the point of beginning, containing nineteen and 052/1000 (19.052) acres, subject, however to all covenants, conditions, restrictions, reservations and easements of record pertaining to the above described tract of land.

NOTES:

The above described tract of land is all of that land conveyed to Robert C. Appenzeller by deed recorded in Microfiche No. 81-0424E09 of the Deed Records of Montgomery County, Ohio.

The above description was prepared from the results of a field survey performed by Mitchell W. Cosler, Ohio Registered Surveyor No. 6393. Iron pins referred to as set are 0.63 inch diameter steel 30 inches long set flush with the ground having a yellow plastic cap stamped "COSLER 6393". Bearings for this description are based upon State Plane Coordinates (NAD83) Ohio South Zone and distances are in U.S. Survey Feet.

file: pen-d:\wpdocs\descrip\2346b.wp6