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J. J. WAGNER  
RECORDED

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MEEKER CREEK

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MONTGOMERY CO. OHIO

THIS DECLARATION, made on the date hereinafter set forth by MEEKER CREEK HOME OWNERS ASSOCIATION, INC., an Ohio joint venture, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner or will be the owner of certain property located in the Township of Butler, County of Montgomery, State of Ohio, and known as "Meeker Creek", which is more particularly described in Exhibit A attached hereto, being the portion of Meeker Creek which Declarant currently owns, ("Property"), and as more fully described in Exhibit A-1 attached hereto being that portion of Meeker Creek yet to be acquired ("Additional Property").

WHEREAS, Declarant is now preparing to develop portions of Meeker Creek to include the filing of a Record Plan;

NOW, THEREFORE, Declarant hereby declares that all of the Property in Meeker Creek, shall be held, sold and conveyed subject to the following assessments, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. Declarant further reserves the right, as hereinafter provided, to incorporate the Additional Property into this Declaration subjecting it to the terms and conditions hereof.

ARTICLE I  
DEFINITIONS

1.01. "Association", shall mean and refer to the MEEKER CREEK HOME OWNERS ASSOCIATION, INC., its successors and assigns.

1.02. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any lot which is a part of the Property of the Additional Property if applicable, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.03. "Builder/Buyer" shall mean any entity which purchases a Lot solely for purposes of development and resale. An owner includes a Builder/Buyer.

1.04. "Property" shall mean and refer to that certain real property hereinbefore described. To the extent Additional Property is submitted to the provisions of this Declaration,

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A. J. WAGNER  
AUDITOR

upon submission the Additional Property shall become Property and brought within the jurisdiction of the Association.

1.05. "Easement Area" shall mean any property identified on the Record Plan as reserved for utilities of whatever nature, their installation, repair and replacement.

1.06. "Street Reserve Area" shall mean that private street that provides ingress and egress to and from Lots 85, 86, 87, 89 to 98 and 105 to 111.

1.07. "Street Reserve Area Lot Owners" shall mean those Owners of Lots whose Lots abut and gain access from the "Street Reserve Area," more specifically being Lots 85, 86, 87, 89 to 98, and 105 to 111.

1.08. "Lot" shall mean and refer to any plot of land or parcel shown on any recorded subdivision map of the Property including all easements.

1.09. "Declarant" shall mean and refer to MEEKER/DOGLE JOINT VENTURE, its successors and assigns if such successor or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

1.10. "Bylaws" shall mean the written bylaws of the Association.

1.11. "Section" shall mean and refer to the designated section of MEEKER CREEK subdivision set forth on the Plat.

1.12. "Board" shall mean and refer to the Board of Trustees of the Association.

1.13. "Common Area" shall mean and refer to that part of the Property which shall be conveyed to and owned by the Association for the common use, enjoyment and benefit of the membership of the Association, and shall include, among other things, any retention and/or detention ponds or areas.

1.14. "Controlled Drainage Easement Area" shall mean and refer to the property within the Controlled Drainage Easement Area as shown the Record Plan as "Reserve Area A" and "Reserve Area B."

1.15. "Controlled Drainage Easement Area Restrictions" No improvements, structural or otherwise, are permitted within the channel area of the Controlled Drainage Easement Area, consisting of Reserve Area A and Reserve Area B. The determination as to what constitutes the channel area and what constitutes an improvement in the event of controversy shall be made by the Board of Trustees and shall be binding on all Owners. Any improvements in the Controlled Drainage Easement Area not falling within such channel area shall be subject to prior approval. Any such approval shall require the consent of the local government body or agency having jurisdiction over such Controlled Drainage Easement Area.

## **ARTICLE II**

### **PROPERTY RIGHTS**

2.01. **Owner's Easements of Enjoyment.** The Declarant through the subdivision and platting process has dedicated easements as they appear on Record Plan for "... the construction, addition, maintenance, and operation, of all public utility systems now or hereafter deemed necessary by Grantor for all public utility purposes, including systems of electric light and power supply, telephone service, gas supply, water supply and sewer services." Those easements are as follows:

(1.) Easement for the above purposes as shown on the Record Plan ... (hereinafter referred to as "Easement Area"). There is retained as to each Lot a right of usage in and to the Easement Area otherwise affecting a lot which said right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions;

(a) No owner shall build any structures in, on or over any Easement Area or otherwise interfere with the purpose of any Easement Area.

(b) Each Owner of a Lot shall maintain the appearance of any Easement Area upon an Owner's Lot consistent with the purpose and intent of this Declaration.

2.02. **Detention Basin Maintenance and Repair.** The Easement Area, "Reserved for Detention Basin", as shown on the Record Plan affecting Lots 50 and 51 is designed as a dry detention basin and shall be mowed and maintained by the Owners of Lots 50 and 51 as said Easement Area affects said Lots in such a fashion so as not to adversely affect the intended purpose of the Easement Area "Reserved for Detention Basin". By the Declaration there is herein reserved to and for the benefit of the Association an easement for purposes of maintenance, repair and replacement of the Easement Area "Reserved for Detention Basin" if and to the extent that the Easement Area "Reserved for Detention Basin" ever fails to perform its intended purpose of detention of storm water for the Plat.

2.03. **Street Reserve Area.**

(1) Separate and distinct from any Easement Area, the Record Plan of Meeker Creek creates a "Street Reserve Area". The Street Reserve Area constitutes the private street that will serve certain portions of the property and provide ingress and egress to public streets. The Declarant, prior to the sale of a majority of the Lots in the Plat, shall convey the Street Reserve Area to the Association who shall maintain, repair and replace the same hereinafter provided. There is retained as to each Lot a right and easement of usage in and to the Street Reserve Area

which said right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the right to the use of the Street Reserve Area by an Owner for any period during which any assessment against his Lot remains past due and unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations after hearing by the Board of Trustees of the Association;

(b) The Declarant specifically reserves the right to dedicate or transfer all or any part of this Street Reserve Area to any public agency, authority, or utility at any time prior to conveying the Street Reserve Area to the Association. The right of the Association to dedicate or transfer all or any part of the Street Reserve Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by two-thirds (2/3) of each class of members and three-fourths (3/4) of the members of the Street Reserve Area Lot Owners and recorded.

(2) Street Reserve Area maintenance, repair and replacement shall be provided by the Association either directly or by contract and the cost thereof shall be assessed against Lots 85, 86, 87, 89-98, and 105-111 as provided in Article IV hereof.

(3) The Declarant further reserves a right of ingress and egress to and from the Street Reserve Area to Meeker Creek for the benefit of emergency vehicles, governmental entities, invitees, delivery vehicles, etc. as the same require access to the Lots.

2.04. Delegation of Use. Any Street Reserve Area Lot Owners may delegate, in accordance with the Bylaws, his right of enjoyment and usage of the Street Reserve Area to the members of his family, his tenants or contract purchasers who reside on the property.

2.05. Right of Entry. The Association, through its duly authorized employees and contractors, shall have the right, after reasonable notice to the owner, to enter any Lot at any reasonable hour on any day to perform such inspections and maintenance as are needed to insure continuing compliance with Article V and Article VI.

2.06. Declarant's Easement. Declarant shall have a right and easement of use and access in and to the Easement Area and Street Reserve Area for the purpose of ingress and egress which shall run with the land for the benefit of and as an appurtenance to all adjacent property to the Properties now or hereafter owned by the Declarant.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.01. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any

Lot. Membership shall be categorized into two (2) types: (i) Lots on public streets; and (ii) Lots on private streets, known as members of the Street Reserve Area Lot Owners, which shall be subject to Section 2.03.

3.02. The Association shall have two classes of voting membership:

(1) Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(2) Class B. The Class B member shall be the Declarant and shall be entitled to One Hundred Thirteen (113) votes. The Class B membership shall cease and be converted to Class A membership, with Declarant entitled to one Class A vote for each Lot it still owns, when the following condition is met: the total votes outstanding in the Class A membership equal or exceed Twenty-eight (28) and owner-occupied residences are in existence on at least Eight-five (85) Lots.

#### ARTICLE IV COVENANT FOR ASSESSMENTS

4.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Operating Assessments, (2) Special Assessments for Capital Improvements, and (3) Lot Assessments. All such assessments shall be established and collected as hereinafter provided. The Annual, Special, and Lot assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Property and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successor owners unless expressly assumed by them. Assessments may differ as to types of Membership, all as set forth in Section 3.01.

4.02. Purpose of Assessments. The general assessments levied annually or semi-annually, by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the subdivision and for the improvement and maintenance of the Controlled Drainage Easement Area. The Street Reserve Area Lot Owners Assessment shall be a separate assessment to provide improvement and maintenance of the Street Reserve Area and shall only be imposed upon Lots 85, 86, 87, 89 to 98 and 105 to 111 if their driveway accesses this

private street. Assessments shall include, and the Association shall acquire and pay for out of the funds derived from the assessments, the following:

(A) **General Operating Assessment** applicable to all Lots for the

(1) maintenance, repair, and operation of any street lights along private or dedicated streets (excluding all lights located on Lots, which lights are to be maintained by the owner);

(2) maintenance, repair and operation of any entrance walls, entrance gates, entrance lighting features and entrance landscaping;

(3) maintenance, repair and operation of other Easement Area landscaping;

(4) maintenance, repair and operation of private underground utilities for gas and electric facilities, if any;

(5) liability insurance insuring the Association against any and all liability to the public, to any Owner or to the invitees or tenants of any Owner, with policy limits set by the Association;

(6) any other insurance or fidelity bond deemed necessary by the Board of Trustees;

(7) all other expenses incurred by the Association for the operation of any Easement Area or for the operation of the Association and enforcement of these restrictions.

(B) **Street Reserve Area Lot Owners Assessment** applicable to Lots 85, 86, 87, 89 to 98 and 105 to 111 for the

(1) improvement, maintenance, and repair of the Street Reserve Area or imposed on the Street Reserve Area;

(2) provision of street signage and snow removal necessary for the Street Reserve Area.

**4.03. Annual General Operating and Street Reserve Area Lot Owners Assessments.**

(1) Prior to the closing by the Declarant of the sale of the first (1st) Lot, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate, and prorate among the Lots, based upon Type of Membership as set forth in Section 3.01., common expenses of the Association consisting of the following:

(a) The estimated cost of maintenance, repair, and other services to be provided by the Association for the next fiscal year;

(b) The estimated next fiscal year's cost for insurance premiums to be provided and paid for by the Association;

(c) The estimated next fiscal year's costs for utility services not separately metered;

(d) The estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

(e) An amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and

(f) The estimated next fiscal year's costs for the operation, management, and administration of the Association including, but not limited to, fees for property management, fees for legal and accounting services, supplies and materials for operating the Association, and any other costs constituting common expenses not otherwise herein specifically excluded.

(g) Notwithstanding any other provision hereof to the contrary, a separate estimate of the next fiscal year's costs for the care, maintenance and upkeep, including snowplowing of the Street Reserve Area as submitted by the Street Reserve Area Lot Owners. The Street Reserve Area Lot Owners shall have the responsibility for making specific recommendations to the Trustees of the Association with regard to all particulars involved in the care, maintenance, and upkeep, including snowplowing, of the Street Reserve Area, including at the option of the Street Reserve Area Lot Owners, recommendations as to contractors to perform any of the recommended work. The Association shall be responsible for ultimately contracting for said work and shall be responsible for overseeing the work to completion with input from the Street Reserve Area Lot Owners.

(2) Based upon Type of Membership, the Board shall thereupon allocate to each Lot that Lot's share of all of these items, prorated on a per lot basis, and thereby establish the annual operating assessment for each separate Lot. For administrative convenience, any such assessment may be rounded to the nearest whole dollar. The Board may establish separate rates for developed Lots and for undeveloped Lots so long as such rates are uniform for each type of Lot as defined by the Board.

(3) The annual operating assessment shall be payable in advance, in semi-annual installments, the due dates for assessments shall be established by the Board of Trustees.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Lots on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall not be deemed profits nor available for distribution to Lot Owners, except on dissolution of the Association or after approval of all members of the Association.

#### **4.04. Special Assessments for Capital Improvements.**

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct, or replace capital improvements on the Easement Areas to the extent that the reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor without the prior consent of Lot Owners exercising no less than two-thirds (2/3) of the voting power of each class of members who are voting in person or by proxy at a meeting called for this purpose.

(2) Any such assessment shall be prorated among all Lots equally, and shall become due and payable on such date or dates as the Board determines following written notice to the Lot Owners.

#### **4.05. Notice and Quorum for any Action Authorized under Paragraph 4.04.**

In the event that any action authorized under paragraph 4.04 is required to be taken by the members, such action shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first of any such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence of members or proxies entitled to cast fifty (50%) percent of all the votes of each class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The Members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

#### **4.06. Lot Assessments.**

(1) The Board may levy an assessment against an individual Lot or Lots to reimburse the Association for those costs incurred by the Association in connection with that Lot or Lots and properly chargeable by the terms hereof to a particular Lot (such as, but not limited to, the cost of maintaining landscaping or making repairs which are otherwise the responsibility of the Lot owner, and providing special services by the Association on a contract basis).

(2) Any such assessment shall become due and payable on such date as the Board determines, after written notice to the Lot owners subject thereto.

(3) The Board shall be authorized to provide contractual services to Lot Owners upon the request of the Lot owner and approval by a majority of the Board. All costs relating to such services shall be paid by the Lot owners through direct reimbursement or through Lot assessments, as the Board may determine.

(4) Where a Lot owner violates a duty imposed under this declaration, the Association may, with the prior consent of two-thirds (2/3) of the voting power of each class of members who are voting in person or by proxy at a meeting called for this purpose (the quorum requirements of paragraph 4.05 shall apply to this meeting), enter upon the Lot and perform such acts as are required to fulfill the duty owed by the Lot Owner (including, but not limited to, maintenance of landscaping and drainage and repair or removal of unapproved improvements or repairs). In each case, the Lot Owner shall be given at least thirty (30) days written notice in advance of such meeting and written notice at least thirty (30) days in advance of the date by which the Lot owner must comply with the decision of the Association. The Lot Owner shall be permitted to correct the violation and comply with the duty within that thirty (30) day period and, if he does so, thereby eliminate any Lot assessment resulting from such violation. The decision of the Association shall be final in these matters.

#### **4.07. Uniform Rate of Assessment.**

Annual and special assessments must be fixed at a uniform rate for all undeveloped Lots and another uniform rate for all developed Lots, on a per lot basis based upon Type of Membership, and shall be collected as hereinabove provided.

#### **4.08. Date of Commencement of Annual Assessments: Due**

The annual assessments provided for herein shall commence as to all Lots on the first day of the first calendar month following transfer of the first (1st) Lot by Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for assessments shall be established by the Board of Trustees. The Association shall, on demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

#### **4.09. Effect of Nonpayment of Assessments: Remedies of the Association**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the

property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Easement Area or abandonment of his Lot. No Member shall be eligible to vote or be elected to the Board of Trustees who is shown on the books of the Association to be more than thirty (30) days delinquent in the payment of any assessments due the Association.

**4.10. Subordination of the Lien to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE V  
ARCHITECTURAL CONTROL**

**5.01. General Architectural Standards.**

Meeker Creek is a single family residential development. No more than one single family residence shall be constructed on any Lot. All buildings and improvements shall conform to the Design Guidelines as specified in Exhibit B, attached hereto and made a part hereof. The Design Guidelines will be administered by a Architectural Review Committee (ARC) to be established by the Declarant consisting of two (2) or more members. ARC approval will expire twelve (12) months following the date of approval. An Owner must re-submit all of the plans as required in the Design Guidelines (Exhibit B) and obtain a new approval if twelve (12) months have elapsed since the initial approval.

**5.02. Initial Development Approval.**

The initial development of a Lot, including all work done within one year following issuance of the initial Occupancy Permit by Butler Township ("Initial Development") , shall be subject to the prior approval by ARC, as to the site location, elevation, design, form, color and materials of the building and all improvements on site. The landscaping, environmental, and drainage plans must be approved in advance by ARC. All such submitted plans shall be approved or disapproved within sixty (60) days of submission or they shall be deemed to be approved pursuant to this section. Declarant shall, from time to time, designate the members of the ARC. The initial members of the ARC shall be the Declarant or their designee. All Builders/Rovers must be approved in advance by the ARC. All builders to be employed by an owner to construct the owner's single family residence must be approved by the ARC whose discretion is absolute.

**5.03. Developed Lot Approvals.**

Once a Lot has been developed pursuant to plans approved by the Declarant or ARC and the initial Occupancy Permit has been issued for at least one (1) year ("Developed Lot"), no building, fence, wall, other structure or improvement shall be commenced, erected or maintained (including painting) on the Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the location, design, color and nature of the structures have been reviewed and approved by the ARC.

#### 5.04. Compliance

Each Owner has a duty to comply with the Design Guidelines. The ARC and the Association have a right to inspect Lots to insure compliance. The Association may enjoin any work not in compliance with this Article, in addition to pursuing other remedies available to it. The Association may also require the removal of any noncomplying improvement, alteration or repair and, if the owner fails to do so pursuant to notices as per Paragraph 4.06(4), the Association may enter the Lot and make the required changes and assess for the costs thereof under Article IV.

#### 5.05. Satellite Dishes.

Satellite receivers are prohibited in front and side yards. Such devices may be installed in the rear yard or on the house if not visible from the street with the approval of the ARC as provided for in 5.02 and 5.03. Such approval shall be conditioned upon compliance with such conditions regarding location, screening and size as the ARC shall deem reasonable.

5.06. Subsequent Improvements on Lots. After Declarant has sold all Lots and such Lots are all Developed Lots, the Declarant shall no longer be the approving authority for subsequent improvements, alterations or additions, and such plans shall be submitted for approval to the ARC of the Association, composed of three (3) or more representatives appointed by the Board. At least one (1) member of the ARC shall be a licensed architect. The Board of Trustees may appoint members of the ARC as the Board deems appropriate, and such members need not be members or trustees of the Association. The ARC may act by vote of a majority of its members at a meeting or by a writing signed by all of its members.

Prior to the commencement of construction of any physical improvement that may be made from time to time on any Lot herein the Owner of said Lot shall submit to the approving authority as designated above a plot plan showing the location, design, color and nature of all improvements to be made. Approval by the approving authority shall be required in the case of all improvements, including the main residence, landscaping, driveway, culvert, any outbuildings, fences and walls. In the event the approving authority fails to approve or disapprove such design and location in writing within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully.

### ARTICLE VI USE RESTRICTIONS

The Property and each Lot within the Property shall be occupied and used only as follows:

6.01. No residence building with less than the following designated square footage of finished living area above grade, exclusive of garage, porches and unfinished areas, shall be erected or placed on any Lot in the Phases, as noted.

**Area/Phase (Finished floor area exclusive of garages, porches and unfinished areas)**

Western:	Ranch (above grade)	2300 sq. ft.
	Two story (above grade)	2800 sq. ft.
Central:	Ranch (above grade)	2800 sq. ft.
	Two story (above grade)	3200 sq. ft.
Eastern:	Ranch/Two story (above grade)	3500 sq. ft.

The exterior of any building shall be fully completed, including all landscaping, within a period of one year from the time construction is commenced. Any deviation from this requirement shall be approved by the Board.

6.02. No garage, barn or other outbuilding shall be constructed or erected upon any Lot prior to the construction of the main residence. Any outbuilding must be to the rear of the residence building or located as approved by the Declarant or ARC and must be approved pursuant to Article V. Outbuildings must be kept painted and maintained the same as a residence.

6.03. All buildings (porches, and bay windows excepted) shall be placed a distance at least equal to the building set back line shown on the recorded Plat of Meeker Creek from the existing private or public road right-of-way and no nearer than fifteen (15) feet from any side boundary line of a Lot. No deviation from this requirement shall be allowed except by written approval of the Declarant's Architect for Initial Development or Developed Lots while still the approving authority, or of the Association by its designated Architectural committee appointed Pursuant to Article V herein for Developed Lots once the Committee is the approving authority.

6.04. Trailers, cabins, tents, shacks, other outbuildings basements or garages may not be used as a temporary or permanent residence on any Lot.

6.05. The raising, housing or maintenance of livestock and poultry is prohibited. Only dogs and cats and other household pets shall be permitted on the Lots. The maximum number of animals shall be limited to three (3) animals for any one Lot. All animals shall be taken care of so as not to be neighborhood nuisances and sanitary conditions must be maintained at all times. All animal shelters must be in the rear of the house, out of sight from the street and within the building area.

6.06. No ponds or water impoundment's shall be permitted except as provided for in the Record Plan for storm water retainage. Such improvements, additions or alterations shall have been submitted to and approved in writing as to compliance with these protective covenants and as to harmony of external design and location in relation to surrounding structures and topography by Declarant.

6.07. Automotive or other vehicle repair shall not be permitted on any Lot. However, an Owner shall be permitted to make minor repairs to his own licensed vehicle.

6.08. No worn out or discarded automobiles, machinery or vehicles or parts thereof shall be stored on any Lot and no portion thereof shall be used for automobile junk piles or the storage of any kind of junk or waste material.

6.09. No Lot shall be used for storage of displaced buildings, lumber or materials of any nature, except insofar as is necessary during the actual construction of buildings upon the Lot where stored.

6.10. Each Lot must be kept neat and clean, the buildings well maintained and painted and weeds and underbrush must be kept under control at all times. Each Owner has a duty to maintain his Lot pursuant to the drainage and landscape plans approved pursuant to Article V. The Association shall have the right, pursuant to notices per Paragraph 4.06(4), to enter and make such improvements and maintenance as is needed to maintain compliance with those plans. The Association may also enjoin any such violations in addition to all other remedies at law or in equity.

6.11. No golf cart, tent, mobile home, trailer of any kind, or similar structure, and no truck, trailer, camper, or boat or anything other than operative automobiles shall be kept, placed, maintained, constructed, reconstructed or repaired, other than in an enclosed garage.

(a.) The doors of garages housing trucks, campers or boats shall be kept closed at all times except for actual entry or exit. The provisions of this paragraph shall not, however, apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in construction or repair in connection with the construction, reconstruction or repair of any work or improvements. The storage location for a mobile home, trailer of any kind, truck camper, boat or mobile home, trailer, of any kind, truck, car or other recreational vehicle, on a residential lot, shall require the review, approval, modification or denial by the ARC. These items must be located behind the rearmost building line of the residence and in a fashion so that neither the adjacent or neighboring properties will see the items from the front or side of their properties.

(b.) The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation.

(c.) The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pick-up truck or van which is used as a principal vehicle by an owner of a residence or his family. It is provided, however, that vehicles being used for the purpose of construction, delivery or repair work upon any Lot may be permitted to park on the Lot.

6.12. All parking shall be off-street parking. Each Owner shall maintain, as a minimum, an area sufficient to park four (4) automobiles on his Lot. All such parking areas, including the driveway, shall be concrete, pavers or brick. Residents may not use guest parking spaces on the street for personal use for more than forty-eight (48) consecutive hours. Parking is allowed in the roadway for special occasions (parties, out of town guest, etc). The Association may adopt rules and regulations regarding parking and may have cars in violation of these rules towed at the owner's expense.

(a.) No building shall be located nearer the front line or nearer than the minimum building setback line shown on the record plat.

6.13. Electrical, telephone, cable and all other communication and power service shall be underground from existing service lines to any structure on each Lot and shall be at the expense of each Owner.

6.14. All driveway culverts shall have approval of design as required for other improvements herein. All driveways shall be approved as to length, grade and other design criteria.

6.15. Each Lot shall use the mailbox and post designated by the Declarant and shall maintain and replace same if damaged.

6.16. No Lot shall be further subdivided without the written consent of the Association and approval of all governmental agencies having jurisdiction over such subdivision of Lots.

6.17. All Lots shall be known and used as single-family residential home sites. All gardens shall be planted to the rear of the building setback line. No building shall be employed or used as a rooming or boarding house.

6.18. Nothing shall be altered in, constructed on, or removed from the Easement Area except by the written consent of the Association.

6.19. All Lots must remain in continuing compliance with all applicable governmental zoning and planning laws.

6.20. No signs or advertising device of any kind may be placed or kept on any lot other than one name and/or number plate not exceeding seventy-two (72) square inches in area and one sign for the purpose of advertising not exceeding 5 square feet of surface area per side

(a.) All signs must be furnished or approved by the ARC. Except being a permanent entrance sign installed by the Grantor. All signage must be approved and permitted by the governmental agency having jurisdiction.

6.21. No free-standing radio tower or television antenna will be permitted. No television antenna or radio tower attached to the house shall be permitted to extend beyond the highest point of the roof of the house. No radio tower or antenna should be visible from the street.

6.22. All Lots shall have installed one pole mounted yard light controlled by a photoelectric cell; maintained in working order at all times; and metered to the Lot Owner. The specifications for the fixture and pole will be determined by the ARC.

## ARTICLE VII EASEMENT AREA

7.01. Improvements in Easement Area and Street Reserve Area. Declarant shall be responsible for constructing all improvements shown in the Easement Area and Street Reserve Area on the Record Plan, at such time as the Declarant determines to be most efficient.

7.02. Maintenance and Repair of Easement Area Prior to Transfer to Builder/Buyer. Declarant shall be responsible for all maintenance and repair of the Easement Area until the transfer of the Lot to a Builder/Buyer or Owner. Declarant shall also transfer any warranty rights it may possess for improvements in the Easement Area to the Association.

7.03. Maintenance and Repair of Easement Area After Transfer. The Association shall be responsible for the maintenance and repair of the Easement Area after transfer from Declarant, including snow removal, grass cutting, weed removal, and other maintenance. However, Declarant shall remain responsible for maintenance and repair of the improvements constructed by Declarant in the Easement Area for a period of one year after completing such construction. The date of completion of construction shall be evidenced by completion of work on the final punch list by all contractors. The Association may improve the Easement Area as it deems appropriate.

7.04. Easement of Enjoyment. Every Lot owner shall have a right and easement of enjoyment in, over, and upon the Easement Area, and a right of access to and from the Lot, which rights and easements shall be appurtenant to and shall pass with the title to each Lot, subject to the right of the Board of Trustees of the Association to make reasonable rules and regulations concerning the use and management of the Easement Area, provided that no such rule or regulation shall limit or prohibit the right of ingress or egress to a Lot. Any Lot Owner may delegate that Owner's right of enjoyment to the Easement Area and right of access to and from his Lot to occupants of that Lot.

## ARTICLE VIII APPROVALS

8.01. All approvals required to be given hereunder by the Declarant, the Association, and/or the ARC are for aesthetic purposes only and not for purposes of structural integrity, suitability of any Lot for any building to be built thereon, compliance with any applicable laws, rules, regulations or codes, all of which are the responsibility of the owner.

(a.) No approval of Plans and Specifications shall ever be construed as representing or implying that any lot is sufficient to be built upon in accord with said Plans and Specifications. No approval of plans and specifications, and no publication of architectural standards bulletins shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence will be built in a good, workmanlike manner. The acceptance of a deed to a residential lot in the subdivision shall be deemed a covenant and agreement on the part of the Grantee, and the Grantee's heirs, successors and assigns, that the Grantor, the Association and the ARC, as well as their agents, employees and architects, shall have no liability under these Restrictions except for willful misdeeds.

## ARTICLE IX GENERAL PROVISIONS

9.01. Enforcement. The Declarant, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, including by injunction, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.02. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

9.03. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2004, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by affirmative vote of owners having two-third (2/3) of the Class A voting power of the Association. This Declaration may be amended solely by the Declarant at any time prior to the time that the Class B membership of the Association is converted to Class A membership. Thereafter, amendments may be made only by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and only on the date five (5) years after conversion of the Class B membership to Class A membership, or at any time after the end of said five year period. Any amendment to this Declaration must be recorded and pre-approved by the Montgomery County Engineer.

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

9.05. Conflicting Provisions. In any case wherein the covenants, conditions, restrictions, easements, reservations, or any other provisions herein should conflict in form or substance from any other provision herein or provisions in the Record Plan then the most restrictive provision shall control. In all cases of conflict, the specific provision shall control and prevail over the general provision.

9.06. Express Reservation of Amendment. The Declarant hereby reserves the express right to amend the provisions of this Declaration so as to include information not currently available, as provided in surveys of this subdivision or other recording information or to remedy any internal inconsistencies.

## ARTICLE X MAINTENANCE

10.01. Association. Unless otherwise provided for herein, the Association shall maintain, repair and make all necessary replacements to the Common Area and major maintenance and repairs to the Controlled Drainage Easement Area.

10.02. Owner. The Owner of each Lot shall maintain such Lot and improvements thereon in a reasonable manner in accordance with the general standards prevailing throughout the Property.

## ARTICLE XI LIABILITY INSURANCE

11.01. General. The Association as a common expense shall insure itself, the Board of Trustees, all Owners and members of their respective families and other persons residing with them in the Property, their tenants, and all other persons lawfully in the possession or control of any Dwelling Unit, or part thereof, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in, or about, or arising from the Common Area, such insurance to afford protection to a limit of not less than Five Hundred Thousand Dollars (\$500,000) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000) in respect to damage to or destruction of property arising out of any one accident.

## ARTICLE XII

## ANNEXATION

12.01. Contemplated Annexation by Declarant. Declarant is the owner in fee simple or has a right to acquire adjacent and adjoining real property (Property and Additional Property), and contemplates constructing thereon additional Residential Structures and reserving certain portions of it for green space and open areas. Declarant further contemplates submitting the Additional Property to the provisions of this Declaration so that the same will become, in all respects, part of the Property.

12.02. Reservation of Right to Annex Additional Property. Declarant hereby reserves the right at any time within a period of ten (10) years, commencing on the date this Declaration is filed for record to take the action so contemplated in submitting such Additional Property, so that the same will become, in all respects, part of the Property.

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

12.04. Consent and Approval for Annexation Amendments. Declarant on its own behalf as the Owner of all Lots in the Property and on behalf of all subsequent Owners, hereby consents and approves, and each Owner and his mortgagee by accepting a deed conveying such ownership, or a mortgage encumbering such interests, as the case may be, hereby consents and approves the provisions of this Article XII, including without limiting the generality of the foregoing, the amendment of this Declaration by Declarant in the manner provided for in Section 12.05, and all such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

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

IN WITNESS WHEREOF, the undersigned have set forth their hands this 5<sup>th</sup> day of August, 1997.

Signed in the Presence of:

DECLARANT:  
Meeker/Dogleg Joint Venture

Jana L McDonald  
Lori Foster

George R. Oberer, Jr.  
George R. Oberer, Jr., Managing Partner

STATE OF OHIO  
COUNTY OF Montgomery, SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named George R. Oberer, Jr., who acknowledged that he/she did sign the foregoing instrument, and that the same is his/her free act and deed.

5<sup>th</sup> IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this August day of August, 1997.

Jana L McDonald  
Notary Public

JANA L. McDONALD, Notary Public  
In and for the State of Ohio  
My Commission Expires: March 29, 1999

Prepared by Pickrel, Schaeffs + Ebeling, Dayton, Ohio.

MEEKER CREEK

EXHIBITS

- Exhibit A    Property Description
- Exhibit A-1    Additional Property Description
- Exhibit B    Design Guidelines (Article V)
- Exhibit C    Articles of Incorporation of Meeker Creek Home Owners Association
- Exhibit D    By-Laws of Meeker Creek Home Owners Association

## EXHIBIT A

**DESCRIPTION OF:** Meeker Creek Property Owned by the Meeker - Dogleg Joint Venture

**CONTAINS:** 103.594 Acres

**DATE:** August 28, 1997

Situated in the southeast quarter of Section 30 and the southwest quarter of Section 29, Town 3, Range 6, Butler Township, Montgomery County, Ohio and being all of the land conveyed to Meeker - Dogleg Joint Venture in:

Deed Microfiche Number 97-048C01 (hereafter known as Tract A),  
Deed Microfiche Number 97-494A01 (hereafter known as Tract B),  
Deed Microfiche Number 97-244D06 (hereafter known as Tract C) and  
Deed Microfiche Number 97-049A05 (hereafter known as Tract D) of the Deed Records of Montgomery County, Ohio and being more particularly described as follows:

Beginning at the southeast corner of said southeast quarter of Section 30 said point also being on the centerline of Meeker Road, thence with the south line of said Section 30 and the centerline of said Meeker Road, South  $86^{\circ} 30' 00''$  West for a distance of 432.00 feet to a point being the southeast corner of said Tract A, said point also being the southwest corner of a tract of land conveyed to June D. Smythe in Deed Microfiche Number 77-296A01 of said Montgomery County Deed Records and also being the True Point of Beginning of this description;

thence continuing with said Section 30 south line and said Meeker Road centerline, South  $86^{\circ} 30' 00''$  West for a distance of 200.56 feet to a point being the southeast corner of a tract of land conveyed to David A. and Sandra E. Drewett in Deed Microfiche Number 71-148C06 of said Montgomery County Deed Records;

thence with the west line of said Tract A and said Drewett east line, North  $00^{\circ} 40' 31''$  West for a distance of 946.76 feet to a point being the northeast corner of said Drewett tract;

thence with the north line of said Drewett tract South  $86^{\circ} 37' 15''$  West for a distance of 451.36 feet to a point being the northwest corner of said Drewett tract;

thence with the west line of said Drewett tract South  $00^{\circ} 41' 23''$  East for a distance of 947.70 feet to a point being the southwest corner of said Drewett tract, said point also being on said Section 30 south line and said Meeker Road centerline;

thence with said Section 30 south line and Meeker Road centerline and said Tract A south line, South  $86^{\circ} 30' 00''$  West for a distance of 199.98 feet to a point being the southwest corner of said Tract A, said point also being the southeast corner of a tract of land conveyed to Thomas J. and Marjorie F. Wallman in Deed Microfiche Number 88-425A11 & 88-565A03 of said Montgomery County Deed Records;

thence with said Tract A west line and said Wallman east line, North  $00^{\circ} 41' 23''$  West for a distance of 1178.19 feet to a point being the northeast corner of a plat known and recorded as Meeker Place in Plat Book 134 PP. 2 & 3 of said Montgomery County Plat Records;

thence with said Meeker Place north line, South  $86^{\circ} 49' 41''$  West for a distance of 206.91 feet to a point on the west line of said Tract A, said point also being the southeast corner of a tract of land conveyed to Harold V. and Linda K. Conklin in Deed Microfiche Number 88-088A11 of said Montgomery County Deed Records;

thence with said Tract A west line, North  $00^{\circ} 41' 07''$  West for a distance of 623.65 feet to a point being the northeast corner of a tract of land conveyed to Kenton N. and Virginia R. Summers in Deed Microfiche

Number 86-616A09 of said Montgomery County Deed Records, said point also being on the south line of said Tract B;

thence with said Tract B south line, South  $86^{\circ} 12' 27''$  West for a distance of 573.03 feet to a point being the southeast corner of tract of land conveyed to Gregory & Kelly Haws in Deed Microfiche Number 97-494A01 of said Montgomery County Deed Records;

thence with said Haws tract east line, North  $00^{\circ} 47' 39''$  West for a distance of 210.00 feet to its northeast corner;

thence with said Haws tract north line, South  $86^{\circ} 12' 27''$  West for a distance of 415.00 feet to its northwest corner, said point also being on the centerline of Dog Leg Road;

thence with the centerline of said Dog Leg Road, North  $00^{\circ} 47' 39''$  West for a distance of 942.05 feet to a point being the northwest corner of said Tract D, said point also being the southwest corner of a tract of land conveyed to Freddie & Linda McCarty in Deed Microfiche Number 83-398E12 of said Montgomery County Deed Records;

thence with the north line of said Tract D for the next four courses, North  $86^{\circ} 36' 34''$  East for a distance of 1978.02 feet to a point;

thence North  $88^{\circ} 04' 34''$  East for a distance of 441.85 feet to a point;

thence South  $03^{\circ} 44' 35''$  West for a distance of 130.02 feet to a point;

thence North  $86^{\circ} 56' 05''$  East for a distance of 118.31 feet to a point being the northeast corner of said Tract D;

thence with the east line of said Tract D for the next two courses, South  $00^{\circ} 21' 57''$  West for a distance of 192.14 feet to a point being the northwest corner of a tract of land conveyed to William & Lillian Patty in Deed Microfiche Number 90-495C02 of said Montgomery County Deed Records;

thence South  $00^{\circ} 20' 42''$  West for a distance of 989.65 feet to a point being the southwest corner of said Patty tract, said point also being the northwest corner of a tract of land conveyed to June D. Smythe in Deed Microfiche Number 87-99B06 of said Montgomery County Deed Records;

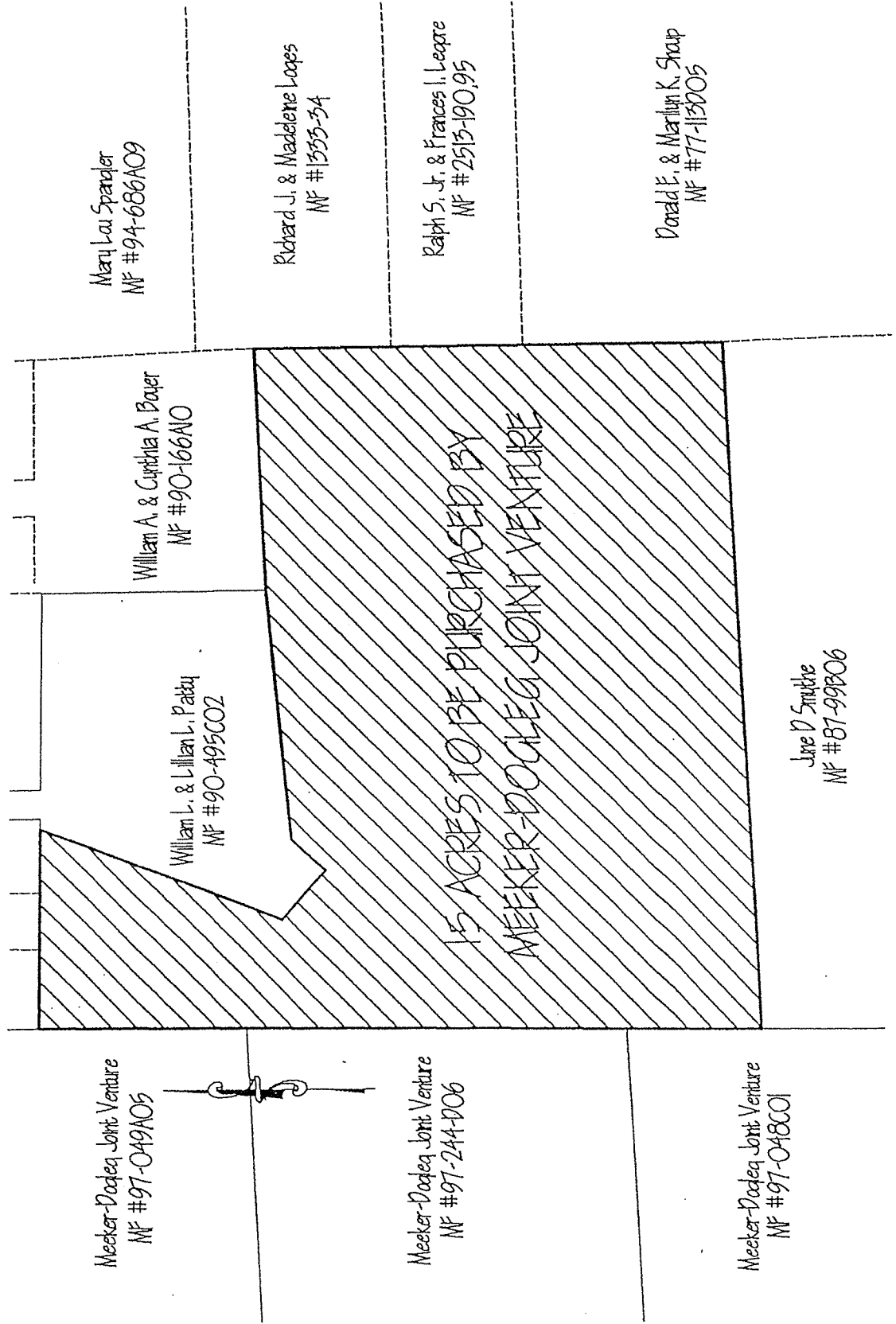
thence with said Smythe Number 87-99B06 tract west line, South  $00^{\circ} 15' 21''$  West for a distance of 915.14 feet to a point being on the south line of said Tract A, said point also being the northeast corner of said Smythe Number 77-296A01 tract;

thence with said Tract A south line and said Smythe Number 77-296A01 tract north line, South  $86^{\circ} 30' 00''$  West for a distance of 432.00 feet to a point being northwest corner of said Smythe Number 77-296A01 tract;

thence with said Tract A east line and Smythe Number 77-296A01 tract west line, South  $00^{\circ} 15' 21''$  West for a distance of 710.00 feet to the True Point of Beginning of this description.

Contains 103.594 acres, be it the same more or less, subject however to all legal highways, easements and restrictions of record.

EXHIBIT A-1



## EXHIBIT B

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MEEKER CREEK

#### DESIGN GUIDELINES (ARTICLE V)

Residential structures in Meeker Creek will be planned and designed to achieve a traditional appearance. To assure that the buildings will maintain a high quality appearance over time, the buildings will utilize high quality and long-lasting maintenance free materials (such as brick, stone, stucco type material with a limited use of wood siding). No simulated wood or wood composition siding will be permitted.

An Architectural Review Committee (ARC) will be established by the Developer for the purpose of administering these guidelines. The ARC, Developer or Seller are not reviewing plans and specifications for structural integrity, buildability on said lot, compliance with any applicable codes all of which are the sole responsibility of the Owner.

The owner shall submit to the ARC for approval, approval with modification or disapproval, two (2) sets of detailed building plans, site and grading plan with landscaping, material descriptions with color selections prior to closing. All reviews by the ARC are for aesthetics only.

#### CONSTRUCTION REQUIREMENTS

No residence building with less than the following designated square footage of finished living area above grade, exclusive of garage, porches and unfinished areas, shall be erected or placed on any Lot in the Phases, as noted.

Area/Phase (Finished floor area exclusive of garage, porches or unfinished areas)

Western:	Ranch (above grade)	2300 sq. ft.
	Two story (above grade)	2800 sq. ft.
Central:	Ranch (above grade)	2800 sq. ft.
	Two story (above grade)	3200 sq. ft.
Eastern:	Ranch/Two story (above grade)	3500 sq. ft.

Garages will accommodate not less than two vehicles. Only panel or flush type garage doors shall be permitted (wood or insulated steel). If a steel door is used, it must be reviewed and approved by the ARC.

Minimum roof pitch (visible from any street, public or private) will be 8/12, unless approved otherwise by the ARC. Minimum roof overhangs of six (6") inches will be required. Dimensional roof shingles or slate will be used.

Windows may be wood or wood clad with either vinyl or aluminum. Colors shall be compatible with the approved color scheme for the house.

Driveways and sidewalks shall be constructed of concrete, pavers or similar material or as approved by the ARC.

Storage sheds may be permitted, provided the location, materials and colors of the shed are approved by ARC.

Satellite receivers are prohibited in front and side yards. Such devices may be installed in the rear yard or on the house if not visible from the street with the approval of the ARC as provided for in 5.02 and 5.03. Such approval shall be conditioned upon compliance with such conditions regarding location, screening and size as the ARC shall deem reasonable. Maximum size of the unit will be a three foot (3') in diameter dish.

Storage of recreational vehicles, boats, campers, trailers and other similar vehicles on a permanent basis, on any portion of the lot is prohibited. Permanent is defined as exceeding 72 hours.

Fencing is permitted, however, an illustration, sample of the fence, site plan, landscaping and color information must be submitted to the ARC. Chain link fence shall not be permitted.

Builder/Buyer is responsible for staking out property limits and providing building construction staking. Final grading must be according to approved site plans, and prior to seeding, sodding or landscaping and following the grades identified on the grading plan. All drainage swales shall be maintained as shown on the developer's grading plan.

Builder/Buyer further agrees to set all finish grade elevations in accordance with the grading plan for the subdivision and to install the driveway aprons.

Builder/Buyer is responsible for all mud and debris left on each lot or tracked onto the streets, or any damage to Declarant improvements, by employees or subcontractors during construction. Declarant may require the Builder/Buyer to deposit up to Twenty-five Hundred Dollars (\$2,500.00) additional, for the purpose of bonding or insuring these requirements during construction. Upon completion of construction and favorable inspection of Declarant improvements, as determined by the ARC, the Twenty-five Hundred Dollars (\$2,500.00) LESS any amount incurred by the Association for street cleaning will be refunded.

Builder/Buyer agrees to leave all sanitary sewer manholes, storm sewer manholes, main water line boxes and water tap box uncovered and exposed to the finish grade after sodding and seeding of the yards or installation of driveways.

Builder/Buyer shall keep the Lot free and clear of all construction debris on a regular basis, shall not encroach on any surrounding Lots and shall hold harmless Seller from any claims arising from Builder/Buyer's activities concerning said Lot.

Builder/Buyer is responsible for securing and paying for all individual zoning permits, sewer and water tap-in fees, building permits and other associated fees.

Builder/Buyer is responsible for obtaining and complying with an NPDES permit from Ohio EPA, and maintain an control plan for erosion and sediment control in accordance with all Federal, State, and Local laws, rules and regulations during the construction period and until all landscaping, grass seeding or sodding is in place.

Builder/Buyer further understand that all easements of record shall be used also for drainage in accordance with the approval by Seller.

Builder/Buyer is responsible for extending all utility connections from the property line of the development zone to each dwelling.

Builder/Buyer shall submit a landscaping plan for the dwelling to be reviewed for approval, approval with modification or disapproved, by the ARC. The amount, quality of existing vegetation, and location of existing vegetation will be shown on the site plan.

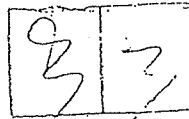
Builder/Buyer shall install a mailbox designated by the ARC for Meeker Creek.

Builder/Buyer shall install one pole mounted exterior area light designated by the ARC. All exterior pole mounted area lights shall be controlled by a photoelectric cell. The placement of all exterior area lights shall be reviewed and approved by the ARC and shall be metered to the single-family residence constructed on the Lot.

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JOY A. CLARK  
RECORDED

98 NOV 25 AM 9:33

MONTGOMERY CO. OHIO  
RECORDEDMEEKER CREEK  
LANDSCAPING GUIDELINES

WHEREAS, on August 29, 1998 at 3:20 p.m., MEEKER/DOGLEG JOINT VENTURE (Declarant) filed for record the Declaration of Covenants, Conditions and Restrictions for Meeker Creek in the Montgomery County Recorders Office, Microfiche No. 97-0589 C05;

WHEREAS, on October 7, 1997 at 3:09 p.m., the Declarant filed for record an Amendment to Declaration of Covenants, Conditions and Restrictions for Meeker Creek in the Montgomery County Recorders Office, Microfiche No. 97-0679 A02;

NOW THEREFORE, the Declarant, with full right, power and authority to do so, does hereby attach to the Covenants and Restrictions the Landscaping Guidelines as hereinafter set forth:

1. The following guidelines are intended to enhance the aesthetic quality and to promote property values in the community.
2. The objective of these Landscaping Guidelines is to provide clarity in interpreting the landscaping requirements set forth in Exhibit B of the Declaration of Covenants, Conditions and Restrictions for Meeker Creek. (Design Guidelines; Articles V.) These guidelines shall apply retroactively.
3. Each owner shall be required to submit and install landscaping according to the following guidelines:
  - a) Procedure: Landscaping plans shall be submitted at the time of house plan approval. Submittal at this time can be waived if owner submits a signed statement in which he promises:
    - (1) to install lawn and trees according to the guidelines set forth below;
    - (2) to submit a plan for approval and install the landscaping within 45 days of closing;
    - (3) to deposit \$2,000.00, at the discretion of the board
    - (4) failure to install the landscaping within 45 days of completion of home, at the Board's discretion, result in forfeiture of the deposit;
    - (5) all plans must include a pricing summary and an invoice/estimate substantiating costs;
  - b) Elements:
    - (1) Lawn: front and side yard must be sodded. On corner lots, both front yards must be sodded. The front yard(s) must be irrigated;
    - (2) Trees: three (3) 3" caliper trees in the front yard, unless (a) the lot is a wooded lot, and (b) the ARB determines, in its sole discretion, to waive said requirement;

NO TRANSFER NEEDED

98 NOV 25 AM 9:25

A. J. WAGNER  
AUDITOR

- (3) Foundation Covering: Owner shall spend a minimum of \$1,500.00 for front yard foundation covering, subject to CPI increases, if any, effective October 1, 1998. Included in this sum are live plants, mulch and design fees. Excluding from this sum are pavers, pathways, and irrigation. A minimum of 60% of the sum must be spent on live plants.

IN WITNESS WHEREOF, the undersigned has set forth his hand this 2/25 day of October, 1998.

Signed and Acknowledged  
in the Presence of:

DECLARANT:  
Meeker/DogLeg Joint Venture

Michele D. Poole  
Michele D. Poole

George R. Oberer, Jr.  
George R. Oberer, Jr.,  
Managing Partner

Mark G. Stenger  
Mark G. Stenger

STATE OF OHIO )  
COUNTY OF MONTGOMERY ) ss:

Before me, a Notary Public, in and for said County and State, personally appeared the above-named George R. Oberer, Jr., who acknowledged that he did sign the foregoing instrument, and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 25 day of October, 1998.

This instrument prepared by:

Meeker/DogLeg Joint Venture  
4324 Webster Street  
Dayton, Ohio 45414  
Phone: (937) 278-0851  
Fax: (937) 278-6334

Michele D. Poole  
Notary Public

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

THIRD AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
MEEKER CREEK

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MEEKER CREEK (this "Amendment") is made as of this 21<sup>st</sup> day of October, 2003, by MEEKER/DOGLEG JOINT VENTURE, an Ohio joint venture ("Declarant"), under the following circumstances:

A. Declarant, as the owner of the real property known as Meeker Creek (the "Property"), adopted certain covenants, conditions and restrictions with respect to the development of the Property, dated August 5, 1997 and recorded at Microfiche Number 97-0589C05 of the Montgomery County, Ohio Records (the "Original Restrictions").

B. The Original Restrictions were amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions dated October 2, 1997 and recorded at Microfiche Number 97-0679 A02 of the Montgomery County, Ohio Records and that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions dated November 29, 1998 and recorded at Microfiche Number 98-0800 A10 of the Montgomery County, Ohio Records (together with the Original Restrictions, the "Restrictions").

C. In connection with the development of Sections 3 and 4 of the Property, Declarant will install a temporary private lift station (the "Lift Station").

D. Pursuant to Article 3.02(2), Declarant is a Class B member since there are not, as of the date of this Amendment, owner-occupied residences in existence on at least eighty-five (85) of the Lots in the Property.

E. Pursuant to Article 9.03 of the Restrictions, Declarant may amend the Restrictions at any time prior to the time that the Class B membership held by Declarant converts to a Class A membership.

F. Declarant desires to amend the Restrictions as set forth below to provide for the operation and maintenance of the Lift Station.

NOW, THEREFORE, Declarant amends the Restrictions as set forth below.

1. The following Section shall be added to Article II of the Restrictions:

2.07. **Lift Station.** The Association, for the benefit of the Lot Owners of Sections 3 and 4, shall have the right, and obligation, to maintain the Lift Station. The Association shall enter into, and keep in force, at all times, a maintenance contract, for periodic inspection and maintenance of the Lift Station, with a company qualified to perform such services. Declarant initially, and then the Association, shall provide written notice, from time to time, to the Montgomery County Department of Sanitary

Engineering of: (i) the name of the company which is providing the maintenance pursuant to the maintenance contract; and (ii) the names and phone numbers of who can be contacted regarding regular maintenance or an emergency situation. Declarant initially, and then the Association, shall promptly notify the Montgomery County Department of Sanitary Engineering, from time to time, of any change in the contract or the contact names and numbers. Labels setting forth emergency phone numbers shall be placed on the side of the Lift Station. The costs of such maintenance contract shall be assessed against the Lot Owners in Sections 3 and 4 as part of the Lift Station Assessment described in Section 4.02(C).

2. Section 4.01 shall be deleted and the following Section inserted in lieu thereof:

**4.01. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Operating Assessments; and (2) Special Assessments for Capital Improvements; and (3) Lot Assessments; and (4) with respect to Owners of Lots in Section 3 and 4, Lift Station Assessments. All such assessments shall be established and collected as hereinafter provided. The Annual, Special, Lot, and Lift Station Assessments, together with interest, costs and reasonable attorney's fees, shall, be a charge on the Property, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successor owners, unless expressly assumed by them; however, the delinquent assessments shall in all instances be a continuing lien upon the subject Lot. Assessments may differ as to types of Membership, all as set forth in Section 3.01.

3. The following subsection shall be added to Section 4.02:

(C) **Lift Station Assessment** applicable to all Lots in Sections 3 and 4 for the maintenance, repair and replacement of the Lift Station. If the Association fails to properly maintain the Lift Station, it shall be Sections 3 and 4 Lot Owners' responsibility to maintain the Lift Station, at their expense. If the Montgomery County Department of Sanitary Engineering performs any maintenance or repair on the Lift Station, the Lot Owners in Sections 3 and 4 shall be responsible for all costs incurred by the Montgomery County Department of Sanitary Engineering, in connection with such repair, pro-rated based upon the number of Lots in Section 3 and 4.

4. The following subsection shall be added to Section 4.03(1):

(h) A separate estimate of the next fiscal year's cost for the maintenance, repair or replacement of the Lift Station which will be assessed against the Lot Owners in Sections 3 and 4.

5. The following section shall be added to Article VII:

7.05. **Lift Station Easement.** The Association and every Lot Owner in Sections 3 and 4 shall have an easement for the use, maintenance, repair and replacement of the Lift Station. Additionally, the Montgomery County Department of Sanitary Engineering shall also have an easement for the purposes of inspecting and, if the Association or the Lot Owners fail to do so, repairing the Lift Station.

6. The provisions in the Restrictions with respect to the Lift Station may not be amended, modified or deleted from the Restrictions without the prior written consent of the Montgomery County Department of Sanitary Engineering's Office.

7. Section 9.03 is deleted and the following Section inserted in lieu thereof:

9.03 **Amendment.** The covenants and restrictions of this Declaration shall run and bind the land until January 1, 2013, after which time they shall automatically extend for successive periods of ten (10) years unless terminated by affirmative vote of the Owners having two-thirds (2/3) of the Class A voting power of the Association. This Declaration may be amended solely by the Declarant at any time prior to the time the Class B membership of the Association is converted to a Class A membership; provided that the Easement Areas, Street Reserved Areas, Control Drainage Easement Areas, Reserved for Detention Basin Areas and Lift Station Easement are not in any way amended without prior approval from the Montgomery County Engineer and the Montgomery County Department of Sanitary Engineering. Thereafter, amendments may be made only by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment to this Declaration must be recorded and pre-approved by the Montgomery County Engineer and Montgomery County Department of Sanitary Engineering.

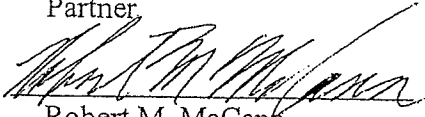
8. Except as modified by this Amendment, the Restrictions remain in full force and effect.

9. The Restrictions, as modified by this Amendment, are ratified and confirmed by Declarant.

EXECUTED hereof as of the date first written above.

MEEKER/DOGLE JOINT VENTURE,  
an Ohio General Partnership

By: Oberer Development Co.,  
an Ohio Corporation, Managing General  
Partner,

By:   
Robert M. McCann  
Chief Operating Officer

STATE OF OHIO )  
 ) SS:  
COUNTY OF MONTGOMERY )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of October, 2003, by Robert M. McCann, as Chief Operating Officer of Oberer Development Co., Managing General Partner of Meeker/Dogleg Joint Venture, an Ohio General Partnership.

Nicholas D. Kenphues  
Notary Public

MICHELE D. KEMPHUES, Notary Public  
In and for the State of Ohio  
My Commission Expires Aug. 4, 2006

This Instrument was prepared by:  
Edward M. Kress, Esq.  
Chernesky, Heyman & Kress P.L.L.  
10 Courthouse Plaza, SW, Suite 1100  
Dayton, OH 45402  
115073.1

0026306

SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
MEEKER CREEK

JOY A. CLARK  
RECORDER  
98 NOV 25 PM 3:30

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MEEKER CREEK (this "Amendment") is made as of this 22 day of NOVEMBER, 1998, by MEEKER/DOGLE JOINT VENTURE, an Ohio joint venture ("Declarant"), under the following circumstances:

A. Declarant, as the owner of the real property known as Meeker Creek, (the "Property"), adopted certain covenants, conditions and restrictions with respect to the development of the Property, dated August 5, 1997 and recorded at Microfiche Number 97-0589C05 of the Montgomery County, Ohio Records, AMENDED BY Amendment dated October 2, 1997 and recorded at Microfiche Number 97-0679 A02 of the Montgomery County, Ohio Records (the "Restrictions").

B. Pursuant to Article 3.02(2), Declarant is a Class B member since there are not, as of the date of this Amendment, owner-occupied residences in existence on at least eighty-five (85) of the Lots in the Property.

C. Pursuant to Article 9.03 of the Restrictions, Declarant may amend the Restrictions at any time prior to the time that the Class B membership held by Declarant converts to a Class A membership.

D. Declarant desires to amend the Restrictions as set forth below.

NOW, THEREFORE, Declarant amends the Restrictions as set forth below.

NO TRANSFER NEEDED  
98 NOV 25 PM 3:29  
A. J. WAGNER  
AUDITOR

1. The Owner of Lot 46 shall be entitled to maintain the single family residence, and detached barn, presently located on Lot 46 as of the date of this Amendment, notwithstanding the fact that the residence does not comply with all of the building specifications for new residences built on the Property, subject to compliance with the following conditions:

- (a) The Owner must, on or before December 31, 2000, complete all renovations or construction obligations set forth on Exhibit "A" as labeled Minimum Renovation Requirements, unless otherwise agreed in writing by the Declarant; and
- (b) The Owner shall, on or before June 30, 1999, submit a landscaping plan to the ARC for review and approval, with all landscaping to be completed by December 31, 2000; and
- (c) The Owner shall abide by the Restrictions with respect to the use and maintenance of Lot 46 and shall pay assessments against Lot 46, from time to time, as required by the Restrictions; and
- (d) If the residence presently existing on Lot 46 is ever "Destroyed" by fire or other casualty, the Owner shall rebuild the residence in complete compliance with the building restrictions set forth in the Restrictions. For purposes of this subsection, the residence presently existing on Lot 46 shall be deemed Destroyed if more than 50% (fifty) percent of the value of the structure is damaged so as to

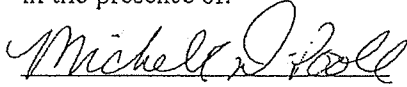
cause renovation or reconstruction.

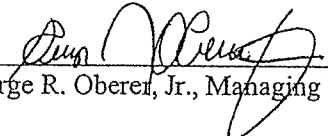
2. Except as modified by this Amendment, the Restrictions remain in full force and effect.
3. The Restrictions, as modified by this Amendment, are ratified and confirmed by Declarant.

WITNESS the execution hereof as of the date first written above.

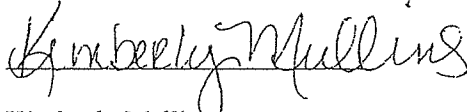
Signed and acknowledged  
in the presence of:

Meeker/Dogleg Joint Venture



By:   
George R. Oberer, Jr., Managing Partner

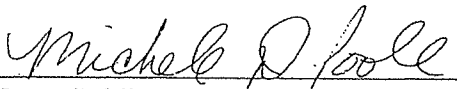
Michele D. Poole  
Printed Witness Name



Kimberly Mullins  
Printed Witness Name

STATE OF OHIO                     )  
  ) SS:  
COUNTY OF MONTGOMERY        )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of November, 1998, by George R. Oberer, Jr., of Meeker/Dogleg Joint Venture, an Ohio joint venture, on behalf of the joint venture.

  
Notary Public

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

This Instrument was prepared by:  
Karen R. Adams, Esq.  
Chernesky, Heyman & Kress P.L.L.  
10 Courthouse Plaza, SW  
Suite 1100  
Dayton, OH 45402

:::ODMA\GRPWISE\CHK.Dayton\_PO.Library1:4692.1

## Exhibit A

### **Improvements -7430 Dog Leg Road -**

The Owner of Lot 46 shall be required to make the following improvements, herein the "Improvements" to the single family dwelling known as 7430 Dog Leg Road. The Improvements are the minimum restoration requirements of the Declarant; Owner has satisfied themselves as to all requirements necessary, with the understanding that the subject sale by Declarant to Owner is "as is" with Declarant bearing the full responsibility to complete all of the Improvements. Declarant makes no representations or warranties as to the condition of the premises on Lot 46. Declarant understands that interior obligations may arise, including potentially new electrical service and/or plumbing. Owner acknowledges that the Declarant has reserved the right to formally approve all plans, materials and colors for the exterior renovation items, with written consent by the Declarant not to be unreasonably withheld. Owner shall bear the responsibility of obtaining all required permits from all governmental authorities.

#### **Exterior -- Minimum Restoration Requirements**

- Roof -- New Shingles will need to be applied to the premises using "dimensional shingles" comparable with those being installed on the new homes in Meeker Creek. New gutters and down spouting to be installed.
- New windows shall be installed throughout the premises.
- New front door. The existing brick and glass structure enclosing the front porch shall be removed. Existing split rail fence shall be removed.
- New exterior siding shall be installed. The siding shall be a wood product such as cedar, or a similar lap siding. Cement type lap siding is acceptable. Repair, replace and repaint exterior trim as needed. The existing TV antenna shall be removed.
- A new HVAC system shall be needed; no window air conditioners shall be allowed.
- Declarant shall provide sewer, water and natural gas laterals to the property line. Purchaser shall be obligated to connect, and pay the costs, of these utilities to the premises. Purchasers shall pay for the costs of all permits and special connection costs. All electric, phone and cable TV connections shall be underground.
- Purchaser shall be responsible, at their costs, for any internal improvements to the home.
- Existing landscaping is overgrown. Overgrown foundation plantings need to be removed and a new landscaping plan submitted to the ARC, for review and approval, prior to March, 2000. Landscaping requirements consistent with requirements for new homes in Meeker Creek, including a minimum of three (3) trees in the front yard and three (3) trees in the side/rear yard along Crestridge Drive. Trees shall be a minimum of 3 inch caliper.

#### **Barn**

- Purchaser shall install a new roof, siding and doors on the barn. The lean-to(shed roof) to the rear(east) of the barn shall be removed.

#### **Driveway**

- Purchaser shall install a new driveway of concrete, pavers or other approved material.
- Purchaser shall install a mailbox, and post light, consistent with those utilized in Meeker Creek.

#### **Garage**

- A minimum 2-car garage, preferably attached, shall be built. Existing 1-car garage shall be razed.

:5650

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR MEEKER CREEK

THIS AMENDMENT TO DECLARATION is made on the date hereinafter set forth by MEEKER/DOGLE JOINT VENTURE, an Ohio joint venture, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant, on August 29, 1997, recorded in the deed records of the Recorder of Montgomery County, Ohio a certain "Declaration of Covenants, Conditions and Restrictions for Meeker Creek", at Microfiche #97-0589 CO5 ("Declaration") which said Declaration provides for various and sundry matters relative to the development of Meeker Creek including, without limitation, storm water management and the method of amendment of the Declaration, and;

WHEREAS, Meeker Creek is a development consisting of several different parcels of land all of which are more fully described in the Declaration, and;

WHEREAS, pursuant to review of said Declaration by the Montgomery County Engineer's office certain amendments have been requested to be made to the Declaration.

NOW THEREFORE, the Declarant, with full right, power and authority to do so, does hereby amend the Declaration as hereinafter set forth:

A. ARTICLE I: DEFINITIONS

*Delete Section 1.15 and in its place and stead add the following:*

Section 1.15. "Reserved for Detention Basin" shall mean the area affecting Lots 50 and 51 being a dry detention basin which shall be mowed and maintained by the owners of Lots 50 and 51.

*Insert new:*

Section 1.16. "Drainage and Detention Basin Easements" shall mean any property identified on the plan as Reserved for Storm Water Control, being "Reserved Area A" and "Reserved Area B" (herein referred to as "Control Drainage Easement Area") and "Reserved For Detention Basin" pertaining to Lots 50 and 51.

NO TRANSFER NEEDED  
97 OCT -7 PM 3:08  
A.J. WAGNER  
AUDITOR

B. ARTICLE II: PROPERTY RIGHTS

*Delete Section 2.02 and in its place and stead add the following:*

Section 2.02. Drainage and Detention Basin Easements.

- (1) "Control Drainage Easement Area." No improvements, structural or otherwise, are permitted within the channel area of the "Control Drainage Easement Area," consisting of Reserve Area A and Reserve Area B. The determination as to what constitutes the channel area and what constitutes an improvement in the event of controversy shall be made by the Board of Trustees and shall be binding on all owners. Any improvements in the "Control Drainage Easement Area" not falling within such channels shall be subject to prior approval. Any such approval such require the consent of the local governmental body or agency having jurisdiction over the "Control Draining Easement Area." By the Declaration there is herein reserved to and for the benefit of the Association an easement for the purpose of maintenance, repair and replacement of the easement area, "Control Drainage Easement Area" if and to the extent that the "Control Drainage Easement Area" ever fails to perform its intended purpose of detention of storm water for the plat.
- (2) Detention Basin Maintenance and Repair. The Easement Area "Reserved for Detention Basin" as shown on the record plan effecting Lots 50 and 51 is designed as a dry detention basin shall be mowed and maintained by the owners of Lots 50 and 51 as said Easement Area affects sub-lots in such a fashion so as not to adversely affect the intended purpose of the Easement Area "Reserved for Detention Basins." By the Declaration, there is herein reserved to and for the benefit of the Association an easement for the purpose of maintenance, repair, and replacement of the Easement Area "Reserved for Detention Basin" if and to the extent that the Easement Area "Reserved for Detention Basin" ever fails to perform its intended purpose of detention of storm water for the plat.

C. ARTICLE IX: GENERAL PROVISIONS

*Delete Section 9.03 and in its place and stead substitute the following:*

Section 9.03 Amendment. The covenants and restrictions of this Declaration

shall run and bind the land until January 1, 2013, after which time they shall automatically extend for successive periods of ten (10) years unless terminated by affirmative vote of the owners having two-third (2/3) of the Class A voting power of the Association. This Declaration may be amended solely by the Declarant at any time prior to the time that Class B membership of the Association is converted to Class A membership; provided that the Declarant seek approval of any amendments to Easement Areas, Street Reserved Areas, Control Drainage Easement Areas, and Reserved for Detention Basin Areas, are not in any way amended without prior approval from the Montgomery County Engineer. Thereafter, amendments may be made only by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and only on the date five (5) years after the conversion of Class B membership to Class A membership, or at any time after the end of said five (5) year period; however any amendment to this Declaration must be recorded and pre-approved by the Montgomery County Engineer.

Except as herein specifically set forth the Declaration shall remain in full force and effect. To the extent of any conflict between the Declaration and the Amendment, the Amendment shall govern.

IN WITNESS WHEREOF, the undersigned have set forth their hands this 2<sup>nd</sup> day of October, 1997.

Signed in the Presence of:

DECLARANT:  
Meeker/Dogleg Joint Venture

Janet Marshall  
Sherry L. Hale

George R. Oberer, Jr.  
George R. Oberer, Jr., Managing Partner

JOY A. CLARK  
RECORDER  
97 OCT -7 PM 3:12  
MONTGOMERY CO. CLERK  
RECORDED

22A

STATE OF OHIO )  
 ) SS:  
COUNTY OF MONTGOMERY )

Before me, a Notary Public in and for said County and State, personally appeared the above named GEORGE R. OBERER, JR., who acknowledged that he did sign the foregoing instrument, and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 2<sup>nd</sup> of October, 1997.

Jana L McDonald  
Notary Public

JANA L. McDONALD, Notary Public  
In and for the State of Ohio  
My Commission Expires: March 29, 1999

This Instrument Prepared by:

Alan B. Schaeffer, Esq  
2700 Kettering Tower  
Dayton, OH 45423  
(937) 223-1130

20450

