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DECLARATION

OF

EASEMENTS, COVENANTS AND RESTRICTIONS

FOR

HILLBROOK

RECORDED THIS DATE
FRANK RUSSO
CITY RECORDER
96 JUL 10 PM 4:22

THOMAS J. NEFF, P. E., P. S.	
COUNTY ENGINEER	
TAX MAP DIVISION	
APPROVED FOR	TJR
RECORD	_____
TRANSFER	_____
SPAT	_____

TRANSFER NOT REQUIRED

JUL 9 1996

[Signature]
CITY COUNTY AUDITOR

GUARDIAN TITLE
ORDER NO. 60724MP

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EXHIBITS

- EXHIBIT A - Legal Description of the Property, which may be expanded from time to time
- EXHIBIT B - Plat of Hillbrook, which may be supplement from time to time by plats of lands in the Expansion Area, subject to this Declaration
- EXHIBIT C - Legal Description of Expansion Area which Declarant may subject to the Declaration and annex to the Property
- EXHIBIT D - Drawing showing the Expansion Area
- EXHIBIT E - Articles of Incorporation of Hillbrook Association
- EXHIBIT F - Bylaws of Hillbrook Association

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
FOR
HILLBROOK

DECLARATION, made this 10th day of July, 1996, by MYLES
LAND COMPANY, hereinafter called "DECLARANT."

W I T N E S S E T H:

Declarant, owner of the real property in the City of
Brecksville, County of Cuyahoga, and State of Ohio, described on
EXHIBIT A, attached hereto ("PROPERTY"), declares that the Property
shall be held, sold and conveyed subject to the following
easements, covenants, restrictions and conditions, which are for
the purpose of protecting the value and desirability of the
Property and which shall run with the Property, shall be binding on
all parties having any right, title or interest in the Property, or
any part thereof and on their heirs, successors and assigns, and
shall inure to the benefit of each owner thereof.

1. DEFINITIONS

Whenever used herein, and in any amendments or
supplements hereto, unless the context otherwise requires,

- (a) "ASSESSMENTS" means the charges payable by Owners pursuant to Paragraphs 2(f)(ix), 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(j), and 7 of this Declaration.
- (b) "ASSOCIATION" means Hillbrook Association, an Ohio non-profit corporation. The Articles of Incorporation and Bylaws of the Association shall be in the form marked EXHIBIT E and F respectively, attached hereto.
- (c) "BOARD" means the Board of Trustees of the Association.

- (d) "COMMON AREA" and "COMMON AREAS," which may be changed from time to time as herein provided, means all the real property (including the improvements thereto and facilities thereon and common Lines therein) owned by the Association, including easement rights both on and off the Property for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as follows: All portions of the Property excluding "Lots" shown on the "Plat," and appurtenant non-exclusive easements on and off the Property which benefit the Property.
- (e) "DECLARANT" means MYLES LAND COMPANY. It means, also, the successors and assigns of MYLES LAND COMPANY.
- (f) "DEVELOPMENT PERIOD" means the period of time beginning on the date hereof and ending on the earlier of (i) December 31, 2005, (ii) the date Declarant files with the Cuyahoga County Recorder an instrument, signed by Declarant, witnessed and acknowledged as provided in R.C. 5301.01, declaring the Development Period ended, or (iii) the date all Lots have been sold by Declarant to bona fide purchasers for value. For purposes of item (iii) of this subparagraph (f), the Expansion Area will be deemed to contain Lots owned by Declarant, even if Declarant does not own the Expansion Area, until Declarant acquires, subdivides and sells the Lots platted in the Expansion Area.
- (g) "EXPANSION AREA" means the land lying to the south of the Property, described on EXHIBIT C and shown on EXHIBIT D, attached.
- (h) "INSTITUTIONAL MORTGAGEE" means a mortgagee which is (i) a bank, savings institution, trust company or national banking association, (ii) an insurance company or fraternal benefit association, (iii) pension, retirement or profit sharing trust or fund, or (iv) a government, public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds.
- (i) "LIMITED COMMON AREA" means the fifteen-foot (15') area along the rear and certain sides of some Units, to the extent there is no overlap, as more defined and explained in Paragraph 2(c)(ii).

- (j) "LINE" means a utility line, pipe, conduit, wire, television cable, vault, and appurtenances thereto.
- (k) "LOT" means any subplot shown upon the Plat of the Property and shown on any plat filed with the Cuyahoga County Recorder of lands in the Expansion Area annexed to the Property and made subject to this Declaration as provided in Paragraph 8(e), below. The Common Area shall not be a Lot.
- (l) "MEMBER" means a member of the Association, being the Declarant and Owners, as further defined in the Articles of Incorporation of the Association.
- (m) "OCCUPANT" means a natural person who lives in a Unit.
- (n) "OWNER" means 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, including persons purchasing a Lot under a recorded land installment contract, but excluding persons having such interest merely as security for the performance of an obligation. Sellers under a recorded land installment contract for a Lot shall be deemed to be persons having an interest merely as security for the performance of an obligation. A lessee under a lease of a Lot having an initial fixed term of fifty (50) years or more, which has been recorded or for which a memorandum of lease has been recorded, shall be deemed to be the Owner of the Lot.
- (o) "PERSON" means a natural person or corporation, partnership, limited partnership, limited liability company, trust or other entity.
- (p) "PLAT" means the Plat of "HILLBROOK ESTATES SUBDIVISION," recorded in Map Volume 276 at Pages 64-65 of Cuyahoga County Records. A reduced copy of the Plat is attached as EXHIBIT B. Declarant may annex lands to the Property described on EXHIBIT A from time to time as herein provided. If lands are so annexed they may be platted. In such case (but only in such case), PLAT shall mean, in addition to the plat shown on EXHIBIT B, the plat, or plats, of the lands annexed and made subject to this Declaration.
- (q) "PROPERTY" means the real property described on EXHIBIT A and lands in the Expansion Area which are annexed and subjected to this Declaration as herein provided. Lands in the Expansion Area shall not be deemed to be Property, however, until and unless they are annexed and submitted to this Declaration as provided in Paragraph 8(e) hereof.

- (r) "RULE" means a Rule or regulation adopted by the Board or the membership of the Association as provided in Paragraph 5(n), below, and in ARTICLE VII, Sections 1 and 2 of the Bylaws of the Association.
- (s) "UNIT" means an enclosed, separate dwelling on the Property providing separate and complete living, cooking, sleeping, bathing and toilet facilities for one family.

2. PROPERTY RIGHTS - COVENANTS AND RESTRICTIONS

(a) Owners' Easements of Use and Enjoyment.

Every Owner shall have a non-exclusive right and easement of use and enjoyment in common with all other Owners in and to the Common Area and in and to all private roads, easements, rights-of-way, and Lines located within the Common Area or in easements appurtenant to the Property. When a Line serves or benefits a Lot other than or in addition to the Lot on which it is located, each Owner who benefits or has need of such Line shall have a non-exclusive right and easement to use such Line in common with all Owners served or benefited by the Line. The Easements described above shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

- (i) The right of the Association to dedicate, transfer, or grant all or any part of the Common Area to any municipality, public agency, authority or utility company for such purposes and subject to such condition as may be agreed to by an instrument signed, in the manner provided in R.C. 5301.01 for the signing of deeds, by Members holding, at the time 66 2/3% or more of the voting power of the Association.
- (ii) The right of the Board to promulgate from time to time reasonable rules and regulations with respect to the use of the Common Areas by Owners, Occupants and guests, and with respect to the use of the Lines by Owners, Occupants and guests.

- (iii) Except as provided in parts (i) and (ii) of this Paragraph 2(a), and except as may otherwise be expressly provided in this Declaration, the Common Areas may not be alienated, released, transferred, hypothecated or otherwise encumbered without approval of all Owners and all holders of the first mortgages encumbering the Lots.
- (iv) The entrance driveway and walk to each Unit is reserved for the use of the Owner of the Unit to which it is appurtenant, or obviously serves, to the exclusion of all other Persons.

(b) Delegation of Use.

Any Owner may assign, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property.

(c) Encroachments.

(i) Initial Construction, Adjoining Owners.

The Association and each Owner has and shall have easements for the existence and maintenance of encroachments upon the Lots of others and upon the Common Areas if the encroachments exist by reason of the construction, reconstruction, repair, restoration, settlement, shifting, or movement of any Unit or other structure on the Property, PROVIDED the encroachment is not caused by the willful conduct of the Owner claiming a right to the easement under this subparagraph (c)(i). Encroachments created by the initial construction of the Units by Declarant are and will be acceptable to all Owners, even if created by the willful act of Declarant, and will be permanent. If a Unit which has an encroachment created by Declarant is damaged or destroyed, the

Owner may recreate the encroachment in the repair or replacement of the Unit. Owners may construct and maintain encroachments on Lots adjoining their own Lots (but not onto the Common Area) by written consent of the Board and by written agreement with the Owners of the Lots on which the encroachment exists. These provisions shall not impair or limit the party wall rights which exist by virtue of Paragraph 4 below. No written agreement between adjoining Lot Owners shall be required for the construction and maintenance of party walls between two adjoining Units.

(ii) Limited Common Area.

(A) 'LIMITED COMMON AREA' means an area fifteen (15) feet in width along the rear and the side of any Lot which does not face the side of another Lot or a street. In no event may Limited Common Area exist between two Lots.

(B) An Owner may construct improvements in the Limited Common Area appurtenant to the Owner's Lot if, and only if, the Owner has received the prior written approval of the Board. The Board may grant approval upon such conditions as it deems appropriate in its sole discretion, and may withhold its approval arbitrarily and without cause. The failure of the Board to act upon a request to construct an improvement in a Limited Common Area shall not be deemed approval. The issuance of a building permit by the City of Brecksville shall not obligate the Board to authorize construction in any Limited Common Area; and the approval by the Board of construction in a Limited Common Area shall not obligate the City to issue a permit.

(C) In approving or denying a request for construction of improvements in a Limited Common Area, the Board may, but shall not be obligated, to consider the following:

- (i) Real estate taxes and assessments upon the improvement and who will pay them;
- (ii) Injuries which may occur on the Limited Common Area by reason of improvements constructed on them;
- (iii) Liability and casualty insurance for improvements constructed on the Limited Common Area and loss payees;
- (iv) How will the improvements be made and by whom;
- (v) Payment for the improvements, and the consequences of non-payment; assurances of payment; upon what lands may mechanics liens be filed; how will mechanics liens be paid;
- (vi) Repairs, replacements and maintenance of the improvements;
- (vii) Appearance of the improvements; quality of the work; affect upon neighboring Lots and homes;
- (viii) Plans and specifications for the work;
- (ix) Precedence established;
- (x) Whether a request for approval should be submitted to adjoining Lot Owners or to the entire membership.

(D) When an improvement is made in a Limited Common Area pursuant to this part, the improvement will be an appurtenance to the Lot to which it adjoins and may be used and enjoyed by such Owner to the exclusion of others, subject to any restrictions, conditions, and limitations upon which approval was given. Upon cessation of use, the area shall revert to the Association and approval must again be had from the Board for any other improvements on the Limited Common Area.

(d) Rights and Easements Reserved by Declarant.

Declarant reserves unto itself, its successors and assigns,

- (i) the right and easement of ingress and egress,
- (ii) the right and easement to drain surface water,
- (iii) the right and easement to construct, install, tie into, use, repair, maintain and replace any and all Lines (both on and off the Property) for water, sanitary sewer, storm sewer, gas, electricity, television, cables, telephone, and irrigation,
- (iv) the right and easement to construct, install, tie into, use, repair, maintain and replace private roads and rights-of-way, and
- (v) the right to annex lands in the Expansion Area to the Property, subject such lands to this Declaration, and thereby grant easements

in, on, over or under the Common Areas and appurtenant easements to the extent necessary for the development, operation and use of all or any parts of the Property and lands, if any, which may be annexed to the Property and made subject to this Declaration; PROVIDED, HOWEVER, that said ingress and egress and said drainage, construction, installations, connections, uses, repairs, maintenance and replacements be performed and effected in such manner and in such places as not to interfere with or disrupt materially the then existing uses of services, roads, Lines, buildings, and structures on the Property. Any damage to the Property caused by the use of any such right, reservation and easement shall be promptly repaired.

The easements, rights and reservations set forth in this Paragraph 2(d) shall be perpetual and shall run with the land.

(e) Maintenance and Access Easements.

(i) Easements are hereby created in favor of the Association, its agents, contractees and employees, in and over the Lots to inspect and maintain the Common Area and those portions of the Lots, Units, and Lines which the Association is required or permitted to maintain pursuant to this Declaration.

(ii) The Association, the Declarant during the Development Period, and their respective agents, employees and contractees, shall have the right to inspect the Lots at reasonable times for the purpose of ascertaining whether the provisions of this Declaration are being complied with and to enforce the provisions of Paragraph 2(f) as expressly hereinafter set forth.

(iii) The Association, the Declarant, and the contractees, agents and employees of the foregoing persons, shall have access to the Property for the purpose of tying into, inspecting, using, maintaining, repairing and replacing the Lines, private roads and rights-of-way within the Common Area of the Property. The easement and rights of Declarant are more fully defined in Paragraph 2(d), above.

(iv) If Declarant has or should construct or install a heating, cooling, or air-conditioning unit or part of such a unit on Common Area near a Lot for the purpose of heating or cooling a Unit on the Lot or for the purpose of treating air in the Unit, the Owner of the Lot shall have an easement on and to that part of the Common Area where the heating, cooling or air-conditioning unit is located, to maintain, service, repair and replace such heating, cooling or air-conditioning unit.

(v) Each Owner, and his agents, contractees, and employees, shall have the right and easement to go upon the Property to tie into, inspect, use, maintain, repair, and replace, when and where necessary, the Lines which service and are appurtenant to the Owner's Unit.

(vi). Every utility company, agency or authority (water, sewer, electric, gas, telephone, irrigation, and cable) and communication companies whether or not a utility, does and shall have an easement in and to the Property for the purpose of inspecting, using, maintaining, repairing and replacing the Lines placed within the Property during the course of its development by Declarant or pursuant to Declarant's authorization or subsequent to its development in accordance with authorization from the Board. All Lines shall be installed underground to the extent reasonably feasible, provided, however, that where vaults, boxes, appurtenances, and Lines must be above ground, reasonable efforts be made to shield them by shrubs or appropriate landscaping. Once initially installed, the Lines shall not be relocated without the approval of either Declarant or the Board.

(vii) Any work done by any person on the land or property of another, under authority of this subparagraph (e), shall be at the risk of the person doing the work, and shall be done as quickly and efficiently as reasonably possible, and with as little interference and inconvenience to others as possible. All damage shall be forthwith repaired and paid for and the property shall be restored, as nearly as reasonably feasible, to its original condition as promptly as possible by the person doing the work.

(f) Covenants and Restrictions.

The following covenants and restrictions shall be applicable to the Property and all Owners and Occupants:

- (i) Good Maintenance. Each Owner and Occupant shall make all repairs and replacements necessary to keep and maintain his Unit and his Lot in a clean and safe condition, in good order and repair, attractive looking and neat, and in accordance with applicable building, health and fire codes and regulations, and the Rules of the Association, unless the Association or some other person is obligated to perform such work. The term "Unit" as used in this part (i) of Paragraph 2(f) shall include, without limitation, the interior and exterior of all buildings, structures and improvements constructed or installed on the Lot, and all fixtures, plumbing, mechanical and electrical installations and equipment in, on or about the Unit. Each Owner shall maintain, repair and replace at his expense all portions of the Property which may be damaged or destroyed by reason of his own act or the act or neglect of any invitee, licensee or guest of such Owner or Occupant. Notwithstanding the foregoing obligation of the Unit Owner, the Association may, but shall not be obligated to, repair and replace the property damaged or destroyed by reason of the act or neglect of a Unit Owner or Occupant, or their invitee, licensee or guest, and charge and collect from such Unit Owner the cost and expense paid or incurred in making any such repair or replacement as hereinafter provided in Paragraph 5(a). In like manner, if an Owner's Unit is damaged by the act or neglect of some other person, the Owner of the Unit so damaged may repair the damage and collect the cost and expense of such repair from the person causing the damage. Each Owner shall, further, keep all garbage and refuse in covered cans supplied by said Owner and shall carry the garbage cans to the curb or the place designated by the Board on days when garbage and refuse shall be collected. The Association may make other regulations concerning the collection of garbage and refuse.
- (ii) Temporary Structures. No temporary building, trailer, tent, shack, free standing garage, barn or other outbuilding shall be constructed or maintained, temporarily or permanently, on any part

of the Property; EXCEPT Declarant may use and authorize others to use construction trailers and sales, preview and information trailers on the Property as the City of Brecksville may permit, and EXCEPT, further, the Board may, from time to time, designate an area or areas on the Property for tents and trailers subject to such conditions, restrictions and limitations as the Board establishes and consistent with the Codified Ordinances of the City of Brecksville.

(iii) Construction and Remodeling. No building, fence, wall or other structure shall be constructed, erected or maintained upon a lot, nor shall any exterior addition, change, or alteration be made to any existing building, fence, wall or other structure (including without limitation the material constituting the exterior fascia of the Units and the color of paint thereon) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to materials, structure, harmony of external design, appearance, and location in relation to surrounding structures and topography by the Board. In the event the Board fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, Board approval will not be required. This part (iii) shall not apply (A) to any installation, erection, construction, reconstruction, repair, replacement or maintenance made by the Declarant, or (B) to the making of repairs and replacements, painting, and similarly maintaining and restoring improvements on each Lot to the condition and appearance they had at the time the Lot with a Unit thereon was first transferred from Declarant to an Owner who is not a Declarant.

(iv) Vehicles. No boat, trailer, airplane, junk car, unlicensed vehicle, or recreational vehicle shall be parked on any part of the Property, except that a boat, truck, trailer, van or recreational vehicle may be parked within the appurtenant entrance driveway of a Unit for the limited purpose of loading or unloading the same in an expeditious manner, and a boat, truck, trailer, unlicensed vehicle, van, and recreational vehicle may be parked inside the garage of a Unit if the door of the Unit is generally kept closed so that the boat, truck, trailer, unlicensed vehicle, or recreational

vehicle cannot be seen from the Common Area. Licensed automobiles and licensed vans in working condition may be parked in the confines of a Unit's garage, in the appurtenant entrance driveway of a Unit, in the parking areas off or adjoining the roadways, cul-de-sacs, and circles allocated for such purpose, and in parking areas designated by the Board. The right herein granted to park licensed automobiles and licensed vans in working condition in the appurtenant entrance driveway of a Unit may be prohibited, restricted or otherwise limited by rules adopted by the Board or by the vote of the membership of the Association, provided such rules are uniformly enforced against all Owners. The entrance driveway to each Unit is reserved for the use of the Owner of the Unit to which it is appurtenant to the exclusion of all others.

- (v) Fences, Walls, Hedges, Etc.. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct right-of-way sight lines for vehicular traffic.
- (vi) Nuisance and Hazardous Substances. No part of the Property (including the Lots and Units) shall be used to store or keep any thing (A) that causes the Property (Lot or Unit) to appear unclean, untidy, or obnoxious to the eye, (B) that emits fowl or obnoxious odors, (C) that causes noise or disturbs the peace, safety, comfort or serenity of Occupants and their invitees. No so-called hazardous or toxic wastes or substances (as defined by any federal or state statute or law) shall be brought upon the Property or disposed of except in strict compliance with legal requirements. No obnoxious or offensive activities shall be carried on or upon any portion of the Lots or the Common Area, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood.
- (vii) One Unit Per Lot. Only one Unit shall be constructed on each Lot.
- (viii) Use of Unit. Each Unit shall be used only as a residence for a single family and for no other purpose, EXCEPT that Declarant may use Units owned by Declarant as "model suites" for the sale or

leasing of such Units and other Units owned by Declarant, and for sales offices. An Owner or Occupant may use a portion of his Unit for his office, studio, provided:

- (A) that the activities shall not interfere with the quiet enjoyment or comfort of any other Owner or Occupant; and
- (B) that such use does not violate any local zoning ordinances.

Except as provided above, no industry, business or trade shall be conducted, maintained or permitted on any part of the Property.

(ix) Animals and Pets. No animals, rabbits, livestock, fowl or poultry of any kind, shall be raised, bred or kept on any Lot or on the Common Area, EXCEPT that one dog and one cat may be kept in a Unit, subject to Rules adopted by the Association, and provided:

- (A) they [the cat and dog] are not kept, bred or maintained for commercial purposes;
- (B) the cat and dog must be kept on a leash held by a person whenever it goes upon the Common Areas and Facilities;
- (C) the Owner immediately pick up, remove, and place in a sealed rubbish container the animal's defecation;
- (D) any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Condominium Property upon three (3) days' written notice from the Board. If Declarant permits some Occupants to have two dogs or both a dog and cat upon initial move in, these Occupants may continue to keep their pets; HOWEVER, after they lose their pets through death or other cause they shall thereafter comply with this subparagraph (x);
- (E) frequent barking by a dog or meowing by a cat, if complained of by any Occupant, may be deemed an unreasonable disturbance sufficient to require permanent removal;

(F) rules adopted by the Association [or Board] governing cats and dogs may include the requirement of a security deposit from the pet owner which will be forfeited if the Owner fails to comply with this subparagraph (m) or Rules governing pets; and

(G) the Board may assess fines or special assessments against any Unit and the Owner(s) thereof who violates this subparagraph or any Rule further regulating pets.

(x) Signs, Etc. No sign, awning, canopy, shutter, screen, radio or television antenna, or anything else shall be displayed from, affixed to, or placed upon the exterior walls, windows (both interior or exterior), doors, or roof of any Unit, or upon any other part of the Property outside a Unit; PROVIDED, HOWEVER,

(A) that Declarant may affix and display "For Sale" and "For Rent" signs on the Property (excepting sold Units) which he elects;

(B) that awnings, canopies, shutters, and screens installed by Declarant as part of the original construction of a Unit by Declarant may be maintained;

(C) that landscaping screens designed and installed by Declarant may be maintained; and

(D) that if rules have been enacted by the Board governing (or otherwise permitting or consenting to) the installation of awnings, canopies, shutters, screens, and antennas and the display of "For Sale" or "For Rent" signs on the Property for the purpose of facilitating the disposal of Units by any Owner, Mortgagee, or the Association, then Owners, Mortgagees, and the Association may install such awnings, canopies, shutters, screens and antennas and display such signs, so long as it is done strictly in accordance with such rules.

(xi) Storage of Material and Trash Handling. Unless approved by the Board, no lumber, metals, bulk material, refuse or trash shall be burned (whether in indoor incinerators or otherwise), kept, stored,

or allowed to accumulate on the Property, EXCEPT necessary building materials may be stored in neat and reasonable quantities during the course of construction or reconstruction of any approved building or structure. This part (xi) does not apply to wood burned in fireplaces or to fuel oil or coal if it should be used for heating or cooking purposes in a Unit.

- (xii) Drilling. No portion of the surface of the Property shall be used for the purpose of boring, mining, quarrying, exploring or removing oil or other hydrocarbons, minerals, gravels, or earth without the prior written consent of the Board.
- (xiii) Impairment of Structural Integrity of Units. Nothing shall be done in any Unit or in, on or to any Lot or Common Area which will impair the structural integrity of any Unit.
- (xiv) Hazardous Uses and Waste. Nothing shall be done or kept in any Unit, on any Lot, or on any Common Area which will increase the rate of insurance applicable for the residential use of any Unit and the contents thereof, or result in the cancellation of insurance on any Unit or on the contents thereof, without the prior written consent of the Board. No waste of any Lot or of any Unit thereon will be committed.
- (xv) Interference with Use of Common Areas. The Common Areas and every part thereof shall be used in such manner as not to interfere with, restrict, or impede the use thereof by others entitled to the use thereof and in accordance with this Declaration, the Bylaws, and Rules adopted by the Board.
- (xvi) Patios; Appearances. Nothing shall be stored, maintained, or used on the patios of the Lots, or any other part of the Lots, or on the Common Area which in the judgment of the Board creates an unsightly appearance. The Board may, but shall not be obligated to, give consent to the planting of trees, shrubs, and other plants on a Lot and on the Common Area near a Lot and may permit landscaping of a Lot and of Common Area near a Lot, subject to conditions. If such permission is given subject to conditions, the Owner to whom the permission is granted shall comply with all of the conditions imposed. The Units and Lots shall not be altered, decorated, landscaped or adorned in any manner

contrary to such Rules as may be established therefor by the Board, nor shall they be used in any manner other than their obviously intended purposes without the prior written consent of the Board.

- (xvii) Laundry. No clothes, sheets, blankets, or laundry of any kind shall be hung out or exposed to view from any Lot or from any part of the Common Area except that patios may be used for such purpose if Rules have been promulgated by the Board permitting such use in such places. The Common Area shall be kept free and clear of garbage, rubbish, debris and other unsightly materials.
- (xiii) Air Conditioning Units. Except as may be permitted by the Board, in writing, no window air conditioning units may be installed in any residence. The failure of the Board to act within thirty (30) days of a request for a window air condition shall not constitute approval or permission.
- (xix) Lighting. Except for seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved in accordance with Paragraph 2(f)(i), above.
- (xx) Guns. The discharge of firearms within the community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(g) Condemnation of Common Area.

In the event that all or any part of a Common Area shall be taken by an authority having the power of eminent domain, each mortgagee of a Unit which has requested notice from the Association and each Owner shall be notified by the Board within thirty (30) days after the Board has received written notice of the proposed acquisition or the proceeding. The Board shall have the exclusive right to handle, negotiate, settle and conduct all matters, proceedings and litigation incident thereto. The Association shall repair, restore and, if reasonably feasible, replace the Common

Area taken unless seventy-five percent (75%) of the voting power of the Association present at a meeting called for such purpose affirmatively vote not to repair, restore or replace said Common Area. If the Owners have elected as above provided not to repair, restore or replace the Common Area so taken or if the Association shall repair, restore or replace the Common Area and in either event if there shall be any part of the award or settlement in excess of the Association's total costs and expenses associated with such taking, including, without limitation, appraisal or legal fees, each Owner (including the Declarant) shall be entitled to receive subject to the rights of his mortgagees, an equitable share of such excess award or settlement. The equitable share of each Owner will be the amount determined by a court of competent jurisdiction, based upon what, in the sound judgment of the court, is fair, just, and equitable in the circumstances. The division may exclude some Owners all together and may give some Owners more than other Owners. Without intending to limit the considerations which may be relevant to the court's determination of what is fair, just and equitable in the circumstances, it seems possible that if all of the Common Area behind one group of Units were taken and no other Units were affected, all of the excess award might possibly be divided among the Owners of the Units directly affected and no part of the award would be given by the court to any other Owners.

(h) Violation of Paragraph 2.

If any Owner or Occupant required to comply with the foregoing provisions of this Paragraph 2 is in violation of any one

of such provisions or of any Rule adopted by the Board, the Association may give written notice to such person setting forth the nature of the violation. If, within 15 days after the giving of such written notice, such violation has not been cured (unless more time is reasonably required and such person is acting with reasonable diligence to cure the violation), the Association, after approval by two-thirds' vote of the Board shall have the right, through its agents and employees, to enter upon any part of the Property where the violation exists and remove, alleviate, or terminate said violation, or the Association shall have the right, through its agents and employees, to enter upon any part of the Property where the violation exists and remove, alleviate, or terminate said violation, or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation. Any and all costs and expenses incurred by the Association, including reasonable attorney's fees, shall be added to and become part of the Assessment upon the lot owned by such Owner or occupied by such Occupant; and the Assessment shall be payable immediately. The rights and remedies provided for in this subparagraph (h) are not exclusive. The Association shall have, in addition, (A) all other rights and remedies herein provided, including those contained in Paragraph 5(j), the Bylaws, and Rules, and (B) all rights and remedies that may now or hereafter exist by law or in equity.

3. INSURANCE; DAMAGE; CASUALTIES

(a) Obligation to Maintain Insurance.

(i) Each Owner shall obtain and maintain in full force and effect insurance for his Unit against loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement costs of any repair or reconstruction of his Unit in the event of damage or destruction from any such hazard; such insurance may have a deductible clause in a reasonable amount (\$5,000.00 shall be considered a reasonable amount at the time this Declaration is filed for record) and may exclude excavation and foundation costs.

(ii) The insurance required to be maintained by each Owner pursuant to this subparagraph 3(a) shall be governed by the following provisions:

- (A) All policies shall be written with a company licensed to do business in the State of Ohio and holding a rating of "AAA" or better by Bests' Insurance Reports or an equivalent rating service;
- (B) Each policy shall name the Unit Owner, the insurance trustee hereinafter provided for, and the holders of mortgages upon the Owner's Unit, as their interests may appear;
- (C) A copy of each policy, together with proof of payment of the premium therefor, shall be deposited with the Association;
- (D) Each policy shall contain a provision that it shall not be terminated without at least ten (10) days' prior written notice to the Association;

(E) Each policy of insurance shall contain, if obtainable, a clause or endorsement providing in substance that the insurance shall not be prejudiced if the insureds have waived right of recovery from any person or persons prior to the date and time of loss or damage, if any.

(iii) If an Owner fails to comply with subparagraphs (i) and (ii) of Paragraph 3(a), above, the Association may, but shall not be obligated to, procure insurance on behalf of such Owner. The cost of the premium shall be paid forthwith by the Owner and be an Assessment immediately due and payable. The failure by an Owner to deliver a copy of the required policy to the Association, together with proof of payment, will be deemed to be a failure by that Owner to comply with all parts of Paragraph 3(a)(i) and (ii).

(b) Insurance Trustee.

(i) The Association shall enter into an insurance trust agreement with a bank or savings association having offices in Cuyahoga County, Ohio, and having at least Fifty Million Dollars (\$50,000,000.00) of total capital and surplus, herein called the "INSURANCE TRUSTEE." The trust agreement may have such provisions as the Board deems to be in the best interests of the Association and all Owners, but it is contemplated that the agreement will not be inconsistent with the provisions of this Declaration. The Insurance Trustee shall be deemed to be the Insurance Trustee for each Unit Owner. The insurance proceeds payable on any loss under any policy required to be maintained by an Owner pursuant to subparagraph 3(a) above, shall be endorsed over and paid to the

Insurance Trustee. The Insurance Trustee shall have no duties until funds are actually paid over to it, and shall not be liable for payment of premiums, for renewal, for the sufficiency of the policies, or for the failure to collect any insurance proceeds. The Insurance Trustee shall have no obligation to inspect the property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(ii) The duty of the Insurance Trustee shall be to receive such proceeds as are paid and delivered to it and to hold such proceeds in separate trust for the benefit of each Unit Owner on behalf of whom the proceeds are paid, the Owner's mortgagees, and the Association.

(iii) The separate proceeds of insurance received by the Insurance Trustee shall be disbursed as follows:

(A) All expenses of the Insurance Trustee shall be first paid and the remaining proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of repairs and reconstruction as hereinafter provided. Any proceeds remaining after defraying the expenses of the Insurance Trustee shall be disbursed to the Unit Owners on behalf of whom the proceeds were paid. If there is a mortgage lien or liens on the Unit, the remittance to the Owner thereof and his mortgagees shall be paid to them as their interests may appear. This is a covenant for the benefit of any mortgagees of a Unit and may be enforced by such mortgagee.

(B) Any and all disbursements of funds to be made by the Insurance Trustee for repairs and restoration shall be

made in such amounts and to such persons as are set forth in a certificate for each payment signed by a person designated in writing by the Board. The Insurance Trustee shall not incur any liability to any Owner, mortgagee or other person for any disbursements made by it pursuant to and in accordance with any such certificates.

(c) Damage by Fire or Other Casualty.

(1) Declarant will deliver a copy of the drawings and specifications used to construct the Units and Common Area improvements to the Association upon completion of such construction. The Association will make these available to Owners and their architects and engineers to prepare any repair and restoration drawings and specifications required by this subparagraph. If any Unit shall be damaged or destroyed by fire, wind, casualty, act of God, vandalism, riot, intentional act, negligence, or malicious mischief, the Owner of the Unit shall promptly cause to be prepared such drawings and specifications as are necessary to enable the Unit to be repaired or restored to substantially the same or better condition as it was in immediately prior to the occurrence of the damage or destruction. The Owner shall deliver the drawings and specifications to the Board, which shall refer them to a competent architect or engineer for approval on behalf of the Board. The approval of such architect or engineer shall not be unreasonably withheld and shall be given if the drawings and specifications provide for repair and restoration of the Unit as herein provided. If the architect or engineer disapproves the drawings and specifications, he shall state in

writing exactly and specifically in what respects he disapproves them and how they can be corrected. If the Board or its designated architect or engineer fails to act by a writing delivered to the Owner within fourteen (14) days after the drawings and specifications are delivered to the Board, the drawings and specifications shall be deemed to be approved.

(ii) Promptly after approval of the Owner's drawings and specifications and after settlement of the insurance award, the Owner shall enter into a contract or contracts for repair and restoration of the Unit in accordance with the approved drawings and specifications. A copy of such contract or contracts shall be delivered to the architect or engineer previously designated by the Board to approve the drawings and specifications. The architect or engineer shall, upon requisition for payment submitted to him by the Owner, issue certificates to the Insurance Trustee for payment of the insurance proceeds to the Owner's contractors as the work of repair and restoration progresses. The certificates shall provide for payment of the insurance funds on the basis of the work and material performed and furnished; provided, however, that in each instance of payment prior to completion, the architect or engineer certify that the insurance proceeds which will remain after the payment requisitioned will, in his reasonable judgment, be equal to or greater than the sum of (A) the cost of the work and material necessary to complete the repairs and restoration plus (B) ten percent (10%) of the cost of the work and material performed. Under no circumstances is the architect or

engineer to be considered an insurer or guarantor of such costs. He is expected only to exercise his good faith judgment. The architect or engineer may, but shall not be obligated to, rely upon certificates as to the cost of completion and cost of performance submitted to him by the Unit Owner, the Unit Owner's contractor, or the Unit Owner's architect. Any deficiency in insurance proceeds shall be paid by the Unit Owner. The 10% retention and any other proceeds remaining after completion of the work shall be paid to the Owner upon certification of completion.

(iii) The Association may exercise either one of the two following options:

- (A) Cause the repairs and restoration to the damaged Unit to be done itself, in which case all insurance proceeds of the Owner shall be made available to the Association, any deficiency in proceeds shall be assessed against the Owner and the Owner's Lot as an assessment, and any excess insurance proceeds shall be payable to the Association; or
- (B) Purchase the Owner's Lot and remaining Unit for a price equal to 85% of its fair market value immediately before the occurrence of the casualty, as such value is determined by an M.A.I. appraiser selected by the Board, in which case all insurance proceeds shall belong to the Association. All mortgage, tax and other liens against the premises shall be deducted from said purchase price. The Owner shall convey fee simple title of the Lot and Unit to the Association upon tender of said purchase price (less the liens) to the Owner.

The Association shall be entitled to specific performance to enforce this right;

upon the occurrence of any one of the following circumstances:

- (A) The Owner of a damaged or destroyed Unit shall have failed to furnish drawings and specifications for the repair and restoration of the damaged Unit to the Board within 120 days of the occurrence of the casualty;
- (B) The Owner submits drawings and specifications for repair and restoration to the Board within the required ninety (90)-day period, but thereafter fails to cause reasonably acceptable revised drawings and specifications to be furnished to the Board within twenty-one (21) days after being advised of required revisions;
- (C) The Owner of a damaged or destroyed Unit shall have failed to enter into an agreement for the repair and restoration of the Unit and shall have failed to commence the work required to repair and restore the Unit within sixty (60) days after approval of the Owner's drawings and specifications;
- (D) The Owner of a damaged or destroyed Unit shall have failed to complete substantially the repair and restoration of the Unit within one hundred ninety (190) days after he shall have commenced the work of repair and restoration, plus such additional time as shall equal any delays caused by shortages of material, labor disputes, additional casualties, and other matters beyond the reasonable control of the Owner [excepting matters relating to the Owner's shortage of money].

The time periods set forth in parts (C) and (D) above shall be extended by the time of delay caused by non-settlement of the insurance reward, shortage of material, strikes, acts of God, and other reasons beyond the Owner's reasonable control. The rights, options and remedies set forth in this Paragraph 3(c)(iii) shall be in addition to all rights, options and remedies set forth elsewhere herein for a default by an Owner.

(iv) In no event shall any insurance proceeds be payable to an Owner if the Owner fails to comply with his obligations set forth in this Paragraph 3(c).

(v) Anything herein to the contrary notwithstanding, if the aggregate amount of the estimated costs of repairing any damage to any Unit is less than \$25,000, the insurance proceeds shall be paid directly to the Owner of the Unit, and his mortgagee, if any, and not to the Insurance Trustee. The Owner shall, however, proceed promptly to repair the damage in a good and workmanlike manner and restore the Unit to the condition it was in immediately before the occurrence of the damage.

(d) Waiver of Subrogation.

Each Owner and Occupant as a condition of accepting title and possession, or either one of such, of a Unit, and the Association agree, provided such agreement does not invalidate or prejudice any policy of insurance, that in the event any part or parts of the Property (including the Units thereon), or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by the insurance of any Owner, Occupant or the Association, or by the lessees and sublessees of any one of them, the rights if any of any party against the other, or against the employees, agents, licensees or invitees of any party, with respect to such damage or destruction and with respect to any loss resulting therefrom, are hereby waived to the extent of the coverage of said insurance.

4. PARTY WALLS

(a) General Rules of Law to Apply.

Each wall which is built as a part of the original construction of the Units upon the Property and placed on the dividing line between the Lots, used to separate one Unit from another, or used as structural support by a Dominant Unit in respect to its Servient Unit [see Paragraph 2(d)] shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire and Other Casualty.

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall shall restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or intentional acts or omissions.

(d) Weatherproofing.

Notwithstanding any other provisions of this Paragraph 4, an Owner who by his negligent or intentional act causes the party

wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with the Land.

The right of any Owner to contribution from any other Owner under this Paragraph 4 shall be appurtenant to the Land and shall pass to such Owner's successors in title.

(f) Arbitration.

Any dispute, controversy or claim arising concerning a party wall, or under the provisions of this Paragraph 4, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

5. DUTIES AND POWERS OF THE ASSOCIATION

(a) Unit Maintenance.

(i) Except repairs necessitated by insurable casualties the Association shall maintain and keep in a state of good repair and condition the exterior of all Units, including, but not limited to, the roofs, the painting, repairs due to deterioration, window cleaning, gutter cleaning and repairs, the structural walls and structural framing, the foundations, and such other types of maintenance and repair of the exterior and structure as is determined by the Board to be desirable. The Association may, also, maintain, repair, and replace such other parts of the Units as Members holding 66 2/3% of the voting power of the Association direct at an Association meeting or in a writing signed by Members holding such voting power.

(ii) If the need for maintenance, repair or replacement of a Unit occurs as a result of any negligent act or omission of an Owner or Occupant or any agent, employee, contractor or invitee of an Owner or Occupant, the Association may perform and pay for the cost of said maintenance, repair or replacement if the Owner or Occupant or any agent, employee, contractor or invitee of an Owner or Occupant fails to perform and pay for it, in which event the cost thereof shall be added to and become part of the Assessments to which such Owner's or Occupant's Lot is subject and shall be immediately payable.

(b) Common Areas Maintenance.

Except as expressly provided to the contrary in this Declaration, the Association shall maintain the Common Areas and all facilities thereon in a clean, safe, neat, healthy and usable condition, and in good repair, and shall promptly make all necessary repairs and replacements. If the need for maintenance, repair or replacement occurs as a result of any negligent act or omission of an Owner or Occupant or any agent, employee, contractor or invitee of an Owner or Occupant, the Association may pay for the cost of said maintenance, repair or replacement if the Owner or Occupant fails to pay for it, in which event the cost thereof shall be added to and become part of the Assessments for which such Owner shall be liable and to which such Owner's or Occupant's Lot is subject and shall be immediately payable.

(c) Lines.

The Association shall keep, maintain in good condition, repair, and replace if necessary all Lines located in the Common Areas. Notwithstanding the above, if maintenance, repair or replacement of a Line in the Common Areas is necessitated by reason of any intentional or negligent act or omission of an Owner or Occupant or any agent, employee, contractor, or invitee or an Owner or Occupant, the Association may, but shall not be obligated to, make the repair or replacement, in which event the cost thereof shall be added to and become a part of the Assessment for which the Owner shall be liable and to which such Owner's or Occupant's Lot is subject and shall be immediately payable.

(d) Lawn Maintenance.

In addition to maintaining the Common Area, the Association shall maintain as a common expense of the Association:

- (i) the lawns, if any, on each Lot;
- (ii) all shrubs and landscaping on a Lot put in by the Declarant or the Association; and
- (iii) all shrubs and landscaping on a Lot Put in by an Owner where the Association did not require the Owner to maintain such shrubs and landscaping as a condition to the installation.

If the need for extra maintenance or repair of a lawn is caused by the intentional or negligent act or omission of an Owner or Occupant or any agent, employee, contractor or invitee or an Owner or Occupant, the cost of such extra maintenance and repair shall be added to and become part of the Assessment for which the Owner shall be liable and to which such Owner's or Occupant's Lot is subject and shall be immediately payable.

(e) Driveways.

(i) The Association shall repair and replace driveways appurtenant to each Unit as a common expense unless the repair or replacement is attributable to the act or negligence of the Unit Owner or the Unit Owner's invitees. Drippings of car fluids and spills of petroleum substances, salts, or other pavement deteriorating substances upon a driveway will be deemed to be an act of the Unit Owner causing the need for repair or replacement by the Unit Owner.

(ii) The Association, at its discretion, may provide for snow removal from driveways appurtenant to each Unit as a common expense. Failure of the Association to cause snow to be removed from Unit Owner driveways will not result in liability on the part of the Association, its trustees, officers, employees or agents.

(f) Taxes and Assessments.

(i) The Association shall pay all taxes and assessments levied against the Common Areas and the improvements thereon. Since the value and cost of the Lots will include the Lots' proportionate shares in the Common Areas, if feasible, the Association will seek to have the County Auditor place a nominal value on the Common Areas. Taxes and assessments on the Common Areas will be a common expense, but may be assessed and collected as part of the common expenses or in the manner provided below.

(ii) If the County Auditor should place a value, other than a nominal value, upon the Common Areas in addition to

the tax value placed on each Lot, the Association, in its discretion, may allow each Unit Owner to pay its prorata share of the real estate taxes and assessments ("TAXES") levied against the Common Areas as hereafter provided. A Unit Owner's prorata share will be the same as the Unit Owner's share of the Common Expense, that is one over the total number of Lots. If the Association elects to provide for Common Area Tax payments by separate payment, the payment by each Owner shall be made to the Association at least ten (10) days before the last day the Association's tax payment may be made to the County Treasurer without penalty. The Association shall deposit and hold such payments in a separate escrow, or trust account, as agent for each Unit Owner making payment, and shall pay over the aggregate of the payments so made to the County Treasurer before the tax collection delinquent date. Any such tax funds collected by the Association in excess of the Taxes actually required to be paid on the Common Areas shall be refunded forthwith to the Unit Owners making payment in proportion to their payments. The Association may, by rule, require the Unit Owners to make their Common Area tax payments to it, as agent, in equal monthly installments throughout the six months preceding the date set by the County for collection, on the basis of the Taxes which the Association reasonably estimates will become due at the next succeeding County collection date. If any special assessments may be paid on an installment basis over a period of years, the Association shall elect to pay such assessment on the installment basis, unless the Owners of all Lots vote to pay the entire

assessment forthwith, on a non-installment basis. Instead of having checks made payable to the Association, the Association may have each Unit Owner make his check for his share of the Common Area Taxes payable directly to the order of the County Treasurer and deliver his check(s) to the Association. The Association in turn would then deliver all such checks in kind to the County Treasurer. The purpose of the foregoing is to attempt to provide to the Unit Owners the federal and state income tax benefits accruing to taxpayers for payment of property taxes. The Association may, in its discretion, use any other procedure that will assist the Unit Owners in receiving tax benefits that may be available to them.

(g) Common Area Utilities Billed to Units.

If a utility service, such as electricity or water, is used for the benefit of a Common Area, but is furnished from one Unit and metered as part of the service provided to the Unit, the Association will pay to the Owner of the Unit the fair and reasonable part of the Unit Owner's bill for such Common Area services; provided a like situation does not exist with all Units. The burdened Owner will have the right to offset this charge against his or her Assessment. For example, street pole lamps may be connected to some Unit Owners' meters; but other Unit Owners may not have street lights connected to their Unit meters. In such a case, payment would have to be made to the Unit Owners who have street lamps connected to their Unit meters. If, however, all Unit Owners should have a street pole lamp connected to their Unit meters, no payments by the Association would be necessary.

(h) Insurance.

(i) The Association shall obtain and keep in full force and effect a comprehensive policy of public liability insurance covering all of the Common Areas, insuring the Association and all Owners and Occupants (if possible) in an amount not less than \$1,000,000 from and against all claims for personal injury and/or property damage arising out of a single occurrence on the Common Areas due to any negligence, act, or failure to act by the Association.

(ii) The Association may but shall not be obligated to obtain and maintain such additional and other insurance as it deems desirable; provided that the Association shall not obtain or maintain hazard insurance on a Unit unless the Unit is owned by the Association, or unless the Association obtains it on behalf of an Owner who failed to obtain the insurance such Owner was obligated to obtain. Notwithstanding the foregoing, the Association may recommend to all Owners that they procure casualty (or hazard) insurance on their Units with the same insurance company so as to avoid conflicts among different insurance companies as to the amounts payable by each insurance company where a single casualty has caused damage to the properties of different Owners.

Examples of other types of insurance which the Association may obtain are the following:

- (A) Property insurance insuring facilities and other improvements, normally insured, in the Common Area owned by the Association, affording protection against loss or damage by fire, vandalism, malicious mischief, and other hazards covered by the standard extended coverage endorsements; and

(B) Fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and the employees of the Association and all others who handle, or are responsible for handling funds of the Association.

(i) Management.

The Association shall provide the management and supervision for the operation of the Common Area and facilities. The Association shall maintain such policies, programs and procedures as it deems necessary or desirable to fully implement this Declaration and may, but shall not be required to:

- (i) Adopt rules with respect to the use of the Common Area by Owners, Occupants and guests;
- (ii) Engage and supervise employees and agents, including without limitation attorneys, accountants and consultants, maintenance firms and contractors;
- (iii) Delegate all or a portion of its authority and management responsibilities to a manager, managing agent, or management company. Such delegation may be evidenced by a management contract which provides for the duties to be performed by the managing agent and for the payment to the agent of a reasonable compensation.

(j) Enforcement.

(i) The Association shall have the power and authority to and shall take all actions reasonably necessary to carry out its obligations under this Declaration and to enforce all of the covenants and restrictions contained in this Declaration. Such rights shall include, without limitation, the right to issue fines in amounts established by the Board for violation of any provisions of this Declaration or any Rule, and, through its agents and employees, to enter upon any part of the Property where a

violation of any of the provisions of this Declaration exists and remove, alleviate, or terminate the violation, and the right to obtain an injunction from any court having jurisdiction for the cessation of such violation. Fines issued for violation of this Declaration or any Rule and all costs and expenses incurred by the Association, including reasonable attorney's fees incurred in connection with enforcement and collection of fines, costs and expenses, shall be added to and become a part of the Assessment upon the Lot owned or occupied by the violator; and the Assessment shall be payable immediately. A lien for such amounts may be filed against the Unit with the Cuyahoga County Recorder.

(ii) The Association shall have the power, right and authority to suspend the voting rights of an Owner for any period during which any fine or Assessment against his or her Lot remains unpaid; and for a period not to exceed 360 days for any infraction of the covenants, restrictions, or conditions of this Declaration and for any infraction of the Association's rules and regulations.

(iii) The Association shall have the power, right and authority to make Assessments, file liens for the non-payment of Assessments, and collect and authorize the collection of Assessments by legal and equitable actions, including foreclosures of its Assessment liens.

(iv) The enforcement rights and remedies contained in this subparagraph (j) are not exclusive. The Association shall have all other powers, rights and authorities granted it herein, under the Ohio not-for-profit corporation law, in its Articles of Incorporation and Bylaws, and in law and at equity.

(k) No Encumbrance on Common Areas.

Except as expressly permitted herein, the Association shall not grant a mortgage or any interest of any kind whatsoever in any part of the Common Areas without the prior written consent of every Owner in the Association and of every person holding a bona fide mortgage of record in every Lot.

(l) Architectural Control Committee.

The Board shall have the right, but shall not be obligated, to appoint an Architectural Control Committee composed of one or more persons to review plans and specifications submitted to the Board pursuant to Paragraphs 2(f)(iii) and 3(c) and to perform such other duties as are specified by the Board. The Architectural Control Committee shall make recommendations to the Board, which the Board may accept or reject, in whole or in part.

(m) Board or Association

Wherever this Declaration or the Bylaws provides that a thing or act is to be done, approved, authorized, or consented to by the Association, the provision shall be deemed to mean that the thing or act shall be done, approved, authorized, or consented to by the Board, unless the context otherwise requires (for example, a clause saying the Association shall pay for a particular thing) or a thing or act which must, by law or express language herein, be done or performed by a vote of the Association's membership.

(n) Powers

The Association, acting through its Board and Officers, shall have all powers and authority reasonably necessary to carry

out its duties herein set forth and to enforce the terms and provisions of this Declaration and the Bylaws. Its powers include, without limitation all power stated herein and in the Bylaws, the power to promulgate Rules and enforce the same, the power to establish and collect fines and make special assessments against Owners and Occupants who violate any provisions of the Declaration, Bylaws or Rules, and the power to file liens against Units whose Owners or Occupants violate a Rule or provision of the Declaration, Bylaws or Rules. The Association shall, further, have the power and authority to take such actions as it, in its discretion, deems desirable to assure compliance on the Property with all applicable municipal, county and state building, zoning, safety and fire codes and regulations, and with all applicable federal laws and regulations.

6. MEMBERSHIP AND VOTING RIGHTS

(a) Membership.

Every Owner of a Lot which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot subject to this Declaration. Declarant shall be a member during the Development Period whether or not Declarant owns a Lot.

(b) Voting Rights.

The Association shall have two classes of voting membership until the end of the Development Period:

Class A: Class A Members shall be all Owners. Each Owner shall be entitled to one 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant. Declarant shall be entitled to seventy-three (73) votes plus one vote for each Lot owned by Declarant. The Class B Membership shall cease at the end of the Development Period.

7. COVENANT FOR MAINTENANCE ASSESSMENTS

(a) 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 agrees to pay the Association: (i) Assessments made against Lots and Owners thereof due to some act or failure to act, as provided in various part of this Declaration [see, for example, Paragraphs 2(h)(ix), 5(a), 5(b), 5(c), 5(d), 5(e), 5(j), and 5(n)]; (ii) regular annual Assessments or charges, provided for in this Paragraph 7; and (iii) special Assessments for capital improvements, also provided for in this Paragraph 7. All Assessments, together with interest, costs, late charges, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made. Each Assessment, together with interest, costs, late charges, and reasonable attorney 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 his successors in title

unless expressly assumed by them; but the Lot shall continue to be liable for payment of the Assessment.

(b) Purpose of Assessments.

The Assessments levied by the Association shall be used to operate and maintain the Association, to promote the recreation, health, safety and welfare of the Owners and Occupants in the Property, to perform the maintenance provided for in this Declaration, to enforce the covenants and restrictions of this Declaration, and to otherwise comply with this Declaration, the Articles, and the Bylaws of the Association and carry out the duties of the Association.

(c) Special Assessments for Capital Improvements.

The Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Property, including fixtures and personal property related thereto, PROVIDED THAT any such Assessment shall have the assent of two-thirds (2/3) of the votes of each the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose and the affirmative vote of Declarant, if Declarant owns a Lot. If Declarant does not own a Lot at the time a vote is taken for a capital improvement expenditure, Declarant shall not be able to vote in respect to such expenditure. Capital expenditures which may be paid out of Association revenues shall not require a vote of the membership. This clause is intended to cover only a special assessment made for a special or extraordinary, capital

expenditure, in a particular year, in addition to the Association's regular annual Assessments.

(d) Notice and Quorum for any Action Authorized Under Subparagraph (c).

Written notice of any meeting of Members called for the purpose of taking any action authorized under subparagraph (c) of this Paragraph 7 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Class A Members or of proxies from Class A Members entitled to cast two-thirds (2/3) of all the votes of the Class A Members shall constitute a quorum. If the required quorum of Class A Members is not present, another meeting may be called subject to the same notice requirement, and the required quorum Class A Members at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

(e) Uniform Rate of Assessment.

Both annual and special Assessments must be fixed at a uniform, that is, equal, rate for all Lots whether owned by Declarant or any other Owner, and may be collected on a monthly basis or such other basis as the Board designates.

(f) Date of Commencement of Annual Assessments; Due Dates.

The annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of any Lot on which a Unit is constructed to an Owner

other than a Declarant. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment against each Lot at least 30 days in advance of each annual Assessment period, but failure of the Board to fix the amount of the Assessment within said 30-day period shall not relieve the Owners from paying the Assessment when established by the Board. If the Board shall fail to fix the annual Assessment for any new year, the annual Assessment for the preceding year shall continue to be paid by the Owners until the Board determines the Assessment for the new year. The Board may increase or decrease the annual Assessment in the course of a year for sound business reasons. Written notice of the annual Assessment and revisions thereof shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

(g) Assessment Certificates.

The Association shall, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments of a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

(h) Effect of Nonpayment of Assessments;
Remedies of the Association.

Any Assessment not paid within 30 days after the due date shall bear interest from the due date at the rate declared by National City Bank (of Cleveland) from time to time to be its

"prime," plus three points; PROVIDED THAT if such rate of interest should be usurious, then the rate shall be the highest rate that may be charged without being usurious. Each unpaid Assessment shall, further, bear, in addition to interest, a late charge, determined by the Board, if not paid within a time established by the Board. The Association may bring an action at law against the Owner personally obligated to pay the Assessment. The Association shall also have a lien on such delinquent Owner's Lot(s) in the amount of the delinquent assessment, which shall include the late charge, interest, and all estimated costs of collection and foreclosure ("ASSESSMENT LIEN"). If the Association deems it advisable, it may file an Affidavit of Assessment Lien, pursuant to O.R.C. §5301.252, with the Cuyahoga County Recorder setting forth the name of the delinquent Owner, a description of the Lot, the amount of the delinquency (late charges, interest and estimated costs of collection), and such other facts as may be necessary to show of record the Association's lien upon and interest in the Lot which was created upon the failure of the Owner to pay the Assessment on time.

The Association may foreclose the Assessment Lien against the delinquent Owner's Lot(s), whether or not an Affidavit of Assessment Lien has been filed for record. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Each Owner, by acceptance of a deed conveying a Lot to him or her, hereby irrevocably appoints the Association, and its

agents, his or her attorney-in-fact, coupled with an interest, to sign a mortgage in favor of the Association to establish a mortgage lien upon the Owner's Lot in an amount equal to the Assessment Lien. Such appointment is for the purpose of assuring that the Association's Assessment Lien may be filed and established of record in the event there are any difficulties in obtaining a recordation of the lien.

The remedies provided for in this Paragraph 7(h) are in addition to any and all other remedies given by this Declaration to the Association against a Unit Owner who defaults under his or her obligations under this Declaration and in addition to the rights and remedies of the Association under ARTICLE XII of the Bylaws of the Association.

(i) Subordination of the Lien to Institutional Mortgages.

The Assessment Lien provided for herein (including the recordation thereof) shall be subordinate to the lien of any bona fide first mortgage existing of record granted to an Institutional Mortgagee on the Lot before the accrual of the Assessment Lien. Sale or transfer of any Lot shall neither affect the Assessment Lien on the Owner's Lot or the Owner's personal obligation to pay the Assessment Lien. However, the sale or transfer of any Lot pursuant to foreclosure by the holder of a bona fide first mortgage granted to an Institutional Mortgagee shall extinguish the Assessment Lien as to assessments which become due after the recording of such first mortgage and prior to such sale or transfer. No such sale or transfer shall relieve the Lot from

liability for any Assessments thereafter becoming due or from the lien thereof; and the proceeds of any foreclosure sale in excess of real estate taxes, court costs, and the first mortgage indebtedness shall be payable to the Association to the extent of the Assessment Lien. As provided above, the foreclosure by the holder of a bona fide first mortgage granted to the holder of an Institutional Mortgage shall not relieve the persons who owned the Lot when the Assessment came due from personal liability for the Assessment; that is, such Owners shall remain personally liable for the Assessment even if the lien thereof should be wiped out during the mortgage foreclosure proceeding.

(j) Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses.

If any purchaser at a judicial foreclosure sale or the holder of a first mortgage granted to an Institutional Mortgagee acquires a Lot as a result of foreclosure of such first mortgage or of the acceptance of a deed in lieu of foreclosure, such holder, its successors and assigns, shall not be liable for the assessments levied against such Lot prior to the acquisition of the Lot by such holder, its successors and assigns. Any unpaid part of the Assessments shall, however, be deemed to be common expenses and shall be assessed and levied against all of the Lots, including the Lot foreclosed.

(k) Dispute as to Assessment Amount.

Any Owner who believes that fines or assessments levied against him or his Lot, or for which a certificate of lien has been filed by the Association, have been improperly determined may bring

action in the Common Pleas Court of Cuyahoga County, Ohio, for discharge of all or any portion of such lien. This shall be the sole remedy of an Owner who disputes a fine or an assessment. Under no circumstances may an Owner fail to pay a fine or an assessment simply because the Owner believes it is in error. The Owner's remedy shall be to discuss it with the Board or the Officers of the Association and to file an action in the Cuyahoga County Common Pleas Court for a declaration of his rights or the propriety of the fine or assessment. Notwithstanding the occasional use of both the words fine and assessment, the word "assessment" means both a fine and an assessment.

8. GENERAL PROVISIONS

(a) Enforcement.

The Declarant during the Development Period, the Association, and any Owner (including the Declarant), shall have the right to enforce, by any proceeding at law or in equity, the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. All remedies specified in this Declaration shall be non-exclusive and in addition to any other remedies available in law or equity. Failure by any person to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

(b) Headings.

The heading to each paragraph and each subparagraph hereof is inserted only as a matter of convenience and reference

and in no way defines, limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

(c) Notices.

Any notice required by this Declaration or the Bylaws to be given by or to the Association or any Owners, shall be in writing and may be given (i) to the Association (A) by mailing such notice by registered or certified mail, return receipt requested, postage prepaid, to the Statutory Agent of the Association at his (or its) address on file with the Secretary of State of the State of Ohio, or to the resident address of the President of the Association, or (B) by personally delivering such notice to the address of said Statutory Agent or to the residence of the President; and (ii) to an Owner (A) by mailing the notice by registered or certified mail, return receipt requested, postage prepaid, to the resident address of the Owner, or (B) by placing the notice upon or beneath the front door of the Owner's Unit or otherwise leaving it at the Owner's Unit. Notwithstanding the foregoing, any Owner may specify by notice a postal address other than his resident postal address as the place to which notices sent by mail may be sent to him (or her) and notices delivered to such address shall be deemed to have been properly given to such Owner on the date of delivery or refusal to accept delivery. Likewise, the Association, by notice to the Owners, may specify an address or place, other than that specified herein, for service of notice on the Association.

(d) Amendment.

(i) Subject to the provisions of item (iii) below, this Declaration may be amended by an instrument signed, in the manner provided in R.C. 5301.01 for signing deeds, by Members holding at the time the amendment is recorded, sixty-six and two-thirds percent (66 2/3%) of the voting power of the Association. Every amendment must, also, be signed, in the same manner, by the holders of all bona fide mortgages of record granted to Institutional Mortgagees against any part of the Property. No amendment shall be effective until it is filed for record with the Cuyahoga County Recorder. Notwithstanding anything in this subparagraph (d) to the contrary, the easements and rights set forth in Paragraphs 2(a), 2(c), 2(d), and 2(e) of this Declaration shall be perpetual and no amendment or termination of the provisions of said Paragraphs 2(a), 2(c), 2(d), and 2(e) shall be effective unless said amendment or termination is executed by all of the Owners and by the holders of bona fide mortgages of record against any part of the Property. In addition, Paragraphs 2(d) and 2(e)(iii) of this Declaration shall not be amended or the effect thereof terminated unless the amendment or termination is executed, in form for recording, by Declarant, during the Development Period.

(ii) Subject to the provisions of item (iii) below, anything herein to the contrary notwithstanding, during the Development Period, whether or not Declarant owns any Lot within the Property, Declarant may amend the Declaration from time to time, without the consent of any other person, by filing an

amendment, signed by Declarant only, in the Office of the Recorder of Cuyahoga County; PROVIDED, HOWEVER, that the size and location of a Lot which is owned by someone other than Declarant, may not be changed without the written consent of such Owner; and PROVIDED, FURTHER, that the manner in which assessments are fixed in Paragraph 7(e) shall not be changed except by an amendment made in accordance with part (i) of this Paragraph 8(d).

(iii) This Declaration may be terminated and the Property removed from the provisions of this Declaration only by a writing to that effect signed in the manner provided in R.C. 5301.01 for signing deeds, (A) by Members holding, at the time the instrument is recorded, 100% of the voting power of the Association (B) by all holders of all bona fide first mortgages granted to Institutional Mortgagees against any and all parts of the Property, and (C) by the Mayor of the City of Brecksville who shall sign upon authority of a resolution adopted by the City Council. The instrument of termination shall not be effective until it is filed for record with the Cuyahoga County Recorder. Upon termination of this Declaration, the Common Areas shall be owned in common by the Owners of the Lots. The undivided interest in said Common Area owned by each Owner shall be a fraction, the numerator of which shall be the number of Lots owned by the Owner and the denominator of which shall be the number of Lots within the Property. The Lot Owner shall at all times have an easement, appurtenant to his Lot, of ingress and egress over what was the Common Area to and from his Lot and that part of the nearest public, dedicated street which

provides access to the Lot. Such access easement shall, also, be upon and over any of the drives and roads within the Property between the Lot and the dedicated public street or streets. This part (iii) may not be amended except by an amendment duly signed by all persons and entities required to sign an instrument terminating this Declaration.

(e) Annexation.

(i) Except as provided in part (ii) of this Paragraph 8(e), additional land may be annexed to the Property and subjected to the provisions of this Declaration only by the affirmative voting power of the Association.

(ii) Declarant may from time to time annex to the Property and subject to the provisions of this Declaration additional land located within the Expansion Area without the consent of any other Members at any time during the Development Period. To annex said land, Declarant shall file an amendment to this Declaration with the Cuyahoga County Recorder. Each Owner and his respective mortgagees and all persons claiming an interest in or through him, by acceptance of a deed conveying a Lot or a mortgage encumbering a Lot, as the case may be, consents to each such amendment and hereby irrevocably appoints Declarant his attorney-in-fact, coupled with an interest, to annex land and exercise the rights reserved in this part (ii) as herein provided, and to execute, acknowledge and record for and in the name of such Owner and mortgagees an amendment or amendments of this Declaration for such purpose and for and in the name of such respective mortgagees, a consent to such amendment or amendments.

(f) Rights of First Mortgagees.

If a first mortgagee of a Lot shall notify the Association in writing that it wishes to receive financial statements of the Association and copies of notices of membership meetings, the Association shall send to such first mortgagee within ninety (90) days following the end of each fiscal year such financial statements and budgets as are prepared by the Association and a copy of all notices of meetings of the Members of the Association. Said first mortgagees shall have the right to designate a representative to attend such meetings. Further, upon receipt by the Association of a written request from such first mortgagees, the Association shall notify such mortgagees in writing (i) of the abandonment or termination of the Common Area owned by the Association, or (ii) of any material amendment to the Declaration, the Bylaws of the Association, or the Articles of Incorporation of the Association. The Association shall have the right to charge a reasonable fee to an Owner for the Association's services hereunder in sending copies of materials and notices to the Owner's first mortgagee.

(g) Covenants Running with Land.

Each grantee, lessee, or contractee of any interest whatsoever in any part of the Property, by the acceptance of a deed of conveyance, lease, or contract in respect to any interest in any part of the Property, accepts the same subject to all restrictions, conditions, covenants, liens and charges provided for in this Declaration. The jurisdiction, rights and powers created or

reserved by this Declaration, all rights, benefits and privileges of every character hereby granted, created, or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the Land, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed, lease and contract.

(h) Waiver.

No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

(i) Severability.

The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration. The cy pres rule shall be applied in all cases where any covenant, restriction, condition, or other provisions of this Declaration or any part thereof is found to be illegal or impossible of being given literal effect.

(j) Duration.

The easements, covenants, conditions and restrictions created by this Declaration are and shall be perpetual, unless amended pursuant to the provisions of Paragraph 8(d), above.

(k) Priority of Documents.

In the event of any inconsistency between this Declaration, the Articles of Incorporation of the Association, the Bylaws, and Rules, the provisions of this Declaration shall prevail over the Articles of Incorporation, the Bylaws, and Rules, the Articles of Incorporation shall prevail over the Bylaws and Rules, and the Bylaws shall prevail over the Rules.

(l) Conveyance of Common Areas.

No later than one (1) year after a Lot containing a completed Unit for which an Occupancy Permit has been issued by the City of Brecksville, is conveyed to a bona fide residential purchaser Declarant shall deliver to the Association a general warranty deed, conveying indefeasible, merchantable, fee simple title in the Common Areas free and clear of all liens and encumbrances whatsoever, except taxes and assessments which may be a lien but are not delinquent for non-payment, the easements, covenants and restrictions created by this Declaration and the Plat(s), and any other easements and restrictions affecting the Property at the time of the conveyance. The Common Areas may be subject to a first mortgage granted by Declarant to acquire and make subdivision improvements, but the mortgage shall be subordinated to this Declaration and shall be discharged when Units on all Lots have been constructed and the Lots, with completed Units thereon, have been sold to bona fide residential purchasers.

(m) Members, Board, Officers.

Ohio Revised Code, Chapter 1702, as it may be amended from time to time, and applicable case law shall govern what actions are to or may be taken by the Members, by the Board, and by the Officers, unless this Declaration, the Articles of Incorporation of the Association, or the Bylaws of the Association specify that a particular action be taken or authorized by the Members, the Board or the Officers of the manner in which actions may be taken.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 9th day of July, 1996.

Signed in the presence of:

Yvonne Schill
Denise Clark
Yvonne Schill
Denise Clark

MYLES LAND COMPANY
By [Signature]
David Snider, President
By [Signature]
Sam Cannata, Secretary

STATE OF OHIO)
) SS.:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 9th day of July, 1996, by DAVID SNIDER, President and SAM CANNATA, Secretary, of MYLES LAND COMPANY, an Ohio corporation, on behalf of the corporation.

Lisa M. Schill
Notary Public LISA M. SCHILL
Notary Public, State of Ohio
Res. in Cuyahoga Cty.
My Comm. Expires 12-6-00

This instrument prepared by:
DONALD H. POWERS, ESQUIRE, 2 Berea Commons, Suite 215, P.O.
Box 1059, Berea, Ohio 44017 (216) 243-2955

D:\0338\010\HILBROOK.DEC

EXHIBIT A

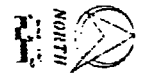
Myles Land

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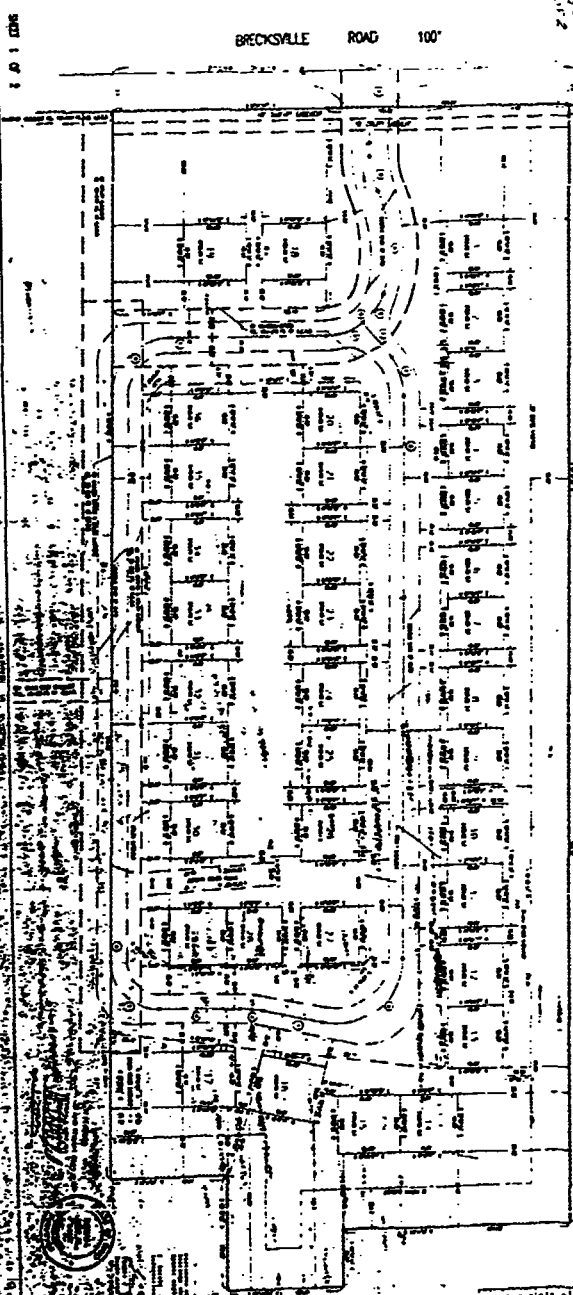
Situated in the City of Brecksville, County of Cuyahoga and State of Ohio: And known as being part of Original Brecksville Township Lot No. 23, and bounded and described as follows:

Beginning on the center line of Brecksville Road, as originally established, 66 feet wide, at a point distant 300 feet Southerly, measured along said center line, from the Northwesterly corner of said Original Lot No. 23; thence South 00° 51' 40" West, along the center line of Brecksville Road, 400 feet; thence South 88° 52' 50" East, and parallel with the Northerly line of said Original Lot No. 23, 974.08 feet to a point; thence North 00° 13' 40" East, 100.01 feet to a point; thence South 88° 52' 50" East, 100 feet to a point; thence North 00° 13' 40" East, 100.01 feet to a point; thence North 88° 52' 50" West, 50 feet to a point; thence North 00° 13' 40" East, 200.02 feet to the intersection with the Southerly line of Sublot 7 in the Heather Hills Estates Subdivision; thence North 88° 58' 42" West along the Southerly line of aforesaid Heather Hills Estates Subdivision approximately 1019.71 feet to the center line of old Brecksville Road and the principal place of beginning.

EXHIBIT A



HILLBROOK ESTATES SUBDIVISION
CITY OF BRECKSVILLE
CUYAHOGA COUNTY, OHIO
BRECKSVILLE TOWNSHIP, ORIGINAL LOT NO. 23



[Handwritten signature]
BRECKSVILLE, OHIO

[Handwritten signature]
BRECKSVILLE, OHIO

Table with multiple columns and rows, likely containing lot numbers and descriptions. The text is too small to read clearly.



EXHIBIT C
Gallucci Land

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PARCEL I:

Situated in the City of Brecksville, County of Cuyahoga, State of Ohio: And known as being part of Original Brecksville Township Lot No. 23 and bounded and described as follows:

Beginning on the center line of Brecksville Road, as originally established 66 feet wide, at the Southwesterly corner of land conveyed to George E. Tate and Hallie W. Tate by deed dated November 21, 1949 and recorded in Volume 6859, Page 704 of Cuyahoga County Records;

Thence Northerly along the center line of Brecksville Road, 200 feet to the Northwesterly corner of land so conveyed to George E. Tate and Hallie W. Tate;

Thence Easterly along the Northerly line of land so conveyed 1074.08 feet to a point distant 100 feet Westerly measured along said Northerly line, from the Northeasterly corner thereof;

Thence Southerly and parallel with the Easterly line of land so conveyed to George E. and Hallie W. Tate, 200.02 feet to the Southerly line thereof;

Thence Westerly along the Southerly line of land so conveyed 1076.26 feet to the place of beginning, be the same more or less, but subject to all legal highways.

PARCEL II:

Situated in the City of Brecksville, County of Cuyahoga, State of Ohio: And known as being part of Original Brecksville Township Lot No. 23 and more fully described as follows:

Beginning at the intersection of the center line of Mill Road, and the old center line of Brecksville Road;

Thence North 0° 51' 40" East along the center line of Brecksville Road, as aforesaid, 328.20 feet to a point;

Thence North 87° 28' 45" East 33.06 feet to a point on the easterly line of Brecksville Road, as aforesaid;

Thence North 0° 51' 40" East along the easterly line of Brecksville Road, as aforesaid, 218.90 feet to a point and the principal place of beginning;

Thence continuing North 0° 51' 40" East along the easterly line of Brecksville Road, as aforesaid 54.00 feet to a point;

Thence South 88° 52' 50" East 129.35 feet to a point;

Thence South 1° 07' 10" West 42.00 feet to a point;

Thence South 46° 07' 10" West 16.97 feet to a point;

Thence North 88° 52' 50" West 116.93 feet to a point on the easterly line of Brecksville Road, as aforesaid, and the principal place of beginning, be the same more or less but subject to all legal highways.

PARCEL III:

Situated in the City of Brecksville, County of Cuyahoga, State of Ohio: And known as being part of Original Brecksville Township Lot No. 23 and more fully described as follows:

Beginning at the intersection of the center line of Mill Road, and the old center line of Brecksville Road;

Thence North 0° 51' 40" East along the center line of Brecksville Road, as aforesaid, 328.20 feet to a point;

Thence North 87° 28' 45" East 33.06 feet to a point on the easterly line of Brecksville Road, as aforesaid;

Thence North 0° 51' 40" East along the easterly line of Brecksville Road as aforesaid 272.90 feet to a point;

Thence South 88° 52' 50" East, a distance of 499.32 feet to an iron pin and the true place of beginning of land herein described;

Thence South 0° 51' 40" West a distance of 241.15 feet to an iron pin;

Thence North 87° 28' 45" East a distance of 647.25 feet to an iron pin;

Thence North 0° 14' 50" East a distance of 200.08 feet to an iron pin;

EXHIBIT C

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Thence North 88° 52' 50" West a distance of 643.94 feet to the place of beginning, be the same or less, but subject to all legal highways.

The foregoing lands are described in the deed from Michael Gallucci, Jr., as Successor Trustee of the Michael Gallucci, Sr., Trust dated August 31, 1990, to Michael Gallucci, Jr., recorded in O.R. 94-07228 at Page 58 et seq. and O.R. 94-07729, Page 1 of Cuyahoga County Records.

04/25/95

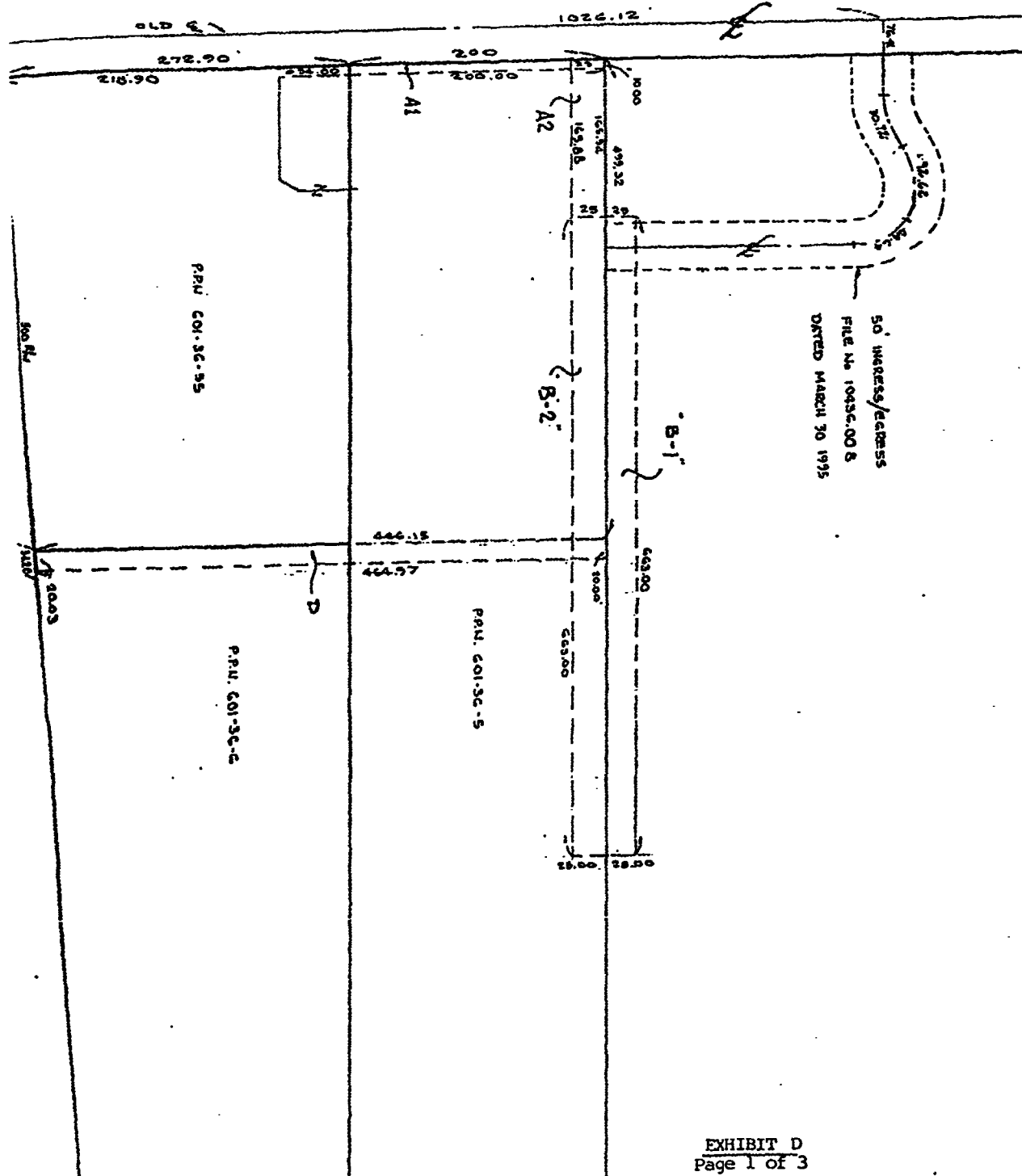
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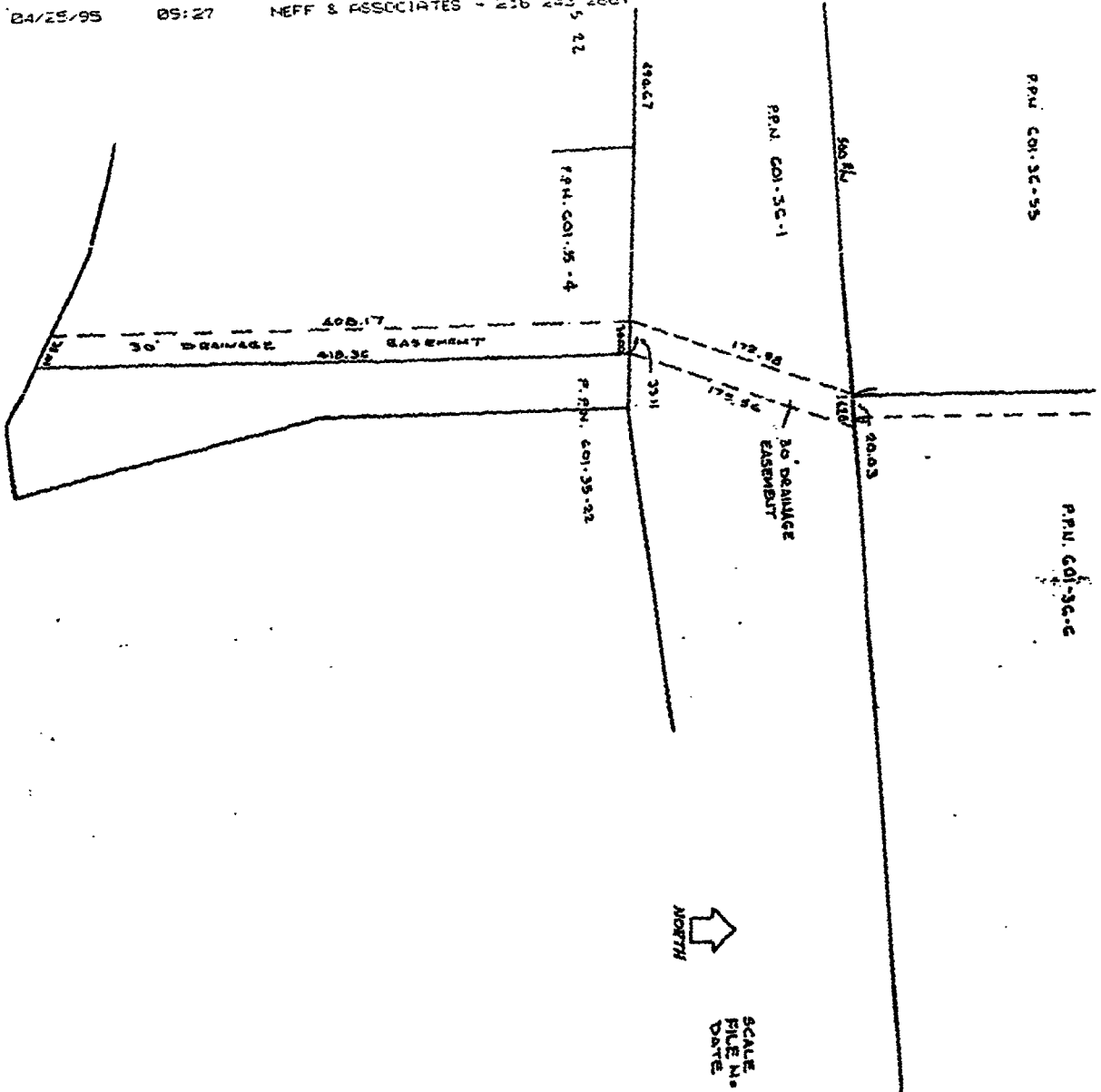
NEFF & ASSOCIATES - 216 243 2667

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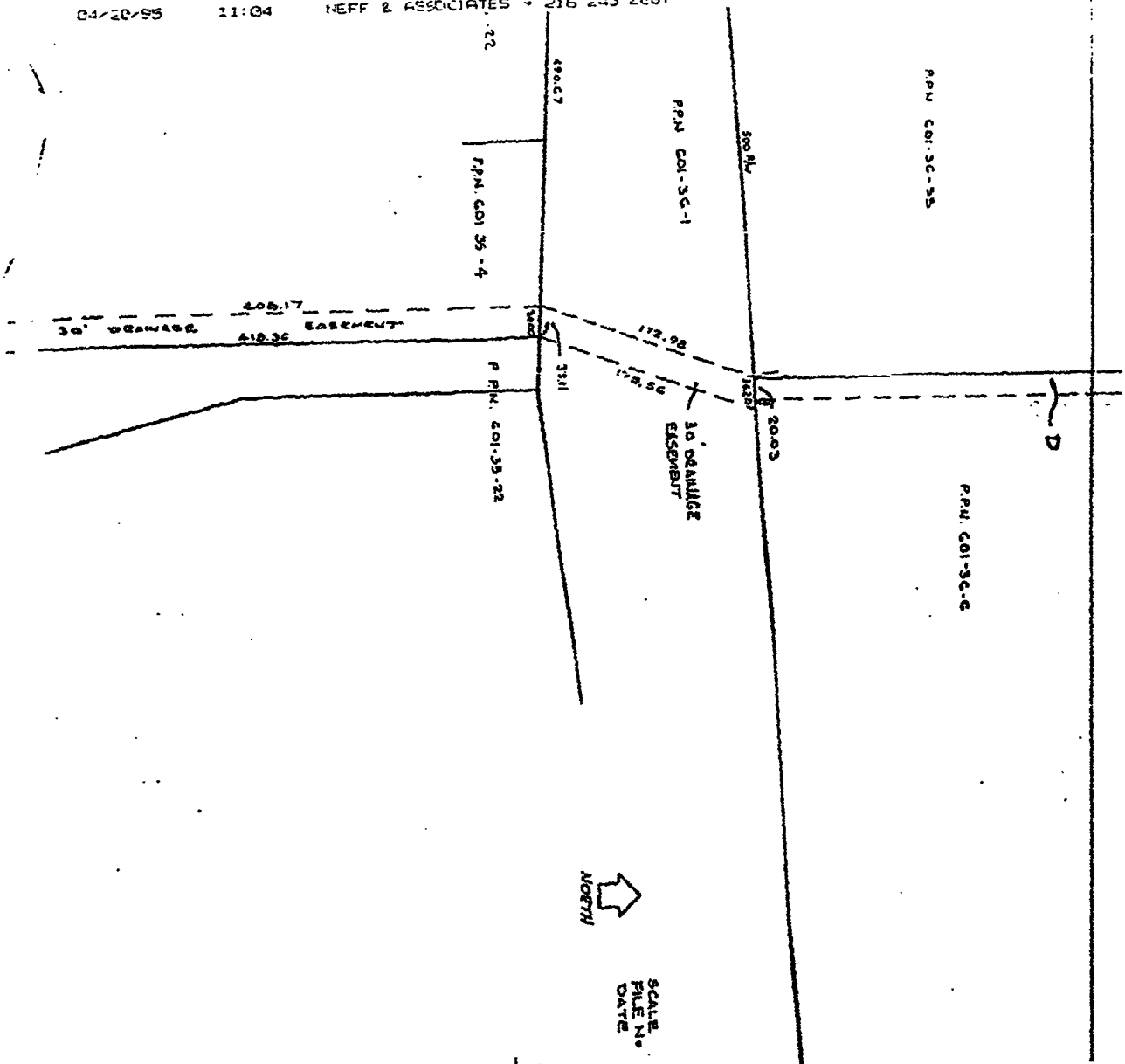
BRECKSVILLE ROAD





SCALE 1"=100'
 FILE NO. 10436
 DATE 3-15-95
 3-17-95
 3-20-95 RANGE A1
 4-10-95
 4-20-95
 4-25-95

0 100
 SCALE IN FEET



SCALE 1:100
 FILE NO. 10433
 DATE 3-6-95
 3-15-95
 3-17-95
 3-20-95
 4-18-95
 4-20-95
 REVISE A1

0 100
 SCALE IN FEET

H

ARTICLES OF INCORPORATION
OF
HILLBROOK ASSOCIATION

The undersigned, a citizen of the United States of America, desiring to form a corporation, NOT FOR PROFIT, under Sections 1702.01 et seq. of the Ohio Revised Code, does hereby certify:

FIRST: Name.

The name of the corporation shall be HILLBROOK ASSOCIATION.

SECOND: Location of Principal Office.

The place in Ohio where the principal office of the corporation is to be located is the City of Brecksville, County of Cuyahoga.

THIRD: Definitions.

The following definitions are applicable to these Articles of Incorporation:

- (a) "ASSOCIATION" means Hillbrook Association, an Ohio non-profit corporation.
- (b) "BOARD" means the Board of Trustees of the Association, as more fully set forth in Paragraph Seventh hereof.
- (c) "COMMON AREA" means all the real property (including the improvements thereto and facilities thereon) owned by the Association for the common use and enjoyment of the Owners.
- (d) "DECLARANT" means MYLES DEVELOPMENT COMPANY. It means, also, the successors and assigns of MYLES DEVELOPMENT COMPANY.
- (e) "DECLARATION" means that certain Declaration of Easements, Covenants and Restrictions for Hillbrook entered into by Declarant for the Property. The Declaration is incorporated by reference herein.
- (f) "DEVELOPMENT PERIOD" means the period of time beginning on the date hereof and ending on the earlier of (i) December 31, 2005, (ii) the date

Declarant files with the Cuyahoga County Recorder an instrument, signed by Declarant, witnessed and acknowledged as provided in R.C. 5301.01, declaring the Development Period ended, or (iii) the date all Lots have been sold by Declarant to bona fide purchasers for value. For purposes of item (iii) of this subparagraph (f), the Expansion Area will be deemed to contain Lots owned by Declarant, even if Declarant does not own the Expansion Area, until Declarant acquires, subdivides and sells the Lots platted in the Expansion Area.

- (g) "EXPANSION AREA" means the lands described on EXHIBIT B, which Declarant may annex to the Property and make subject to the Declaration.
- (h) "LOT" means any subplot shown upon the Plat of the Property filed with the Cuyahoga County Recorder and on any plat(s) of any of the lands in the Expansion Area which Declarant annexes to the Property and makes subject to the Declaration. The Common Area shall not be a Lot.
- (i) "MEMBER" means a member of the Association, being the Declarant and Owners, as more fully set forth in Paragraph Fifth herein.
- (j) "OCCUPANT" means a natural person who lives in a Unit.
- (k) "OWNER" means 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, including persons purchasing a Lot under a recorded land installment contract, but excluding persons having such interest merely as security for the performance of an obligation. Sellers under a recorded land installment contract for a Lot shall be deemed to be persons having an interest merely as security for the performance of an obligation. A lessee under a lease of a Lot having an initial fixed term of fifty (50) years or more, which has been recorded or for which a memorandum of lease has been recorded, shall be deemed to be the Owner of the Lot.
- (l) "PERSON" means a natural person or corporation, partnership, limited partnership, limited liability company, trust or other entity.

- (m) "PROPERTY" means the real property described on EXHIBIT A and lands in the Expansion Area which are annexed and subjected to the Declaration by Declarant. Lands in the Expansion Area shall not be deemed to be Property until and unless they are annexed and submitted to the Declaration.
- (n) "UNIT" means an enclosed, separate dwelling on a Lot providing separate and complete living, cooking, sleeping, bathing and toilet facilities for one family.

FOURTH: Purposes and Powers of the Association.

This Association does not contemplate pecuniary gain or profit to the Members thereof and the specific purposes for which it is formed are to provide for the maintenance, preservation and control of the Common Area within the Property and to promote the health, safety and welfare of the Owners and Occupants within the Property and any additions thereto as may hereafter be subjected to the Declaration or brought within the jurisdiction of this Association. For these purposes, the Association shall have the right to:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, and as the same may be amended from time to time.
- (b) Fix, levy, collect and enforce payment by any lawful means, all charges, fines, or assessments pursuant to the terms of the Declaration; pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all license, taxes or governmental charges levied or imposed against the property of the Association.
- (c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.
- (d) Borrow money and, with the assent of two-thirds of each class of members, mortgage, pledge, grant a deed in trust in respect to, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(e) Dedicate, sell, transfer or grant easements in all or any part of the Common Area to any public agency, municipality, authority, utility or person for such purposes, and subject to such conditions as may be provided in the Declaration. Except as expressly set forth in the Declaration, no such dedication, sale or transfer shall be effective unless an instrument has been signed by two-thirds of each class of Members, agreeing to such dedication, sale or transfer.

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Common Area, provided that except as expressly set forth in the Declaration, any such merger, consolidation or annexation shall have the assent of two-thirds of each class of Members.

(g) Have, exercise, and engage in any and all powers, rights, privileges and acts which a corporation organized under the Ohio Non-Profit Corporation Law (Chapter 1702 of the Ohio Revised Code) by law may now or hereafter have or exercise.

FIFTH: Membership.

Every Owner of a Lot which is subject to the Declaration shall be a Member of the Association. Declarant shall be a Member until December 31, 2005, whether or not Declarant owns a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot subject to this Declaration, except in respect to Declarant, which shall be a Member until December 31, 2005, whether or not Declarant owns a Lot.

SIXTH: Voting Rights.

The Association shall have two classes of voting membership until the end of the Development Period:

Class A: Class A Members shall be all Owners. Each Owner shall be entitled to one 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant. Declarant shall be entitled to seventy-three (73) votes plus one (1) vote for each Lot

owned by Declarant. The Class B Membership shall cease at the end of the Development Period.

SEVENTH: Board of Trustees.

Until the first annual meeting of Members, the affairs of this Association shall be managed by a Board of three Trustees. The names and addresses of the persons who are to act in the capacity of Trustee until the election of their successors are:

<u>Name</u>	<u>Address</u>
David Snider	7650 Chippewa Road Suite 210 Brecksville, Ohio 44141
Sam Cannata	7650 Chippewa Road Suite 210 Brecksville, Ohio 44141
Lisa M. Schill	7650 Chippewa Road Suite 210 Brecksville, Ohio 44141

From and after the first annual meeting, the Board shall consist of five (5) Trustees. At the first annual meeting the Members shall elect two (2) Trustees for a term of one year and three (3) Trustees for a term of two years. At each subsequent meeting the Members shall elect trustees for two-year terms to fill the vacancies created by the expiration of the Trustees' terms. A trustee may serve more than one term if re-elected by the Members. The number of trustees may be changed by Amendment of the Bylaws of the Association. Trustees need not be Members of the Association.

EIGHTH: Dissolution.

The Association may be dissolved with the assent given in writing and signed by all Members and by holders of all bona fide first mortgages on all or any part of the Property, and with the written approval of the City of Brecksville. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be conveyed and assigned to the Owners to hold in accordance with the provisions of Paragraph 8(d) of the Declaration.

NINTH: Duration.

The Corporation shall exist perpetually.

TENTH: Amendments.

Amendment of these Articles shall require the assent of Members having not less than sixty-six and two-thirds percent (66 2/3%) of the voting power of the Association.

ELEVENTH: Indemnity.

Each member of the Board of Trustees and officer of the Association and each former member of the Board of Trustees and officer of the Association shall be indemnified by the Association against the costs and expenses reasonably incurred by him in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which he is or may be made a party by reason of his being or having been such Board Member or officer of the Association (whether or not he is a member or officer at the time of incurring such costs and expenses), except with respect to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for misconduct or negligence in the performance of his duty as such Board Member or officer. In case of a settlement of any action, suit or proceeding to which any Board Member or officer of the Corporation, or any former Board Member or officer of the Association, is made a party or which may be threatened to be brought against him by reason of his being or having been a Board Member or officer of the Association, he shall be indemnified by the Association against the costs and expenses (including the cost of settlement) reasonably incurred by him in connection with such act, suit or proceeding (whether or not he is a Board Member or officer at the time of incurring such costs and expenses) if: (a) the Association shall be advised by independent counsel that such Board Member or officer did not misconduct himself or was not negligent in the performance of his duty as such Board Member or officer with respect to the matters covered by such action, suit or proceeding, and the cost to the Association of indemnifying such Board Member or officer (and all Board Members and officers, if any, entitled to indemnification hereunder in such case) if such action, suit or proceeding were carried to a final adjudication in their favor could reasonably be expected to exceed the amount of costs and expenses to be reimbursed to such Board Member and officers as a result of such settlement, or (b) disinterested Association members entitled to exercise the majority of the voting power shall by vote, at any annual or special meeting of the Association, approve such settlement and the reimbursement to such Board Member or officer of such costs and expenses. The phrase "disinterested members" shall mean all members of the Association other than (i) any Board Member or officer of the Association who is at the time or may be entitled to indemnification pursuant to the foregoing provisions, (ii) any corporation or organization of which such Board Member or officer owns of record or beneficially ten per cent (10%) or more of any

class of voting securities, (iii) any firm of which such Board Member or officer is a partner, and (iv) any spouse, child, parent, brother or sister of any such Board Member or officer. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such Board Member or officer and shall not be exclusive of other rights to which any Board Member or officer may be entitled as a matter of law under the Declaration, these Articles, the Bylaws of the Association, any vote of Corporation members, or any agreement.

IN WITNESS WHEREOF, for the purpose of forming this Corporation under the laws of the State of Ohio, I, the undersigned, constituting the incorporator of this Association, have executed these Articles of Incorporation this ____ day of July, 1996.

David Snider

APPOINTMENT OF STATUTORY AGENT

The undersigned, being the incorporator of HILLBROOK ASSOCIATION, hereby appoints DAVID SNIDER, a natural person residing in Cuyahoga County, Ohio being the County in which HILLBROOK ASSOCIATION has its principal office, the statutory agent upon whom may be served any process, notice or demand required or permitted by statute to be served upon the Corporation. His complete address is:

7650 Chippewa Road
Suite 210
Brecksville, Ohio 44141

HILLBROOK ASSOCIATION

David Snider

HILLBROOK ASSOCIATION

Gentlemen:

I hereby accept the appointment as agent of HILLBROOK ASSOCIATION upon whom process, notices or demands required or permitted by statute to be served upon the Corporation may be served.

David Snider

Date: July ____, 1996

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HILLBROOK ARTICLES

EXHIBIT E

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