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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE WOODS

This agreement is made between JMD Development Inc., an Ohio corporation, hereafter referred to as the "Declarant," for the purpose of establishing a plan of development described herein utilizing the provisions of Chapter 711 of the Revised Code of Ohio.

Article I. Concept.

Section 1. Initial Plat. This declaration is being filed in connection with the subdivision of 21.443 acres to be platted as The Woods, Planned Unit Development, that plats 45 single-family residential lots and various parcels that are shown on the record plan as common area.

Section 2. Other development. The Initial Plat is only a part of the land controlled by the Developer, there being some 75 acres that may be brought under all or part of the provisions of the Declaration, said land referenced as "The Properties".

Section 3. Lifestyle. The Initial Plat of 45 Lots is to create what the declarant refers to as "Estate Lots" and "Patio Lots" which essentially deal with the size of the lots for the single-family detached Dwelling Units to be constructed thereon. The Declarant proposes, in addition to the type of Lots initially platted, that it may Plat lots for multifamily units for attached dwelling units that will be separated onto separate Lots by the planning process or by a replatting process. Also, as part of the development of the Properties, some of the Units constructed may be submitted to the Ohio Condominium Act. While all of the Properties will be brought under the Declaration it may be advisable for the Declarant to also file a separate declaration to deal with the mechanics of that style of development including ownership of Common Area relating to the particular development that is not related to the association to be formed as provided by this declaration.

Section 4. Common Area. The development concept proposed by this Declaration will have Common Area created by the platting process. Without limitation, this Common Area will be used as a Community Center for the development of a clubhouse and recreational amenities; storm water detention and retention basins that will be developed as lakes or ponds with the basins permanently impounded water; Green Space that may be developed for trails, walkways and paths; Private Roads to serve a part of the community developed; Entrance Monuments to the development; Landscaped Boulevard Areas that are part of the public streets; and Street Lighting is provided by the Association. It is contemplated here by that the Association that is formed as provided here in will own or control the Common Area except for the Clubhouse and recreational amenities.

Section 5. Recreational Area. While the Community Center and recreational area will be part of the initial subdivision of the 21.443 acres, these facilities will serve more than the original 45 platted lots and are designed to benefit some 394 lots to be developed from the Properties brought under this Plan of Development.

Article II. Definitions.

Section 1. "Association". The term "Association" shall mean and refer to The Woods Owners Association, a nonprofit corporation, its successor is and assigns. It is understood that all owners of land that is subject to the Declaration will belong to The Woods Owners Association, which is formed to own and administer the Common Area. Provided, however, if the subsequent plating of the Properties added to the plan of development should create Common Area that pertains or relates only to the areas and then formed whose members will only be the Owners of Lots or Units pertaining to the separate area and said Owners will be members of both the Association and the newly created association.

Section 2. "Owner". The term owner sometimes called "Unit Owner", shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to a Lot, including contract Sellers, but excluding those having an interest as security for the performance of an obligation. Notwithstanding any applicable theory of mortgages, the term shall not mean or refer to a mortgagee unless and until such mortgagees has acquired title pursuant to foreclosure or other proceedings in lieu of foreclosure.

Section 3. "Declarant". This term will referred to JMD Development, Inc., an Ohio corporation, and to its successor and assigns.

Section 4. "Properties". This term has reference to the land as may from time to time be subjected to the provisions of this Declaration, and is located in the City of Beavercreek, Green County, Ohio with public asset access from Kemp Road.

Section 5. "Parcel". This term refers to the large lots that are platted from time to time from the Properties that are convenient to the residential construction of buildings with more than one Living Unit. The term "Parcel" is used herein to distinguish it from the term "Lot" as used herein, which refers to a smaller planted locked that contains a Unit. It is contemplated that in subsequent plats of the properties that large lots (parcels) will be platted for multifamily type construction that will be read subdivided to separate the detached units to separate lots and appropriate Common Area.

Section 6. "Lot". The term "Lots" here in used as reference to the real estate that, improved with a Unit, will be conveyed to the owner.

Section 7. "Unit". The term "Unit" refers to each separate living area sometimes referred to as a "Dwelling Unit." A Dwelling Unit will be a single-family detached home under the initial platting process but may be referenced as a Dwelling Unit that is part of a multifamily building when separated to a Lot.

Section 8. "Common Area". The term "Common Area" shall mean and refer to the land that will be owned or controlled by the association. The Common Area will be created as part of the platting process or replats of Parcels if appropriate.

Section 9. "Builder". The term "Builder" will refer to the acquirers of a Lot or Parcels from the Declarant for the purpose of constructing approved building improvements thereon.

Section 10. "Common Expense". This term refers to the expenses of the Association to maintain the Common Area owned by it, the care and maintenance of their of and the expenses that are generated by the Common Area.

Section 11. " Trustees". This term references the duly elected Board of Trustees of the association.

Section 12. "Articles". This term refers to the Articles of Incorporation of The Woods Owners Association, the Association.

Section 13. "By-Laws". This term refers to the code of regulations or administrative rules of the Association.

Section 14. "Declaration". This term refers to this Declaration of Covenants, Conditions and Restrictions and any amendments thereto that are subsequently made, being the Plan of development.

Section 15. "Community Center". This term references the recreational facilities that are developed and constructed for the properties comprising The Woods Development.

Article III. Development

Section 1. Initial Plat. The initial Plat of 21.443 acres creates 45 lots for single-family detached homes and identifies a number of areas that are referenced as Common Areas that, among other purposes, will be developed, (the 3.5774 acre parcel) as a Community Center, and (the 1.0052 acre parcel) as a surface water detention basin.

Section 2. Subsequent Plats. If additional land is platted from the Properties for single-family detached homes, lots will be platted therefore. If multifamily lots are platted, such lots (Parcels) will be replatted in order to separate each unit of the multifamily buildings on to a separate lot and in such event, part of the replat of the parcel may be designated Common Area. Other land may be platted as Common Area for green space and for water detention purposes.

Section 3. Properties. The properties consist of the 21.443 acres. recorded as though woods and that additional land described in the exhibit a hereto. The declarant reserves the right and privilege to add the balance of said land or any part thereof to this plan of development.

Section 4. Regulations. The development is subject to the subdivision regulations and zoning regulations, and the provisions of P U D case 90-5, of the city of Beavercreek and the approval process there under for any Lot split or creation of additional building sites. It is intended that the replanting of the parcels will result in a unit being located on a locked and, after transfer to the owner of the living unit, that there will be no further division of the lot without the approval of the city. The streets so designated as being private are to be owned and maintained by the association and there is no obligation of the city of Beavercreek to except the ownership or maintenance responsibilities for such streets or to except the ownership or maintenance of by the common area.

Article IV. Units and Lots

Section 1. Types of Construction. The Units to be initially constructed will be single-family detached living Units. The construction style will vary at the discretion of the declarant in the approval process of the builder's plans as being compatible and complementary to other Units built.

Section 2. Design of Lots. The design of the Lots will be such that each Lot contains a separate Living Unit including the amenities purchased as a part thereon such as garage, patio, porches, and other features for the benefit of the owner.

Section 3. Access. Each unit shall have a direct access through its lot and, if necessary through the common area private streets to a public street or highway, and a non-exclusive easement is created over the common areas to provide ingress and egress to each lot. As part of the common area any private street system, the shown on the Platt of the woods, will be developed to provide the means of access.

Section 4. Intention. It is the intention of this plan that each lot shall, for all purposes, constitute real property and shall be deemed real estate within the meaning of all provisions of the Revised Code of Ohio.

Section 5. Plan approval. As a condition precedent to any construction on a Lot or Parcels, the Builder will submit the plans and specifications to the Declarant for its approval. As part of the sale of a Lot, the Declarant has established criteria for the Dwelling Units to be constructed and the approval is to confirm that the proposed Unit will comply with these criteria. In the event that a Lot is purchased and the approved unit is not immediately built there on or such plan is changed or the lot is transferred, nevertheless no construction will proceed without the actual approval by Declarant of the plans to be constructed.

Section 6. Lot landscaping. It is contemplated that due to weather or other conditions, lots may be conveyed to an owner together with an allowance for the costs of the owner providing his own landscaping. In such cases, the owner shall be required to complete such landscaping as is approved by the declarant. In the event a lot owner shall not promptly complete such approved landscaping as is approved by the declarant. In the event a lot owner shall not promptly complete such approved landscaping as permitted by weather, the association may, after thirty (30) days notice to the lot owner, undertake to complete the landscaping at a cost not to exceed the amount of the landscaping allowance. The association, by action of its trustees, shall recover the expense by assessing the lot owner as provided in article XIV, Section 4.

Article V. Common Area

Section 1. Ownership. The Common Area that may be owned by the Association shall consist of all of the land so platted in each Parcel not platted into a Lot containing a Unit and shall include the private roads. The Declarant shall convey said Common Area (except the Community Center) to the Association at or about the time the Lots on said Parcel are conveyed to owners or upon completion of the improvements to be made to the Common Areas.easement for use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot by way of membership in the Association, subject to the rights of the association to make reasonable rules and regulations concerning the use of said Common Area. Provided, however, that nothing herein shall limit or restrict the right of the Owner to access, both vehicular and pedestrian, from his Lot or parking area to the nearest public street over such portions of the Common Areas as may be designated as private streets.

Section 3. Use. Except as otherwise provided here in, the common area shall be used for sole and exclusive use, benefit and enjoyment of the owners for the following purposes: private streets, sidewalks, footways, parking areas, drives, recreational areas, utility lines, detention basins and like facilities.

Section 4. Community Center. The Declarant will have built on the 3.5744 acres shown as Common Area on the Initial Plat a Community Center that is proposed to be used and enjoyed by the owners of lots brought under this plan and as part of the properties. The Community Center will consist of a clubhouse, swimming pool, tennis courts and other recreational facilities. The

Community Center will be transferred by the Association upon Declarant's determination that the plan of development has reached the stage of completion to merit the transfer; the sale of 186 Lots or Units. Nevertheless, upon completion of the Community Center, Declarant shall lease same to the Association, and its members shall have the full use and enjoyment of the amenities as if owned by the Association; and the Association shall pay the Common Expense of the Community Center, assessable as other Common Expenses, to Declarant as lessor. Other than the Common Expense determined in accordance with article XII of this Declaration, Declarant shall not be entitled to rental payments upon such lease. Declarant further reserves the right an option to transfer the community center to the association prior to the sale of 186 Lots but retain a security interest in the 3.5744 acres until the sale of such Lots. The cost of personal property, such as exercise equipment and other furnishings acquired for the Community Center, as determined by the Trustees of the Association, shall be considered a Common Expense of the Association.

Section 5. Landscaping Maintenance, Storm Water Retention and Detention. The declarant will construct on the 1.0052 a. shown as common area on the initial Platt the storm water retention basins. As part of this development, the declarant will landscape the area not subject to flooding and may provide other amenities for the use and enjoyment of the owners. This area will be transferred to the association upon completion. Upon such transfer, the association shall maintain the landscaping (pursuant to city of Beavercreek approved plans for the development) and other amenities of the common area, as defined in article II, Section 8 of this declaration, as provided on the planned unit development plans approved by the city of Beavercreek.

Article VI. Property rights

Section 1. Restrictions as to uses. The association, in addition to the rights to make other reasonable regulations concerning the Common Area, may subject the Common Area to the following provisions:

- a. The right of the association to restrict parking and other uses of the drives, private roadways and parking areas.
- b. The writing the association to control the uses of the common area, to make rules and regulations concerning said uses and to generally regulate the common areas for the benefit all the owners.
- c. The right to the association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes provided such agency, authority, or utility will except dedication or transfer and subject to such conditions as may be agreed to by the members.
- d. The right of the association, in accordance with its articles of incorporation and bylaws, to borrow money for the purpose of improving the common areas. The association shall not borrow money except by resolution approved by 66 and 2/3% of the total number of votes held by Class A members and approval by the Class B member if such member should exist.
- e. The writing of the association to enforce and from time to time amend reasonable rules and regulations and pertaining to the use of the Common Areas. Provided, however, nothing herein shall be deemed to give the right to the association to suspend any owners right of ingress or egress across the common area to his unit.

Section 2. Easements for Utilities. The easements to generally serve the requirements of the properties will be created and shown on the planning process to create the lots or parcels and the replanting process to create the lots. However the association may grant such additional easements' as may from time to time be required for full use and benefit of the lot owners or the association.

Section 3. Easements for General Welfare. As to the common area, there is hereby granted a valid and permanent easement to the local political authorities, but not to the public in general, to enter upon said common area for the purpose of maintaining and providing for the health, safety, welfare, police protection, fire protection to the units and for the benefit of all persons using the same, the owners and the association.

Section 4. Future Easements. Declarant hereby reserves to itself the right an easement to install, late, maintain, repair and replace water mains, pipes, sewer lines, gas mains, telephone wires and equipment and television electrical conduits and wire under, and along any portion of the Common Areas, provided that it shall be a condition precedent to the use and enjoyment of any such easement that the Declarant or Grantee of such easement shall restore to the common areas to the same condition as existed just prior to the installation of any such utility improvements.

Article VII. Protective Covenants and Restrictions

Section 1. Use. Each lot or units shall be used for residential purposes only, except that the declarant may use the same for construction and sales purposes during the building and initial sales period.

Section 2. Hotel and Transient Uses. No unit or any part thereof shall be rented or used for transient or hotel purposes, which shall be defined as (a) rental for any period of less than 30 days, or (b) any rental if the occupants of a unit are provided customary hotel or boarding house services, such as room service for food and beverages, made service, the furnishing of laundry and linen service, meals, busboy service and other like services.

Section 3. Architectural Control. No exterior additions or alterations of any unit situated on any Lot, nor changes in the colors of the exterior portions of the unit, including doors and window frames, nor changes in fences, hedges, walls or other structures and appurtenances to the units shall be commenced, erected or maintained on less and until the construction, plans and specifications are approved by the declarant or by the trustees of the association or by an Architectural Review Committee appointed by said trustees. It is understood that any building additions or modifications, including patio or room additions, that may be approved by the Architectural Review Committee must also meet the applicable regulations of the city of Beavercreek and P U D 90-5.

Section 4. Prohibited Parking. The parking of campers, trailers, boats, mobile homes and the like are prohibited on any Lot or on the Common Area, on less the Association designates a specific area of therefore on the common area.

Section 6. Building on Easements. Within the easements for the installation and maintenance of utilities and drainage facilities, no structure, building, fences, walls, planting or other materials shall be placed for permitted to remain which will damage or interfere with the installation and maintenance of the utilities, or which may change the flow of

drainage channels, or which may obstruct or retard the flow of surface water from its proper course or flow

Section 6. Nuisances. No obnoxious or offensive activity shall be permitted on any Lot, Unit or Common Area nor shall any thing be done there on which may be or may become an annoyance or nuisance to the neighborhood. Nothing shall be done that will create any waste, that will increase the costs of insurance or result in the cancellation of insurance on the Units or Common Area.

Section 7. Temporary structures. No structures of a temporary character, tents, garages, barns or outbuildings shall be permitted on any Lot. No structures of any kind shall be erected on the common area or less placed or erected by the declarant or upon the approval of the Architectural Review Committee of the Association.

Section 8. Signs. No sign of any kind shall be displayed to the public view on the properties, except (a) on the common area, signs regarding and regulating the use of the Common Area that are erected by the Association, (b) on a lot, except one sign of no more than five (5) square feet advertising the property for sale or lease; (c) signs used by the declarant for the advertisement of the property during the construction and initial sales period. Signs may be erected for traffic control on the private streets.

Section 9. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or common area, except dogs, cats and other usual household pets, provided that they are not kept, bred or maintained for any commercial purposes. No animal shall be permitted to run loose on or become a nuisance to any other Owner. The Association may regulate and control the use of the Common Area by such household pets as from time to time it deems necessary.

Section 10. Garbage and Refuse Disposal. No lot nor any part of the Common Area, shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers on the lots or in dumpsters if provided by the Association.

Section 11. Water and sewer. No private water supply systems or sewage disposal systems shall be permitted.

Section 12. Common Area. Except as otherwise provided herein, the Common Area shall be used for the sole and exclusive use, benefit and enjoyment of the owners. The trustees of the Association may establish and enforce reasonable rules and regulations as to the use of all Common Area and the same, as promulgated from time to time, shall be enforceable in the same manner and to the same extent as if originally part of this Declaration.

ARTICLE VIII. Maintenance, Repair and Replacement.

Section 1. Changes. An owner will make no changes to the exterior of the unit or will not make any additions, alterations or changes on less and until the Owner has the approval of the Architectural Review Committee of the Association, and the approval and issuance of permits by the building and zoning authorities of the city of Beavercreek, if such approval and issuance be necessary.

- a. The Architectural Review Committee may require the Owner to supply plans and specifications for the proposed improvements showing the nature, kind, shape, height, material, and location of the proposed work, it being understood that the workmanship, material, and design must be in harmony with the rest of the building in the development.
- b. The Owner shall make arrangements to pay the cost for all such changes that are approved, and to see that the work is performed in good workmanship manner.

Section 2. Common Area. The Association shall assume all responsibility for the maintenance and repair of the Common Area, and the cost thereof shall be a Common Expense.

Section 3. Managing Agent. The association by its trustees may delegate all or any portion of its authority to discharge its maintenance and repair responsibilities to one or more independent contractors or to a managing agent. Such delegation shall be evidenced by a management contract for a term not to exceed three (3) years in duration, which shall provide for the payment of reasonable compensation to such managing agent as a Common expense. Upon the expiration of the initial term of any such management contract the Trustees may renew such contract from time to time for successive. No one of which shall exceed three (3) years in duration or enter into a new contract for a like period. The Declarant, after the filing of this declaration, may enter into the contract with the managing agent on behalf of the Association for the initial term of three (3) years. Such agreements shall provide for termination without cause and without payment of a termination fee ninety (90) days notice.

Section 4. Private Roads. All private roads and private rights of way shall be maintained by the Association.

ARTICLE IX. Insurance.

Section 1. Carried by Association. The Association, will carry fire and extended coverage, vandalism and malicious mischief liability insurance and workers' compensation insurance, if applicable, on the Common Area structures or other

improvements now or at any time hereafter constituting a part of the Properties and the costs thereof shall be a Common Expense.

Section 2. Fire and Extended Coverage. The Association shall contract for the insurance on the improvements on the Common Area for insurance against fire and other perils covered by a standard extended coverage endorsement in an amount equal to the maximum insurance replacement that you excluding foundation and excavation costs at the appropriate time.

- a. The insurance policies shall provide for the release by the insurer thereof of any and all rights of subrogation, assignment or other rights of recovery against any Unit Owner, his family, tenants and all other persons lawfully in possession, for recovery against any one of them for any loss occurring to the Common Area Improvement from any of the perils insured against buy such insurance coverage.
- b. Proceeds of all insurance policies owned by the Association shall be paid to the Association, and shall be held in a separate account and in trust for the purposes of repair or construction as is appropriate.
- c. Such insurance may have a reasonable deductible as determined by the Board of Trustees and such deductible shall be considered a Common Expense of the Association.

Section 3. Liability Insurance. The association, as a Common Expense, shall insure itself, the Board of Trustees, all Unit Owners and members of their respective families and other persons residing with them in the Unit their tenants, and all persons lawfully in possession or control of any part of the Properties, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the Common Areas. Such insurance to afford protection to a limit of not less than \$500,000.00 in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than \$1,000,000.00 in respect to any one occurrence and to the limit of not less than \$100,000.00 in respect to damage to or destruction of property arising out of any one accident.

Section 4. Association to Act. Each Owner does hereby appoint the Association as is true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of fire and extended coverage, vandalism and malicious mischief, liability insurance and, if applicable, worker's compensation insurance pertinent to the Properties and Common Area with such insurers as may from time to time provide insurance. With out limitation to the generality of the foregoing, the association has said attorney-in-fact shall have full power and authority to purchase and maintain such insurance, to collect proceeds and to distribute the same, to execute release of liability and to execute all documents and do all things on behalf of the Unit Owners as shall be necessary or convenient in dealing with any insurance purchased by the Association.

ARTICLE X. Detention/Retention Areas.

Section 1. Initial Construction. The declarant, at its cost, will provide the land and improvements for the surface storm water retention and detention locations in connection with the development of the Woods Subdivision and will maintain such Common areas until such common Area is transferred to the Association.

Section 2. Subsequent Maintenance. The Association after conveyance to it of the Common Area shall have the primary duty and the responsible for the care, custody, maintenance, regulation and control of the storm water retention and detention facilities and ponds located on the Common Area and the equipment therein, the grounds in which such facilities are located, for such safety maintenance as is reasonably necessary for such Common Areas, and for such maintenance to insure compliance with applicable City of Beavercreek regulations.

Section 3. Maintenance Standards. The Association shall maintain the Common Area conveyed to it in such manner to allow storm water to accumulate in and/or discharge gradually from the pond thereon.

- (a) The Association shall be responsible for removal of any debris and sediment in such facilities.
- (b) The Association shall also be responsible for keeping any inflow and discharge pipes associated with any such facility free from obstruction.
- (c) The Association shall be responsible for routine mowing and maintenance of the grounds within such Common Area not covered with water, and for maintenance, repair and replacement of any equipment therein.
- (d) The Association shall have the power and duty to keep the Common Area free from debris and obstructions, to remove any structures which may be placed in them and to take such other corrective action there in as may be necessary to permit proper drainage, retention and detention of storm water through the property.
- (e) The Association shall be responsible for proper lighting of the Common Area.

Section 4. Access Easement. The Association shall have an easement onto, over and through all lots to the extent such an easement is necessary or appropriate to enable the Association to perform its maintenance duties described in this Declaration.

Section 5. City. The City of Beavercreek shall have the permanent indoor and irrevocable right and authority to inspect and monitor the drainage and water detention facilities that are developed under this plan. In the event that said facilities are not properly constructed or maintained, upon the failure of the declarant or association to take corrective action after being duly notified by the City, the City shall have the right, but not the obligation, to take whatever action that is necessary to correct any improper construction, maintenance or operational functions and shall have the

right to assess the full cost of such City action to the association and to file a lien as hereafter provided if the Association fails to make payment.

Article XI. Real Estate Taxes.

Section 1. Owner. The Owner of each Lot shall pay the real estate taxes and assessments that are from time to time levied against his individual Lot.

Section 2. Association. The Association shall be responsible for the payment of all taxes and assessments, if any, that are from time to time levied against the Common Areas.

Article XII. Association.

Section 2. Membership. Each owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and made not be separated from the ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Upon the sale or other disposition of a Lot that vest title in a new Owner, the new Owner shall automatically become a member of the Association and the Seller shall cease to be a member, unless he owns other Lots in the Properties.

Section 3. Membership classes and voting rights. The association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners (except the Declarant) of Lots upon which is constructed a Living Unit, and shall be entitled to one (1) vote for each such lot.

Class B. The Class B member shall be the declarant, and shall be entitled to three (3) votes for each lot owned.

The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

- a. When Class A is in existence and the total votes outstanding equals or exceeds the total votes outstanding in the Class B membership; provided, however, that if at any time or from time to time the declarant does not Plat additional lots as provided in this declaration so as to maintain Class B membership in existence, due to no fault of its own (either because of governmental or quasi-governmental action or inaction or otherwise), then Class B membership shall not cease, but shall continue in order to allow the declarant in reasonable time after the impediment has been eliminated to plat additional lots as provided herein; or
- b. on December 31st, 2000.

Section 4. Joint Owners or Occupants. When more than one person holds an interest in any Lot, all such persons shall be members of the Association; provided, however, that Owners vote shall be exercised as all such persons among themselves determined, but in no event shall more than one (1) vote be cast with respect to any Lot not owned by Declarant.

Section 5. Election of Board. The Declarant, as long as Class B membership exists, shall have the right to elect or appoint a majority of the Board of Trustees of the Association. In the event that there shall be a vacancy in the office of any board member appointed by the Declarant at any time then the provisions of the bylaws to the contrary notwithstanding, the successor or substitute board member shall be appointed or elected by the Declarant. During such time as the Declarant shall have the right to appoint or elect a majority of said Board, the Declarant shall not vote its membership in the election of the balance of the Board, to wit, the minority thereof. Said minority of the board shall be elected by the members exclusive of the Declarant. The Declarant's presence shall, however, be included for the purpose of determining a quorum at any meeting of the members at which the election of board members take place. The declarant shall, at the annual meeting of members, advise the chairman of the annual meeting of the persons whom it desires to have appointed or elected Board members, not exceeding a majority of the whole Board of Trustees, and such persons shall be deemed elected Board Trustees of the Association. The Board members appointed or elected by the Declarant here under need not be members of the Association, provisions and of the by-laws of the association to the contrary notwithstanding, and need not be Officers or Directors of the Declarant.

Article XIII. Common Expenses.

Section 1. Binding. Each Owner by the acceptance of a deed to a Lot, for himself, his heirs, administrators, executors, personal representatives, successors and assigns, whether or not it shall expressed in such deed, covenants and agrees to pay the assessments that are levied from time to time to pay his allocated share of the Common Expenses provided for herein and as levied by the Association.

Section 2. Common Area Expenses. Until the Declarant transfers the Common Area to the Association, the Declarant shall be responsible for the expenses relating to the Common Area for which it retains title; subject to Article V, Section 4.

Section 3. Conveyance. At the time of the initial conveyance of any part of the Common Area to the Association, as to the Common Area transferred, the Association shall assume the Common Expense thereto and for the additional Common Areas as they are transferred to the association and the members of the Association shall be responsible for their prorata share of the Common Expense.

Section 4. Payment. The Builder commencing on the first day of the month following the completion of any Unit, will pay to the Association its allocated assessment for each Lot it owns that is subject to this Declaration that contains a completed Unit and until it sells same and the assessment is assumed by the new Owner. Conversely, the assessment for Common Expenses will not accrue for any of the Lots until and unless a Unit is constructed and until the Unit is separated on to a Lot.

- a. Commencing on the first day of the month after acceptance of his deed, each Owner will pay the then current annual assessment charges that are due the

Association. The previous Owner will be responsible for such charges until that date.

b. The Grantor or Grantee, upon the payment of a reasonable fee, will be entitled to a statement from the trustees or their agent setting forth the amount of the unpaid assessments and do from Grantor's Lot as a of a specified date and the Grantee shall not be liable for any assessments of the Grantor in excess of that amount set for as of the date specified.

c. The Trustees of the Association may impose a late charge for any Common expense not paid within five (5) days after they are due.

d. Payments of the Common Expense shall be at least annually, but may be adjusted uniformly to be more often including monthly payments and may be payable in advance.

Section 5. Pro-Rata Share. Each owner of a Unit will pay an equal share of the Common Expenses. Each share will be computed by dividing the total expense for any period by the number of Lots then a part of this plan and subject to the Declaration. Such Common Expenses will include, without limitation, the cost of insurance for the Common Area, real estate taxes for the Common Area, the cost of maintain the Common Area, administration of the Association, such services provided for by the Association and any management fees that do under any management contract entered into by the Association, being all costs necessary to properly maintain the Common Area improvements and the Association expenses.

Section 6. Alternate Proration. Considering the initial plat and development, it appears that each of the Owners of Lots will equally benefit from the improvements that will be made to the Common Area and an equal proration of the Common Expense is equitable. Provided, however, if the Association provided herein in is the Owner of the Common Area that is a benefit primarily to the limited number of Lots or Unit Owners, the Declarant and the Trustees will establish a new proration of the Common Expenses to reflect an equitable assessment among the Owners.

Section 7. Advancements by Declarant. Declarant recognizes that until a sufficient number of Lots are conveyed to Owners, the pro-rata share of Common Expenses of the Association to maintain the Common Area will be greater than when a larger number of Lots are sold. Declarant, at its option, may advance funds to the Association in such amounts as are appropriate to maintain a reasonable member assessment and pay the budgeted expenses such advancements shall be recognized by the Trustees of the Association as a loan repayable at such time and in such installment amounts together with a reasonable interest, as Declarant shall determine; it being Declarant's intention to permit the Association to operate and maintain the Common Area as a first class facility for the benefit of all members in the early phases of development.

Section 8. Preparation of Budget. The association shall on or before December 1st of each year, prepare an estimate of the total amounts that will be necessary to pay the Common Expense for the ensuing calendar year and shall forthwith supply each Unit Owner a copy thereof and his estimated share of common expense.

a. The budget prepared shall take into consideration the projected addition of Lots to this plan; necessity of setting up a reserve for repair and replacement of the Common Areas and other matters that could affect the Common Expenses of the Properties.

b. Provided, however, the failure to prepare a budget shall not be a waiver or release of the obligation of each Owner to pay his pro-rata share of the Common Expenses.

Section 9. Review and Adjustment. In June of each year and more often as necessary, the Association shall review the budget and shall make adjustments to the Assessments for Common Expenses to the actual expenses incurred or projected for the balance of the calendar year and the amount of the individual assessment for the Common Expense, if necessary, shall be adjusted. Any amounts paid by an Owner in excess of his pro-rata share shall be credit against the next assessment due for Common Expense. It is initially believed that the services provided by the Association and the Common Expenses required will be of equal benefit to Unit Owners so that the costs will be prorated equally among the Units irrespective that there may be some variances in the size of the Units and the sales price of the Units.

Section 10. Mandatory Requirement. The Association shall at all times budget and collect and each Owner shall be obligated to pay an amount necessary to keep and maintain the Common Areas in a good state of maintenance and repair, and as the same are necessary to create reserve for replacement for the facilities.

Section 11. Limitation on Disbursements. The Association shall not authorize any structural alterations, capital additions to or capital improvements of the Common Area requiring an expenditure in excess of One Thousand Dollars (\$1,000.00) without, in each case, the prior approval as hereafter provided.

Section 12. Non-Use of Facilities. No owner of a unit or Lot may exempt himself from liability for his contribution toward the Common expense by waiver of the use or enjoyment of any of the common area or by the abandonment of his unit or lot.

Section 13. Unimproved Parcels. With reference to the application of this article, parcels owned by the declarant or builder that are not improved by a completed unit shall not be assessed.

ARTICLE XIV. Other Assessments.

The assessment for the payment of common charges shall be such to provide the funds necessary for the normal expenses of the Association to carry out its responsibilities herein outlined. Under the following circumstances, the Association may adopt the following additional assessments:

Section 1. Special Assessment. In addition to the assessments authorized to cover the Common expense, the association may levy in any year a special assessment, applicable to the year only, for the purpose of defraying any unexpected repair or replacement or for such other unexpected costs and which have not otherwise been provided for in full as part of the annual assessment, provided that any such assessment shall have the approval fifty-one percent (51%) of the total number of votes held by Class A members and by the Class B member of the Association. Any special assessments levied by the Association pursuant

to the provisions of this section shall be fixed at an equal rate upon all Units. All monies received by the Association as a special assessment shall be held in trust by the Association for the benefit of the Owners, to be used only for the purpose of the special assessments, including any income derived from such funds. The assessment may be billed in advance on a monthly, quarterly or annual basis.

Section 2. Capital Improvements. The Association may levy assessments for Capital Improvements (which term contemplates the construction of a new Capital Improvement to the Common Area or for the major repair, rehabilitation or replacement of an existing Capital Improvement on the Common Area), provided that any such assessment shall have the approval of sixty and two-thirds percent (66-2/3 %) of the total number of votes held by the Class A members and the approval of the Declarant. Said members and Declarant shall also determined the time period that such Capital Improvement Assessment shall be applicable. Any Capital Improvement Assessment levied by the Association pursuant to the provisions of this section shall be fixed at an equal rate upon all Units. All monies received by the Association hereunder shall be held in trust by the Association for the benefit of the Owners to be used only for the Capital Improvement, including any income derived from such fund. The Assessment may be billed in advance on a monthly, quarterly or annual basis.

Section 3. City Assessment. In the event that the City of Beavercreek, upon the failure of the Association to take corrective action to the storm detention basins, has performed such measures as is necessary to correct any improper construction maintenance or operational functions for the detention basin, the city shall be entitled to be paid all of its costs thereof. If the Association does not pay the City its recoverable costs within Sixty (60) days after the statement therefore has been sent to the Association, the City shall have the right to assess the cost against the Lots and parcels that are subject to this Declaration.

Section 4. Landscaping assessment. The Association may levy assessments for landscaping improvements made to a particular Lot as provided in Article IV, Section 6 of this Declaration, following thirty (30) days notice to the Lot Owner upon completion of the work. The Trustees shall determine the period in which such assessments shall be paid.

ARTICLE XV.

Lien for Non-Payment.

Section 1. Certificate. The Association shall have a lean upon estate or interest of any Owner in a Lot for the payment of the portion of the Common Expenses or other assessments chargeable against such Lot which remains unpaid for ten (10) days after the same has become due and payable and a certificate therefore or an affidavit thereabout has been filed with the Recorder of Green County pursuant to authorization given by the Trustees of the Association.

- a. Such certificate or affidavit shall contain a description of the lot, the name of the record owner thereof and the amount of such unpaid portion of the Common expense and other assessments and shall be subscribed by the president or other chief officer of the association. Such lean may include late penalties and shall draw interest at the rate of ten percent (10%) per annum.

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

Section 2. Priority. The lien provided for herein shall take priority over any lien or encumbrances subsequently arising or created, except liens for real-estate taxes and assessments and liens of first mortgages which have been filed for record. Said lien may be foreclosed in the same manner as a mortgage on real property in an action on behalf of the Association by the President or other chief officer pursuant to Authority given him by the Trustees. In any such foreclosure action, the Owner of the Lot affected agrees to pay a reasonable rental for said Unit during the pendency of such action and the Owner agrees that the Plaintiff in such action is in title to the appointment of a receiver to collect the same.

Section 3. Association as Purchaser. If approved by seventy-five percent (75%) of the voting power of the Association, the Association may be the purchaser of the Lot at the foreclosure sale.

Section 4. Discharge of Lien. Any Owner who believes that the portion of the Common Expenses or other assessments has been improperly charged against him or his Lot may bring an action in the Court of Common Pleas of Green County for the discharge of such lien. In such action, if it is finally determined that such portion of the Common Expense or other assessment has been improperly charged to such Owner or his Lot the Court may make such order as is just, which may provide for a discharge of record of all or part of such lien. The Association agrees to such an action and to the authority of the Court to make any such orders.

Section 5. Mortgagee. It is agreed that where the mortgagee of a first mortgage of record or other purchaser at a foreclosure acquirers title to a Lot, such acquirers of title shall not be liable for the assessments of the Owner or Lot that accrued prior to the transfer of title. Such on paid expense is not collected from the previous Owner, will be deemed a Common Expense against all other Lots, including the Lot of the acquirers are according to their percentage of responsibility for Common Expense.

ARTICLE XVI. Statutory Agent.

The person to receive service of process for the association will be Charles F. Allbery, III whose address is 137 N. Main Street, Suite 900, Dayton, Ohio 45402. The statutory agent for the Association may be changed by the affirmative action of the board of trustees of the Association. Such change shall be reflected by a change the statutory agent with the Secretary of State of Ohio on such forms prescribed for the subsequent appointment of statutory agents for nonprofit Ohio corporations.

Article XVII.

Addition of Land.

Section 1. Properties. The Declarant may include the land described in Exhibit A in this plan of development.

Section 2. Other Land. Additional land beyond the properties herein described may be added only with the consent of 75% of the voting interests of the Owners.

Article XVIII.

Amendment.

Section 1. Amendment of Declaration. Except as otherwise stated it in any other Article of the Declaration and except as stated in any other Section of this Article, any provision of the Declaration may be amended at any regular or special meeting of the members of the association. In order for the amendment to pass, at least seventy-five percent (75%) of the total number of votes held by Class A members and the vote held by Class B member, if any, of the Association, must be cast in favor of the Amendment. The Amendment will be effective upon the recording, in the County Recorder's office at which the Declaration was recorded, of a copy of the amendment together with an acknowledged statement from the Secretary of the Association stating:

- (i) the date of the meeting at which the Amendment was adopted;
- (ii) the percentage of the total number of votes held by Class A members cast in favor of the Amendment;
- (iii) the percentage of the total number of votes held by Class B members cast in favor of the Amendment (or a statement that there were no longer any Class B members);
- (iv) the fact that a true and accurate copy of the Amendment is attached to the statement; and
- (v) the fact that the person making the statement is the Secretary of the Association.

Section 2. Correction. Either the Association or the Declarant may, at any time and without the consent of the members of the Association, make amendments to the Declaration to correct errors in typing or errors in grammar or errors in arithmetic or errors on the plats of record. The amendment will be effective upon the recording in the County Recorder's office, of a copy of the Amendment.

Section 3. Rights Are Not Subject to Suspension. Any provision of the Declaration stating that certain rights and/or easements may not be suspended by the Association may be amended only upon the unanimous vote of every member of every class of the Association in favor of the Amendment.

Section 4. Declarant's Consent. Notwithstanding any other provisions of this Declaration, no provision of this Declaration may be amended within ten (10) years

after the date of this Declaration unless the Declarant has consented in writing to the Amendment. The consent of the Declarant is in addition to the other requirements of this Article.

Article XIX.

Architectural Control.

Section 1. Appointment. The trustees shall appoint an Architectural Review Committee or upon their failure to sew up point, shall themselves act as such a committee. The Committee shall have the responsibility of maintaining this scheme of architecture and development of the properties as originally laid out and constructed.

Section 2. Approval. No changes, modifications, enlargements or additions may be made to the Units or Common Area beyond the improvements installed by the Declarant and Builder unless first approved by such Architectural Review Committee.

- a. As otherwise provided herein, the Architectural Review Committee shall review all such plans, specifications, nature, kind, shape, height, materials and location of the same to determine that they are in harmony with the existing structures and improvements to the Properties.
- b. Provided, however, if said the Committee shall have failed to approve or disapprove such alterations or additions within thirty (30) days after their submission, then approval will not be required and this article will be deemed to be complied with.

Section 3. Arbitration. The Trustees or Architectural Review Committee shall arbitrate any and all disputes that may arise from the terms and provisions of this Declaration.

Article XX.

Miscellaneous.

Section 1. Duration. The covenants and conditions herein contained in this Declaration shall run with the land perpetually, subject to amendment as provided in this Declaration.

Section 2. Enforcement. Any Owner or the Association may enforce these covenants and restrictions. Enforcement's shall be by any proceeding a law or in equity against any person or persons violating or attempting to violate any Covenant or restriction, either to restrain or to enjoy in violation or to recover damages and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any Covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter. There shall be, and there is hereby created and declared to be a conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages. All charges incurred by the Association in enforcing these covenants and restrictions (including court costs and reasonable attorney's fees) shall constitute a charge against the person or persons violating or attempting to violate the Covenant or restriction, and such charge shall constitute a lien against the Lot or Property of such person or persons, subject to subordination to first mortgages as provided herein.

Section 3. Notices. Any notice required to be sent to any member or owner under the provisions of this declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, the last known address of the person who appears as a member or owner on the records of the association at the time of such mailing.

Section 4. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance or maintenance of any Common Areas or Community Facilities by any public or municipal agency, authority or utility. It is understood that the City of Beavercreek has no obligation to accept and maintain the private streets or detention basins.

Section 5. Association and Board Responsibility. In carrying out the provisions of this Declaration, and in the performance of all of the rights, duties and obligations, covenants and conditions, hereunder, specifically including, but not limited to, the protection, maintenance and upkeep of the Common Areas, the Association, its officers, Board members, servants, and employees shall be required to exercise reasonable care only, and shall in no way be deemed absolutely liable or deemed insurers.

Section 6. Severability. Invalidation of any of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 7. Quit Claim Deeds and Correction Deeds. The Association may execute and make in respect to the Common Areas (common property) quitclaim deed and/or corrections deeds in order to correct typing or surveying errors in legal descriptions or to reflect a lot has actually laid out order correct any other error by which the Association was granted real estate or an interest in real estate by mistake of any kind. Such conveyances by the Association shall also convey all right, title, and interest that each member of the association has in the real estate conveyed, by reason of the Declaration and any amendment thereto. The Association may so act upon resolution of a majority of its Board, if any, and if the Board does not exist, then by agreement of the majority of the members in the Association the executing and/or making of quitclaim deed and or correction deed shall not constitute an shall not be deemed to be the abandoning partitioning, subdividing, encumbering, selling or transferring of common property within the meaning of this Declaration.

Section 8. Personal Liability. Nothing in this declaration, the articles or the regulations of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the maintenance, repair or replacement of any part of the Common Areas or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an owner or member hereby releases and discharges all persons now or hereafter serving as an Officer or Trustee, or both, from any liability for injuries or damages to such member or Owner or to such member's or owner's property and covenants not to initiate any legal proceeding against any such person or persons on less such said person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.

Section 9. City Regulations. All provisions of this Declaration are subject to all applicable zoning and building regulations of the City of Beavercreek and any other applicable regulations of the City.

Article XXI. Binding.

By the acceptance of a deed to a Lot or Common Area, the Grantee for himself, his heirs, administrators, executors', personal representatives, successors and assigns, whether or not it shall be so expressed in such deed, covenants and agrees to be bound by the terms and conditions of this Declaration of Covenants, Conditions and Restrictions.

