

TRANSFER NOT NECESSARY
DANIEL S. WURST
BY DK. 6-21-90 DEPT.
AUDITOR, BUTLER CO., OHIO

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

20498

AND RESERVATION OF EASEMENTS

FOR

WHITE HILL SQUARE HOME OWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by J. Harold Maggard, Trustee and Joseph W. Schwarz, Trustee, hereinafter referred to as "Declarants".

WITNESSETH:

WHEREAS, Declarants are the owners of certain property in Union Township, County of Butler, State of Ohio, which is more particularly described in Exhibit "A" attached.

NOW THEREFORE, Declarants hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1.1 "Association" shall mean and refer to White Hill Square Home Owners Association, its successors and assigns.

1.2 "Builder" shall mean any person or entity who acquires a Lot for the purpose of construction of a house on the Lot and sale to an Owner.

1.3 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association in fee or by easement and maintained for the common use, benefit and enjoyment of the owners. Nothing herein shall imply that the Association shall own any real property.

1.4 "Declarants" shall mean and refer to J. Harold Maggard, Trustee and Joseph W. Schwarz, Trustee, their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarants for the purpose of development.

1.5 "Lot" shall mean and refer to any plot of land upon any recorded subdivision plat of the Properties with the exception of the Common Area.

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

1.7 "Property or Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.8 "Surface Water Management System" shall mean the system designed for the subdivision in accordance with the county engineer's requirements for storm water, soil erosion and sediment control, including the following: drainage easements as shown on the recorded plat of the subdivision, detention basins including the concrete gutters and outlet structures, storm sewers, manholes, catch basins, pipes, headwalls, streams, ditches, gabions, rip rap, and rock if used for channel protections.

ARTICLE II

PROPERTY RIGHTS

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

2.1.1 the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

2.1.2 the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

2.1.3 the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Code of Regulations, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, his or her tenants or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

3.2 The Association shall have two classes of voting membership:

3.2.1 Class A Members shall be all Owners, with the exception of the Declarant and any Builder, and 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.

3.2.2 Class B Member(s) shall be the Declarant and any Builder and shall be entitled to seven (7) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

3.2.2.1 when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

3.2.2.2 on January 1, 1999

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENT

4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each Lot owned within the Properties, hereby covenant, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in

such deed, covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

4.3 Maximum Annual Assessment. Until January 1, 1991, the maximum annual assessment shall be Ninety Dollars and no/100 (\$90.00).

4.3.1 From and after January 1, 1991, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

4.3.2 From and after January 1, 1991, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.3.3 The Board of Trustees may fix the annual assessment at an amount not in excess of the maximum.

4.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, 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 Common Area, 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 class of members who are voting in person or by proxy at a meeting duly called for this purpose.

4.5 Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 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 members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

4.7 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein for each Lot shall commence on the first day of the month following occupation of a dwelling built on that Lot. Such initial assessment shall be prorated to the end of the Association's fiscal year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a

certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. 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.

4.8 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen (18%) percent per annum. The Association may establish reasonable late charges for delinquent assessments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

4.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the liens thereof.

ARTICLE V

RESTRICTIONS

5.1 General. The architectural and use restrictions set forth in this Article shall be applicable to the Property, except that nothing herein shall be construed to provide for any prior plan approval or consent.

5.2 Architectural Restrictions. The following architectural restrictions shall be applicable to the Property.

5.2.1 Dwelling Type. No building shall be erected, altered, placed or be permitted to remain on any Lot other than one single-family dwelling. Such dwelling may include a private garage for not less than two nor more than three cars which shall be built in or attached to the dwelling. Dwellings shall not exceed two stories in height.

5.2.2 Dwelling Floor Areas. The minimum floor areas of the main dwelling, exclusive of porches, decks, basements and garages shall be:

Ranch Home on Basement	1400 S.F.
Ranch Home, No Basement	1500 S.F.
Tri-level	1750 S.F.
Bi-level	1800 S.F.
Two-story	2000 S.F.

5.2.3 Construction Materials. No dwellings shall be constructed of concrete block, cinder block or other similar materials unless the entire exterior of the dwelling is covered with brick. No underground dwellings shall be permitted.

5.2.4 Conformance to Code. All dwellings shall be built in such a manner so to comply with the zoning laws, health regulations, and building, plumbing and electrical codes of Butler County and/or the State of Ohio.

5.2.5 Grading. The grades of all Lots shall not be materially altered or changed so as to adversely affect or interfere with any other Lot. Storm water must be disposed of in accordance with the drainage plans on file with the Butler County Engineer. All drainage patterns and drainage swales must be maintained in accordance with such plans and may not be altered without the prior consent of the Butler County Engineer.

5.2.6 Other Structures. Except as hereinafter permitted, no structure of a temporary character, trailer, shack, barn, storage sheds or other outbuildings, shall be permitted on any Lot. Construction trailers and/or storage sheds shall be permitted during construction of any dwelling. A small storage building shall be permitted to be erected in conjunction with the construction of an in-ground swimming pool for the sole purpose of housing pool filter, pump, heater, equipment and chemicals.

5.2.7 Radio and Television Antennas. No satellite dish antennas shall be permitted on any Lot. No radio or television antenna of any kind, attached or detached, may exceed the highest point of the roof of the dwelling on the Lot.

5.2.8 Fences. No fences, walls or hedges shall be erected or placed on any Lot near to any street than the minimum building setback line. No solid fences shall be permitted.

5.3 Use Restrictions. The following use restrictions shall be applicable to the Property:

5.3.1 Purpose of the Property. The Property shall be used only for single family residential purposes. Boarding homes, group homes and lodging homes shall not be permitted.

5.3.2 Trade or Business. No trade or business of any kind may be conducted in or from any Lot except that the owner or occupant residing in a dwelling constructed on a Lot may conduct such business activity within the dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the dwelling; (b) the business activity conforms to all zoning requirements for the Property, (c) the business activity does not involve

persons coming on to the Lot who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property.

The terms "trade" or "business", as used in this provision shall be construed to have their ordinary generally accepted meanings and shall include without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full-time or part-time; (b) such activity is intended to or does generate a profit, and (c) a license is required thereof.

5.3.3 Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may interfere with the quiet enjoyment, comfort, health or safety of the occupants of adjacent Lots.

5.3.4 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot. Dogs, cats and other common household pets may be kept, provided that they are not bred or maintained for commercial purposes or in such numbers so as to be a nuisance or offensive to other owners or occupants. Exterior compounds, kennels or cages for the keeping of household pets or hunting dogs are prohibited. All animals must be kept within the dwelling and are not permitted to run unattended.

5.3.5 Signage. No signs of any kind shall be displayed to the public view on any Lot except: (a) one sign of not more than five square feet advertising the property for sale or rent which sign may be doublefaced;

(b) signs used by any Builder to advertise the property during the construction or sale period; and (c) political signs of not more than five square feet, provided that they are not erected more than thirty (30) days prior to any election and removed within seven (7) days after such election. Declarants and any Builders shall be permitted to erect a large subdivision sign near the entrances to the development.

5.3.6 Swimming Pools. No above ground pools are permitted.

5.3.7 Vehicle Parking and Storage. No boats, trailers, campers, mobile homes, buses, recreational vehicles or trucks exceeding three quarter ton shall be permitted to be parked or stored on or in front of any Lot. Recreational vehicles and boats may be parked for a period not to exceed forty-eight (48) hours for the purpose of loading, unloading and cleaning. No junk or inoperable vehicles shall be parked or stored on any Lot.

5.3.8 Refuse and Trash. No Lot shall be used or maintained as a dumping ground for refuse and trash, except during construction of any dwelling on that Lot or on a Lot in the vicinity. All trash, rubbish and garbage shall be kept in sanitary containers. All incinerators or other equipment for the storage and disposal of such material shall be kept in a clean and sanitary condition.

5.3.9 Maintenance. Each and every Lot and the dwelling thereon shall be maintained by the Owner in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All Lots shall be kept free of debris and clutter and shall be kept mowed. Builders and Owners shall be responsible for: (a) the cleaning and removal

of mud or debris on the streets during any construction; and (b) the cost of any cleanup or removal incurred by the Declarants.

ARTICLE VI

SURFACE WATER MANAGEMENT

6.1 Surface Water Management System. The Association shall maintain the private drainage easements as shown on the plat and any structures or improvements thereon or on the Common Area in accordance with the regulations and guidelines set forth by the Butler County Engineer. The Association shall have primary responsibility for the maintenance of any pipes, concrete gutters or mechanical devices. By acceptance of such responsibility, the Association shall not be liable for any damage caused by surface water, erosion, landslide or other similar causes, unless such damage was proximately caused by the failure to exercise ordinary care in carrying out its duties and responsibilities. Each Owner shall have primary responsibility for grass-cutting and vegetation control within the easements located on his or her Lot. Such responsibility shall include keeping these easements clean and unobstructed.

6.2 Access to Lots. For the purpose solely of performing the maintenance required or authorized herein, the Association for surface water management, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon the Lot at reasonable hours on any day.

ARTICLE VII

GENERAL PROVISIONS

7.1 Enforcement. The Declarants, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of

this Declaration. Failure by the Declarants, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

7.3 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended with the consent of not less than sixty-six and two-thirds (66 2/3%) percent of the Lot Owners. Any amendment shall be certified by the President and Secretary that the requisite consent has been obtained and shall not be effective until recorded.

7.4 Right to Amend Documents. Notwithstanding anything above to the contrary, this Declaration may be amended at any time without the vote of Owners by a written instrument executed by the Declarants for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarants' original intent; making any change necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other agency which may insure or purchase loans on a Lot; provided, however, that no such amendment shall materially affect any Owner's interest in the Association or the Common Elements. Each Owner and his mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarants as

provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by a Declarant to be necessary or proper to effectuate the provisions of this paragraph.

7.5 Annexation. The Declarants may, without the consent of the Owners, annex additional properties to the terms of this Declaration. Other residential properties and Common Area may be annexed to the Properties of the Association by a vote of two-thirds (2/3) of each class of membership. Such annexation shall be accomplished by the filing of a supplemental declaration with the Recorder of Butler County, Ohio. Any declaration by the Association shall be signed by President who shall certify that the requisite vote was obtained. The members need not sign such declaration.

IN WITNESS WHEREOF, the undersigned being the Declarants herein have hereunto set their hands and seal this 12th day of JUNE, 1990.

Signed and Acknowledged
in the Presence of:

James A. Bennett
Scott Frank

Joseph W. Schwarz, Trustee
JOSEPH W. SCHWARZ, TRUSTEE

Adam Wraynah

J. Harold Maggard, Trustee
J. HAROLD MAGGARD, TRUSTEE

Christine A. Engler

STATE OF OHIO)
) ss,
COUNTY OF BUTLER)

The foregoing instrument was acknowledged before me this 12th day of JUNE, 1990, by J. HAROLD MAGGARD, TRUSTEE and JOSEPH W. SCHWARZ, TRUSTEE.

Christine A. Engler

Notary Public

CHRISTINE A. ENGLER
Notary Public, State of Ohio
My Commission Expires Sept. 10, 1990

THIS INSTRUMENT PREPARED BY:

James A. Matre
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