

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR  
STONE BROOK COMMUNITY ASSOCIATION**

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March 13, 2000

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### EXHIBITS

- "A" - Legal Description - Initial Development
- "B" - Articles of Incorporation
- "C" - By-Laws
- "D" - Legal Description - Possible Future Development



**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
STONE BROOK COMMUNITY ASSOCIATION**

THIS DECLARATION, is made this \_\_\_\_ day of \_\_\_\_\_, 2000, by The Drees Company, a Kentucky corporation, hereinafter sometimes referred to as the "Declarant".

**WITNESSETH:**

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" attached hereto and desires to create thereon a residential community consisting of various types of single-family residences with permanent common areas, and community facilities for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and community facilities; and to this end, desires to subject the real property described in Exhibit "A" attached hereto to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof; and

WHEREAS, there exists differences between the various types of residential units to be situated in the community requiring differing restrictions and limitations, particularly in matters of maintenance, in order to preserve the values and amenities of the entire community; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and community facilities and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed the "Stone Brook Community Association" as a non-profit Ohio corporation for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the Properties described in Exhibit "A" attached hereto and such other property as may be subjected to the provisions hereof pursuant to Article II, shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, 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

The words in this Declaration which begin with capitalized letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the same meanings as the definitions of those words in this Article I.

1.1 "Articles" shall mean those Articles, filed with the Secretary of Ohio, incorporating Stone Brook Community Association, as a corporation not for profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "B" is attached hereto and made a part hereof.

1.2 "Association" shall mean and refer to Stone Brook Community Association, its successors and assigns.

1.3 "Board" shall mean the Board of Trustees of Stone Brook Community Association, which shall also be known as the "Board of Trustees".

1.4 "Builder" shall mean and refer to any party, other than The Drees Company, who acquires one or more developed Lots from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.

1.5 "By-Laws" shall mean the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time, pursuant to Section 1702 of the Revised Code of Ohio. A true copy of the By-Laws as shown on Exhibit "C" is attached hereto and made a part hereof.

1.6 "Common Areas" shall mean and refer to community facilities, subdivision entrance walls and related water features, signs, landscape mounds, fences, Storm Water Facilities and landscaping constructed for the common use and enjoyment of the Owners, as well as such areas designated as either "common areas", "open-space easements" "landscape easements," or "greenbelt easements" on the record plat or plats for the Property. The "Common Areas" shall also include, but shall not be limited to, a swimming pool, community shelter/bathhouse and lakes.

1.7 "Common Driveway" shall mean and refer to any private road or passageway which is built or installed as part of the original construction on the Property to serve more than one (1) Lot, and which is situated on an easement over one (1) or more Lots and which road or passageway may be specifically designated by the Declarant on the record plat as "Common Driveway".

1.8 "Declarant" shall mean and refer to The Drees Company, a Kentucky corporation, its successors and assigns if such successors or assigns should acquire all unsold Lots and/or unplatted



real property which adjoins any property already developed and which is intended to be developed into Lots.

1.9 "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of: (a) December 31, 2020, or (b) the day next following the day on which the Declarant or a Builder own no part of the Property.

1.10 "Living Unit" shall mean and refer to any single family residence, including a patio home unit, designated and intended for use and occupancy as a residence by a single family.

1.11 "Lot" shall mean and refer to any parcel of land upon any recorded subdivision plat of the Properties with the exception of the Common Areas.

1.12 "Member" shall mean any one of those Owners who are Members of the Association as provided in Article IV hereof.

1.13 "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.

1.14 "Patio Home Lot" shall mean and refer to a Lot on which a patio home unit shall be constructed and in which the Association, as opposed to the Owner of such Lot, shall be responsible for maintaining the lawn area and landscaping (except for flower beds or gardens installed by the Lot Owner) situated on such Lot. Such parcel of land may be designated as a "Patio Home Lot" upon any recorded subdivision plat of the Properties.

1.15 "Properties" or "Property" 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.

1.16 "Single Family Lot" shall mean and refer to a Lot on which a detached single family Living Unit, other than a patio home, shall be constructed and in which the Owner of such Lot, as opposed to the Association, shall be responsible for maintaining the lawn area and landscaping situated on such Lot. Such parcel of land may be designated as a "Single Family Lot" upon any recorded subdivision plat of the Properties.

1.17 "Storm Water Facilities" shall mean and refer to storm sewers, storm sewers swales, streams, ditches, catch basins, drainage lines, man holes and detention basins situated either on the Common Areas or on storm sewer easements or drainage easements encumbering certain of the Lots as designated on the record plat or plats for the Property and owned by the Association for the common use and enjoyment of the Owners.

1.18 "Trustee" and "Trustees" shall mean that person or those persons serving, at the time pertinent, as a Trustee or Trustees of the Association, and shall mean that same person or those persons serving in the capacity of a member of the Board of Trustees of the Association.

## ARTICLE II

### PROPERTY DEVELOPMENT - ANNEXATION

2.1 Property Subject to Declaration. The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in the Village of South Lebanon, County of Warren, State of Ohio, and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

2.2 Planned Development. Declarant reserves the right to subject all or any part of the real estate described in Exhibit "D" to the provisions of this Declaration, so as to create a residential planned development consisting of various residential properties with permanent Common Areas for the benefit of said development. Such additional property shall be annexed to the real estate described in Exhibit "A" as provided in Section 2.3 hereof. Notwithstanding the above, nothing contained in this Declaration, in the By-Laws or in any map, picture, drawing, brochure or other representation of a scheme of development shall obligate the Declarant to annex any additional property to the property described in Exhibit "A" and the real estate described in Exhibit "D" shall remain wholly free from any covenant or restriction herein contained until so annexed as hereinafter provided.

2.3 Annexation of Additional Property. For a period of twenty (20) years from and after the date this Declaration is filed for record, additional property, not limited to the Property described in Exhibit "D", may be annexed to the above-described Property by the Declarant without the assent of the Members of the Association, if any. Thereafter, such additional property may be annexed only with the consent of fifty-one (51%) percent of each class of Members of the Association. Any additional property so annexed, however, must be adjacent to or in the immediate vicinity of the above-described Property. The scheme of the within covenants and restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on Exhibit "A" as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise shall be made by recording a supplement to this Declaration with the Recorder of Warren County, Ohio, which supplementary Declaration shall extend the scheme of some or all of the within covenants and restrictions to such annexed property. Such supplementary Declaration may contain such additional covenants, conditions, restrictions, easements, assessments, charges and liens as the Declarant shall deem appropriate for the purpose of completing the development of the Property.

2.4 Additional Common Areas. Declarant shall have the right, from time to time, for a period of twenty (20) years from the date this Declaration is filed for record, to convey to the Association for nominal or other appropriate consideration, and the Association shall accept conveyance of any property or interest in property owned by Declarant along with any structure, improvement, or other facility including related fixtures, equipment and furnishings located thereon. Upon conveyance of such property, the property shall constitute Common Areas.

### ARTICLE III

#### PROPERTY RIGHTS

3.1 Owner's Right of Enjoyment. Every Owner and, in the case of rented Lots, such Owner's tenants, shall have a right to an easement for the enjoyment of, in, and to the Common Areas, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas;

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration;

(c) Easements and restrictions of record;

(d) The right of the Association or the Declarant to reserve or grant additional easements over the Common Areas and Lots as provided in Sections 3.4 and 3.5;

(e) The right of the Association to levy reasonable admission and other fees for the use of any community facility situated upon the Common Areas by the Members of the Association and their guests;

(f) The right of the Association to suspend the voting rights and the right to use of any community facility situated upon the Common Areas for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulations; provided that the rights set forth in subparagraph (g) below shall not be suspended;

(g) The rights of the Association and Owners of Lots to a perpetual easement over any Common Areas, and upon other Lots for such portions of their Living Units that may overhang or encroach on said Common Areas, or upon any other Lot, and for necessary pedestrian and automotive ingress and egress to and from such Living Unit over said streets, driveways and walkways of said Common Areas, if any, and for gas, electric, telephone, water, sewer, drain, cable television connections, and other utility conduits with rights to repair, maintain, and replace same, as they may be established over, upon, and through the said Common Areas, or other Lots, which rights are hereby expressly established, granted, and reserved for the benefit of the individual lots; and

Every Owner of a Living Unit on a Patio Home Lot and, in the case of rented Lots, such Owners Tenants, shall have an access easement over any private roadways situated in the Patio

Homes Section of the Property, if any, and such right and easement shall be appurtenant to and shall pass with title to such Lot.

3.2 Delegation of Use. Subject to rules and regulations established by the Board, any Owner may delegate, in accordance with the applicable By-Laws of the Association, his right of enjoyment in and use of the Common Areas to the members of his family, guests, and his tenants or contract purchasers who reside on the Property.

3.3 Easements to Other Residents. The Declarant may designate that certain owners of real property outside of the Property and such other persons as the Declarant may designate, shall have an easement of enjoyment in, on and over the Common Areas, to the same extent as any Owner of a Lot located on the Property, subject to the provisions of Section 3.1. Such individuals shall be subject to the rules and regulations of the Association concerning the use of said areas, but shall not be subject to assessments by the Association.

It is the intent of the Declarant that there may be reserved similar easements in favor of the Owners on and over other tracts of land. Such easements, however, shall be created solely by instruments other than this Declaration, and such easements shall be governed by the terms therein contained. The establishment of any such easements are wholly contingent upon (a) the commencement of further development of land located outside of the Property (b) consent of the owners of such land, and (c) approval by appropriate governmental authorities. Accordingly, the Declarant neither represents nor guarantees that any such easements of enjoyment will be established for the Owners.

3.4 Title to Common Areas. The title to any portion of the Common Areas that are to be owned by the Association in fee simple shall be conveyed to the Association, during the Development Period, free and clear of all liens and encumbrances; provided, however, that the Declarant shall have the right from time to time to reserve for the purpose of development of the Property all or any portion of the Property for various easements and rights of way, together with the right to dedicate same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. The Declarant's rights hereunder shall not unreasonably interfere with the Owner's easement of enjoyment.

3.5 Right to Grant Easements. Declarant hereby reserves the right, to grant, on behalf of the Association and/or the Owners and without the consent of the Association, or any Owner, easements, across, through or under the Common Areas. Such easements, which shall be exclusive or non-exclusive, shall be limited to utility easements (including cable television and telecommunication), green belt easements, sign easements, access easements or roadway easements.

The Association, without the consent of any Owner, shall have the right at any time to grant easements as set forth in this Section.

3.6 Rights Not Subject to Suspension. Notwithstanding anything herein contained to the contrary, the rights and easements created in paragraph (g) of Section 3.1 shall not be suspended by the Association for any reason.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

4.1 Members. 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.

4.2 Classes of Members; Voting. The Association shall have two classes of voting membership:

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

4.2.2 Class B Member(s) shall be the Declarant who shall be entitled to five (5) votes for each Lot owned, provided, however, that Class B membership shall terminate after the Class A Members are entitled to elect all of the Board. At such time as Class B membership shall terminate, the Declarant, for any Lot owned, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member.

#### ARTICLE V

##### ASSESSMENTS

5.1 Covenant for Assessments. The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons, or entity who becomes an Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments; (2) Individual Assessments; and (3) Special Assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments, together with interest thereon as hereafter provided and costs of collection thereof (including court costs and reasonable attorney's fees) as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property and Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person, group of persons, or entity who was the Owner of such property and Lot at the time when the assessment fell due.

5.2 Annual Assessments, Purposes. The Annual Assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Property and preserving the aesthetic and scenic qualities of the development. The Annual Assessments shall consist of: (i) Annual General Assessments; and (ii) Annual Maintenance Assessments - Patio Home Lots.

5.2.1 Annual General Assessment.

To carry out these purposes, an Annual General Assessment shall be levied by the Association against the Owner of each Lot and against said Lots to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the Common Areas, including, but not limited to, the payment of taxes, insurance and fidelity bonds, and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision, and including the maintenance, repair and landscaping of Storm Water Facilities as well as streets and right of ways benefitting the Members of the Association as a whole, and, in the discretion of the Association, including any entrance roads or adjoining roads or areas, whether public or private, which may affect the recreation, scenic enjoyment, health, welfare and safety of the residents even though not owned by the Association.

5.2.2 Annual Maintenance Assessment- Patio Home Lots.

To further carry out these purposes, an Annual Maintenance Assessment shall be levied by the Association against the Owner of each Patio Home Lot on which is located a Living Unit and against said Lots, to provide for current use, and to provide an adequate reserve fund for future use, for the purpose of:

(a) providing for grass cutting and the maintenance of landscaping installed by the Declarant, a Builder or the Owners on Patio Home Lots. The Association shall not maintain private flower or vegetable gardens situated on the Patio Home Lots. The Board shall adopt specifications for grass cutting and the maintenance of landscaping;

(b) providing for snow removal from the sidewalks and driveways situated on the Patio Home Lots;

(c) providing and paying for the share of administrative and management expenses attributable to carrying out the purposes of the Annual Maintenance Assessment; and

(d) providing such additional matters, consistent with the general purposes of the Annual Maintenance Assessment as may be approved by the Board, or in writing by not less than two-thirds (2/3) vote of Members owning Patio Home Lots.

### 5.3 Annual Assessments, Initial Amount.

(a) Until January 1, 2001, the Annual General Assessment for each Class A membership for general purposes provided in Section 5.2.1 shall not exceed Three Hundred Eighty-five Dollars (\$385.00) per Living Unit.

(b) Until January 1, 2001, the Annual Maintenance Assessment for each Class A membership for the general purposes provided in Section 5.2.2 shall not exceed Eight Hundred Sixty-four Dollars (\$864.00) per Patio Home Living Unit.

### 5.4 Annual General Assessment, Increase.

(a) The assessment may be billed in advance on a monthly, quarterly, or annual basis. Commencing January 1, 2001, and at any time thereafter, the Board of Trustees shall fix the amount of the Annual General Assessment. The assessment shall be fixed at a uniform rate based upon the number of Lots situated on the Property. Annual General Assessments funds shall be accounted for separately from Annual Maintenance Assessment funds.

### 5.5 Annual Maintenance Assessment- Patio Home Lots.

(a) The Annual Maintenance Assessment for Patio Home Lots shall be levied by the Board on such Lots in such amount as may be necessary, in the determination of the Board of Trustees, to carry out the purposes of this Annual Maintenance Assessment. The Annual Maintenance Adjustments shall not be used to provide for the exterior maintenance of the residences situated on the Patio Home Lots.

(b) The assessment shall be fixed at a uniform rate based upon the number of Living Units situated on Patio Home Lots and may be billed in advance on a monthly, quarterly or annual basis. Annual Maintenance Assessments for Patio Home Lots and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association.

(c) Negligence or Willful Neglect. In the event that the need for the maintenance or repair of landscaping is caused through the willful or negligent act of the Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs (including costs incurred by the Association for attorney's fees, court costs, or other expenses incurred to obtain access to the subject Lot) shall be added to and become a part of the assessment against the individual Lot upon which the maintenance or repairs are performed.

(d) Access to Lot. For the purpose solely of performing the maintenance and repair required or authorized herein, the Association, through its duly authorized agent or employees, or subcontractors, shall have the right, without notice to the Owner, to enter upon any Patio Home Lot at reasonable hours on any day. No notice shall be required for grass cutting, maintenance of landscaping or snow removal.

5.6 Individual Assessments. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees and such maintenance is not that to be provided by the Association under Section 5.2 above for which assessments are provided, then the Association, after approval by sixty-six and two-thirds (66-2/3%) vote of all Members of the Board shall have the right through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance and repair (including charges incurred by the Association for attorney's fees, court costs, or other expenses incurred to obtain access to the subject Lot) shall be added to and become part of the total assessment to which such Lot is subject.

5.7 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, replacement or addition of a described capital improvement located upon, or adjacent to, the Common Areas, which cost has not otherwise been provided for in full as part of the applicable Annual General Assessment, including the necessary fixtures and personal property related thereto, provided that any such assessment affecting the Common Areas shall have the approval of fifty-one (51%) percent of the total number of votes held by Class A Members and fifty-one (51%) percent of the total number of votes held by the Class B Members. Any Special Assessments levied by the Association pursuant to the provisions of this Section shall be fixed at a uniform rate based upon the number of applicable Living Units. All monies received by the Association as a Special Assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of the Special Assessment and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association. The assessment may be billed in advance on a monthly, quarterly or annual basis.

5.8 Commencement of Assessments. The Annual Assessments shall commence on the first day of the first month following the date the Declaration, or an amendment thereto, is filed for record or at such other date as determined by the Association. The first Annual General Assessment for any such membership may be made for the balance of the calendar year and shall become due and payable and a lien on the date aforesaid. The Board may from time to time determine the manner and schedule of payments.

It shall be the duty of the Board of Trustees of the Association to periodically fix the amount of the assessment against each Lot for such assessment period and the Board of Trustees shall make reasonable efforts to fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at the time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be opened to inspection by any Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owner of any Lot subject thereto. Annual Assessments subsequent to the first Annual Assessment shall become a lien on January 1 of each year; Individual and Special Assessments shall become a lien at the time designated by the Board of Trustees. No



notice of lien other than this Declaration need be recorded to establish the validity of any such lien, and this Declaration shall stand as notice thereof.

5.9 Assessment of Builder and Declarant.

(a) Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association notwithstanding, a Builder shall be required to pay an assessment for any recorded Lots on which is situated a completed Living Unit only in an amount equal to ten (10%) percent of the Annual Maintenance Assessments which the Association levies for purposes set forth in Section 5.2.2. A Builder shall be completely exempt from the obligation to pay the Annual Maintenance Assessment until such time as a Living Unit has been completed on a Lot. A Living Unit shall be deemed completed at such time as a Certificate of Occupancy could be issued for such Living Unit. Additionally, a Builder shall be required to pay the full amount of the Annual General Assessment which the Association levies for the purposes set forth in Section 5.2.1 on any lot owned by such Builder. A Builder shall be completely exempt from the obligation to pay the Special Assessments which the Association levies for the purposes set forth in Section 5.8.

(b) Any provision of this Declaration or the Articles of Incorporation or By-Laws of the Association notwithstanding, the Declarant shall be required to pay an assessment for any recorded Lots only in an amount equal to ten (10%) percent of the Annual General Assessments which the Association levies for the purposes set forth in Section 5.2.1. The Declarant shall be completely exempt from the obligation to pay the Annual Maintenance Assessment which the Association levies for the purposes set forth in Sections 5.2.2, and the Special Assessments which the Association levies for the purposes set forth in Section 5.8.

(c) The provisions of this Section 5.9 shall not apply to the assessment of any Lot and Living Unit held by a Builder or the Declarant for rental purposes and which is or has been occupied as a Living Unit; in which event such Builder or the Declarant shall be required to pay the full amount of the assessments levied thereon.

5.10 Assessment Certificates. The Association shall, upon demand, at any reasonable time, furnish to the Owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

5.11 Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the property which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association.

If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of each assessment. No Owner shall waive or otherwise escape liability for the assessments herein provided for by non-use of the Common Areas or abandonment of his Lot or Living Unit.

In addition to the ten percent (10%) per annum interest provided above, the Board of Trustees in its discretion, may establish a reasonable late charge to be paid in the event of any assessment that is not paid within fifteen (15) days after the due date.

5.12 Subordination of Lien to Mortgage. 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, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or through foreclosure shall not be liable for more than six (6) months of the Lot's unpaid assessments or charges accrued before the acquisition of title to the Lot by the mortgagee.

5.13 Capital Contribution and Assessment at Closing. At the time of a closing on the purchase of a Lot from the Declarant, the purchaser of such Lot (including a Builder) shall be required to pay the sum of Three Hundred Fifty Dollars (\$350.00) as such purchaser's initial capital contribution to the working capital of the Association. This assessment shall be used by the Association for its operating expenses. Such assessment is not an advance payment of assessments, and it will not be held in any sort of trust or reserve account. Additionally, at the time of such closing, each purchaser of a Lot shall be required to pay a pro-rata share of: (i) the Annual General Assessment, for the balance of the current year to the extent that such assessment is not otherwise being collected by the Association; and (ii) the Annual Maintenance Assessments, if applicable, for the balance of the current month, to the extent that such Assessment is not otherwise being collected by the Association. The Declarant shall be exempt from the contributions and assessments collected pursuant to this Section.

## ARTICLE VI

### INSURANCE

6.1 Liability Insurance. The Association shall obtain and maintain a Comprehensive policy of public liability insurance covering all of the Common Areas, insuring the Association, Trustees, and Owners and members of their respective families, tenants and occupants in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00), per occurrence for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. The insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants or occupants.

6.2 Other Insurance. In addition, the Association shall obtain and maintain contractual liability insurance, Trustees' and Officers' liability insurance and such other insurance as the Board may deem desirable from time to time.

6.3 Owner's Insurance. Any Owner, tenant, or occupant may carry such insurance in addition to that provided by the Association pursuant to this Declaration, as that Owner, tenant, or occupant may determine. Each Owner of a Living Unit shall be responsible for obtaining casualty and liability insurance for his Lot.

6.4 Insufficient Insurance. In the event the improvements forming a part of the Common Areas shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots for which whose benefit the amount was so advanced, and such assessment shall have the same force and effect, and if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

6.5 Fidelity Bonds. The Board shall obtain fidelity bond coverage, naming the Association as an insured, with respect to any person or agent handling Association funds in an amount of not less than Five Thousand Dollars (\$5,000.00) as determined by the Board.

## ARTICLE VII

### ARCHITECTURAL CONTROL

7.1 Approval Required. No building, deck, structure or other exterior improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made 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 by the appropriate entity. Review of the construction of the original dwellings and related improvements shall be by the Declarant. All review associated with the remodeling of dwellings and related improvements shall be by the Board of Trustees of the Association. Such plans and specifications shall be reviewed as to harmony of external design and location in relation to surrounding structures and topography in accordance with the requirements hereinafter set forth and the design review criteria established from time to time by such entity.

The plans and specifications to be submitted shall be in such form and shall contain such information as the Declarant or the Board may reasonably require but shall in all cases unless waived by such committee or the Board (as the case may be) include:

(a) A site plan showing the location of all proposed structures on the Lot and the approximate size and square footage of the first, or ground floor of the structure and square footage of the entire structure;

(b) Contours reflecting existing topography and a grading plan showing finished contours, existing environmental features and any significant tree stands;

(c) Any proposed retaining walls;

(d) Architectural plans, including floor plans, decks or balconies, in elevations clearly depicting the design and exterior appearance including specification of materials, color scheme, trim and other details effecting the exterior appearance of the proposed structure.

All construction shall be performed substantially in accordance with the approved plans and specification and any modifications to such plans and specifications shall be resubmitted to the Declarant or the Board (as the case may be) for approval.

7.2 Approval - Not a Guarantee. No approval of plans and specifications shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals shall in no event be construed as representing or guaranteeing that any Living Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant nor the Association shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article, any loss or damage to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans and specifications, any loss or damage arising from the non-compliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

7.3 General Requirements. The following requirements shall be applicable to the Properties:

7.3.1 General Conditions: No building shall be erected, altered, placed or be permitted to remain on any Lot other than one Living Unit with a private garage suitable for parking not less than two (2) cars or more than four (4) cars which is to be attached to the principal dwelling.

Except for improvements constructed by the Declarant in connection with the development of the Property, no improvement of any kind shall be erected, altered, placed or permitted to remain on the Common Areas (including areas designated as "open-space easements" or "landscape easements"). Additionally, no improvement constructed by the Declarant in connection with the development of the Property shall be removed from the Common Areas (including areas designated as "open-

space easements" or "landscape easements") without the prior written consent of the Declarant or the Association.

7.3.2 House Placement and Yard Grading: Residences and Lots shall conform to existing grade and drainage patterns as set forth on the grading plan for the Property filed with the appropriate governmental authorities. Existing grades at Lot lines shall not be altered more than one (1) foot without the written consent of the Declarant. Each Lot Owner and/or Builder shall endeavor to retain as much of the natural woods as is practical.

7.3.3 Driveways: All driveways shall be surfaced with concrete, asphalt or other similar substance, except all driveway approaches from the street to the back of the sidewalk shall be concrete.

7.3.4 Water Discharge: Storm water must be disposed of in accordance with drainage plans established by the Declarant or the Association.

7.3.5 Radio and Television Antennae and Satellite Dishes: All television and radio antennae, including CB radio antennae, must be enclosed within the residence located on the Lot. All satellite dishes are prohibited, unless such satellite dish has a diameter of one (1) meter or less and screened from view from the public right of way.

7.3.6 Air Conditioning and Heat Pump Equipment: Such equipment shall be located only in side or rear yards and shall be screened from the roadway view.

7.3.7 Awnings: No metal or plastic awnings for windows, doors or patios may be erected or used. Canvas awnings may be used on any Lot subject to prior written approval of the Declarant or the Association.

7.3.8 Fences:

- (a) No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, excepting a retaining wall, shall be erected, placed or suffered to remain upon any Patio Home Lot.
- (b) No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, excepting a retaining wall, shall be erected, placed or suffered to remain upon (i) any landscape easement, (ii) open-space easement, (iii) greenbelt easement, or (iv) upon any Single Family Lot nearer to any street than the rear building line of the residence located on the Lot. Unless otherwise approved by the Board, fences shall be limited to a three-rail, split rail fencing with or without black

or nonreflective, wire mesh, or a hedge or other growing plants used as a fence, and shall not exceed four feet (4') in height. On a corner Single Family Lot, in addition to the restrictions set forth above, no fence or portion thereof shall be erected or placed or suffered to remain upon said corner Lot, closer to the side street than the building set back line for such residence.

- (c) Fence as used herein shall be liberally construed as to accomplish the purpose of these restrictions, and shall specifically include, but not be limited to, contrived barriers of any type including those of shrubs, hedges or walls. Side street as used herein, shall refer to any street contiguous to any Single Family Lot which does not face the front door of the residence.
- (d) This Section shall not apply to decorative fences or retaining walls installed by the Declarant or a Builder in connection with the development of the Property.

7.3.9 Exterior Carpeting: No exterior carpeting shall be allowed if it is visible from the street or adjoining properties.

7.3.10 Lighting Exterior: Mercury vapor yard lights are prohibited, except for street lights installed in a right-of-way by the Declarant or a utility company. This Section shall not apply to residences used by the Declarant or Builders as model homes or sales offices.

7.3.11 Completion: Construction of a residential building on any tract shall be completed within one (1) year from the date construction is started and the disturbed yard area of the Lot must be sodded or seeded.

7.3.12 Roofs: All roofs on residences situated on Patio Home Lots shall be of a similar type, color and shingle type as designated by the Declarant. A replacement roof on such residences shall be color matched to the original roof.

7.3.13 Zoning: All improvements shall be constructed in accordance with and subject to all applicable zoning regulations and building codes.

7.4 Variances. In order to avoid unnecessary hardship and/or to overcome practical difficulties in the application of certain provisions of the Declaration, the Board shall have the authority to grant reasonable variances from the provisions of Section 7.3. Additionally, so long as Declarant owns one or more Lots on the Property, the Declarant, may grant reasonable variances from the provisions of Section 7.3 and from the guidelines that it has established in connection with its review of the plans and specifications associated with original construction. No variance shall materially injure or materially adversely affect any other part of the Property or any other Owner or occupant. No variance granted pursuant to the authority of this Section 7.4 shall constitute a waiver of any provision of the Declaration as applied to any other party or other part of the Property, and no

variance may be granted to permit anything that is prohibited by applicable law. All provisions of the Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the Property.

## ARTICLE VIII

### USE RESTRICTIONS AND MAINTENANCE

8.1 Restrictions. The Property shall be subject to the following restrictions:

8.1.1 Purpose of Property: Except for parcels designated as Common Areas, the Property shall be used only for residential purposes and common recreational purposes auxiliary thereto. Garages shall be used only for the parking of vehicles and other customary uses and shall not be used for or converted into living area, (e.g. family room, bedrooms, offices or recreational rooms). The Declarant or a Builder shall have the right to use unsold residences as model homes or sales offices.

8.1.2 Nuisance: No obnoxious or offensive activity of any kind shall be engaged in on any Lot nor shall any Owner or occupant thereof engage in any activities that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent neighboring Lots. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.

8.1.3 Animals and Pets: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets (excluding pot-belly pigs) may be kept, provided that they do not exceed three (3) in number and they are not kept, bred or maintained for any commercial purpose. Notwithstanding the above, in the event such household pets have a litter, the Owner shall have a period of one hundred twenty (120) days from the date of such birth to dispose of such excess pets.

8.1.4 Signage: No sign of any kind shall be displayed to the public view on any Lot except: (a) one (1) professional sign of not more than two (2) square feet; or (b) one (1) sign of not more than nine (9) square feet advertising the property for sale. This paragraph shall not apply to signs used by Declarant or a Builder to advertise the Property during the construction or sale period.

8.1.5 Trash: No burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any Lot. Trash and garbage shall be placed in sanitary containers and shall not be permitted to remain in the public view except on days of trash collection. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.

8.1.6 Prohibited Accessory Structures, Swimming Pools, Play Equipment: No permanent or temporary accessory building, tent, storage shed, mobile home or free standing greenhouse shall be erected or permitted to remain upon a Lot. Decks are permitted provided they are located within the building set back area of the Lot and attached to the residence. Swimming Pools and related appurtenances are permitted on Single-Family Lots provided they are approved pursuant to Section 7.1. Swimming Pools are not permitted on Patio Home Lots. Hot tubs, spas and related appurtenances are permitted on Single-Family Lots and Patio Home Lots provided they are approved pursuant to Section 7.1.

Playsets shall be permitted on any Single Family Lot provided they are installed in compliance with the following criteria: (a) they shall be of a semi-permanent nature; (b) they are made primarily of wood; and (c) they are located in the rear yard area of the Lot within the legal rear and side yard setbacks. Basketball goals shall be permitted on any Single Family Lot provided they are installed in compliance with the following criteria: (a) they are not attached to the residence on the Lot; (b) they shall have a clear backboard; and (c) the supporting poles shall be black and the backboard shall be set perpendicular to the adjoining street in front of the residence. Playsets and basketball goals shall not be permitted on any Patio Home Lots. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.

8.1.7 Maintenance and Landscaping. Each and every Lot and house thereon shall be maintained by the Owner thereof in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All landscaping on the Lots shall be maintained in good condition. All Lots, including any areas designated as "open-space easements" or "landscape easements" on such Lots, shall be kept free of debris and clutter and shall be kept mowed. Notwithstanding the above, the Association shall be responsible for maintaining landscaping and mowing the grass on Patio Home Lots as provided in Section 5.2.2 hereof. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.

8.1.8 Automobiles, Recreational Vehicles, Boats, Travel Trailers. No recreational vehicle, mobile home, boat or travel trailer shall be parked or stored on any Lot, for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in the garage and completely out of view. Commercial vehicles and trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view.

No vehicle in inoperable condition or unlicensed condition shall be stored on any Lot for a period in excess of five (5) days unless the same is in the garage and completely out of view. This paragraph shall not apply to any Lots owned by the Declarant or a Builder and held for sale.



8.1.9 Garage and Yard Sales and Holiday Decorations. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period.

Christmas lights and other holiday-type decorations may be erected no sooner than five (5) weeks prior to and removed not later than two (2) weeks after such holiday.

8.1.10 Obstruction of Easements and Drainage. No structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

8.1.11 Lakes. All lakes, ponds and streams within the Property shall be aesthetic amenities only and no other use thereof, including without limitation, swimming, boating, playing or use of personal floatation devices shall be permitted except in accordance with rules and regulations established by the Declarant or the Association. Notwithstanding the above, Owners and their families shall be permitted to fish in the lakes. Neither the Declarant, a Builder nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, ponds or streams within the Property.

8.1.12 Irrigation Systems. No irrigation system outlets shall be located in the public right-of-way.

## ARTICLE IX

### EASEMENTS AND MAINTENANCE

9.1 Access Easements and Open-space Easements. All Lots shall be subject to an access easement in favor of the Declarant and the Association for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, replacing and otherwise dealing with the Common Areas, including all improvements thereon.

As set forth on the record plat or plats for the Property, certain Lots are subject to "open-space easements", "landscape easements" or "greenbelt easements. Such "open-space easements", "landscape easements" and "greenbelt easements" are in favor of the Declarant and the Association and are for the purposes of providing access to the Common Areas and for allowing the Declarant and the Association to maintain improvements constructed by the Declarant in such easement areas.

Such easements are also created for the purpose of retaining the easement areas as conservation land in their natural, scenic and undeveloped condition. Except as otherwise provided herein, no one other than the Declarant, the Association or the Owner on whose Lot is situated an "open-space easement", "landscape easement" or "greenbelt easement", shall be permitted to have access to, or enter onto, such easement area or to trim, cut, or otherwise remove trees or vegetation from such easement area.

9.2 Private Drainage Easements. Except as otherwise set forth on the record plat or plats for the Property, all Single Family Lots are subject to private drainage easements in favor of the Declarant and the Association. Such private drainage easements shall be ten feet (10') in width (five feet (5') on each Lot) and shall exist along all side yard common lot lines, with the common lot line being the center line of said easement. Additionally, except as otherwise set forth on the record plat or plats for the Property, all Single Family Lots are subject to a ten foot (10') in width private drainage easement adjacent to the rear lot line of the Lot.

Except as otherwise set forth on the record plat or plats for the Property, all Patio Home Lots are subject to private drainage easements in favor of the Declarant and the Association. Such private drainage easements shall be ten feet (10') in width (five feet (5') on each Lot) and shall exist along all common Lot lines, with the Lot line being the center line of said easement.

The Declarant and the Association shall have the right to enter upon a private drainage easement for the purpose of establishing or re-establishing drainage swales in order to control and direct storm water to collection facilities.

9.3 Common Driveway Access and Utility Easement. The Lots sharing a Common Driveway shall be subject to and benefitted by a perpetual nonexclusive easement for ingress and egress over the Common Driveway and for providing utility services to the individual Lots. The Owners of such Lots shall use the Common Driveway situated on the easements with due regard for the rights of any other Owner and its use of such driveway. No Owner shall use or permit the use of the driveway in any manner which impairs the right of any other Owner to its use, nor shall any Owner park or store vehicles or personal property on, or obstruct or encroach upon, or permit the use of, or permit the obstruction of or encroachment upon, the Common Driveway in any manner whatsoever without the concurrence of all Owners entitled to use the Common Driveway.

The Owners using the Common Driveway shall share equally in the expense and cost of maintaining, improving and repairing the Common Driveway, except that any damage other than ordinary wear and tear caused by any Owner, or any party claiming through such Owner, whether by negligence or otherwise, shall be repaired at the expense of such Owner. The driveway shall be maintained in good repair and in a condition substantially similar to that of its original construction. Upon conveyance of a Lot, the Grantor of such Lot shall be, as of the closing date for such conveyance, relieved of the obligation to share in the expense and cost of future maintenance and repair imposed hereby, and those obligations shall bind thereafter the Grantee of said conveyance. The Grantor shall, however, be obligated personally during and after his period of ownership for expenses and costs incurred for maintenance and repair during his period of ownership of the Lot. The obligation of an Owner of a Common Driveway to share in the cost and expense of maintaining

a Common Driveway, is separate and distinct from the obligation of such Owner to pay the assessments levied pursuant to Article V.

9.4 Maintenance Easements. All Patio Home Lots shall be subject to and benefitted by a Maintenance Easement in favor of the Association, the Declarant, the Builder and the adjoining Lot Owner(s) for the purposes of maintaining, cleaning, repairing, improving, replacing and otherwise dealing with the Living Unit situated on a Lot. Such Maintenance Easement shall encompass the side yard building set back area along all common Lot lines. Said Maintenance Easement shall specifically permit an Owner to temporarily place a ladder or scaffolding within the easement area of the neighboring Lot in order to perform maintenance and repairs on the Owners' Living Unit.

9.5 Maintenance of Common Areas. The Association shall be responsible for the care and maintenance of the Common Areas of the subdivision. Such obligation of the Association shall include the care and maintenance of any improvements (other than landscaping) constructed by the Declarant or the Association in an "open-space easement", "landscape easements" or "greenbelt easement". The Association shall also be responsible for the care and maintenance of the Storm Water Facilities in a manner satisfactory to the Village of South Lebanon Engineer including the replacing of any piping and the maintaining of good appearance around these easement areas to the extent that such items are not otherwise being maintained by a governmental authority. The Association shall be responsible for any required maintenance of pipes, concrete gutters, fixtures or mechanical devices. Subject to the provisions of Section 5.2.2, the Owner of a Lot shall be responsible for the care and maintenance of all other portions of such Owner's Lot, including any landscaping situated in an "open-space easement", "landscape easements" or "greenbelt easement" or detention basin areas. Should any Owner fail to maintain his Lot, or a Common Driveway to the extent provided in the Declaration, the Association may do so, after notice, and assess such Owner for the cost. The assessment shall be a lien on the Owner's Lot to the same extent as other liens provided for herein.

9.6 Reservation of Easements. The Declarant shall have and hereby reserves easements in favor of itself, the Association and their successors and assigns, and such other persons or entities as it may designate as follows:

9.6.1 In, on and over that portion of the publicly dedicated rights of way outside of the actual roadway, as well as over a twenty foot (20') wide strip of land on either side of such publicly dedicated rights of way on the Property for the purposes of: (i) access to construct, use and maintain utilities, sidewalks, signage, lighting, landscaping and recreational uses; (ii) removing any obstructions including landscaping from such areas; and (iii) such other uses deemed appropriate for or necessary to intergrade the Property into other real estate.

9.6.2 In, on and over all utility and drainage easements set forth on the Property for the installation and maintenance of utility and drainage systems.

9.7 Right of Association to Remove or Correct this Declaration. The Association may, in the interest or the general welfare of all of the Owners, enter upon any Lot or the exterior of any dwelling at reasonable hours on any day for the purpose of removing any roadway obstructions, including landscaping, or correcting any violation or breach of any attempted violation of any of the covenants and restrictions contained in this Declaration, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided however, that no such action shall be taken without a resolution of the Board of Trustees of the Association authorizing access to such Lot or property covered under this Section and any charges incurred by the Association in correcting the violation hereunder, (including court costs and reasonable attorney's fees) shall constitute a charge against the subject property and a personal obligation of the Owner thereof, and the Association shall have a lien upon the property and Lot for such expenses, and including costs of collection of said lien amount, which lien shall be subordinate to first mortgages as provided in Section 5.12.

9.8 Declarant's Reservation of Entry Rights. The Declarant for itself and any Developer reserves the right during the Development Period to enter upon the Lot for purposes of correcting grade and drainage patterns for the benefit of the entire Properties, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.

9.9 Declarant's and Association's Right to Grant Easements. Notwithstanding any other provisions herein, as long as there exists Class B membership, the Declarant, and thereafter the Association is authorized without consent of the Members to grant across, through or under any Lot, Common Area or any utility easement, including a Television Cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the Properties, provided no easement shall be granted across, through or under any Living Unit or building which restricts ingress or egress to such Living Unit or building.

9.10 Handicap Accessibility. Notwithstanding any other provisions herein, an Owner of any Lot may, at his expense, have such reasonable modifications made to the interior and exterior of his Living Unit and Lot and the Common Areas as may be necessary to afford physically handicapped persons full enjoyment of his premises. Any modifications to be undertaken to the exterior of a Living Unit and Lot or the Common Areas shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract, the terms, conditions and specifications of which, shall be approved by the Board of Trustees. The approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members of the Association, the Board of Trustees is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Living Unit and Lot, including the Common Areas.

9.11 Arbitration. In the event of any dispute between Owners, other than the Declarant, regarding the application of these restrictions or any rule or regulation, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time and place for a hearing thereon within thirty (30) days thereafter, and give written notice to each party thereof not less than five (5) days in advance of such hearing. The Board, after hearing such evidence and arguments as it deems proper, shall render a written decision on the matter to each party within thirty (30) days after such hearing. No legal action may be instituted by either party on such a dispute unless the arbitration provided for herein has occurred, or unless both parties have waived the requirement for arbitration.

## ARTICLE X

### FEDERAL HOME LOAN MORTGAGE CORPORATION PROVISIONS

10.1 FHLMC. The following provisions are included herein for the benefit of the holders of first mortgages on any Lot within that portion of the Stone Brook which is subject to the provisions of this Declaration (PUD), in order to permit compliance with the requirements of Federal Home Loan Mortgage Corporation (FHLMC) as a condition to the purchase of loans on Living Units in the PUD. The covenants and provisions hereinafter set forth shall run in favor only of the first mortgage holders, and the provisions hereinafter set forth may be altered, amended, revised or rescinded by actions of the Board of Trustees of the Association, without approval of the Members of the Association, but only without such approval to the extent that such alteration, amendment, revision or rescission is necessary to comply with the requirements of FHLMC.

10.2 Approvals. It is provided as follows:

(a) Unless at least two-thirds (66-2/3%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant or Developer) of the individual units in the PUD have given their prior written approval, the Association shall not be entitled to:

- (i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such homeowners association for the benefit of the units in the PUD (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association shall not be deemed a transfer within the meaning of this clause);
- (ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against a PUD unit owner;
- (iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of

units, the maintenance of the common property party walks or common fences and driveways, or the upkeep of lawns and plantings in the PUD;

- (iv) fail to maintain fire and extended coverage on insurable PUD common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (v) use hazard insurance proceeds for losses to any PUD common property for other than the repair, replacement or reconstruction of such common property.

(b) First mortgagees of PUD units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any PUD common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the PUD homeowners association. All first mortgagees of units in the PUD shall be entitled to such reimbursement.

(c) No PUD Unit Owner, or any other party, has priority over any rights of any first mortgagee of a PUD unit pursuant to its mortgage in the case of a distribution to such PUD Unit Owner of insurance proceeds or condemnation awards for losses to or taking of PUD common property.

(d) A first mortgagee, upon request, is entitled to written notification from the homeowners association of any default in the performance by the individual PUD unit Borrower of any obligation under the PUD constituent documents which is not cured within sixty (60) days.

## ARTICLE XI

### GENERAL PROVISIONS

11.1 Enforcement. The Declarant, 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 Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.2 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.

11.3 Amendment. Except as otherwise provided in this Declaration, 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 and the By-Laws may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by not less than fifty-one percent (51%) of the Lot Owners. Any amendment must be recorded. No amendment to the covenants and restrictions of this Declaration shall be binding upon any Lot owned by the Declarant or upon any additional property annexed to the terms of this Declaration by the Declarant, or upon any Lot upon which a single-family dwelling has not yet been erected unless the Declarant or any such Lot Owner agrees to said amendment in a recorded writing.

11.4 Right to Amend Documents. Notwithstanding anything above to the contrary, this Declaration and the By-Laws may be amended at any time without the vote of Owners by a written instrument executed by the Declarant for the purpose of: eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarant's original intent; conforming to any requirements imposed or requested by any governmental agency, public authority or financial institution; provided, however, that no such amendment shall materially affect any Owner's interest in the Association. 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 and the By-Laws by Declarant 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 Declarant to be necessary or proper to effectuate the provisions of this paragraph.

11.5 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 use, maintenance, repair or replacement of any Living Unit or 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 liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and in such event the amount of recovery shall be limited in the amount of insurance.

11.6 Non-Liability of Declarant. Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to them by or pursuant to this Declaration or the By-Laws, whether or not such claims shall be asserted by an Owner, occupant, the Association, or by any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof becoming out of repair or by reason of any act or neglect of any Owner, occupant, the Association and their representative agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property, or by

reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, cable television, etc.), except as provided by any written warranty provided by the Declarant to an Owner or the Association.

11.7 Articles of Incorporation and By-Laws. Copies of the Articles of Incorporation and By-Laws for the Association are attached hereto as Exhibits "B" and "C".



IN WITNESS WHEREOF, the undersigned Declarant, The Drees Company, a Kentucky corporation, has hereunto set its signature on the day and year first above written.

Signed and acknowledged  
in the presence of:

THE DREES COMPANY,  
a Kentucky corporation

\_\_\_\_\_  
Name: \_\_\_\_\_ By:

David G. Drees,  
  
President

Name: \_\_\_\_\_

STATE OF OHIO :  
: SS:  
COUNTY OF HAMILTON :

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000 by David G. Drees, President of The Drees Company, a Kentucky corporation, on behalf of such corporation.

Notary Public

THIS INSTRUMENT PREPARED BY:  
Stephen R. Hunt, Esq.  
ARONOFF, ROSEN & HUNT  
2400 Firststar Tower  
425 Walnut Street  
Cincinnati, Ohio 45202-3954