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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WAGNER HILL
SECTION ONE

A SINGLE FAMILY RESIDENTIAL SUBDIVISION
IN
SUGARCREEK TOWNSHIP, GREENE COUNTY, OHIO

PLAT CABINET:
PAGES: /

30
371-B, 372 A
AND 372-B

TRANSFER NOT NECESSARY
Fee Exempt ✓
SUSANNA A. DELANEY, GREENE COUNTY AUDITOR

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WAGNER HILL**

THIS INSTRUMENT (the "Declaration") is made by KINGSWOOD III CO., an Ohio corporation, (the "Declarant") for the purpose of establishing a plan of development utilizing the provisions of Chapter 711 of the Ohio Revised Code.

ARTICLE I: PURPOSE AND INTENT

1.01 Ownership. The Declarant is the owner of fee simple title to certain undeveloped real property containing approximately Thirty-One and 143/1000 (31.143) acres in Sugarcreek Township, Greene County, Ohio, as more fully described on attached Exhibit A (the "Property").

1.02 Plan of Development. The Declarant intends to subdivide and improve the Property, and additional property, for the purpose of establishing a single family residential community to be known as "WAGNER HILL." The Declarant plans to develop the Property in more than one phase. The original phase and each additional phase will be subject to the terms and conditions of this Declaration immediately upon recording the plat for such phase. All phases of the subdivision shall be deemed to be one, unified residential community. The portion of the Property included in the first phase of the development is more fully described on attached Exhibit B.

1.03 General Intention. The intention of these Declarations is to provide a mechanism for the protection and enhancement of the inherent value of ownership of lots within the Property by ensuring the proper development and use of the Property, providing for adequate maintenance of the common areas, private roads and residential lots within the development, and to promote a cohesive and aesthetically pleasing living community for all lot owners. The Declarant has deemed this Declaration to be necessary and beneficial for the health, safety and welfare of all owners and residents within the development.

1.04 Homeowners Association. The Declarant has also created Wagner Hill Homeowners Association, an Ohio nonprofit corporation (the "Association") in order to advance the purposes of this Declaration, and for the purpose of owning, operating, managing, maintaining and administering portions of the Property, together with certain improvements to be constructed and developed on the Property, including without limitation common areas, private roads and other facilities dedicated by the Declarant for the common use by the owners of lots within the development. The Association shall also administer and enforce the provisions of this Declaration, and shall have such other powers and duties of operation as are described in this Declaration.

ARTICLE II: DEFINITIONS

In addition to other terms that are separately defined in these Declarations, the following words and phrases have the meanings defined below:

2.01 Accessory Structure. The term "Accessory Structure" means any Improvement on any Lot that is not permanently attached to and made a necessary part of the Residence constructed on the Lot. The term includes without limitation all hardscape features of the landscape on the Lot, all recreational equipment, poles and structures, and all detached storage facilities, garages, patios, decks, stairs, gazebos, arbors, ornamentation, gates, fences, retaining or decorative walls, windbreaks, antennas, satellite dishes, swimming pools, signs and similar Improvements that are not shown on the original plans as a part of the structure of the Residence.

2.02 Additional Property. The term "Additional Property" means any other real property adjacent to the Property, or portion of the original Property not included on the original Plat, that is subjected to the this Declaration in the future in the manner provided in this Declaration.

2.03 Architectural Review Board. The term "Architectural Review Board" means the standing committee established by and under the control of the Board of the Association for the purpose of interpreting, reviewing, establishing guidelines, approving, disapproving or otherwise fulfilling all responsibilities within this Declaration regarding the construction, alteration, modification, demolition or other matters pertaining to Improvements on any Lot. The term may also be abbreviated in this Declaration as "the ARB."

2.04 Articles. The term "Articles" means the Articles of Incorporation of the Association, as filed with the Secretary of State of Ohio, and any future amendments.

2.05 Assessment. The term "Assessment" means the various types of charges against all Owners and Lots as described in this Declaration.

2.06 Association. The term "Association" means Wagner Hill Homeowners Association, an Ohio nonprofit corporation, and its successors and assigns. All Owners shall be Members of the Association in the manner and to the extent provided in the Articles and the Regulations.

2.07 Board. The term "Board" means the Board of Trustees of the Association.

2.08 Builder. The term "Builder" means any Person who has been approved by the Board to participate in the construction of Residences on a Lot or Lots within the development, and who acquires a Lot from the Declarant or who is contracted by an Owner of a Lot for the purpose of constructing Improvements on a Lot. Any Builder who owns fee simple title to a Lot shall also be deemed an Owner throughout his period of ownership of the Lot.

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2.09 Common Area. The term "Common Area" means the real property designated and shown on any subdivision Plat of the Property that will be owned or controlled by the Association for the mutual benefit of all Owners, including without limitation all Improvements to that real property.

2.10 Declarant. The term "Declarant" means Kingswood III Co., an Ohio corporation, and its successors and assigns.

2.11 Declarations. The term "Declarations" means this Declaration of Covenants, Conditions and Restrictions, and any future amendments.

2.12 Design Review Guidelines. The term "Design Review Guidelines" means any written guidelines that may be created by the ARB for the purpose of carrying out its obligations in a more uniform manner, or as a method of describing or suggesting acceptable choices concerning matters within the jurisdiction of the ARB. The term also any future amendments to the original Design Review Guidelines.

2.13 Drainage Facilities. The term "Drainage Facilities" means the surface water drainage improvements constructed and installed by the Declarant in the development of the Property, whether or not those improvements are within the Common Areas. The term includes all grading, erosion control or sediment abatement mechanisms, swales, channels and all areas created for the flow, detention or retention of surface water runoff.

2.14 Exhibit. The term "Exhibit" means any document, instrument or other information referred to in and attached to this Declaration.

2.15 Governmental Entity. The term "Governmental Entity" means any township, village, city, county or other governmental body which has jurisdiction over any aspect of the Property or Declarant's subdivision and improvement of the Property.

2.16 Improvements. The term "Improvements" means any change to a Lot from its natural state after the sale of the Lot by the Declarant to the immediate purchaser. The term includes without limitation all demolition, clearing, excavation, filling or grading performed on any Lot, all Residences, buildings, storage facilities, garages, recreational equipment, poles and structures, swimming pools, patios, decks, stairs, gazebos, arbors, ornamentation, gates, fences, retaining or decorative walls, windbreaks, antennas, satellite dishes, swimming pools, signs, all plantings, planted trees, shrubs, hedges and hardscape features of the landscape on the Lot, and all other types of structures or appurtenances of every kind or description.

2.17 Lot. The term "Lot" means each separate parcel of real property, whether with or without Improvements, as designated and shown on any recorded subdivision Plat of the Property, except Common Areas and those portions dedicated for public purposes.

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2.18 Member. The term "Member" means each Person who meets the qualifications and is deemed a member of the Association in one or more of the three Membership Classes as provided in the Regulations of the Association.

2.19 Owner. The term "Owner" means the record owner, whether one or more Persons, of fee simple title to a Lot, including purchasers under a land installment contract, but excluding Persons who have an interest in a Lot merely as security for the performance of an obligation. Notwithstanding any applicable theory of mortgages, the term shall not mean any mortgagee unless and until such mortgagee has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings in lieu of foreclosure. The Declarant and any Builder are also considered an Owner of any Lot to which they own fee simple title.

2.20 Person. The term "Person" means any individual, partnership, corporation, firm or any other form of entity.

2.21 Plat. The term "Plat" means each subdivision record plan of the Property as recorded in the plat records of Greene County, Ohio.

2.22 Property. The term "Property" means the real property described on attached Exhibit A, including that portion of the Property included in the first phase of the subdivision and including any Additional Property that is or may in the future be subjected to the provisions of this Declaration.

2.23 Regulations. The term "Regulations" means the Code of Regulations of the Association, and any future amendments.

2.24 Residence. The term "Residence" means the individual dwelling and attached Improvements constructed on any Lot which are designated, constructed and intended for use by a single family.

2.25 Resident. The term "Resident" means each Person residing in any Residence, whether as a permanent occupant or as one who possesses or claims to possess a leasehold interest in any Residence.

2.26 Rules. The term "Rules" means any rules adopted by the Board pursuant to the Regulations of the Association, or as otherwise permitted in this Declaration.

ARTICLE III: DEVELOPMENT PLAN

3.01 Name. The name of this development is "Wagner Hill."

3.02 Initial Plat. The initial Plat of Nineteen and 108/1000 (19.108) acres for Wagner Hill, Section One, creates Twenty-Nine (29) lots for single family residential detached homes and identifies a number of areas that are referenced as Common Areas.

3.03 Subsequent Plats. If Additional Land is platted from the Property for single family residential detached homes or Common Areas, those Lots and Common Areas will be shown on a subsequent Plat and subjected to this Declaration. The Declarant reserves the right, without the consent of any Owners or the Association to Plat other land within or adjacent to the Property which has not yet then been sold or conveyed to any Owner or the Association as Common Area for green space and for Drainage Facilities as the Declarant may deem reasonable and necessary in its sole discretion.

3.04 Dedication. The Declarant and/or the Association reserve the right to dedicate to the use of the public any part or all of the roadways, streets, access ways and easements within the Property that are designated as Common Areas. This provision creates a right only, but does not obligate the Declarant or the Association to make such dedications, or obligate any Governmental Entity to accept any proposed dedication.

3.05 Regulations. The development is subject to the subdivision regulations, zoning regulations, and other applicable provisions of any Governmental Entity, including without limitation approval processes for any lot split or the creation of additional Lots. There shall not be any further division of any Lot without the approval of the appropriate Governmental Entity, and then only if permitted in this Declaration. Any Common Areas designated on the Plat as being private are to be owned and maintained by the Association and no Governmental Entity shall be obligated to accept any ownership or maintenance responsibilities for any Common Areas.

ARTICLE IV: ASSOCIATION

4.01 Formation. The Declarant has formed the Association as an Ohio nonprofit corporation under Chapter 1702 of the Ohio Revised Code. The purpose of the Association is to carry into effect the terms and conditions of this Declaration, to own and maintain the Common Area, and to fulfill such other obligations as are provided in the Articles, Regulations and this Declaration.

4.02 Powers and Duties. The Association shall have all powers, authority and duties as provided in the Articles, Regulations and this Declaration, in addition to all other powers, authority and duties imposed by law.

4.03 Membership. The Declarant and every Person who is a Builder or an Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to the Lot owned by the Member and may not be separated from the ownership of the Lot. Ownership of a Lot shall be the sole qualification for membership. Membership in the Association may not be assigned. However, upon the sale or other disposition of a Lot that vests legal title in a new Owner, the new Owner shall automatically become a Member of the Association and the former Owner shall cease to be a Member, unless the former Owner also owns another Lot or Lots.

4.04 Membership Classes. The Association shall have three (3) initial classes of Members. The Developer Class shall be held exclusively by the Declarant. The Builder

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Class shall be held only by Builders who own legal title to a one or more Lots. The Homeowner Class shall be held only by Owners of Lots. The duration and specific rights of each membership class are provided in the Regulations.

4.05 Voting Rights. The voting rights of each Member shall be as provided in the Regulations.

4.06 Election of Board and Officers. The Regulations provide certain procedures for the qualification, election and term of the Board and Officers of the Association, and describe the powers, authority and duties of the Board and each Officer. All members of the Board and the Officers shall serve at the will of and for the benefit of the Association.

4.07 Delegation of Duties. The Association, through its Board and Officers, is authorized to delegate any or all of its powers, duties or functions to any Person, either as manager, independent contractor, employee or agent of the Association on such terms and conditions as the Board may deem appropriate. No member of the Board or any Officer shall be personally liable for any act or omission of any Person to whom any powers, duties or functions have been delegated.

4.08 Right of Entry. The Association, through any authorized representative, shall have a right to enter upon any Lot at any reasonable time to perform any of its obligations, to exercise any of its rights or to carry out any of its duties. Such representatives shall not be deemed to have committed a trespass as a result of entry pursuant to this Section. However, this right of entry does not extend to entry into any Residence or other structure on a Lot without first providing the Owner at least Five (5) days prior written notice of the proposed entry and the purpose of such entry, except in the case of emergency reasonably perceived to constitute an immediate threat to the health or safety of the occupants of the Residence or other Owners.

4.09 Statutory Agent. The person to receive service of process for the Association is Thomas M. O'Diam, Attorney At Law, 2371 Lakeview Drive, Beavercreek (Greene County), Ohio 45431. The statutory agent for the Association may be changed by the affirmative action of a majority of the Board. Such change shall be reflected by a change of statutory agent with the Secretary of State of Ohio on such forms prescribed for the subsequent appointment of statutory agents for non-profit Ohio corporations.

ARTICLE V: ARCHITECTURAL CONTROL

5.01 Formation. Pursuant to the Regulations, the Board of the Association shall establish an Architectural Review Board. The ARB shall be a standing committee of the Board, and shall serve at the discretion and under the control of the Board.

5.02 Appointment. There shall be three (3) initial members of the ARB, all of whom shall be appointed by the Board for such term as the Board may determine. The Board shall have the authority to increase or decrease the number of members on the ARB

at any time. Members of the ARB may, but do not have to be, Members of the Association, members of the Board or Officers of the Board.

5.03 Authority. In general, the ARB shall have such powers, authority and duties as may from time to time be delegated to it by the Board. The primary purpose of the ARB shall be to interpret, review, establish guidelines, approve, disapprove and otherwise fulfilling all responsibilities within this Declaration regarding the construction, alteration, modification, demolition or other matters pertaining to Improvements on any Lot. The ARB shall have complete, absolute and final discretion and authority to approve or disapprove any plans submitted or required to be submitted pursuant to this Declaration.

5.04 Design Review Guidelines. The ARB may establish Design Review Guidelines concerning the procedures and standards upon which the ARB will base its approval or rejection of plans for Improvements on any Lot. These guidelines may be amended at the discretion of the ARB or the Board. All Design Review Guidelines and amendments shall be deemed to be incorporated into and enforced as a material part of this Declaration. The Association shall make a copy of any Design Review Guidelines available to any Builder, Owner or prospective Owner upon written request.

5.05 Prohibition. No Improvements shall be commenced on any Lot, and no Improvements previously approved shall be modified, enlarged, added to, demolished or otherwise changed in any respect unless and until approved in writing by the ARB.

5.06 Review Process. Prior to commencing work on any Improvements, the Owner shall submit to the ARB triplicate originals of a complete set of plans for the proposed Improvements. The plans shall contain all information required by the ARB as described in its Design Review Guidelines.

A. Basis of Review. Approval, approval subject to change, or disapproval of plans submitted to the Board shall be based upon matters deemed relevant by the ARB, including without limitation, compliance with this Declaration, compliance with the Design Review Guidelines, conformity and harmony with other Improvements in the development, preservation and harmony with the natural surroundings in the development, and the color, kind, shape, height, materials, composition and location of the proposed Improvements.

B. ARB Action. Upon receipt of plans submitted by an Owner for Improvements on a Lot, the ARB shall have Thirty (30) days to review the plans and issue a written decision either: (i) approving the plans as submitted; or (ii) approving the plans subject to changes as required by the ARB; or (iii) disapproving the plans.

C. Failure to Approve. If the ARB fails to render a decision within Thirty (30) days concerning any plans submitted for approval, such failure to act shall be deemed a disapproval and rejection of the plans.

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D. Appeal to Board. If the ARB disapproves any plans, or approves any plans subject to changes as required by the ARB with which the Owner is not willing to comply, the Owner shall have a right to appeal the decision to the Board for reconsideration. The appeal must be filed with and received by the President of the Board within Ten (10) days from the earlier of: (i) the date the Owner received a notice of disapproval or approval subject to changes from the ARB; or (ii) expiration of Thirty (30) days from the date the plans were submitted. The appeal shall be in writing and shall state the issue or issues under dispute and the Owner's reasons that the plans should be approved. The Board shall set a time within Fifteen (15) days from receipt of the appeal in which to hear the oral arguments of the Owner and a representative of the ARB. Within Fifteen (15) days from the date of the hearing, the Board shall issue a written decision to either uphold or overrule the decision of the ARB. All decisions of the Board shall be final and binding on all Persons for all purposes.

E. Scope of Approval. No portion of the Design Review Guidelines, and no approval of any plans by the ARB, shall ever be construed as representing, guaranteeing or implying that such plans and specifications comply with applicable law, or that they will result in a safe and properly designed or constructed Improvement. Nor shall the Design Review Guidelines or approval of any plans by the ARB ever be construed as representing, guaranteeing or implying that the Improvements will be constructed in a good and workmanlike manner.

F. Government Regulations. The provisions of this Declaration are subordinate to all applicable laws, statutes, ordinances, rules, regulations, orders, directives and codes of any local, state or federal governmental entity or agency concerning any aspect of Improvements on any Lot. Under no circumstance shall approval of any plans by the ARB be interpreted or construed as an acceptance or approval of aspects of the Improvements that violate applicable law.

5.07 Limitation of Liability. Neither the Declarant, the Association, the Board, the ARB or any member of the foregoing, or their heirs, personal representatives, successors or assigns shall be liable to any Person by reason of mistakes in judgment, negligence, nonfeasance, act or omission arising out of or directly or indirectly relating to the approval, disapproval or failure to approve any plans for Improvements on any Lot, or the enforcement of any provision of this Declaration.

ARTICLE VI: PROTECTIVE COVENANTS AND RESTRICTIONS

6.01 General. The provisions of this Article are specifically intended to establish and preserve the high quality and aesthetically pleasing character of all Improvements in this development in order to maintain the highest possible values of the Lots and Residences for the overall benefit of all Owners. The covenants, conditions and restrictions provided in this Article are in addition to, and not in substitution of, any other terms and conditions in this Declaration.

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6.02 Common Areas. No Builder, Owner, Resident or other Person shall make any changes to or damage or destroy any portion of the land or Improvements constituting part of the Common Areas, except as specifically provided in this Declaration regarding the rights and duties of the Association.

6.03 Lots. No Lot shall be further subdivided, split or partitioned, and no Lots may be combined, in any respect that would change the configuration of the Lots and Common Areas as shown on the original Plat prepared and recorded by the Declarant, except as otherwise provided in this Declaration regarding the rights of the Declarant and/or the Association.

6.04 Approval Required. In addition to other permits required by any Governmental Entity, absolutely no Improvements shall be commenced on any Lot unless and until all plans and specifications for such Improvements have been approved in writing by the ARB in the manner provided in this Declaration. Upon approval, the Improvements must be commenced and promptly completed in strict accordance with the plans and specifications as approved by the ARB. Once completed, no Improvements may be modified, altered, expanded, demolished or changed in any respect (whether relating to size, character, design, composition, color, location, or otherwise) without the prior written approval of the ARB. However, no prior approval from the ARB shall be necessary with respect to normal maintenance and repair necessary to keep any Improvements in their condition as originally constructed and previously approved by the ARB, or with respect to renovation, remodeling or other maintenance, repair or modification of any interior features of a Residence on a Lot that are not visible from any other Lot or from the Common Areas.

6.05 Commencement and Completion. Actual, on-site work on construction of a Residence on a Lot must commence within Six (6) months after the date of conveyance of title to the Lot from the Declarant to the initial Owner. Construction of the Residence and all other Improvements on the Lot that were approved at the time of or in connection with the plans for the Residence must be completed within the earlier of: (a) One (1) year of the date of actual commencement, or (b) Eighteen (18) months after the date of conveyance of title to the Lot from the Declarant to the initial Owner.

6.06 Builder Qualifications. Every Builder who serves as a general contractor for the construction of any Residence on any Lot must be approved by the Board in advance. The Board shall have the power to make rules governing the qualifications of Builders who are permitted to serve as general contractors in Wagner Hill. Further, the Board and the ARB shall have absolute authority to prohibit an Owner who is not a registered builder in good standing with the Homebuilders Association of Dayton and the Miami Valley from serving as his own general contractor for the purpose of constructing a Residence on his Lot.

6.07 Residences. All Residences shall be single family, detached dwelling structures. In addition to the more specific Design Review Guidelines established by the ARB, all Residences must meet the following minimum requirements:

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A. Setbacks. All front, rear and side yard setbacks shall comply with applicable zoning regulations. No fence, wall or hedge shall be permitted to extend nearer to any street than the front yard setback line, except landscape features not exceeding Three (3) feet in height. Any vegetable gardens must be located in the rear yard and within the rear and side yard setbacks.

B. Square Footage. Residences must contain a minimum of Two Thousand Two Hundred (2200) square feet of finished living area, excluding garages, attics, porches, decks, sidewalks, driveways and basements (whether or not partially or completely finished). If a Residence is two stories, the ground level must contain a minimum of One Thousand Four Hundred (1400) square feet of finished living area, subject to the same exclusions.

C. Garages. All Residences shall be designed and constructed with side-entry or rear-entry garages, and shall be large enough to house a minimum of Two (2) full sized cars. The ARB may grant exceptions to this requirement based upon constraints resulting from particular Lot configurations.

D. Driveways and Sidewalks. All driveways and sidewalks servicing the Residence on each Lot shall be constructed of plain or textured concrete. Asphalt and gravel driveways and sidewalks are prohibited.

E. Chimneys. The exterior portion of all chimneys must be brick, wood, stone or stucco. No metal flues shall be exposed in any manner so as to be visible from other Lots or the Common Areas.

F. Roofs and Shingles. All roofs must be a minimum of 6/12 pitch. All shingles must dimensional and in colors approved by the ARB.

G. Other. All other aspects of the plans and specifications for a Residence and all other Improvements on any Lot must meet the standards of the Design Review Guidelines established by the ARB.

6.08 Required Accessory Structures. Every Owner shall have constructed on his Lot at the same time as construction of the Residence a mailbox and a street light. The mailbox and street light shall be of a design, style, location and specification prescribed by the ARB. If the ARB requires the mailbox and/or the street light to be constructed in the Common Areas adjacent to the Owner's Lot, the Owner shall remain solely responsible for the cost of the labor and materials for installation, as well as for all repair, maintenance and operation.

6.09 Permitted Accessory Structures. Other Accessory Structures may only be incorporated as Improvements on a Lot with the written approval of the ARB. Such permitted Accessory Structures shall be compatible with the architectural design and materials as the Residence on the Lot. Any permitted Accessory Structures shall be screened from the view of other Lots or the Common Areas to the extent and in such manner as the ARB may deem appropriate.

6.10 Prohibited Accessory Structures. Under no circumstances shall any above-ground swimming pools, metal or plastic storage structures, chain-link, metal or plastic fences, television or radio antennas, or satellite dishes or equipment in excess of Thirty (30) inches in diameter be placed on any Lot for any purpose. Permitted satellite dishes and equipment shall only be allowed in the rear yard and within the setback restrictions of the Lot. In addition, the ARB may compile and modify a list of other prohibited structures that the ARB, in its sole discretion, deems inconsistent with the aesthetic qualities of Wagner Hill or detrimental to the health, safety, welfare or enjoyment of the Owners and Residents.

6.11 Temporary Improvements. No Improvements that are intended to be temporary, or by their nature are normally not incorporated as permanent improvements to real property, shall be permitted on any Lot, including without limitation any tents or canopies, and trailers, barns or similar storage structures or buildings. However, during the course of construction of Improvements on a Lot a Builder may use such temporary structures as the ARB may approve as necessary, all of which must be removed from the Lot within Five (5) days after completion of construction. No temporary structures of any kind shall be erected on the Common Areas, unless placed or erected there by the Declarant or the Association.

6.12 Site Maintenance. Owners and Builders shall at all times during the course of constructing Improvements on a Lot keep the Lot in a clean and sanitary condition, free from all debris and rubbish, and otherwise in a neat and attractive appearance. No work on any Improvements may commence until a trash dumpster or roll-off container of suitable capacity is placed on the Lot. Further, no Owner or Builder shall at any time use any other Lot or any portion of the Common areas for storage of materials or equipment, parking, concrete wash-out, disposal of scrap materials or debris, or for any other purpose. No Owner, Builder or any other Person under their control or within the development at their request or for their benefit, shall cause or permit any damage to or destruction of any other Lot or Improvement, or any portion of the publicly dedicated improvements, or Common Areas and related Improvements.

6.13 Signs. The ARB may specify the design, style, color and size of any signs it may approve to be used by Builders and/or realtors in this subdivision, so as to maintain a uniform and attractive appearance of these permitted signs. The Builder shall promptly repair or replace any permitted sign that is damaged or destroyed. All Builder and realtor signs must be removed within Thirty (30) days after issuance of a certificate of occupancy for the Residence on a Lot, unless the Owner requests the signs to be removed earlier, or unless the ARB grants an extension because the Lot and Residence are not then sold. Except for the signs expressly permitted in this Section, no Owner, Resident, Builder, realtor, subcontractor or any other Person shall at any time place any sign on a Lot. Absolutely no signs are permitted in the Common Areas, except those that may be installed by the Declarant as part of the initial Improvements to the Common Areas or those later installed by the Association.

6.14 Lawns. As soon as weather permits during or after completion of the construction of a Residence on a Lot, each Owner shall finish grade and sod their

entire Lot so as to prevent or to minimize the possibility of erosion from the Lot. In the alternative and with the prior approval of the ARB, the rear yard (from the farthest rear point of the Residence to the rear Lot line) may be seeded and covered with straw mulch or other suitable cover. Owners shall be responsible for sodding, mowing and maintaining any lawn areas between the sidewalks and the streets.

6.15 Landscaping. Each Owner shall install a minimum of One Thousand Dollars (\$1,000.00) of landscaping plant material to their Lot, which shall be part of a comprehensive landscape plan for the Lot, and which shall be completed before final completion of construction of a Residence on a Lot. "Landscaping plant material" includes all trees, shrubs, bushes and other perennial plants, plus all labor charges for installation, but does not include and is different from sodding and seeding requirements under this Declaration and "hardscape" features such as retaining walls, fountains, irrigation mechanisms, and similar non-living items. All landscaping plans shall be submitted to the ARB prior to commencement of construction of the Residence on a Lot, and must be approved before any landscaping is installed. Once installed, all landscaping shall be properly maintained, and all dead or diseased plant material shall be promptly removed and replaced to restore the landscape to its original condition as approved by the ARB.

6.16 Utilities. No private water supply systems or sewage disposal systems shall be permitted on any Lot. All Lots shall be provided with access to and shall utilize public water and sanitary sewer services. All public and private utilities servicing any Lot shall be installed and maintained underground to the greatest extent possible so as to minimize any adverse visual affects that could be created by such utilities. Natural gas utility service will be available to all Lots as part of the development. All allowances or rebates from Dayton Power & Light Company for any Lot shall be paid to the Developer as a partial reimbursement for installation costs. Any Owner who does not place a meter or use natural gas service shall pay to the Developer on demand One Thousand Two Hundred Dollars (\$1,200.00) in addition to the Lot purchase price, as a partial reimbursement for installation of the natural gas utilities in the development.

6.17 Residential Uses. The Residence on any Lot shall only be used as a primary, private dwelling for a single family, and for no other purpose. No Accessory Structures shall at any time be used as a dwelling for any Owner, Resident or other Person. No Residence, Accessory Structure or other Improvement on any Lot shall be used for operation of a business or other commercial enterprise.

6.18 Transient Uses. No Residence or any part of a Residence or other Improvement on a Lot shall ever be rented or used for transient or hotel purposes. "Transient or hotel purposes" is defined as: (a) rental for any period less than Sixty (60) days; or (b) rental to roomers or boarders of only a portion of the Residence or Improvement, regardless of the length of the rental period; or (c) any rental in which the occupants are provided customary hotel or boarding house services, such as room service for food and beverages, maid service, the furnishing of laundry and linen service, meals, busboy service and similar services.

6.19 Animals. No animals of any kind shall be raised, bred or kept on any Lot, except dogs, cats and other usual household pets (but not exotic animals) in a reasonable number, provided that they are not raised, bred or kept for any commercial purposes. No permitted household pet shall be allowed to run loose or leave the Owner's Lot unless on a leash under the control of a Resident, or otherwise become a nuisance to any other Owner or Resident. The Association may establish Rules to regulate and control the use of the Common Area by such household pets as from time to time it deems necessary.

6.20 Continuing Maintenance. Every Owner shall have a continuing obligation to maintain his Lot and all Improvements on the Lot in a good state of repair as originally approved by the ARB, including keeping all grass mowed and landscaping properly irrigated and trimmed. No Lot, nor any part of the Common Area, shall be used as a dumping ground for rubbish, trash, garbage, debris or other waste, all of which shall be kept in sanitary trash containers on the Lots.

6.21 Storage. No inoperative automobiles, trucks or other motor vehicles, and no trailers, motor homes, campers, recreation vehicles, boats or other similar non-passenger vehicles (whether or not operable) shall be parked or stored on the Common Areas or on any Lot, except in an enclosed garage or behind the building setback line and screened from public from the streets, Common Areas and other Lots.

6.22 View Restrictions. Subject to Rules established by the Association, no vegetation, Improvement, or other obstruction shall be planted, constructed or maintained on any Lot in a location or of such height as to unreasonably obstruct the view from any other Lot. However, neither the Declarant nor the Association makes any representation or warranty concerning the view from any Lot, or how that view may be affected by subsequent Improvements on any other Lot or on the Common Areas.

6.23 Quiet Enjoyment/Nuisance. No Owner or Resident shall permit anything to be done or kept on his Lot or within his Residence that will obstruct or interfere with the rights of quiet enjoyment of any other Owner or Resident, or that may constitute a nuisance, or that may be deemed an immoral or illegal act under applicable law. Without limiting the generality of the foregoing restriction, on any Lot there shall be: (a) no open fires on any Lot except in grills or barbecue structures approved by the ARB; or (b) no obnoxious or loud noise, whether from music or otherwise; (c) no audible, exterior alarms; or (d) no other noxious or offensive activity which may be or may become an annoyance or nuisance to other Owners or Residents; or (e) no other activity that will create any odors or other unsightly, unsanitary, unhealthy, offensive or detrimental conditions; or (f) no activities that will increase the costs of insurance or result in the cancellation of insurance on any Lot or the Common Areas.

ARTICLE VII: EASEMENTS

7.01 Owners' Easements. Subject to the limitations provided in this Article, every Owner and Resident shall have a perpetual, concurrent, non-exclusive right and

easement of access, use and enjoyment in and to all portions of the Common Area, together with all sidewalks on any Lot that are parallel to and in proximity with the private streets for the purpose of pedestrian access, use and enjoyment. These easements are appurtenant to and shall automatically pass with title to every Lot.

7.02 Utility Easements. The Declarant and the Association shall have the continuing right and easement at any time and from time to time in the future, by itself or through applicable public or private utility services, to construct, install, operate, maintain, repair and replace water mains, pipes, or component parts, storm or sanitary sewer lines, electrical lines, conduits, transformers and related equipment, gas mains, telephone wires and equipment, and television or cable television conduits, wire and related equipment under, along, through or over any portion of the Common Areas. The user of such easements shall restore the Common Areas to the same condition as existed just prior to such work within the easement.

7.03 Association Easements. The Association shall have a perpetual easement to, in, through and over all of the Common Areas and all Lots (except the Residences or other structures on Lots) at any time and for any purpose necessary or incidental to fulfilling any of its obligations and duties, or exercising any of its rights, as provided in this Declaration.

7.04 Limitation on Easements. Notwithstanding any provision of this Article to the contrary, all easements shall be subject to reasonable Rules as may be adopted or amended by the Board. In the absence of such Rules, any user of the easements described in this Article who damages or destroys any property or Improvements, whether or not located on the Common Areas, shall be responsible for all costs and expenses required to repair or restore the damage to its condition prior to the damage or destruction. The Association shall have complete discretion to select and supervise the contractors who perform any repair or restoration, and shall have a right to collect the full cost of all materials and labor, plus an administrative fee equal to Five Percent (5%), from the Person or Persons who caused the damage or destruction. Use of these easements is further subject to all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders. No limitations provided in this Declaration or by Rules adopted by the Board shall be construed or enforced in a manner that would suspend a permanent right of ingress and egress to and from any Lot.

7.05 Future Easements. The Association shall have the right to grant, execute, acknowledge and deliver any additional rights and easements pertaining to the Common Areas as the Board may deem necessary or beneficial for providing public or private services or utilities to any Lot or Lots, or to any Owner or Resident.

ARTICLE VIII: COMMON AREAS

8.01 Ownership. The Declarant will convey to the Association fee simple title to the Common Areas shown or to be shown on the Plat of the Property, free and clear of all liens and encumbrances, but subject to this Declaration. It is the intention of the

Declarant to complete this conveyance as part of the platting process or by special warranty deed. The Common Areas shall consist of all of those portions of the Property not shown on the Plat as Lots or publicly dedicated improvements, including without limitation any private roads, Drainage Facilities, and all other Improvements and amenities located or to be located on the land designated on the Plat as Common Areas. The Association shall not abandon, partition, subdivide, alienate, release, encumber, hypothecate or otherwise transfer any right, title or interest in the Common Areas, except as specifically provided in this Declaration.

8.02 Use. Except as otherwise provide in this Declaration, the Common Areas shall be for the use, benefit and enjoyment of the Owners as an incident of ownership of their Lot. All Residents and their family members and invited guests shall have a nontransferable privilege to use and enjoy the Common Areas for any proper purpose directly associated with their relationship with the Owner of any Lot. The Board may in its sole discretion adopt, enforce and amend Rules concerning the use of the Common Areas.

8.03 Maintenance. The Association shall be responsible for all maintenance, repair, restoration and improvement of the Common Areas, and shall not alter or permit the alteration of any Improvements on the Common Areas unless approved by the affirmative vote or written consent of the Members holding not less than Fifty-One Percent (51%) of the voting power of the Association at a special meeting called for that purpose. In particular, the Association shall maintain all entrance features, landscaping and other Improvements on the Common Areas at or above the levels of quality existing at the time the Common Areas are conveyed to the Association, or at the time such Improvements are completed by the Declarant.

8.04 Commencement of Responsibilities. The Association's obligation to maintain the Common Areas shall commence immediately upon recording the Plat of the Property and/or any special warranty deeds conveying all or any portion of the Common Areas from the Declarant to the Association.

8.05. Authority to Convey. Notwithstanding any provision of this Declaration to the contrary, the Association shall have the power to convey or dedicate any property interest, easement or right of way over any or all of the Common Areas, free and clear of any other rights, easements or interests, if such conveyance or dedication is to a governmental entity for use as a public roadway, pedestrian walkway or other public purpose, or in the case of an easement or right of way if such conveyance or dedication is for the installation, operation, maintenance or repair of public or private utility services for the benefit of the Lots. No portion of the Common Areas may be conveyed to any Person who is not a public entity without the affirmative vote or written consent of the Members holding not less than Seventy-Five Percent (75%) of the voting power of the Association at a special meeting called for that purpose.

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ARTICLE IX: DRAINAGE FACILITIES

9.01 Initial Construction. As part of the initial development of the Property, the Declarant may construct the Drainage Facilities throughout the Property, whether or not within the Common Areas, to provide for surface storm water runoff, retention and/or detention areas. The Drainage Facilities shall be of the design and construction determined by the Declarant to be reasonable and necessary to properly allow adequate drainage of surface water throughout the Property, and to minimize the risks of erosion or sedimentation. The Drainage Facilities shall also comply with regulations of Governmental Entities and other applicable law.

9.02 Maintenance. After conveyance of the Common Areas, the Association shall have the obligation to care, maintain, repair, improve, regulate and control the Drainage Facilities within the Common Areas in a manner that complies with applicable regulations and laws. The Owners of each Lot shall have the obligation to care, maintain, repair, improve, regulate and control the Drainage Facilities on their respective Lots in a manner that complies with applicable regulations and laws. These duties include without limitation an obligation to keep the Drainage Facilities free of any debris, sediment or other obstructions, to keep the grass portions of the Drainage Facilities mowed, to maintain, repair or replace and Improvements within the Drainage Facilities that are damaged or otherwise fail, and to take such other corrective action as may be necessary to permit proper drainage, retention or detention of storm water runoff throughout the Property.

9.03 Restrictions. Notwithstanding any provision of this Declaration to the contrary, no Owner, Builder, Resident or other Person shall at any time or for any reason take any action, or fail to take immediate corrective action, to make any changes by means of grading, excavation, construction or modification of Improvements or otherwise that in any respect impairs, increases, decreases or changes the direction, rate of flow or volume of surface storm water runoff on any portion of the Property, or otherwise adversely affects any aspect of the Drainage Facilities, as designed and constructed by the Declarant. Any Person who violates this provision shall be liable to the Association for the all costs and expenses incurred by the Association to remedy the violation.

9.04 Rights of Governmental Entities. The Governmental Entities shall have the permanent, concurrent and irrevocable right and authority to inspect and monitor the Drainage Facilities. If the Drainage Facilities are not properly constructed or maintained, and the Declarant or the Association fails to correct the problems within a reasonable time after being notified by any Governmental Entity, the Governmental Entity shall have the right, but not the obligation, to take whatever action that is necessary to correct any improper construction, maintenance or operational functions. The Governmental Entity shall have the right to assess the full cost of the corrective action to the Association. If the Association does not pay the Governmental Entity its recoverable costs within Sixty (60) days after the statement has been sent to the Association, the Governmental Entity shall have the right to assess the cost against the Lots.

ARTICLE X: ASSESSMENTS

10.01 Creation of Assessments. The Declarant has determined and deems it necessary to establish a method for paying the necessary costs and expenses associated with carrying the requirements of this Declaration into effect in order to assure the operation and continuing viability of the Association, and for the proper maintenance, repair, replacement and improvement of the Common Areas for the benefit of all Owners. Therefore, every Owner and their respective Lots are subjected to and liable for Assessments in the manner and according to the terms and conditions of this Article.

10.02 Classification. There shall be three classifications of Assessments, each of which is described as follows:

A. Regular Assessments. The Board shall determine and levy Regular Assessments each year for the purpose of paying the costs and expenses incurred by the Association for the protection of the health, safety, welfare and enjoyment of all Owners, Residents and other Persons in connection with the use and enjoyment of the Common Areas, to preserve and enhance the values and amenities of the Common Areas and the development as a whole, and all other costs and expenses incurred by the Association in the exercise of its powers, authority and duties under this Declaration.

B. Special Assessments. In addition to the Regular Assessments, the Association may levy in any year a Special Assessment, applicable to that year only, for the purpose of defraying the actual or anticipated costs and expenses of any action, undertaking or emergency by the Association which exceeds the budgeted gross expenses of the Association for that fiscal year which have not otherwise been provided for in full as part of the Regular Assessments for that year. However, no Special Assessments may be levied unless approved in advance by the affirmative vote of Members holding not less than Fifty-One Percent (51%) of the voting power of the Association at a regular or special meeting of the Members called for that purpose. Special Assessments shall be levied and payable in the manner and at the times approved by the Members as part of approval of the Special Assessment.

C. Compliance Assessments. The Association may levy Compliance Assessments against any individual Lot and the Owner of that Lot in an amount equal to all costs and expenses incurred by the Association as a result of making repairs which are the responsibility of the Owner under the terms of this Declaration, or otherwise incurred by the Association to remedy any violation of these Declarations with respect to any event or circumstance for which the Owner is responsible, whether or not such violation was committed by the Owner personally. Compliance Assessments are the responsibility of the individual Owner and his Lot, and are not prorated among the Owners of other Lots. All Compliance Assessments shall be due and payable on demand, subject to the same terms and conditions as are provided in this Article for the payment of other Assessments.

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10.03 Prorata Share. All Regular and Special Assessments shall be divided and levied equally among each Lot by dividing the total budgeted costs and expenses, or amounts determined to be specially assessed, for the applicable period by the total number of Lots as shown on the Plat which are then subject to this Declaration. The exemption provided in this Article for Lots then owned by the Declarant shall not increase the prorata share of Assessments payable by the Owners of other Lots not owned by the Declarant.

10.04 No Offset. No Owner may offset against any Assessments the value of any claims he has or may contend to have against the Association. Nor may any Owner exempt himself from liability for any Assessments by reason of waiver of the use or enjoyment of the Common Areas, or the abandonment of his Lot.

10.05 Exemption of Declarant. Notwithstanding any provision of this Declaration to the contrary, the Declarant is exempt from the payment of all Assessments, and no lien for Assessments shall attach to any Lot while titled in the name of the Declarant. However, the Declarant may from time to time, in its sole discretion, advance funds to the Association in such amounts as it deems appropriate to maintain a reasonable level of Assessments for the Owners and pay necessary budgeted expenses until a sufficient number of Lots are sold to make the Association self-supporting through Owner Assessments. The Declarant's advances, if any, shall constitute a loan to the Association and shall be repayable, with reasonable interest, at such times and in such installment amounts as the Declarant and the Board may determine.

10.06 Budget. Prior to conveying title to any Lot, the Association or the Declarant shall prepare a preliminary, estimated budget of the anticipated costs and expenses of the Association for the first year. Each following year, the Association shall prepare a revised budget of the anticipated costs and expenses of the Association for that year. Each budget shall take into consideration good-faith estimates of the costs and expenses the Association will incur to fulfill its obligations under this Declaration, to establish reserves for repair, replacement or further improvement of the Common Areas, to pay premiums on policies of insurance required or permitted under this Declaration, administration costs and expenses, and to cover other matters that could affect the operations of the Association. The Board shall have the power to carry over surpluses from preceding years, and may in its sole discretion either utilize such surplus to reduce the amount of Regular Assessments for the current year, or allocate all or any portion of the surplus to a reserve for the repair, replacement or further improvement of the Common Areas. The Board shall provide each Owner with a copy of each budget, but the decision of the Board concerning all budget matters shall be final and binding on all Owners and Lots. Failure of the Declarant or the Association to prepare or present a budget shall not be a waiver or release of the obligation of each Owner to pay his Assessments and shall not release the lien of the Assessments from any Lot. The budget shall be the basis for calculating the Assessments on each Owner for that year. If the Board determines for any reason that the initial budget for that year must be adjusted during the year, the Board shall have the power to adjust the Assessments to meet the revised budget.

10.07 Payment and Delinquency. The Board shall determine the frequency of periodic installments of the Assessments, whether annually, semi-annually, quarterly, or monthly, and may change such frequency from time to time upon written notice to all Owners. The Board shall also have the power to establish procedures concerning the billing and collection of Assessments, which must be consistent with the provisions of this Article. The periodic installment of Assessments shall be due and payable to the Association in full within Thirty (30) days after the date shown on the written statement sent to each Owner. If any Owner fails to pay the full installment of Assessments then due on or prior to the due date, then in addition to the Assessment amount, the Owner shall pay the Association as an administrative expense a late charge equal to Five Percent (5%) of the Assessment shown on the statement. If any Owner continues to fail to pay the full installment of Assessments and late charges then due within Fifteen (15) days of the due date, then in addition to the Assessment amount and late charge, the Assessment shall be deemed delinquent and the amount of the Assessment then unpaid shall bear interest at the rate of Eighteen Percent (18%) per annum until paid in full. In addition to collection of the amount of the Assessment, late charges and interest, the Association shall also be entitled to collect from the Owner all costs and expenses incurred by the Association in collecting the full amount then due, or other costs or expenses incurred by the Association in working with Owner to eliminate the conditions for which the lien of the Assessment could be foreclosed, including without limitation all reasonable attorney fees. All costs and expenses shall bear interest at the rate provided for delinquent payment of Assessments from the date the Association incurs such costs and expenses. All late charges, interest, costs and expenses shall be included in and deemed a material part of the lien for the Assessments.

10.08 Lien for Assessment. The Association shall have an automatic and continuing lien and first charge upon each Lot for all Assessments then due and payable, and for all Assessments and installments of Assessments levied and payable in future years, and including all other costs and expenses associated with the Assessments as provided in this Declaration, which shall bind the Lot in the hands of any Owner, and his heirs, beneficiaries, administrators, executors, personal legal representatives, successors, assigns and subsequent transferees of title to the Lot. This lien shall be superior to any other liens or encumbrances on the Lot which may in any manner be imposed upon the Lot in the future, whether by judgment, decree, agreement, contract, mortgage, mechanic's lien, operation of law or otherwise, excepting only liens for real estate taxes and assessments that may be superior under applicable law and the lien of any bona fide first mortgage on the Lot. If an Assessment remains unpaid for more than Thirty (30) days, the Board may, in its discretion, record a notice of the amount of the lien in the office of the Greene County Recorder.

10.09 Foreclosure. The Association may enforce the lien of any Assessment by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under Ohio law. In addition to the lien for the Assessment, interest and other costs, the Association shall also be entitled to recover all costs and expenses of the foreclosure, including without limitation reasonable attorney fees. If approved in advance by the written consent or affirmative vote of Members holding not less

than Seventy-Five Percent (75%) of the voting power of the Association, the Association shall have the right to bid at the foreclosure sale to acquire title to the Lot and Improvements being foreclosed upon, and to hold, sell, convey, lease, encumber, or otherwise deal with the same in any manner deemed appropriate by the Board.

10.10 Certification. Upon request of any Owner, the Association shall within Twenty (20) days furnish the Owner a certificate stating the amount of Assessments (including interest and costs) then due and payable as of the date of the certificate with respect to the Owner's Lot. The Owner, any mortgagee or any immediate purchaser may rely on the certificate as accurate, and shall not be liable for any Assessments, interest or costs arising prior to the effective date of the certificate, but not shown on the certificate.

ARTICLE XI: REAL ESTATE TAXES

11.01 Owners. The Owners of each Lot shall pay all real estate taxes and assessments levied against the Lots.

11.02 Association. The Association shall pay all real estate taxes and assessments levied against the Common Areas.

ARTICLE XII: INSURANCE

12.01 Public Liability Insurance. The Association shall obtain and maintain one or more policies of comprehensive public liability insurance, insuring the Association, the Board, the Officers, the Members and all other Owners, employees, agents, successors and assigns of the Association against any liability for injuries to or death of persons, or damage or destruction of property, arising out of, in connection with or directly or indirectly relating to the ownership, occupation, use, maintenance and/or repair of any portion of the Common Area or any other property, facility, or activity under the control of the Association. The terms and limits of liability of such insurance shall be as the Board deems appropriate. Unless the Board determines otherwise, this public liability insurance shall have limits of not less than \$1,000,000.00 per occurrence for bodily injury or death of persons, and not less than \$500,000.00 per occurrence for property damage.

12.02 Fire and Extended Coverage. The Association shall also obtain and maintain one or more policies of casualty and fire insurance, with extended coverage endorsements, in an amount equal to 100% of the replacement cost of all Improvements on the Common Area, without deduction for depreciation or co-insurance. This insurance shall, if possible, provide for the release by the insurance carrier of any and all rights of subrogation, assignment or other rights of recovery against the Board, Officers, Members, Owners, Residents, and their families, guests and all other persons lawfully using the Common Area, for recovery against any one of them for any loss occurring to any Improvement on the Common Area from any of

the perils insured against by such insurance coverage. All proceeds of this insurance shall be paid to the Association, and shall be held in a separate account in trust for the purposes of repair or construction of any damaged Improvement.

12.03 Other Coverage. The Association shall also obtain and maintain workers' compensation coverage in amounts and to the extent required by law. The Association may further obtain and maintain other forms of insurance coverage as the Board may deem necessary or appropriate, in amounts and on terms and conditions acceptable to the Board, including without limitation directors and officers liability coverage, fidelity bonds, or umbrella coverage for any type of insurance.

12.04 Association to Act. To the extent required by law or by any insurance carrier, each Owner appoints the Association as his true and lawful attorney-in-fact with full power and authority to act in connection with all matters concerning insurance Coverage maintained by the Association. Without limiting the generality of the foregoing, the Association as attorney-in-fact shall have full power and authority to purchase and maintain such insurance, to collect proceeds and to distribute the same, to execute release of liability and to execute all documents and do all things on behalf of the Owners as may be necessary or convenient in dealing with any insurance maintained by the Association.

12.05 Owners' Insurance. Each Owner may obtain and maintain any form of insurance on his personal property and Improvements on his Lot, and public liability insurance protecting against personal injuries or death to any persons, or damage to any property relating to occurrences on his Lot. The Association shall not have any obligation to carry any form of insurance protecting the interests of Owners for any liabilities regarding events on their Lots. No insurance carried by any Owner shall adversely affect or diminish any coverage under insurance carried by and for the benefit of the Association as described in this Article.

ARTICLE XIII: ADDITIONAL PROPERTY

13.01 Within Property. The Declarant may include Additional Property from the Property described in Exhibit A, and any property adjacent to that Property, in this plan of development without the prior consent of the Association, Board, Members or Owners. This Additional Property will become subject to this Declaration upon recording the Plat of the Additional Property.

ARTICLE XIV: GENERAL PROVISIONS

14.01 Governing Law. This Declaration shall be governed by and construed and enforced in accordance with the laws of the State of Ohio.

14.02 Consent to Jurisdiction. Any litigation arising out of or in any way related to this Declaration must be instituted by the complaining party, or removed to, and adjudicated in the Common Pleas Court of Greene County, Ohio, and all Persons interested in or affected by this Declaration consent to the personal jurisdiction of and

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venue in that court. In no event shall the Declarant or any Builder, Owner, Resident or other Person interested in or affected by this Declaration contest the personal jurisdiction of such court over it and the venue of such court with respect to those claims or disputes. Each Builder, Owner and Resident irrevocably appoints the Statutory Agent for the Association as his personal agent for service of process to receive service of process in any action arising out of or relating to this Declaration if, at the time process is to be served, such party is no longer domiciled in, a resident of, or otherwise located in the State of Ohio, or cannot after reasonable efforts be located in the State of Ohio.

14.03 Duration. All covenants, conditions and restrictions in this Declaration shall run with the land which comprises the Property, and shall create an equitable servitude upon all Lots for the direct mutual and reciprocal benefit of all Owners and the Association. All provisions of this Declaration shall be binding upon and inure to the benefit of the Declarant, the Association, all Owners, all Residents and each of their respective legal representatives, executors, administrators, heirs, beneficiaries, successors, assigns and transferees for a period of Twenty (20) years from the date this Declaration is recorded in the office of the Greene County Recorder, after which this Declaration shall be automatically extended for successive periods of Ten (10) years each, unless amended or terminated in the manner provided in this Declaration.

14.04 Amendment. This Declaration may be amended at any time and for any purpose only by recording an instrument describing the amendments and executed by the Members holding not less than Seventy-Five Percent (75%) of the voting power of the Association. No amendment may require any change in any then existing Improvements or uses which are in compliance with this Declaration immediately prior to the recording date of the amendment. These requirements for amending this Declaration shall not apply to amendments relation solely to Additional Property, which procedure is otherwise provided in this Declaration.

14.05 Termination. This Declaration may be terminated at any time by recording an instrument providing for such termination and executed by the Members holding not less than Ninety Percent (90%) of the voting power of the Association.

14.06 Time Limits. If an provision of this Declaration is declared void or unlawful for violation of: (a) the rule against perpetuities; or (b) any rule or law relating to restrains on alienation; or (c) any other statutory or common law rule imposing time limits with respect to real property, then such provision shall continue only until Twenty-One (21) years after the death of the last survivor of those decendents of the individual who has signed this Declaration on behalf of the Declarant.

14.07 Enforcement. The Declarant, any Owner or the Association may enforce this Declaration by any proceeding at law or in equity against any Person violating or attempting to violate any covenant, condition or restriction in this Declaration, either to restrain or to enjoin the violation or to recover damages, and against any Lot to enforce any lien created by this Declaration. The failure or forbearance of the Association, the Declarant or any Owner to enforce this Declaration shall not under

any circumstances be deemed a waiver of the right to enforce the same or any subsequent violation at a later time. There shall be a conclusive presumption that any violation or breach, or any attempted violation or breach, of this Declaration cannot be adequately remedied by an action at law or by recovery of damages. All charges incurred by the Association, the Declarant or any Owner in enforcing this Declaration (including without limitation court costs and reasonable attorney fees) shall constitute additional damages and a charge against the Person violating or attempting to violate this Declaration, and such charge shall constitute an immediate lien against the Lot of such Person, subject to subordination to first mortgages as provided in this Declaration.

14.08 Owner's Responsibility. The Owners of each Lot shall be solely responsible for ensuring that all Residents and their family members, guests, contractors, agents and other Persons entering the Property and/or their Lot comply with every term, condition, restriction and other requirement in this Declaration. The Owners are primarily liable for any such violation, and enforcement measures may be taken directly against the appropriate Owner in lieu of or in conjunction with the Person who committed the violation.

14.09 Limitation of Liability. Neither the Declarant nor any of its shareholder, directors, officers, employees, agents, successors or assigns shall be liable for any claim arising out of or directly or indirectly relating to any actions performed or not performed, or any decisions made pursuant to any authority granted or delegated to the Declarant under this Declaration, or otherwise in connection with any aspect of the development of the Property.

14.10 Severability. If any provision of this Declaration is held invalid or unenforceable by any court of proper jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and all such remaining provisions shall continue in full force and effect to the fullest extent permitted by law.

14.11 No Dedication to Public Use. Except as specifically designated on the Plat, nothing in this Declaration shall be construed as a dedication to or acceptance for public use by any Governmental Entity or utility. It is understood that no Governmental Entity shall have any obligation to accept and maintain the Common Areas or Drainage Facilities on the Lots or within the Common Areas.

14.12 Exemption. If any portion of the Property has been or in the future is conveyed to any Governmental Entity or dedicated for any public purpose, the public property shall be exempt from this Declaration.

14.13 Mortgagee Protection. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction in favor of the Association. The lien of any Assessments provided in this Declaration shall be subordinate to the lien of any first mortgage now or in the future recorded on any Lot. The lien of the Assessment shall not be affected or discharged by the sale or transfer of any Lot, unless the sale or transfer of any Lot is pursuant to judicial

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foreclosure of a first mortgage. The purchaser of title to a Lot pursuant to judicial foreclosure of a first mortgage will not be liable for any unpaid Assessments for which the lien of the Association was extinguished by the judicial foreclosure. However, this provision does not relieve the purchaser at foreclosure from liability for Assessments accruing after the date of acquisition. Any first mortgagee shall have a right to receive any notices or other information to which the mortgagor is entitled by providing the Association with written notice of its desire to receive the notices and information, and providing the Association with its name and address, as well as the name and address of its mortgagor.

14.14 Construction. The provisions of this Declaration shall be liberally construed in a manner that will best fulfill its purpose of creating a uniform plan for the development and maintenance of the Property.

14.15 Headings. The headings of each article, section and paragraph in this Declaration are for convenience of reference only, and shall not be considered in any way to define, describe, interpret, construe, limit or expand the scope or intent of the language to which they refer.

14.16 Inclusive Terms. Throughout this Declaration, words in the singular may be interpreted in the plural, and words in the masculine may be interpreted in the feminine or neuter, or vice versa, where the context or application to a particular circumstance so requires for a logical and reasonable interpretation of this Declaration.

14.17 Exhibits. All Exhibits are incorporated by reference and made a material part of this Declaration.

14.18 Notices. Any notice required or permitted to be sent to any Member or Owner under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last know address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

14.19 Constructive Notice. Every Person who now owns or in the future acquires any legal or equitable rights, title or interests in any portion of the Property shall be conclusively deemed to have notice of this Declaration, and to have consented to every term and condition of this Declaration, whether or not the instrument by which such Person acquired the interest specifically referred to this Declaration.

14.20 Government Regulations. All provisions of this Declaration are subject to all applicable zoning, building and other regulations and ordinances of Governmental Entities and agencies having jurisdiction over the Property and/or the Association.

14.21 Quit Claim Deeds and Correction Deeds. The Association may execute and make in respect to the Common Areas (common property) quit claim deeds and/or correction deeds in order to correct typing or surveying errors in legal descriptions or to reflect a Lot as actually laid out or to correct any other error by which the

Association was granted real estate or an interest in real estate by mistake of any kind. Such conveyances by the Association shall also convey all right, title, and interest that each member of the Association has in the real estate conveyed, by reason of the Declaration and any amendment thereto. The Association may so act upon resolution of a majority of its Board, if any, and if the Board does not exist, then by agreement of the majority of the members of the Association. The executing and/or making of quit claim deed and/or correction deed shall not constitute and shall not be deemed to be the abandoning partitioning, subdividing, encumbering, selling or transferring of common property within the meaning of this Declaration.

14.22 Mortgagee Consent. Bank One, Dayton, N.A., ("Mortgagee") as holder of a mortgage on the Property, has signed this Declaration for the purpose of acknowledging its consent to the terms and conditions described in this Declaration. However, Mortgagee shall not be liable to any person or entity for any act or omission of Declarant, the Association or any Governmental Entity with respect to any aspect of this Declaration, and shall not be a party to any action relating to the enforcement or failure to enforce these Declarations.

IN WITNESS WHEREOF, the Declarant and Mortgagee have caused these Declarations to be executed by their duly authorized officers effective as of the 13th day of March, 1997.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

DECLARANT:
KINGSWOOD III CO.,
An Ohio Corporation

Anna Szpyt
Thomas M. Wain

BY: *[Signature]*
Hisham A. Shtayyeh, President

MORTGAGEE:
BANK ONE, DAYTON, N.A.

[Signature]
TALLA STEPPE
[Signature]

BY: *[Signature]*
Printed Name: DAVID O'CONNOR
Title: VICE PRESIDENT

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STATE OF OHIO)
) SS:
COUNTY OF Greene)

The foregoing instrument was acknowledged before me on this 10th day of March, 1997, by Hisham A. Shtayyeh, President of KINGSWOOD III CO., an Ohio corporation, on behalf of the Corporation.



Laura S. Pezzot
Notary Public

LAURA S. PEZZOT, Notary Public
In and for the State of Ohio
My Commission Expires Jan. 30, 2000

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STATE OF OHIO)
) SS:
COUNTY OF Montgomery)

The foregoing instrument was acknowledged before me on this 13th day of March, 1997, by Daniel O'Donnell, in his/her capacity as Vice President of BANK ONE, DAYTON, N.A.

John C. Chambers
Notary Public

JOHN C. CHAMBERS, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

THIS INSTRUMENT PREPARED BY:

Thomas M. O'Diam, Attorney At Law
O'DIAM, TURNER, McNAMEE, HILL & STONE CO., L.P.A.
2371 Lakeview Drive
Beavercreek, Ohio 45431



EXHIBIT A
Cosler Engineering
Civil Engineering • Land Surveying

3183D Beaver Vu Drive
Beavercreek, Ohio 45434
(513) 426-9913
Fax (513) 426-3390

**Description of a 31.143 Acre
M. E. Fisher Enterprises, Inc. Land**

May 2, 1996

Located in Section 10, Town 2, Range 6, Sugarcreek Township, Greene County, State of Ohio and being tract of land described as follows:

Beginning at a railroad spike (bent) found in the centerline of Wagner Road at the northwest corner of land conveyed to Ronald L. Bryant by deed recorded in Volume 178, Page 401, at the southwest corner of land conveyed to Terry L. & Glenna J. Howland by deed recorded in Volume 987, Page 831, and at the southeast corner of land conveyed to James P. Rion by deed recorded in Volume 883, Page 420, all of the Official Records of Greene County, Ohio;

thence with the west line of said Bryant land and its southwardly extension, said extension being the west line of land conveyed to Souhad M. Shtayyeh by deed recorded in Volume 439, Page 449 of the Official Records of Greene County, Ohio, South twenty-nine degrees forty-seven minutes eleven seconds ($29^{\circ}47'11''$) West for a distance of one thousand three hundred ninety-two and $54/100$ (1,392.54) feet to a 0.75 inch diameter iron pin found at the southwest corner of said Shtayyeh land and the north line of land conveyed to Phyllis D. Wilson by deed recorded in Volume 891, Page 163 of the Official Records of Greene County, Ohio;

thence with the north line of said Wilson land, South eighty-six degrees fifty-eight minutes fifty-seven seconds ($86^{\circ}58'57''$) West for a distance of five hundred twenty-six and $50/100$ (526.50) feet to a 0.63 inch diameter iron pin found at the northwest corner of said Wilson land in the east line of a lane which runs north to a "cemetery lot", said iron pin being located twelve (12) feet east of the east line of land conveyed to Con J. Fecher, Jr., et al. by deed recorded in Volume 386, Page 222 of the Deed Records of Greene County, Ohio;

thence with the east line of said lane of said "cemetery lot", North one degrees one minutes nineteen seconds ($01^{\circ}01'19''$) East for a distance of eight hundred twenty and $29/100$ (820.29) feet to an iron pin set at the northeast corner of said "cemetery lot";

thence with the north line of said "cemetery lot", North eighty-seven degrees fifty-four minutes thirty-one seconds ($87^{\circ}54'31''$) West for a distance of ten and $95/100$ (10.95) feet to an iron pin set in the east line of Jeremy Woods Phase One, Section Two as recorded in Plat Cabinet 30, Pages 149A-150B of the Plat Records of Greene County, Ohio;

thence with the east line of said Jeremy Woods Phase One, Section Two, North one degrees thirty-six minutes twelve seconds ($01^{\circ}36'12''$) East for a distance of five hundred forty-two and $38/100$ (542.38) feet to an iron pin set in the north line of Sarah's Way (50 feet wide) as recorded in said Jeremy Woods Phase One, Section Two;

thence with a new division line for the following three (3) courses, North forty-eight degrees fifty-nine minutes forty-six seconds ($48^{\circ}59'46''$) East for a distance of one hundred ten and $19/100$ (110.19) feet to an iron pin set;

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thence North seventy-seven degrees thirty-one minutes fifty-five seconds (77°31'55") East for a distance of two hundred two and 32/100 (202.32) feet to an iron pin set;

thence North twenty-two degrees thirty-five minutes thirty-nine seconds (22°35'39") East for a distance of two hundred ninety-two and 63/100 (292.63) feet to a 0.25 inch diameter magnetic nail set in the centerline of Wagner Road and in the south line of land conveyed to Larry E. & Hazel D. Hartsock by deed recorded in Volume 527, Page 818 of the Deed Records of Greene County, Ohio;

thence with the centerline of Wagner Road and the south line of said Hartsock land, South sixty-seven degrees twenty-four minutes twenty seconds (67°24'20") East for a distance of sixty-one and 31/100 (61.31) feet to a 0.25 inch diameter magnetic nail set at an angle point in said Road and said south line;

thence still with the centerline of Wagner Road and the south line of said Hartsock land and its eastwardly extension said extension being the south line of land conveyed to Shyam L. & Rajendra K. Aggarwal by deed recorded in Volume 556, Page 530 of the Deed Records of Greene County, Ohio and the south line of said Rion land, South fifty-seven degrees thirteen minutes nine seconds (57°13'09") East for a distance of eight hundred ninety-one and 02/100 (891.02) feet to the point of beginning, containing thirty-one and 143/1000 (31.143) acres, more or less, subject, however to all covenants, conditions, restrictions, reservations and easements of record pertaining to the above described tract of land.

NOTES:

The above description was prepared from the results of a field survey performed by Cosler Engineering in April, 1996. Iron pins referred to as set are 0.63 inch diameter steel 30 inches in length with a yellow plastic cap stamped "COSLER 6393".

The above described tract of land is part of that land conveyed to M. E. Fisher Enterprises, Inc. by deed recorded in Volume 648, Page 856 in the Official Records of Greene County, Ohio.



Cosler Engineering

Civil Engineering • Land Surveying

3183D Beaver Vu Drive
Beavercreek, Ohio 45434
(937) 426-9913
Fax (937) 426-3390

Description of 19.108 Acre Tract
"Wagner Hill, Section One (29 lots)"
for
Kingswood III Company

January 7, 1997

Located in Section 10, Town 2, Range 6, Sugarcreek Township, Greene County, State of Ohio,
and being tract of land described as follows:

Beginning in the centerline of Wagner Road and in the south line of land conveyed to James P. Rion by deed recorded in Volume 883, Page 420 of the Official Records of Greene County, Ohio, said point of beginning also being located North fifty-seven degrees thirteen minutes nine seconds ($57^{\circ}13'09''$) West and a distance of four hundred seven and $53/100$ (407.53) feet from a railroad spike found at the northwest corner of land conveyed to Ronald L. Bryant by deed recorded in Volume 178, Page 401 of the Official Records of Greene County, Ohio;

thence with a new division line for the following five (5) courses, South thirty-two degrees fifty-one minutes nine seconds ($32^{\circ}51'09''$) West for a distance of two hundred twenty-four and $37/100$ (224.37) feet;

thence South fifty-seven degrees eight minutes fifty-one seconds ($57^{\circ}08'51''$) East for a distance of forty-five and $00/100$ (45.00) feet;

thence South thirty-two degrees fifty-one minutes nine seconds ($32^{\circ}51'09''$) West for a distance of two hundred nine and $20/100$ (209.20) feet;

thence South twenty-three degrees fifty-eight minutes twenty seconds ($23^{\circ}58'20''$) East for a distance of two hundred twenty-seven and $04/100$ (227.04) feet;

thence South nineteen degrees thirteen minutes twenty-two seconds ($19^{\circ}13'22''$) East for a distance of two hundred sixty-seven and $77/100$ (267.77) feet to the west line of land conveyed to Souhad M. Shtayyeh by deed recorded in Volume 439, Page 449 of the Official Records of Greene County, Ohio;

thence with the west line of said Shtayyeh land, South twenty-nine degrees forty-seven minutes eleven seconds ($29^{\circ}47'11''$) West for a distance of one hundred fifty-four and $65/100$ (154.65) feet;

thence with a new division line for the following for the following four (4) courses, South eighty-six degrees fifty-eight minutes fifty-seven seconds ($86^{\circ}58'57''$) West for a distance of five hundred twenty-six and $68/100$ (526.68) feet;

thence North eighty-eight degrees fifty-eight minutes forty-one seconds ($88^{\circ}58'41''$) West for a distance of fifty and $00/100$ (50.00) feet;

thence North one degrees one minutes nineteen seconds ($01^{\circ}01'19''$) East for a distance of seventy-eight and $35/100$ (78.35) feet;

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thence North eighty-eight degrees fifty-eight minutes forty-one seconds (88°58'41") West for a distance of one hundred ninety-seven and 14/100 (197.14) feet to the east line of a "cemetery lot";

thence with the east line of said "cemetery lot", North one degrees one minutes nineteen seconds (01°01'19") East for a distance of two hundred ninety-one and 41/100 (291.41) feet to an iron pin set at the northeast corner of said "cemetery lot";

thence with the north line of said "cemetery lot", North eighty-seven degrees fifty-four minutes thirty-one seconds (87°54'31") West for a distance of ten and 95/100 (10.95) feet to an iron pin set in the east line of Jeremy Woods Phase One, Section Two as recorded in Plat Cabinet 30, Pages 149A-150B of the Plat Records of Greene County, Ohio;

thence with the east line of said Jeremy Woods Phase One, Section Two, North one degrees thirty-six minutes twelve seconds (01°36'12") East for a distance of five hundred thirty-five and 77/100 (535.77) feet;

thence North forty-eight degrees fifty-nine minutes forty-six seconds (48°59'46") East for a distance of one hundred ten and 19/100 (110.19) feet to an iron pin set;

thence North seventy-seven degrees thirty-one minutes fifty-five seconds (77°31'55") East for a distance of two hundred two and 32/100 (202.32) feet to an iron pin set;

thence North twenty-two degrees thirty-five minutes thirty-nine seconds (22°35'39") East for a distance of two hundred ninety-two and 63/100 (292.63) feet to a MAG nail set in the centerline of Wagner Road and in the south line of land conveyed to Larry E. & Hazel D. Hartsock by deed recorded in Volume 527, Page 818 of the Deed Records of Greene County, Ohio;

thence with the centerline of Wagner Road and the south line of said Hartsock land and its eastwardly extension, said extension being the south line of said Rion land, South sixty-seven degrees twenty-four minutes twenty seconds (67°24'20") East for a distance of sixty-one and 31/100 (61.31) feet to a MAG nail set at an angle point in said centerline and in said south line;

thence still with the centerline of Wagner Road and the south line of said Hartsock land and its eastwardly extension, said extension being the south lines of land conveyed to Shyam L. & Rajendra K. Aggarwal by deed recorded in Volume 556, Page 530 of the Deed Records of Greene County, Ohio and of said Rion land, South fifty-seven degrees thirteen minutes nine seconds (57°13'09") East for a distance of four hundred eighty-three and 49/100 (483.49) feet to the point of beginning, containing nineteen and 109/1000 (19.109) acres, more or less, subject, however to all covenants, conditions, restrictions, reservations and easements of record pertaining to the above described tract of land.

NOTES:

The above description was prepared from the results of a field survey made by Mitchell W. Cosler, Ohio Registered Surveyor No. 6393, in April, 1996. Iron pins referred to as set are 0.63 inch diameter steel thirty (30) inches in length with a yellow plastic cap stamped "COSLER 6393", set flush with the ground, unless otherwise described. Magnetic nails referred to as set are 0.25 inch diameter chrome two (2) inches in length with a 0.56 inch diameter head stamped "MAG". Bearings used are based on an assumed azimuth and are for purposes of angular

measurement only.

The above described tract is 10.113 acres out of a 10.113 acre tract conveyed to Kingswood III Company by deed recorded in Volume 1010, Page 322 and 8.995 acres out of a 21.030 acre tract conveyed to Kingswood III Company by deed recorded in Volume 1010, Page 324 both of the Official Records of Greene County, Ohio.

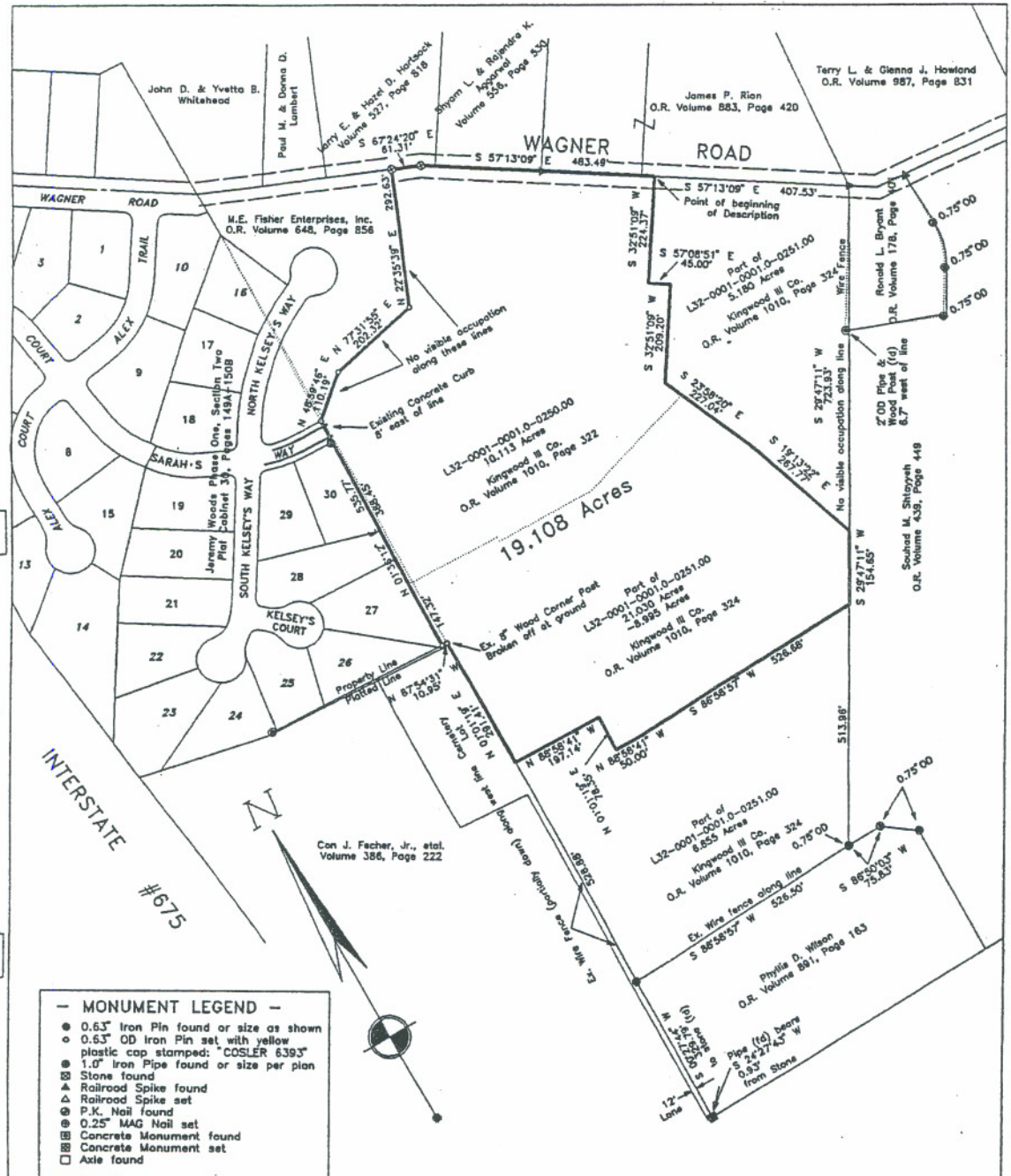
By: Mitchell W. Cosler
Mitchell W. Cosler, Ohio Registered Surveyor No. 6393

File: pen-c:\My Documents\Descriptions\2366pos1.doc



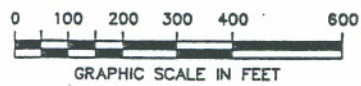
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VOL 1078FC802



- MONUMENT LEGEND**
- 0.63" Iron Pin found or size as shown
 - 0.63" OD Iron Pin set with yellow plastic cap stamped: "COSLER 6393"
 - 1.0" Iron Pipe found or size per plan
 - ⊠ Stone found
 - ▲ Railroad Spike found
 - △ Railroad Spike set
 - ⊙ P.K. Nail found
 - ⊙ 0.25" MAG Nail set
 - ⊠ Concrete Monument found
 - ⊠ Concrete Monument set
 - Axle found

NOTE: Bearings used are based on an assumed azimuth and are for purposes of angular measurement only.
 Monuments found or set are in good condition unless otherwise labeled.
 Deeds & Survey Records as noted on drawing are source data for this survey.



PEN-D:\2366\2366POS1.DWG

SURVEYED BY: Mitchell W. Cosler
 REG. SURVEYOR NO. 6393
 APPROVED GREENE COUNTY ENGINEER
 By _____ Date _____
 APPROVED BY: _____
 ZONING _____ DATE _____
 RPOC, CITY, OR VILLAGE _____ DATE _____



GRANTOR Kingswood III Co.
 GRANTEE _____
 LOCATION
 Section 10 Town 2 Range 6
 or Survey No. _____
SUGARCREEK TOWNSHIP,
 GREENE COUNTY, OHIO
 DATE JANUARY 7, 1997