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JOE D. PEGG  
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DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS AND ASSESSMENTS

WHISPERING HILLS

For Recorded Plat, See Plat Book **103**, Page **20**.

Montgomery County Plat Records

THIS INSTRUMENT PREPARED BY:  
Robert L. Deddens  
Attorney at Law  
367 West Second Street  
Dayton, Ohio 45402

*copy*

- 77-441A01 -

6/20/77

## DECLARATION

OF

### COVENANTS, CONDITIONS, RESTRICTIONS AND ASSESSMENTS

THIS IS A DECLARATION creating covenants, conditions, restrictions and a private plan of assessments, made on the date hereinafter set forth, by THE WHISPERING HILLS PARTNERSHIP, an Ohio Co-partnership, with offices in the City of Centerville, Ohio, hereinafter referred to as the "DECLARANT",

#### Recitals

A. The Declarant is the owner of the (following described) real estate situated in the City of Centerville, Montgomery County, Ohio and described in Exhibit "A" attached hereto and made a part hereof (hereinafter called "the Tract"), and has heretofore caused a substantial portion of the Tract to be platted into Lots and Reserves described as follows:

Lots 1 through 45, inclusive, and  
Reserves A through D, inclusive,  
on the Plat of Whispering Hills, Section  
One, as recorded in Plat Book 103,  
Page 20, in the Plat Records of Montgomery  
County, Ohio.

These Lots and these Reserves are hereinafter collectively called "the Property". Reserves A through D, inclusive, are hereinafter called the "Common Area". This is the Declaration referred to in the Plat of Whispering Hills aforesaid.

B. The Declarant intends to create on the Property a single-family type residential community, with open spaces, walkways, a pond, private courts and driveways, and garden areas, and other common facilities for the benefit of said community. Declarant's general plan is to construct such amenities on the Common Area, and to prepare the remaining portion of the Property as buildable lots for sale to builders for the construction of detached, single family dwelling thereon.

C. The Declarant desires to establish a plan of covenants, conditions, restrictions and private assessments to provide for the preservation of the values and amenities in the Property. To this end, the Declarant is making this Declaration, and has caused to be created an Ohio not-for-profit corporation named the "Whispering Hills Association, Inc." (which corporation and any successor thereto is hereinafter called the "Association"), to own the Common Area and to administer and enforce the provisions hereof.

#### Declarations

NOW, THEREFORE, the Declarant hereby declares that all of the Property, and all of the Tract added to this plan as hereinafter provided, shall be held, sold and conveyed subject to the

following easements, restrictions, covenants, conditions and assessments, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions, conditions, and assessments, unless otherwise specifically limited herein, shall run with the land (i.e., the Property), and all additions to the plan from the Tract, and shall be binding on all parties having or acquiring any right, title or interest in the property or any part thereof and additions thereto, and shall inure to the benefit of each owner of any part thereof.

## ARTICLE I

### THE ASSOCIATION

Section 1. Organization. The Association was formed as an Ohio corporation not-for-profit pursuant to the provisions of Chapter 1702 of the Revised Code of Ohio, by the filing of Articles of Incorporation, hereinafter called the "Articles", with the Secretary of State of Ohio. Additionally, the Association duly adopted on the date of its incorporation a set of administrative operating rules called the "Code of Regulations". The Articles and Code of Regulations are hereby incorporated herein by references. These two documents, together with this Declaration, are hereinafter called the "organization documents".

Section 2. Membership. Every present and future owner of a Lot that is subjected hereto is hereby declared to be a member of the Association. Membership is appurtenant to and shall not be separated from ownership of a Lot. Each owner, by acceptance of a deed or other conveyance of a Lot, thereby becomes a member of the Association. When more than one person or entity is an owner of a Lot, all such persons and entities shall be members. When the owner of an interest in a Lot ceases to own an interest therein, that person or entity is no longer a member. No owner of any interest in any Lot shall have any right or power to disclaim, terminate or withdraw from his, her or its membership in the Association or any of his, her or its obligations as such member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such owner shall be of any force or effect for any purpose.

Section 3. Voting Rights. Each member of the Association is entitled to the number of votes in the affairs of the Association that equals the number of Lots owned by that member. If any Lot is owned by more than one owner, each such member has a fraction of a vote equal to his, her or its undivided interest in that Lot.

Section 4. Declarant's Rights. Notwithstanding the provisions of Section 3 of this Article, the powers, rights, duties and functions of the Association shall be exercised by a Board of Trustees selected by the Declarant until such time as a special meeting of the members is called by the Trustees and held within one hundred eighty (180) days after the sale of all Lots (on the Property and any additions thereto from the Tract) by the Declarant, or until Declarant waives such requirement by calling a special meeting of members for the purpose of relinquishing such rights, whichever shall occur first.

Section 5. Board of Trustees. Except as expressly otherwise provided by the organization documents, or as otherwise required by law, all power and authority to act on behalf of the Association and to establish its policies shall be vested in its Board

of Trustees and its officers under the direction of said Board, and shall not be subject to any requirement of approval on the part of its members.

Section 6. Authority of the Association. Subject to the specific limitations set forth in the organization documents, the Association shall be responsible for and have authority to manage, maintain, repair, replace, alter and improve the Common Area, assess and collect funds for the payment thereof, and do all things and exercise all rights provided by law or the organization documents. Notwithstanding the foregoing, so long as the members of the Board of Trustees are those who have been selected by the Declarant and its successors or assigns, the Association shall not enter into any executory agreement by the terms of which performance will extend beyond a one-year period of time, or, if it will, that agreement must be terminable by the Association at any time after one year on thirty (30) days' notice in writing.

The Association may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority to a managing agent may be evidenced by one or more management agreements subject to the further limitations that (a) the management agreement will be terminable by the Association for cause on thirty (30) days written notice thereof, and (b) no such agreement may exceed a term of one year, renewable by agreement of the parties for successive one-year periods. Subject to the foregoing, nothing contained herein shall preclude the Declarant, its successors or assigns, or any other entity designated by Declarant to act as managing agent, from being employed as managing agent.

## ARTICLE II

### CONVEYANCE OF COMMON AREA

The Declarant agrees that, prior to the time it conveys any Lot to a third party for purposes of constructing a single-family dwelling thereon, it will cause the Common Area to be conveyed to the Association free and clear of all liens and encumbrances except general real estate taxes not then due and payable.

## ARTICLE III

### COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, hereby covenants (subject to the provisions of Section 8(c) of this Article), and each member by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, and (3) special individual Lot assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest and costs, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, (if permitted by law) shall also be the personal obligation

of the member or members who were the owners of that Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to members' successors in title unless expressly assumed by them, but the lien shall continue unaffected, except as otherwise provided herein.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, welfare and recreation of the residents in the Property and for the improvement and maintenance of the Common Area.

**Section 3. Operating Assessments.** Such assessments shall be used to pay for:

(a) Maintenance and repair of the Common Area, including but not limited to utility facilities, lawns, shrubs, trees, recreational facilities, the pond, and all garden areas and walkways; but excluding the maintenance and repair of the pavements described in Section 6 of this Article.

(b) Taxes and local government assessments on the Common Area.

(c) Water, sewer, lighting, telephone or any other utility service as may be provided to the Common Area.

(d) Acquisition of furnishings and equipment for the Common Area.

(e) Insurance premiums for insurance provided to the Association as required hereinafter in Article VI.

(f) Costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, and postage.

(g) A general operating reserve to assure availability of funds for these purposes.

(h) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board of Trustees of the Association for the operation and protection of the Common Area, for the benefit of lot owners, or for the enforcement of any restrictions.

**Section 4. Maximum Annual Operating Assessment.** Until January 1 of the year immediately following the conveyance of a deed for the first Lot improved with a completed residence to an owner thereof, the maximum annual assessment shall be \$300.00.

(a) From and after January 1 of the year immediately following said conveyance of said first Lot, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following said conveyance of said first Lot, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Trustees may fix the annual assessment at an amount not in excess of the maximum herein provided for.

**Section 5. Special Assessments for Capital Improvements.**  
In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only and applicable to all Lots only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal property related thereto, but excluding the vehicular surfaces referred to in Section 6 of this Article; provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the membership voting in person or by proxy at a meeting duly called for this purpose.

**Section 6. Special Individual Lot Assessments.** In addition to the annual and special assessments authorized above, the Association may levy in an assessment year, a special assessment applicable to that year only, but limited to a specific Lot or group of Lots as set forth hereinafter, only for the purpose of defraying in whole or in part, the cost of any repair or replacement of a vehicular surface situated on the Common Area and serving vehicular ingress and egress to and from garages on the Lot or Lots, as the case may be, and including parking areas.

(a) The owner(s) of a Lot served by a driveway situated in whole or in part on the Common Area (and where such driveway serves no other Lot) shall be responsible for maintaining and for the cost of maintaining said driveway in good condition, including any repair or replacement thereof.

(b) The owner(s) of those Lots served by a common driveway or a vehicular court (including parking areas) situated in whole or in part on the Common Area shall be responsible on a pro rata basis for maintaining and for the cost of maintaining said driveway or vehicular court in good condition including any repair or replacement thereof.

If the Association determines that any such driveway or vehicular court is in need of repair or replacement, it shall give written notice thereof to the owner(s) of the Lots served thereby, and, if the condition is not remedied within 120 days from the date of such notice, it may levy an assessment as aforesaid, provided that any such assessment pursuant to subsection (b) hereof shall have the consent of a majority of the votes of the members affected by such assessment voting in person or by proxy at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this Section 6 shall be given to all affected members not less than 15 days in advance of the meeting.

**Section 7. Wreckful Acts of ...** Notwithstanding anything to the contrary herein, if the Association shall

incur any cost of expense for or on account of any items of maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission of any owner, such cost of expense shall be borne by such owner and not by the Association, and if paid by the Association shall be paid or reimbursed to the Association by such owner as a special assessment forthwith upon the Association's demand.

Section 8. Payment of Annual Operating Assessment.

(a) The annual operating assessment shall be payable in advance, in equal monthly or quarterly installments, provided, that nothing contained herein shall prohibit any member from prepaying assessments annually, or in semi-annual installments. The due dates of any such installments shall be established by the Board of Trustees and, unless otherwise provided, the Association shall collect on or before the first day of each month or of each quarter from the member or members who own the Lot one-twelfth (1/12th) or one-fourth (1/4th) of the annual operating assessment for that Lot as the case may be. In the event that any such installment is not paid, in full, within thirty (30) days after the same becomes due, the entire assessment shall thereupon become due and payable.

(b) If at any time after the Declarant relinquishes control of the Board of Trustees, the amounts so collected are insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board of Trustees among the Lots in equal shares. Similarly, if after such conveyance assessments collected during any calendar year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be allocated and paid into the reserve fund applicable to that type of expense, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to members; provided, however, if the Board of Trustees should determine that the retention of any assessments collected in excess of ordinary and necessary expenses would disqualify the Association from tax-exempt status under any applicable tax laws, or would subject any proceeds to taxation, the Board of Trustees, in its discretion, may refund all or any portion of such excess among the members owning those Lots at the time of such distribution in the same proportions as the same were made with respect to the Lots of those members, provided, further, that any excess shall be so divided among only those who are Lot owners at the time of distribution without regard to the question of who was the owner at the time of assessment or collection. Alternatively, any such excess may be applied by the Board of Trustees in reduction of the next due assessments.

(c) Notwithstanding the other provisions of this Section 8, the annual operating assessment shall not commence for each Lot until after acceptance by the owner or owners thereof of a deed to such Lot after improved with a completed residence by a builder (such assessments shall not be payable from the builders for such owners); further, the Declarant shall have no obligation to pay an annual operating assessment for the Lots owned by it except that it shall pay to the Association a monthly or quarterly amount equal to the difference between the actual operating expenses of the Association and the aggregate of the monthly or quarterly assessments paid by all owners of Lots improved with completed residences, and Declarant's obligation to pay such monthly or quarterly amount shall cease when it relinquishes control of the Board of Trustees.

**Section 9. Amount and Payment of Special Assessments.** The Association's Board of Trustees may levy an assessment against an individual Lot, or Lots, to reimburse the Association for those costs incurred in connection with that Lot or Lots, pursuant to the provisions of Sections 5, 6 and 7 of this Article. Any such assessment shall become due and payable on such date or dates as the Board of Trustees determine and give written notice to the member or members subject thereto.

**Section 10. Effective Date of Assessments.** Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board of Trustees to the member subject thereto at least fifteen (15) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a member's Lot shall constitute notice to that member, unless the member has delivered written notice to the Board of Trustees of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that member.

**Section 11. Effect of Nonpayment of Assessments; Remedies of the Association.**

(a) If any installment of any assessment is not paid within thirty (30) days after the same has become due, the entire unpaid balance of the assessment for that calendar year shall, at the option of the Board of Trustees, without demand or notice, forthwith become due and payable, and bear interest thereafter at the greater of a rate of eight percent (8%) per annum or the prime rate then being charged by national banks in Dayton, Ohio.

(b) Annual operating and both types of special assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association upon the Lot against which each such assessment is made.

(c) At any time after an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for the entire unpaid balance of that assessment, interest and costs, may be filed with the Recorder of the county in which the Lot is situated, pursuant to authorization given by the Board of Trustees. The certificate shall contain a description of the Lot against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments, and shall be signed by the president or other officer of the Association designated by the Board of Trustees.

(d) Any member who believes that an assessment chargeable to his, her or its Lot (for which a certificate of lien has been filed by the Association) has been improperly charged against that Lot, may bring an action in the Court of Common Pleas in the county in which the Lot is situated for the discharge of that lien. In any such action, if it is finally determined that a portion of the assessment has been improperly charged to that Lot, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.



(e) Each such assessment together with interest and costs shall also be the joint and several personal obligation of the members who owned that Lot at the time when the assessment fell due. The obligation for delinquent assessments, interest, and costs shall not be the personal obligation of that member or members successors in title unless expressly assumed by the successor, provided, however, that the right of the Association to a lien against that Lot, or to foreclose any lien thereon for those delinquent assessments, interest, and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(f) The Association, as authorized by the Board of Trustees, may file a lien to secure payment of the entire unpaid balance of a delinquent assessment, interest, and costs; or bring an action at law against the member or members personally obligated to pay the same, or an action to foreclose the lien, or both. In any such foreclosure action, the member or members affected shall be required to pay a reasonable rental for that Lot during the pendency of such action, and the Association as Plaintiff in any such action shall be entitled to become a purchaser at the foreclosure. In any such action, interest and costs of such action shall be added to the amount of any such assessment, to the extent permitted by Ohio law.

Section 12. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subject and subordinate to the lien of any duly executed and recorded first mortgage, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots, including the mortgaged Lot.

Section 13. Certificate Regarding Assessments. The Association shall, upon demand, for a reasonable charge, furnish a certificate signed by the President, Secretary, or other designated officer of the Association, setting forth whether the assessments on a specified Lot have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 14. No Waiver. No owner may exempt himself from liability for the assessments imposed by this Article by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot or otherwise.

Section 15. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be given to all members not less than fifteen (15) days in advance of the meeting by mailing a copy of such notice, postage prepaid, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. At the first

such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 16. Uniform Rate of Assessment. Both annual and special assessments pursuant to Sections 4 and 5 shall be fixed at a uniform rate for all Lots.

#### ARTICLE IV

#### RESTRICTIONS

Section 1. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change of alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures to topography by the Board of Trustees of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Use. The Property shall be used for residential purposes and purposes incident thereto and for no other purpose except for purposes reserved to Declarants herein and except as herein specifically provided otherwise. It shall be expressly permissible for Declarant and its successors and assigns to maintain during the period of sale of Lots, upon those portions of the Property as they deem desirable, those facilities they deem reasonably required, convenient or incidental to the construction and sale of homes, including but without limiting the generality of the foregoing, a business office, storage area, construction yard, signs, models, sales office and parking areas.

Section 3. Hotel and Transient Uses; Leases. No lot or any part thereof shall be rented or used for transient or hotel purposes, which is defined as: (a) rental for any period less than thirty (30) days, or (b) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid services, the furnishing of laundry and linen, busboy service, and like services, or (c) rental to roomers or boarders, that is, rental to one or more persons of a portion of a dwelling unit only. Every lease of a Lot or any part thereof shall be in writing, and shall provide that the terms of the lease and of the tenancy shall be subject in all respects to the terms of the organization documents, and any failure to comply therewith shall be a default under the lease.

**Section 4. Common Area Prohibited Uses.**

(a) No part of the Common Area shall be used by anyone other than the Association for the storage or maintenance of any signs, goods, machinery, material or other item or device, nor shall clothes, sheets, blankets, laundry or other articles of any kind be hung out or exposed on any part thereof visible from the outside, nor shall there be playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Area, except in accordance with rules and regulations therefor adopted from time to time by the Board of Trustees.

(b) No use shall be made of a drive apron area that would prohibit free and unimpeded ingress and egress by a member and his, her, or its motor vehicles to and from his, her, or its garage and the drives of the Common Area.

**Section 5. Vehicles.** The parking of motor vehicles on the Common Area shall be subject to such rules and regulations as the Board of Trustees may from time to time establish, which may include the assignment of exclusive parking spaces to each member. No boats, trailers, trucks or other like vehicles shall be permitted to park on the Common Area or visible part of any Lot, nor shall mechanical work on vehicles be permitted thereon.

**Section 6. Nuisances.**

(a) No noxious or offensive activity shall be carried on upon any Lot or the Common Area nor shall anything be done thereon which may in any way or for any purpose endanger the health or unreasonably disturb the occupant of a Lot or interfere with the full use of a Lot.

(b) The parking of inoperative or unlicensed motor vehicles on the Common Area in violation hereof or of rules and regulations promulgated pursuant hereto, shall, per se, constitute a nuisance, and the Board of Trustees shall have the explicit authority to remove any such vehicle, at the cost of the owner thereof, at any time twenty-four (24) hours or more after a notice has been placed thereon demanding its removal.

**Section 7. Building on Easements.** Within the easements for the installation and maintenance of utilities and drainage facilities reserved pursuant to the provisions hereof, no structure, planting, or other material (except such as shall have been constructed by the Declarant) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

**Section 8. Structural Integrity.** Nothing shall be done on any Lot or in, on or to the Common Area which will impair or change the structural integrity of any improvement.

**Section 9. Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other

outbuilding shall be used on any Lot or on the Common Area at any time as a residence either temporarily or permanently.

Section 10. Signs. No sign of any kind shall be displayed to the public view on the Property, except (a) on the Common Area, provided they are approved in accordance with the provisions of Section 1 hereof, and signs used by Declarant and builders to advertise Lots for sale during the construction and sales period, and (b) on a Lot, one professional sign of no more than five (5) square feet advertising of a Lot for sale or rent, and signs used by Declarant advertising Lots for sale during the construction and sales period.

Section 11. Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained on a Lot, provided that (a) no such animal shall be permitted in any portion of the Common Area except on a leash maintained by a responsible person, (b) the permitting of attended leashed animals on the Common Area shall be subject to such rules and regulations as the Association's Board of Trustees may from time to time establish, and (c) the right of a member to maintain an animal on a Lot shall be subject to termination if the Board of Trustees, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance.

Section 12. Garbage and Refuse Disposal. No Lot nor the Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection.

Section 13. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 14. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

Section 15. Clothes Lines; Offensive Devices. No exterior clothes line or hanging device nor noxious or offensive device shall be permitted on the Common Area or the exterior visible portions of a Lot.

Section 16. Antennas. No TV, CB, or ham radio antennas or similar devices shall be permitted on the exterior portion of improvements on a Lot, except with the written permission of the Board of Trustees or, if delegated, its architectural committee.

Section 17. Exclusive Use. Except as otherwise provided herein, the Common Area shall be used for the sole and exclusive use, benefit and enjoyment of members for the following purposes and no others: streets, sidewalks, footways, parking areas, drives, common areas, maintenance areas, utility lines, recreation areas, playgrounds, athletic areas, picnic areas, and like facilities including buildings, structures, and all personal properties incidental thereto, serving the Property. The Trustees of the Association

may establish and enforce reasonable rules and regulations (including charges) as to the use of the Common Area, and the same, as promulgated from time to time, shall be enforceable in the same manner and to the same extent as other restrictions herein.

Section 18. Open Fires. No open fires shall be permitted on the Common Area.

Section 19. Replacements; Subdividing. Any building erected to replace a building on the Property shall be of new construction and of comparable size, design and construction to that replaced. There shall not be constructed or maintained on any portion of the Common Area, not at the time of subjection hereto devoted to the residential buildings, anything other than facilities for the common use of all Lots. Without the approval of members of the association exercising not less than seventy-five (75%) percent of the voting power of members, and the approval of all holders of first mortgage liens on the Lots affected, neither the Association nor any member or members shall subdivide any Lot or the Common Area.

Section 20. Conveyances. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 21. Discrimination. No action shall be taken at any time by the Association or its Board of Trustees which would discriminate in any manner against any member or members in favor of another.

Section 22. Arbitration. In the event of any dispute between members as to the application of these restrictions or any rule or regulation to any particular circumstance, the party aggrieved shall submit a complaint in writing to the Board of Trustees specifying the dispute. The Board of Trustees shall set a time, date and place for a hearing thereon within twenty (20) days thereafter, and give written notice to each party thereof no less than three (3) days in advance. The Board of Trustees shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

Section 23. Trees and Railroad Buffer. No sound hardwood trees shall be removed from any Lot or Reserve without written approval of the Association acting through its Board of Directors or duly appointed committee, provided that this provision shall not apply to any Lots owned by the Declarant or any builder prior to completion of all residences on the Lot and sale thereof or use as a rental home by the same.

Reserve D shall at all times remain and be preserved in its natural state as open space to serve as a buffer between the railroad and the homes on Millbank Avenue. No trees shall be cleared from Reserve D, except for woodland management purposes, and no recreational facilities shall be installed therein.

Section 24. Utility Service. Each owner shall install underground, all electric, telephone and cable television service lines to each residence and accessory building.

#### ARTICLE V

#### GRANTS AND RESERVATIONS OF EASEMENTS

Section 1. Easements for Repair, Maintenance and Restoration. The Association shall have a perpetual right of access and an easement

to, over and through all of the Property, including each Lot from time to time, during reasonable hours, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair, restoration and/or servicing of any items, Lots (including the dwellings thereon), things, or areas of or on the Property, including the removal, correction or abatement of any violations or breach or any attempted violation or breach of the covenants and restrictions herein.

Section 2. Easement for Construction. There is hereby reserved to Declarant, its successors and assigns, a right and easement to enter upon the Common Area to do all things necessary to complete construction and to perform construction work necessary to develop the balance of the Tract. The Declarant further reserves, for itself and any builder, the right for two (2) years after the sale of the Lot by the Declarant or the builder to an owner to enter upon the Lot to correct grade and drainage patterns for the benefit of the Tract as a whole, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.

Section 3. Easement for Access and Use of Common Area.

(a) A non-exclusive perpetual easement is hereby reserved to Declarant, its successors and assigns, for access to future owners of portions of the Tract, for access to and use of roadways, sidewalks, drives and walkways that may from time to time exist upon the Property, and the right to cross the Common Area that might from time to time exist upon the Property for pedestrian and vehicular travel, as might be appropriate, to and from public streets.

(b) Each member and the occupants of a dwelling unit on the Property shall have a non-exclusive perpetual easement over and on all sidewalks, drives and roadways or any other portion of the Property required for ingress or egress, both vehicular and pedestrian, to his, her or its Lot and to and from public streets, and to use of the Common Area.

Section 4. Easements for Utilities.

(a) There is hereby created upon, over and under all of the Common Area, easements to the Association and to the utility company involved, and reserved hereby to Declarant, for ingress and egress to, and the installation, replacing, repairing, and maintaining of all utilities, including, but not limited to water, sewers, gas, telephone, electricity, and cable television. By this easement it shall be expressly permissible for the providing utility company to construct and maintain the necessary poles (temporary) and equipment, wires, circuits and conduits on, above, across and under the Common Area, so long as such poles, equipment, wires, circuits and conduits do not unreasonably interfere with the use and enjoyment of any Lot or the Common Area. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Trustees shall have the right to grant such easement without conflicting with the terms hereof.

(b) There is hereby reserved to Declarant, its successors and assigns, a non-exclusive right and easement over,

on, and under the Common Area, to use, tie into and extend all existing utility lines in order to serve other areas of the Tract hereafter developed.

Section 5. Easement for Services. A perpetual non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, municipal garbage and trash removal personnel, and all similar persons, and to the local governmental authorities, but not the public in general, to enter upon the Common Area in the performance of their duties.

Section 6. Power of Authority. Each member, by acceptance of a deed to a Lot, hereby irrevocably appoints Declarant, his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such member, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of Declarant's authorized representatives, to further establish or effectuate the foregoing easements. This power is for the benefit of Declarant's each and every member, the Association, and the real estate to which it is applicable, runs with the land, and is coupled with an interest.

Section 7. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement on the Property.

#### ARTICLE VI

#### INSURANCE

Section 1. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association, with such limits as the Trustees may determine, but no less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence. This insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to developments similar in construction, location and use. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a member because of negligent acts of the Association or other members.

Section 2. Fire and Extended Coverage Insurance. The Board of Trustees shall have the authority to obtain insurance for all insurable buildings, structures or other improvements now or hereafter constituting a part of the Common Area, against loss or damage by fire, lightning and such perils as are comprehended within the term "extended coverage", vandalism, malicious mischief, windstorm and water damages in an amount no less than the replacement cost thereof (exclusive of land, foundation excavation and other items normally excluded from coverage), less a reasonable deductible. This insurance shall be written with a fire insurance company authorized to write such insurance in the State of Ohio, having a financial rating by Best's Insurance Reports of BBB+ or better.

Section 3. Insufficient Insurance. In the event the improvements to be insured pursuant to Section 2, above, 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 to be performed by the Association, the, such repairs, restoration or reconstruction of the improvements so damaged or destroyed shall be undertaken by the Association with the cost thereof paid by special assessment, Article II, Section 5: ...

#### ARTICLE VII

##### CONDEMNATION

In the event that by reason of the exercise by appropriate public authority of the right of eminent domain any portion of the Common Area is appropriated, the net proceeds received therefrom shall be prorated and distributed among the members in the same proportions as operating assessments are charged, subject to the right of any holder of a first mortgage to the portion of the proceeds applicable to the Lot mortgaged to such mortgagee.

#### ARTICLE VIII

##### ANNEXATION

Section 1. Annexation. Additional residential Lots and Common Areas within the Tract may be annexed to the Property by the execution and recording by Declarant, its successors and assigns, of a Supplemental Declaration describing the additional land to be subjected to this plan and reciting that the provisions hereof shall be applicable thereto and to the owners thereof.

Section 2. Effects of Annexation. Upon subjection of additional portions of the Tract to the terms hereof:

(a) The added portion shall thereafter be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if that added portion had been provided herein as constituting part of the Property, that is, the rights, easements, covenants, restrictions and assessment plan set forth herein shall run with and bind the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to the Property;

(b) The owner or owners of the added portion shall thereupon become members, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other members; and

(c) In all other respects, all of the provisions of this Declaration shall include and apply to all additional portions of the Tract included in any such Supplemental Declaration, and to the owners, mortgagees and lessees thereof, with equal meaning and of like force and effect.

#### ARTICLE IX

##### GENERAL PROVISIONS

Section 1. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges



created by this Declaration shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Property, and their respective heirs, executors, administrators, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless amended as hereinafter provided.

Section 2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant, the Association, or any member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any member to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, easement, reservation, lien or charge.

Section 3. Amendments. Except as hereinafter provided, this Declaration may be amended only with the approval of (a) members exercising not less than seventy-five percent (75%) of the voting power of members, and (b) if material to the rights of a mortgagee, the approval of all holders of first mortgage liens on Lots subject to assessment by the Association. Notwithstanding the foregoing, Declarant hereby reserves the right and power, and each member by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Lot and is irrevocable (except by Declarant), for a period of five years from the date hereof, to amend this Declaration and to execute any and all documents deemed necessary or desirable by Declarant to obtain financing from lending institutions in Montgomery County, Ohio.

Section 4. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 6. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned, the Declarant herein, has caused this instrument to be duly executed this 24 day of June, 1977.

Signed and acknowledged  
in the presence of

Carolyn M. Gice

Marianne Braker

THE WHISPERING HILLS PARTNERSHIP

By Dale R. Smith  
Partner, Dale R. Smith

By Scott H. Cappel  
Partner, Scott H. Cappel

Robert L. Deddens

By

James P. McConnaughey  
Partner  
James P. McConnaughey

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

On the 24 day of June, 1977, the foregoing  
instrument was acknowledged before me by Dale R. Smith,  
Partner, Scott H. Cappel, Partner, and James P.  
McConnaughey, Partner, of THE WHISPERING HILLS PARTNERSHIP.

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

Robert L. Deddens  
Notary Public



CODE OF REGULATIONS  
(BY-LAWS).

OF

WHISPERING HILLS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is WHISPERING HILLS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the corporation shall be located at such place in Montgomery County, Ohio, as the Board of Trustees may from time to time determine. Meetings of members and the Board of Trustees shall be held at such places within Montgomery County, Ohio, as may be designated by the Board of Trustees.

ARTICLE II

DEFINITIONS

All of the terms used herein shall have the same meanings as set forth in the Articles of Incorporation of the Association (the "Articles"), and in the Declaration described therein.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. Regular meetings of the members shall be held in the first calendar quarter of each year hereafter, on a date and at an hour established, from time to time, by the Trustees.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Trustees or upon written request of the members entitled to exercise one-fourth (1/4) of the voting power of members.

77-441B07

Section 3. Notice of Meetings. Written notice of each meeting of members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Upon the written request of the holder of any first mortgage lien on a Lot, mailed or delivered to the principal office of the Association, the aforesaid written notice of meetings of members shall be given to such lien holder, who shall have the right to designate a representative who shall be entitled to attend all such meetings.

Section 4. Quorum. The members present at any duly called and noticed meeting shall constitute a quorum for such meeting.

Section 5. Proxies. At all meetings of members each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his, her or its Lot.

Section 6. Voting Power. Except as otherwise provided in the Declaration, this Code of Regulations, the Articles of Incorporation, or by law, a majority of the voting power of members voting on any matter may be determined by the members at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts Rules of Order shall apply to the conduct of all meetings of members except as otherwise specifically provided herein or in the aforesaid documents. Any action that could be taken by members at a meeting by vote of a majority of the voting power of members present, may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of the voting power of members having not less than a majority of voting power of members.

#### ARTICLE IV

##### BOARD OF TRUSTEES: SELECTION: TERM OF OFFICE

Section 1. Initial Trustees. The Trustees shall initially be those named in the Articles, or substitutes

selected by Declarant, who shall serve until the meeting at the time specified in Article V of the Articles.

Section 2. Successor Trustees. At the meeting of members at which the Trustees selected by Declarant are to be replaced; the members, for terms commencing at that time, shall elect three Trustees, one each for a one, two and a three year term, and at each annual meeting thereafter, the members shall elect a Trustee for a term of three (3) years to replace the Trustee whose term then expires. From and after the time the members first elect Trustees, the members, by vote of those exercising a majority of the voting power of members, may change the number and terms of office of the Trustees.

Section 3. Removal. Excepting only Trustees appointed by Declarant, any Trustee may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a Trustee other than one elected by Declarant, that Trustee's successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of members, when a Trustee shall be elected to complete the term of such deceased, resigned or removed Trustee. Declarant shall have the sole right to select the successor of any Trustee selected by it who dies, resigns, or leaves office for any other reason.

Section 4. Compensation. Unless otherwise determined by the members at a meeting duly called and noticed for such purpose, no Trustee shall receive compensation for any service rendered to the Association as a Trustee. However, any Trustee may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 5. Action Taken Without a Meeting. The Board of Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

## ARTICLE V

### NOMINATION AND ELECTION OF TRUSTEES

Section 1. Nomination. Nomination for the election of Trustees to be elected by the members shall be made by a

Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and two or more members of the Association appointed by the Board of Trustees. The Nominating Committee shall make as many nominations for election to the Board of Trustees as it shall, in its discretion, determine, but no less than the number of vacancies that are to be filled. These nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Trustees by the members shall be by secret written ballot. At such elections, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles and the Declaration. The person or persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETINGS OF BOARD OF TRUSTEES

Section 1. Regular Meetings. Regular meetings of the Board of Trustees shall be held no less than quarterly, without notice, on such date and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Trustees shall be held when called by the president of the Board of Trustees, or by any two (2) Trustees, after not less than three (3) days notice to each Trustee.

Section 3. Quorum. A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act taken or decision made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall constitute a binding act or decision of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 1. Powers. The Board of Trustees shall exercise all powers and authority under the provisions of the Articles, this Code of Regulations, and the Declaration, that are not specifically and exclusively reserved to the membership by law or by

other provisions thereof, and without limiting the generality of the foregoing, shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law;
- (b) obtain insurance coverage no less than that required pursuant to the aforesaid documents;
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (d) repair, maintain and improve the Common Area and perform other maintenance as provided in the Declaration;
- (e) establish, enforce, levy and collect assessments as provided in the Declaration;
- (f) adopt and publish rules and regulations governing the use of the Common Area and the personal conduct of the members and their guests thereon;
- (g) suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association (such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for each infraction of published rules and regulations or of any provisions of the aforesaid documents);
- (h) declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees;
- (i) authorize the officers to enter into one or more management agreements with third parties in order to facilitate the efficient operation of the property subject to the Association's scope of authority (it shall be the primary purpose of such management agreements to provide for administration, management, repair and maintenance as provided in the Declaration, and

the receipt and disbursement of funds as may be authorized by the Board of Trustees. The terms of any management agreements shall be as determined by the Board of Trustees to be in the best interest of the Association, subject, in all respects, to the provisions of the aforesaid documents); and

- (j) to do all things and take all actions permitted to be taken by the aforesaid documents and by law, not specifically reserved thereby to others.

Section 2.      Duties. It shall be the duty of the Board of Trustees to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereto to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members representing one-fourth (1/4) or more of the voting power of members;
- (b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (i) fix the amount of assessments against each Lot as provided therein;
  - (ii) give written notice of each assessment to every lot owner subject thereto within the time limits set forth therein; and
  - (iii) foreclose the lien against any property for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the owner personally obligated to pay the same, or both:
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting



forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association, as provided in the Declaration;
- (f) cause all officers or employees having fiscal responsibilities to be bonded;
- (g) cause the property subject to the Association's scope of authority to be maintained within the scope of authority provided in the Declaration;
- (h) cause the restrictions created by the Declaration to be enforced; and
- (i) take all other actions required to comply with all requirements of law and the aforesaid documents.

#### ARTICLE VIII

##### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Trustees, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution establish.

Section 2. Selection and Term of Officers. The officers of the Association shall be selected by the Board of Trustees, from time to time, to serve until the Trustees select their successors.

Section 3. Special Appointments. The Trustees may elect such other officers as the affairs of the Association may require,

each of whom shall hold office for such period, have such authority, and perform such duties as the Trustees may, from time to time, determine.

Section 4. Resignation and Removal. Any officers may be removed from office with or without cause by the Trustees. Any officer may resign at any time giving written notice to the Trustees, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Duties. The duties of the officers shall be such duties as the Board of Trustees may from time to time determine. Unless the Board of Trustees otherwise determine, the duties of the officers shall be as follows:

- (a) President. The president shall preside at all meetings of the Board of Trustees, shall see that orders and resolutions of the Trustees are carried out, shall sign all leases, mortgages, deeds and other written instruments, and shall approve all checks and promissory notes.
- (b) Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Trustees.
- (c) Secretary. The secretary shall record the votes and keep the minutes and proceedings of the Trustees and of the members, serve notice of meetings of the Trustees and of the members, keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Trustees.
- (d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Trustees,

shall sign all checks and promissory notes of the Association, keep proper books of account, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its annual meeting, and deliver or mail a copy of each to each of the members. Additionally, any holder of a first mortgage lien who so requests in writing mailed or delivered to the Association at its principal office, shall be sent, by the Treasurer, within ninety (90) days following the end of the Association's fiscal year, a financial statement of the Association.

#### ARTICLE IX

##### COMMITTEES

The Trustees may appoint an Architectural Control Committee, as provided in the Declaration, and shall appoint a Nominating Committee, as provided in this Code of Regulations. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purpose.

#### ARTICLE X

##### FIDELITY BONDS

The Association shall obtain and maintain fidelity coverage insurance against dishonest acts on the part of managers, trustees, officers, employees, or volunteers responsible for handling funds, collected and held for the benefit of the members, which insurance names the Association as the named insured, and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. In connection with such coverage an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

#### ARTICLE XI

##### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during normal business hours, be subject to inspection

by any member and by the duly authorized representative of any holder of a first mortgage lien on a Lot. The Declaration, the Articles, the Code of Regulations and management agreements shall be available for inspection by any member or any such lienholder's representative at the principal office of the Association where copies may be purchased at reasonable cost. The books and records of the Association shall include capital accounts showing assessments for capital improvements and contributions to capital with respect to the Lot for which the contribution is made.

#### ARTICLE XII

##### CORPORATE SEAL

The Association shall have no seal.

#### ARTICLE XIII

##### AMENDMENTS

This Code of Regulations may be amended, at a regular or special meeting of the members, by a vote of members exercising a majority of the voting power of members, and, if material to the rights of a mortgagee, the approval of all holders of first mortgage liens on Lots.

#### ARTICLE XVI

##### MISCELLANEOUS

Unless otherwise changed by the Board of Trustees, the fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of this Association.

IN WITNESS WHEREOF, the undersigned, the sole incorporator of the Whispering Hills Association, Inc., has hereunto set his hand this \_\_\_\_\_ day of \_\_\_\_\_, 1977.

---

Robert L. Deddens



E0287-0900

TED W. BROWN  
Secretary of State

## Certificate

499970

It is hereby Certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings; that said records show the filing and recording of: ARN OF WHISPERING HILLS ASSOCIATION, INC.

United States of America  
STATE OF OHIO  
Office of the Secretary of State

Recorded on Roll E287 at Frame 0901 of the  
Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State, at the City of  
Columbus, Ohio, this 20TH day of JUNE, A. D. 19 77

*Ted W. Brown*

TED W. BROWN



Plat. R.R. 3 P. 4. & 12 and Center R.R. 6 P. 3 INDEXES 349  
641 4 1113

Book 103 Page 20

# WHISPERING HILLS

SECTION ONE  
22.162 ACRES

Plat Book 103  
Page 20

LOCATED IN,  
SECTION 20, TOWN 2, RANGE 6 MRS.  
CENTERVILLE, MONTGOMERY CO., OHIO

## CURVE DATA

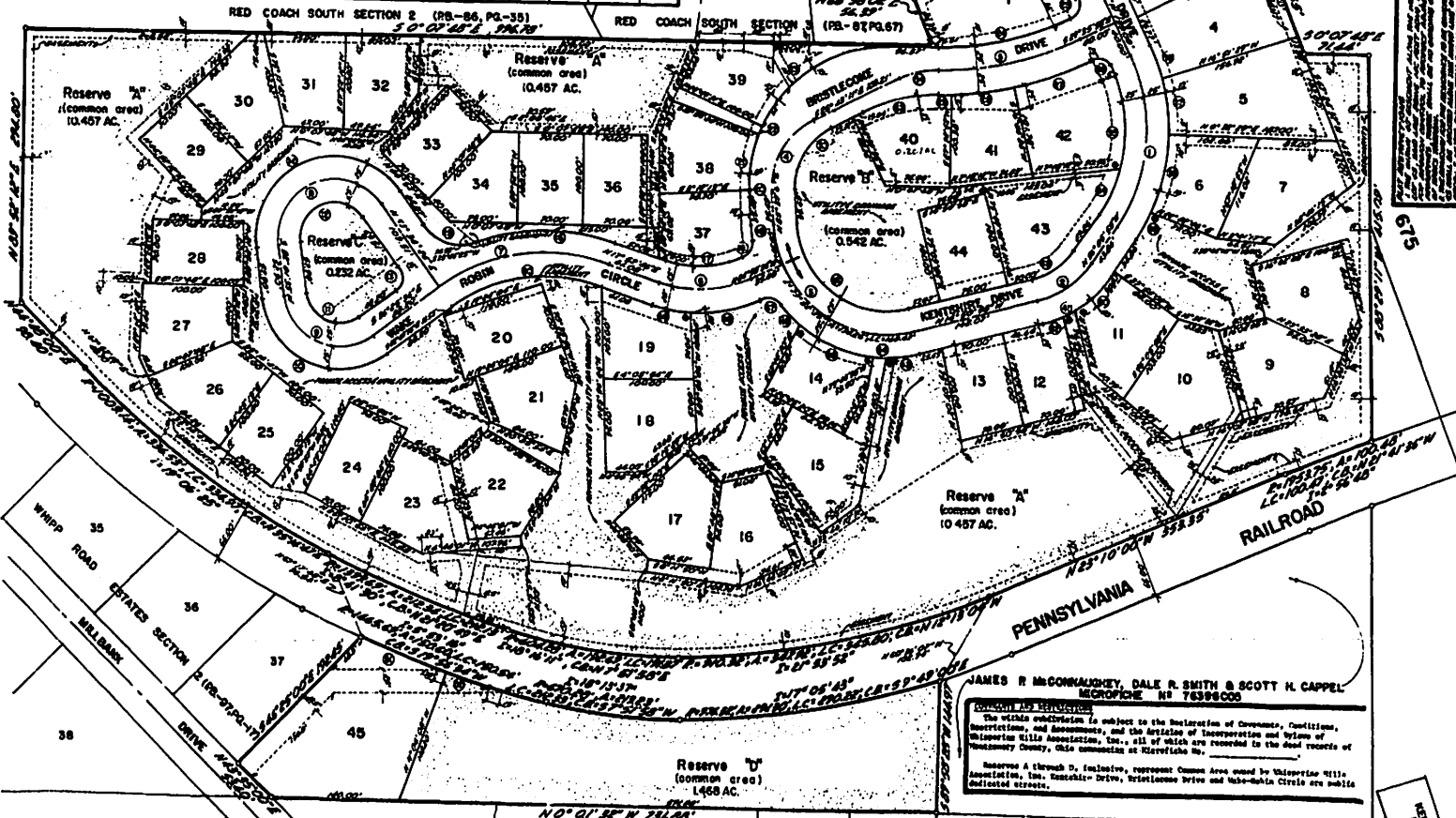
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19	124.00	124.00	124.00	124.00	124.00	29	124.00	124.00	124.00	124.00	124.00
20	124.00	124.00	124.00	124.00	124.00	30	124.00	124.00	124.00	124.00	124.00

APPROVED FOR DESCRIPTION AND OWNERSHIP

MONTGOMERY COUNTY ENGINEER

SCALE - 1"=60'-0"

©-DENOTES NON RADIAL LINE



The measurements are certified correct and accurate and shall be used as shown and true line shall be used as such but cannot upon completion of this subdivision. Curved distances are measured on the arc.

PD, INC. By  
Dale R. Smith  
Registered Surveyor No. 112

Whereas, the undersigned, being all the owners and leaseholders of the lands herein described and situated, do hereby acknowledge the validity and effect of the within plat and do hereby authorize the surveyor to execute the same and to do the same in and to the public use forever.

Whereas, the undersigned, being all the owners and leaseholders of the lands herein described, do hereby acknowledge the validity and effect of the within plat and do hereby authorize the surveyor to execute the same and to do the same in and to the public use forever.

Whereas, the undersigned, being all the owners and leaseholders of the lands herein described, do hereby acknowledge the validity and effect of the within plat and do hereby authorize the surveyor to execute the same and to do the same in and to the public use forever.

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# HIDDEN HILLS SECTION TWO

LOCATED IN:  
SECTION 20, TOWN 2, RANGE 6 M.R.S.  
CITY OF CENTERVILLE, MONTGOMERY COUNTY,  
OHIO; CONTAINING 3.6755 ACRES; JAN. 1979

CURVE DATA									
NO	RADIUS	ARC	CHORD	ANGLE	TANGENT	CHORD BEARING			
1	978.32	51.63	81.81	4° 48' 09"	43.94	S 20° 45' 56" E			
2	1687.75	172.59	172.53	0° 14' 16"	86.35	S 20° 18' 31" E			
3	50.00	49.42	47.43	56° 37' 59"	26.94	S 39° 12' 29" W			
4	50.00	10.00	9.98	11° 27' 33"	5.02	S 18° 37' 16" W			
5	50.00	59.73	56.24	68° 28' 58"	34.01	S 56° 34' 31" W			
6	50.00	34.50	33.82	39° 32' 10"	17.97	N 69° 28' 53" W			
7	50.00	55.00	52.27	69° 01' 31"	30.66	N 18° 08' 09" W			
8	50.00	39.82	38.77	48° 31' 51"	21.03	N 36° 10' 42" E			
9	50.00	7.44	7.44	6° 31' 51"	3.73	N 63° 18' 33" E			
10	1887.75	97.59	97.58	2° 57' 43"	49.81	S 21° 41' 09" E			
11	1887.75	73.00	73.00	2° 16' 58"	37.50	S 19° 04' 00" E			

The within plat is a subdivision of 3.6755 acres conveyed to Dale E. Smith by Microfiche No. 75-112-410 of Montgomery County, Ohio.

The measurements are certified correct and monuments shall be set as shown and iron pins shall be set at each lot corner upon completion of this subdivision. Curved distances are measured on the arc.

*Ronald Trisler*  
Professional Surveyor #6283

## DECLARATION

We, the undersigned, being all the owners and holders of the lands herein plattd, do hereby acknowledge the making and signing of the within plat to be our voluntary act and deed, and we hereby dedicate the streets shown on said plat to the public use forever.

Assessments shown on the within plat are for construction, operation, maintenance, repair, replacement or removal of water, sanitary sewer, storm sewer, and drainage, gas, electric, telephone or other utility lines or services, and for the express privilege, but subject to the recorded covenants referred to elsewhere on this plat, of running any and all lines or other obstruction to the free use of said utilities and for providing of lamps and access to the property for said purposes and are to be maintained as such forever.

Also, an easement unto the Ohio Bell Telephone Company to install, construct, reconstruct, operate, maintain, repair, supplement and restore at any time or times hereafter, underground communications service cable facilities in, under, and upon a strip of land three (3) feet in width extending from rear or side lot lines to the dwelling lot on said lot. Said grant includes the right, at all times, of ingress to and egress from said lot, the right to use the premises parallel to and adjoining the boundaries of said strip for the operation of operations, appliances and equipment for any of the purposes herein specified and the right to clear and have cleared said strip of all shrubbery, trees, roots, underground and obstructions to its use as a utility easement. The telephone company shall promptly restore the surface of said strip to its former state of usefulness.

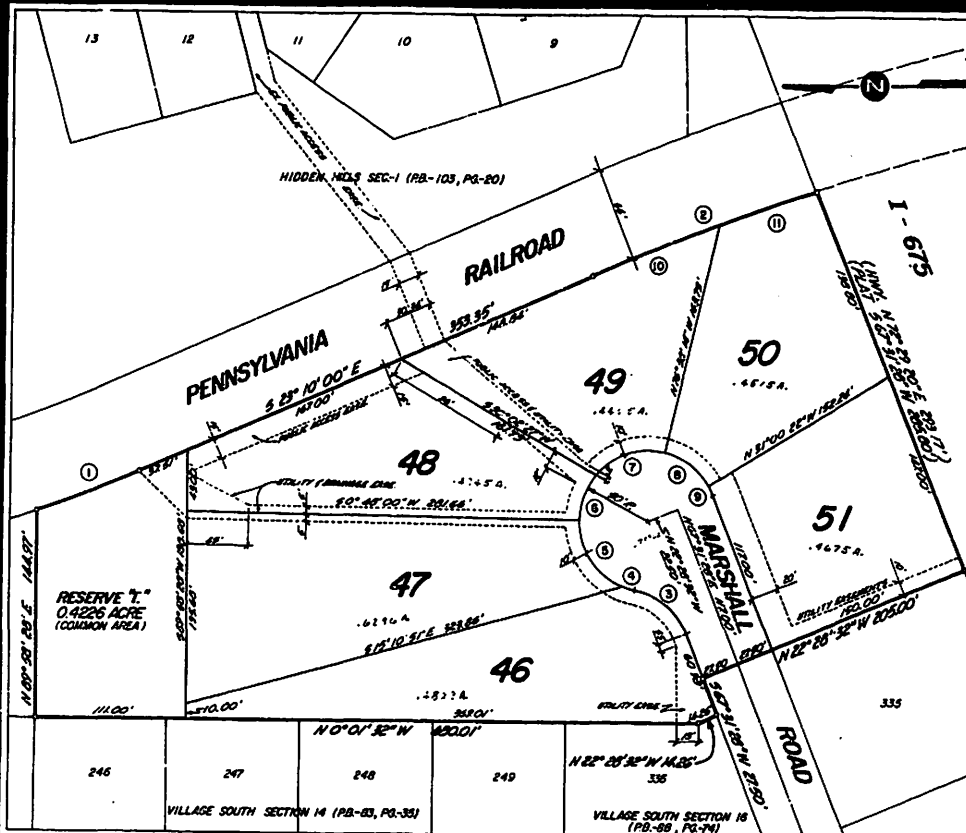
Signed and acknowledged to the presence of:

*Dale E. Smith*  
*Walter A. Smith*

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Be it remembered that on this 12th day of January, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally came Dale E. Smith, who acknowledged the signing and execution of the foregoing plat to be his voluntary act and deed. In testimony whereof, I have hereunto set my hand and notarial seal on the day and date written above.

Notary Public in and for  
Montgomery County, Ohio



RECORD PLAN • SCALE: 1"=40'

Signed and acknowledged to the presence of:

*Walter A. Smith*  
*Dale E. Smith*  
Notary Public in and for  
Montgomery County, Ohio

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Be it remembered that on this 12th day of January, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally came Dale E. Smith, who acknowledged the signing and execution of the foregoing plat to be his voluntary act and deed. In testimony whereof, I have hereunto set my hand and notarial seal on the day and date written above.

In testimony whereof, I have hereunto set my hand and notarial seal on the day and date written above.

Notary Public in and for  
Montgomery County, Ohio

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Dale E. Smith, being duly sworn, says that all persons, partnerships and corporations, in best of his knowledge, interested in this Declaration, either as donors or lineholders, have written in the declaration.

In testimony whereof, I have hereunto set my hand and notarial seal this 12th day of January, 1980.

Notary Public in and for  
Montgomery County, Ohio

## COVENANTS AND RESTRICTIONS

- The minimum front yard of every lot shall be thirty-five (35) feet.
- The minimum rear yard of every lot shall be forty (40) feet.
- On lots no. 46, 47 and 48, the west side yard shall be a minimum of fifteen (15) feet and the east side yard may be a minimum of zero (0) feet, except where otherwise designated along the west side lot line.

Reserve E represents Common Area, owned by Hidden Hills Association, Inc. The within Reserve E is subject to the Declaration of Covenants, Conditions and Restrictions, all of which are recorded in the deed records of Montgomery County, Ohio, commencing at Microfiche No. 75-112-410, at Microfiche No. 75-112-410 and as amended.

## APPROVALS

Approved by the Planning Commission for the City of Centerville this 12th day of January, 1980.

*Walter A. Smith*  
Chairman

Approved by the City Council for the City of Centerville this 23rd day of January, 1980.

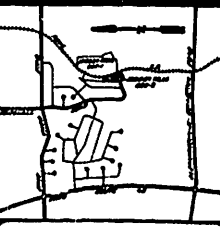
*Walter A. Smith*  
Mayor

## MONTGOMERY COUNTY ENGINEER APPROVAL

Approved for description and accuracy.

*Walter A. Smith*  
Date: 1-12-80

*Walter A. Smith*  
Checked by and date: 1-12-80



VICINITY SKETCH: NO SCALE

THIS INSTRUMENT PREPARED BY

**PEP2**  
PROFESSIONAL ENGINEERS & PLANNERS  
4032 PROGRESS AVE., DAYTON, O. 45424  
TELEPHONE (513) 234-9722

VICKI D. PEGO  
RECORDER

01819

FEB 10 2 41 PM '81

SUPPLEMENTAL DECLARATION

MONTGOMERY CO. OHIO  
RECORDED

This is a Supplemental Declaration, made as of the date hereinafter set forth, by R.M.S. Builders, Inc., hereinafter referred to as "Declarant", for the purpose of annexing additional common area to the Hidden Hills single-family residential community.

RECITALS

A. R.M.S. Builders, Inc., an Ohio Corporation, is the successor Declarant as defined under a certain "Declaration of Covenants, Conditions, Restrictions and Assessments" for Hidden Hills (formerly "Whispering Hills"), as recorded at Microfiche Number 77-441-A01 et seq, and the First Amendment thereto recorded at Microfiche Number 78-112B10 et seq., of the Deed Records of Montgomery County, Ohio (hereinafter referred to as the "Declaration").

B. R.M.S. Builders, Inc. is said Declarant by virtue of acquiring certain lots within the plat of Hidden Hills, Section 1, (being a replat of Whispering Hills, Section 1), as recorded in Plat Book "106", Page 9 of the Plat Records of Montgomery County, Ohio; as evidenced by General Warranty Deed dated May 23, 1980, and filed for record on May 23, 1980, at Microfiche Number 80-220B05, of the Deed Records of Montgomery County, Ohio.

C. As Declarant, and by virtue of Article VIII, Annexation, Section 1, of the said Declaration, as amended, Declarant may add additional Common Area within the Tract (as defined in the Declaration and First Amendment thereto) by annexing the same to the Property (as defined in the Declaration and First Amendment thereto). Such annexation is effected by executing and recording this Supplemental Declaration which describes the additional land to be annexed and subjected to the plan of development.

D. Declarant desires to annex 0.4226 acres of Common Area, to be known as "Reserve E", to the Property.

FEB 10 1981

TRANSFERRED  
ROBERT E. ROEMER  
NOTARY PUBLIC

81 054B08



DECLARATION

NOW, THEREFORE, Declarant hereby declares that:

1. For purposes of adding 0.4226 acres to the Property, the Declaration is hereby amended by annexing thereto 0.4226 acres contained within the Tract and described as follows:

Situate in the City of Centerville, Montgomery County, Ohio, and being Reserve E in the Plat of Hidden Hills, Section 2, as recorded in Plat Book 111, Page 25, Montgomery County Plat Records.

2. When said acreage is annexed to the Property, the covenants, conditions, restrictions, easements, reservations, liens and charges created by the Declaration and First Amendment thereto shall run with and bind said 0.4226 acres in the same manner, to the same extent, and with the same force and effect as the terms of the Declaration apply to the Property originally subjected to the Declaration and First Amendment thereto.

3. Consent to this Supplemental Declaration on behalf of all owners, other than Declarant, is hereby granted by Declarant which, in its capacity as Attorney-in-Fact for all owners, has caused this instrument to be executed this 28<sup>th</sup> day of January, 1981.

Witnesses:

James Melara

R.M.S. BUILDERS, INC.

By: Robert M. Stern  
President

Carolyn McGee

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 1981, by Robert M. Stern, President of R.M.S.

Builders, Inc.



Carolyn McGee  
NOTARY PUBLIC

CAROLYN McGEE, Notary Public  
In and for the State of Ohio  
My Commission Expires Nov. 22, 1983

PREPARED BY:

ROBERT L. DEDDEN  
ATTORNEY AT LAW

18 01 83J

TRANSFERRED  
ROBERT L. DEDDEN  
ATTORNEY

069-15-18-2, 4, 12, 13, 19, 21, 24  
 GENERAL WARRANTY DEED 15-17-1, 2, 3, 5, 7, 12, 18, 20,

KNOW ALL MEN BY THESE PRESENTS, that DALE R. SMITH, married, of Montgomery County, Ohio, for valuable consideration paid, grants with general warranty covenants to R.M.S. BUILDERS, INC. whose tax mailing address is 5763 Far Hills Ave., Dayton, Ohio 45459, the following real property:

Situate in the City of Centerville, County of Montgomery and State of Ohio and being Lots 2, 4, 12, 13, 17, 18, 19, 21, 22, 23, 24, 25, 28, 34, 36, 39, 41, and 44, Hidden Hills, Section One (being a replat of Whispering Hills, Section 1), as recorded in Plat Book "106", page 9 of the Plat Records of Montgomery County, Ohio

The real property is conveyed subject to and there are excepted from the general warranty covenants, (i) the building and zoning laws and regulations; (ii) real estate taxes and assessments becoming due and payable after the December 31, 1979 installment thereof and (iii) all easements, restrictions, and reservations of record including, without limitation, the terms and conditions of, and the charges and liens created by, the Declaration of Covenants, Conditions Restrictions and Assessments (the "Declaration") which is recorded in Microfiche 77-441A01 et seq., Montgomery County Deed Records, and the First Amendment thereto which is recorded in Microfiche 78-112B10 et seq., Montgomery County Deed Records.

VICKI D. PEGG  
 RECORDER

MAY 23 3 03 PM '80  
 MONTGOMERY CO. OHIO  
 RECORDED

And excepting a certain note and mortgage to State Fidelity Federal Savings and Loan Association, dated June 2, 1977, filed for record June 10, 1977 and recorded in Mortgage Microfiche 77-681E05, of the Mortgage Records of Montgomery County, Ohio, in the present principal sum of \$198,000.00 all of which taxes, assessments, note and mortgage the grantee assumes and agrees to pay as part consideration for these presents.

TRANSFERRED  
 ROBERT J. RODERER

The Grantee covenants that in every deed or other conveyance conveying such real property or any part thereof or interest therein, it will make reference therein to the Declaration, including all amendments thereto.

PRIOR DEED REFERENCE: Deed Microfiche 80 200B03, Montgomery County, Ohio Records.

P. JOANN SMITH, wife of Grantor, hereby waives all rights of dower therein.

WITNESS their hands this 23 day of May, 1980.

Signed and acknowledged in the presence of:

James A. Ege  
Robert L. Reddick

Dale R. Smith  
 Dale R. Smith  
P. JoAnn Smith  
 P. JoAnn Smith

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Be it Remembered, that on this 23 day of May, 1980 before me the subscriber, a Notary Public in and for said County, personally came, DALE R. SMITH and P. JOANN SMITH, husband and wife, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

- 80 220B05 -

IN TESTIMONY WHEREOF, I have hereunto subscribed my name  
and affixed my seal on this day and year aforesaid.

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

*Robert L. Deddens*  
NOTARY PUBLIC

TRANSFERRER  
ROBERT L. DEDDENS  
NOTARY PUBLIC  
MAY 23 '80

THIS INSTRUMENT PREPARED BY:

Robert L. Deddens  
Attorney at Law  
367 W. Second Street  
Dayton, Ohio 45402  
(513) 461-5860

80 220B06