

## HEATHER LAKE SUBDIVISION

### *DECLARATION OF COVENANTS, EASEMENTS, RESTRICTIONS AND ASSESSMENT LIEN*

This is Declaration of Covenants, Easements, Restrictions and Assessment Lien made on or as of the \_\_\_\_\_ day of August, 1996, by Countrytyme Incorporated, an Ohio Corporation, (the "Declarant").

#### **BACKGROUND**

A. Countrytyme Incorporated is the owner in fee simple of the following described property:

Situated in the State of Ohio, County of Fairfield, Township of Bloom, and further described as follows:

Being Lots Numbered 1 through 22, inclusive, and Reserve A, of Heather Lake Subdivision, as the same are numbered and delineated on the recorded plat thereof, of record in Plat Book 1, Page 173 of the Recorder's Office, Fairfield County, Ohio.

B. The Declarant intends to convey Reserve, and may convey Reserves B and C to an association, to be held and operated for the benefit of the Declarant and the future owners of Lots in the Subdivision.

C. The Declarant desires to create a plan of restrictions, easements and covenants with respect to the Lots described herein, and establish liens upon the Lots described herein, which shall be binding upon and inure to the benefit of the Declarant, the Association, and all future owners and occupants of the Lots.

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#### Definitions

The terms used in this document shall have these meanings, unless the context requires otherwise:

1. "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Ohio, incorporating Heather Lake Homeowners' Association as a corporation not-for-profit under the provisions of chapter 1702 of the Revised Code of Ohio, as the same may be lawfully amended from time to time. (The State of Ohio's non-profit corporation statutory act).
2. "Association" and "Heather Lake Homeowners' Association" mean the corporation not-for-profit created by the filing of the Articles.
3. "Association Organizational Documents" means these Covenants, and the Articles and By-Laws of the Association.
4. "Board" and "Board of Trustees" mean those persons who, as a group, serve as the board of trustees of the Association.
5. "By-Laws" mean the by-laws of the Association, as the same may be lawfully amended from time to time, which serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702.
6. "Common Areas" means the Reserves actually conveyed to the Association, and any property, whether it be real or personal, owned by the Association.
7. "Covenants" means this instrument.
8. "Declarant" means Countrytyme Incorporated, an Ohio Corporation, and its successors and assigns, provided that the rights specifically reserved to Declarant under these Covenants, or under any other Association Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.
9. "Design Review Manual" means the current Design Review Manual promulgated by the Declarant for use in the Heather Lake Subdivision, as changed from time to time at the sole discretion of the Declarant.

10. "Eligible holder of a first mortgage lien" means the holder of a valid recorded first mortgage on a Lot, which holder has given written notice to the Association stating the holder's name, address and Lot or Lots subject to its mortgage.
11. "Lot" or "Lots" mean one or more of Lots numbered 1 through 22, inclusive, of Heather Lake Subdivision, as such Lots are numbered and delineated on the recorded plat thereof, of record in Plat Book   1  , Page 173 of the Recorder's Office, Fairfield County, Ohio. The Declarant reserves the right to submit lots numbered 23 through 71 of later phases of Heather Lake Subdivision to the jurisdiction of these covenants in accordance with the provisions of Article X, below.
12. "Lot owner" and "Lot owners" mean that person or those persons owning a fee-simple interest in a Lot or Lots, each of whom is also a "member" of the Association, as defined in Ohio's non-profit corporation statutory act.
13. "Occupant" means a person lawfully residing on a Lot, regardless of whether that person is a Lot owner.
14. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
15. "Reserve" or "Reserves" mean Reserve A of Heather Lake Subdivision, and such of Reserves B and C as are actually conveyed to the Association, as such Reserves are identified and delineated on the recorded plat thereof, of record in Plat Book   1  , Page 173 of the Recorder's Office, Fairfield County, Ohio, or later phases of Heather Lake Subdivision. The Declarant intends to convey Reserves A through C to the Association for the use and benefit of owners of all Lots.
16. "Subdivision" means the portion of Heather Lake Subdivision, as shown on the recorded plat thereof, of record in Plat Book   1  , Page 173 of the Recorder's Office, Fairfield County, Ohio, and the portion of the future phases of Heather Lake Subdivision, which portions have been submitted by the Declarant to the jurisdiction of these restrictions.
17. "Trustee" and "Trustees" mean that person or those persons serving, at the time pertinent, as a trustee or trustees of the Association.
18. "Turnover Date" the date selected by the Declarant, in its sole discretion but no later than the date required pursuant to Article VII. 2 a. (4), below, for the Declarant to relinquish control over the selection of the Association's Trustees.

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**DECLARATION OF  
COVENANTS, EASEMENTS, RESTRICTIONS AND ASSESSMENT LIEN**

The Declarant hereby declares that the following described property shall be held, sold, conveyed and occupied subject to the following covenants, easements, restrictions and lien for assessments, which are for the purpose of protecting the values and desirability of, and which shall run with, the land and each part thereof, and be binding on all parties having any right, title or interest in the land, and each part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of and be enforceable by the Declarant, each Lot owner, the respective heirs, successors and assigns of the Declarant and each Lot owner, and the Association.

Situated in the State of Ohio, County of Fairfield, Township of Bloom, and further described as follows:

Being Lots Numbered 1 through 22, inclusive, of Heather Lake subdivision, as the same are numbered and delineated on the recorded plat thereof, of record in Plat Book   1  , Page 173 of the Recorder's Office, Fairfield County, Ohio.

The provisions of this Declaration of Covenants, Easements, Restrictions and Assessment Lien, as from time to time amended, shall be considered to be a part of, and incorporated within, each deed hereinafter conveying the Lots, or any portion thereof.

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**ARTICLE I.  
PURPOSES; RESTRICTIONS**

Section 1. **Purposes.** This Declaration is being made to establish Covenants, Easements and Restrictions for the Subdivision, to provide for an Association for the ownership and operation of the

Common Areas; to provide for and promote the benefit, enjoyment and well being of Lot owners and occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

Section 2. **Restrictions.** The Lots shall be subject to the following restrictions:

(a) **Lot Uses.** No Lot may be subdivided or have more than one primary residential dwelling on said Lot without the prior written consent of the Declarant. Except as otherwise specifically provided in these Covenants, no Lot shall be used for any purpose other than that of a single family residence and purposes customarily incidental thereto. Notwithstanding the foregoing: (i) professional and quasi-professional occupants may use a residence constructed on a Lot as an auxiliary or secondary facility to an office established elsewhere; (ii) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, or conducting personal business or professional telephone calls or correspondence, in or from a residence constructed on a Lot is engaging in a use expressly declared customarily incidental to principal residential use and is not in violation of these restrictions; and (iii) it shall be permissible for the Declarant to maintain, during the period of its sale of Lots, one or more Lots or portions of Reserves as sales models and offices and/or for storage and maintenance purposes, until such time as all Lots have been sold and conveyed.

(b) **Common Areas Uses.** Upon conveyance of any Reserve to the Association, the Common Areas shall be owned by the Association and held and operated for the benefit of the Declarant and the Lot owners and occupants and their agents, servants, customers, invitees and licensees, subject to the restriction of use of such Reserves as are driveways, for the benefit of the lots served thereby, and subject to such rules and regulations as may from time to time be promulgated by the Board.

(c) **Antennas.** No antenna, tower, or satellite dish antenna for the reception of television, telephone or radio signals, shall be erected on any Lot without the approval of the Architectural Review Board. This restriction shall not apply to normal residential television antennas which do not extend more than twenty (20) feet above the peak of the roof of the dwelling.

(d) **Nuisances.** No noxious or offensive activity shall be permitted on any Lot, or upon the Common Areas, nor shall either be used in any way or for any purposes, which might endanger the health of, or unreasonably disturb, any other Lot owner or occupant. Lot Owners must keep their Lots mowed so that weeds and grass are no more than 8 inches in height. The Association and/or the Declarant shall have the right to enter a Lot for the purpose of mowing the Lot, and the costs thereof may be assessed against a Lot Owner as a Special Individual Lot Assessment.

(e) **Vehicles.** The Board may promulgate regulations restricting the parking of automobiles, inoperable vehicles, trucks, boats and recreational vehicles on the Lots and Common Areas and, to the extent not prohibited by law, the streets within the subdivision, and may enforce such regulations or restrictions by levying fines or enforcement charges, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate.

(f) **Renting or Leasing.** No Lot or part thereof, unless the same is owned by the Association, shall be rented or used for transient or hotel purposes, which is defined as: (i) rental for any period less than thirty (30) days; (ii) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (iii) rental to non-employee roomers or boarders, that is, rental to one or more persons of a portion of a residence constructed on a Lot. Any lease agreement shall be in writing, shall provide that the tenant shall be subject in all respects to the provisions hereof, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the lessee to comply with the terms of the Association Organizational Documents and lawful rules and regulations shall be a default under the lease.

(g) **Signs.** No sign of any kind shall be displayed to the public view on the Lots except: (a) on the Common Areas, signs placed by the Declarant or the Board regarding and regulating the use of the Common Areas; (b) on the Lots, one professionally prepared sign advertising the Lot for sale; and (c) on the Common Areas and Lots, signs advertising the sale of Lots by the Declarant during the initial sales period, which shall continue until all Lots have been sold to parties unrelated to the Declarant.

(h) **Animals.** Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or on the Common Areas. Notwithstanding the foregoing, household domestic pets not bred or maintained for commercial purposes, and one (1) large domestic farm animal for every one (1) acre of fenced pasture (including but not limited to horses, cattle, sheep, goats and llamas) on Lots with five (5) acres or more, may be maintained at a residence constructed on a Lot provided that: (i) no animals shall be permitted in any portion of the Common Areas except on a leash (not longer than six feet in length) maintained by a responsible person; (ii) no animals shall be left

unattended on a Lot or any portion of the Common Areas; (iii) owners shall keep the Common Areas and their Lots clean; (iv) Lots with large domestic farm animals shall not be overgrazed, but shall be healthy and thick, and weeds shall be controlled; (v) noise and odors from any animal shall be controlled so that neither shall be offensive to other Lot owners; (vi) the permitting of animals in the Subdivision shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy fines and enforcement charges against persons who do not clean up after their pets; and (vii) the right of an occupant to maintain an animal shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or other Lot owners or occupants.

(i) **Temporary Structures.** No garage or unfinished single family dwelling, travel-trailer, barn, tent, basement or other structure shall at any time be occupied or used as a temporary or permanent residence.

(j) **Conveyances.** Each Lot shall be conveyed subject to the terms, conditions and provisions hereof. The right of a Lot owner to sell, transfer or otherwise convey that owner's Lot is not subject to any right of first refusal or similar restriction, and any Lot owner may transfer that owner's Lot free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Lot owners, each Lot owner agrees to notify the Association, in writing, within five days after an interest in that Lot owner's Lot has been transferred to another person. In addition, each Lot owner agrees to provide to a purchaser of that owner's Lot a copy of the Association Organizational Documents and all effective rules and regulations.

(k) **Discrimination.** No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Lot owner in favor of another.

(l) **Architectural Control.** Except as hereinafter specifically provided, no building, fence, wall, sign or other structure shall be commenced, erected or maintained upon a Lot, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications have been submitted to and approved in writing by the Declarant. Notwithstanding any other provision of these Covenants to the contrary, the Declarant shall have the authority, exercisable in its sole discretion, to approve any structure, improvement or feature, even though the same is not similar to those constructed or approved for other Lots, and such approval shall not be considered as a waiver of the requirements of this paragraph and those of the *Design Review Manual*, nor shall it be considered as a precedent binding the Declarant or the Board to approve similar structures, improvements or features for any other Lot. In the event the Declarant or the Board fails to approve or disapprove such plans and specifications within sixty (60) days after they have been submitted to them, approval will not be required and these provisions will be deemed to have been fully complied with. Subject to the Declarant's discretion set forth above, all buildings shall be of similar or compatible style, construction and materials. The Board may, in addition to all other costs, charges and Special Individual Lot Assessments levied against a Lot for failure to comply and for the cost of causing compliance with the restrictions contained in this paragraph, levy an additional Special Individual Lot Assessment against any Lot, for up to \$100, for each day that such violations continue until corrected.

*Lot 1 of the Subdivision contains a property which was not initially constructed in accordance with the provisions of this section. In the event of the destruction or demolition of the building on Lot 1, the provisions of this section shall apply to any reconstruction or replacement of such building.*

#### Dwellings

All dwellings shall be Site/Stick Built. Any dwelling constructed or placed on the premises shall meet the following conditions:

- a) Ranch style homes shall have at least 1,750 square feet of finished living area.
- b) Two story homes shall have at least 2,250 square feet of finished living area, and 1,200 square feet of said living area located on the first-floor.
- c) All other style homes shall have at least 1,950 square feet of finished living area.

\*\*\*\* Living areas are exclusive of porches, breezeways, basements, attics, decks, patios, and garages \*\*\*\*

#### Roofing

All roof pitches must fall within the range of 5/12 - 12/12.

Fences

No chain link, other wire fences or dog runs will be permitted. No fencing will be allowed in front yards, except for small sections of decorative wood or wrought iron fence.

Garages

All homes shall have at least a two-car attached garage constructed of similar material and style as the dwelling.

Driveways

All driveways shall be constructed of asphalt, plain concrete, textured concrete, pre-cast concrete pavers, brick or stone and shall be well maintained.

Detached Structures

No metal structures will be allowed.

Outdoor Lighting

All exterior lighting shall be indirect so as not to intrude upon adjacent neighbors.

Mailboxes

All mailboxes must be built to community standards and specifications outlined in the Design Review Manual.

Construction Time

The construction of the dwelling and garage shall begin within three (3) years of purchasing the Lot and shall be completed within one (1) year of obtaining the appropriate building permits.

The aforementioned is to serve only as a brief summary of construction guidelines and is not to be considered all inclusive. *All Lot owners must refer to the Design Review Manual* for further explanation and guidelines regarding the design and construction of dwellings and landscaping for their Lot.

(m) **Arbitration.** The interpretation of the Declarant as to the application of these restrictions or any rule or regulation promulgated by the Board, shall be binding upon all Lot owners until the Declarant has sold and conveyed all Lots. Thereafter, in the event of any dispute between Lot owners as to the application of these restrictions or any rule or regulation promulgated by the Board, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing within sixty (60) days thereafter, and give written notice to each party no less than thirty (30) days of the hearing. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

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## ARTICLE II. OWNERS' ASSOCIATION

Section 1. **Establishment of Association.** The Association has been formed to be and to serve as the owners' association for the Subdivision. The Declarant is presently the sole members of the Association.

Section 2. **Membership.** Membership in the Owners' Association shall be limited to the Declarant and the Lot owners. Every person or entity who is or becomes a record owner of a fee or undivided fee-simple interest in a Lot is a Lot owner and shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and transfer of a Lot shall automatically transfer membership to the transferee.

Section 3. **Voting Rights.** Prior to the Turnover Date, all voting power in the Association shall be vested in the Declarant. From and after the Turnover Date, each Lot owner, including the Declarant, shall be entitled to one vote for each Lot owned in fee simple, and a proportionate part of a vote for ownership of an undivided fee-simple interest in a Lot, provided, that unless timely challenged by an owner of an undivided fee-simple interest in a Lot, any owner of a fee-simple interest in that Lot may cast the entire vote with respect to that Lot.

Section 4. **Board of Trustees.** The Board initially shall be those three persons named as the initial Trustees pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. Because of the substantial financial undertakings of the Declarant, the Declarant shall continue to control the makeup of the Board until the Turnover Date selected by the Declarant. From and after the Turnover Date, there shall be six Trustees elected by the Lot owners, which Lot owners shall include the Declarant as the owner of any unsold Lots. The terms of the six trustees shall

be staggered so that the terms of one-third of the Trustees will expire and successors be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two trustees whose terms then expire shall be elected to serve three-year terms.

Section 5. **Authority.** The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and do all things, and exercise all rights provided by the Association Organizational Documents and permitted by Ohio Law that are not specifically reserved to Lot owners, and assess and collect funds for the payment of all costs and expenses incurred in connection therewith. Prior to the Turnover Date, the Board shall not enter into any contract lasting longer than one year, unless terminable without penalty on ninety-day notice.

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### **ARTICLE III. MAINTENANCE AND REPAIR**

**Association Responsibility.** Except as provided herein, the Association shall maintain, repair and replace the Common Areas, including and not limited to shrubs, trees, plantings, Subdivision signage, and all other improvements which are located on the Common Areas. Additionally, the Association shall maintain, repair and replace Subdivision amenities located on the Lots, including entrance features and equipment owned by the Association serving the Subdivision.

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### **ARTICLE IV. UTILITY SERVICES**

The Association shall arrange for the provision of utility services required for the use of the Common Areas and shall pay the costs of such services separately metered to the Association by the utility company.

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### **ARTICLE V. INSURANCE; LOSSES BONDS**

Section 1. **Fire and Extended Coverage Insurance.** The Board shall have the authority to and shall obtain insurance for all structures, fixtures and equipment and common personal property, now or at any time hereafter constituting a part of the Common Areas or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard coverage endorsements, with such limits and coverage as is deemed appropriate by the Board.

Section 2. **Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of general liability insurance covering all of the Common Areas, insuring the Association, the Trustees, and the Lot owners and occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use; and (b) \$1,000,000 for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot owner because of negligent acts of the Association, the Board, or other Lot owners and shall include, without limitation, coverage for legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Association. Each such policy must provide that it may not be canceled or substantially modified by any party, without at least 10 days' prior written notice to the Association and to each Eligible holder of a first mortgage on a Lot.

Section 3. **Other Association Insurance.** In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine.

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### **ARTICLE VI. GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS**

Section 1. **Easements of Enjoyment and use; Limitations.** Every Lot owner shall have a right and easement of enjoyment in, over and upon the Common Areas, which rights and easements shall be appurtenant to and shall pass with the title to a Lot, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas.

Section 2. **Right of Entry for Repair, Maintenance and Restoration.** The Association shall have a right of entry and access to, over, upon and through all of the Lots to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, and replacement of any Common Areas or property owned by the Association.

Section 3. **Easements for Utilities.** There is hereby created upon, over and under all of the Lots, easements to the Association for ingress and egress to the Lots, and for the installation, replacing, repairing and maintaining of all utility lines and equipment thereon. It shall be expressly permissible for the Association to grant to the providing company permission to construct and maintain the necessary poles and equipment, wires, circuits and conduits on, above, across and under the Lots so long as such poles and equipment, wires, circuits and conduits do not unreasonably interfere with the use and enjoyment of the Lots. Should any utility company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof.

In addition, a non-exclusive perpetual easement is hereby reserved to Declarant, its successors and assigns, for their benefit and the benefit of Lot owners for pedestrian and vehicular access over roadways, footpaths and streets within the Subdivision, for ingress and egress to and from the Lots and public rights-of-way. Additionally, Declarant, for itself and its successors and assigns, reserves the right to extend and tie into utility lines in the Lots and Common Areas, as permitted by public authority and the utility company involved, to extend such lines into other Lots, portions of Common Areas, or other lots in the Heather Lake Subdivision. Additionally, the Declarant hereby grants an easement to the Association, for the benefit of the Lot owners, across Lots 2, 21, 23, 60, 61 and 70 of the Heather Lake Subdivision, for the purpose of operation repair, maintenance, and replacement of the entrance features serving the Heather Lake Subdivision. The Association shall operate, maintain, repair and replace any such entrance features. These easements shall survive the termination of these Covenants.

Section 4. **Other Relevant Easements.** All Lots are subject to oil lease, crop lease, utility easements, road right-of-way easements, or drainage easements, if applicable to the Lot.

Section 5. **Easements for Drainage.** Each Lot Owner, by acceptance of a deed to a Lot, hereby agrees, for himself/herself and his/her heirs and assigns: (a) to grant a drainage easement (at no monetary cost or any other consideration) for the purpose of providing an outlet for storm water and/or septic system drainage to any Lot Owners or any Lot of this Subdivision; (b) to comply with all requests from the County Health Department and County Engineer, and with all County or Township requirements to ensure the health and welfare of each Lot Owner and any Lot of this Subdivision; and (c) to grant utility easements to serve any Lot of this Subdivision.

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

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

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## ARTICLE VII. ASSESSMENTS AND ASSESSMENT LIENS

Section 1. **Types of Assessments.** The Declarant, for each Lot, hereby covenants, and each Lot owner, 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, all of such assessments to be established and collected as hereinafter provided.

Section 2. **Elements-Apportionment: Due Dates**

a. **Annual Operating Assessments Prior to Turnover Date**

(1) Commencing on the date that a Lot is conveyed to a bona-fide purchaser, the owners of that Lot shall pay monthly installments of operating assessments in the amount of \$ 553 per month, in advance, on or before the first day of each month until the Turnover Date.

(2) Until such Turnover Date, the Declarant shall not pay any assessments with respect to such Lots owned by it or conveyed by it to persons or entities affiliated with the Declarant or one of Declarant's general partners or to entities in which either of Declarant's general partner owns an equity interest.

(3) Until the Turnover Date, the Declarant shall pay all expenses of the Association which exceed the amounts assessed to owners of Lots.

(4) The Turnover Date shall be that date, prior to the conveyance to bona fide purchasers of 75% of all lots submitted to the jurisdiction of these covenants, selected by the Declarant, in its sole and absolute discretion, and communicated to the Association in writing by the Declarant, as the date after which the Declarant will have no further responsibility to pay Association expenses, (except in its capacity as owner of any unsold Lots), and the date which control of the Association, and the right to select, remove and replace Trustees, will be turned over to the owners of Lots, (including the Declarant with respect to Lots owned by it).

**b. Annual Operating Assessments After the Turnover Date**

(1) Promptly after the Turnover Date, and thereafter, prior to the beginning of each fiscal year of the Association, the Board shall estimate, and divide equally among the Lots, the expenses of the Association consisting of the following:

(a) the estimated next fiscal year's cost of the maintenance, repair, replacement, and other services to be provided by the Association;

(b) the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;

(c) the estimated next fiscal year's costs for utility services charged to or otherwise properly payable by the Association;

(d) the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

(e) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and

(f) the estimated next fiscal year's 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, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(2) The Board shall thereupon allocate such expense equally among all Lots subject to these Covenants, and thereby establish the annual operating assessment for each separate Lot.

(3) The annual operating assessment shall be payable in advance, in equal, quarterly installments, provided that nothing contained herein shall prohibit any Lot owner from prepaying assessments in annual or semi-annual increments. The due dates of any such installments shall be established by the Board, and, unless otherwise provided, the Association shall collect on or before the first day of each calendar quarter from those who own the Lot an equal share of the annual operating assessment for that Lot.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Lots on an equal basis.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Lot owners.



c. **Special Assessments for Capital Improvements**

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on or constituting a part of the Common Areas to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to five percent (5%) of that fiscal year's budget, without the prior consent of Lot owners exercising no less than seventy-five percent (75%) of the voting power of Lot owners and the consent of eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by eligible holders of mortgages appertain.

(2) Any such assessment shall be divided equally among all Lots, and shall become due and payable on such date or dates as the Board determines following written notice to the Lot owners.

d. **Special Individual Lot Assessments.** The Board may levy an assessment against an individual Lot, or Lots, as fines levied for the violation of the restrictions set forth herein (including, without limitation, fines for the violation of covenants restricting construction of improvements not complying with approved plans, or for parking violations), and to reimburse the Association for those costs incurred properly chargeable by the terms hereof to a particular Lot (such as, but not limited to, the cost of enforcement of covenants and restrictions against a particular Lot, or of causing compliance with the restrictions and covenants set forth herein, or arbitration costs properly chargeable against such Lot owner.) Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Lot owners subject thereto.

Section 3. **Effective Date of Assessments.** Any assessment created pursuant hereto shall be effective on the date determined by the Board. Written notice of the amount of any assessment shall be sent by the Board to the Lot owner subject thereto at least ten days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice shall be mailed or delivered to a Lot owner's Lot unless the Lot owner has delivered written notice to the Board of a different address for such notices, in which event the Board shall mail such notice to the last designated address. Failure to receive such notice, for whatever reason, shall not be a defense to the Lot owner's obligation to pay such assessment.

Section 4. **Effect of Nonpayment of Assessment; Remedies of the Association**

(a) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable; (ii) charge interest on the entire unpaid balance, (or on an overdue installment, alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine; (iii) charge a reasonable, uniform late fee, as determined from time to time by the Board; and (iv) restrict services to the Lot and restrict use of the Association's Common Areas and of easements for the use thereof, by the owners and occupants of the Lot. Such services and use may be restricted until the assessments with respect to the Lot have been paid.

(b) Annual operating and both types of special assessments, together with interest, late charges 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. (Whenever the term "costs" is used herein, it shall include, without limitation, reasonable attorneys' fees incurred by the Association, to the extent that the recovery of such fees is not prohibited by Ohio law.)

(c) At any time after an installment of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, an affidavit regarding the non-payment of Assessments and restriction of the use of easements appurtenant to the Lot and the availability of services to such Lot, may be filed with the Recorder of Fairfield County, Ohio, pursuant to authorization given by the Board. The certificate shall contain a description of the Lot for which Assessments are unpaid, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments, interest, late charges and costs, and shall be signed by the president or other officer of the Association.

(d) Any Lot owner who believes that an assessment chargeable to his, her or its Lot has been improperly charged against that Lot, may bring an action in the Court of Common Pleas of

Fairfield County, Ohio for the discharge of that assessment. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Lot, the court shall make such order as is just.

(e) Each such assessment together with interest, late charges and costs, shall also be the joint and several personal obligation of the Lot owners who owned the Lot at the time when the assessment fell due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that owner or owners' successors in title unless expressly assumed by the successors, provided, however, that the right of the Association to any lien upon the Lot for non-payment of Assessments, and the right of the Association to restrict the use of easements appurtenant to such lot and restrict services to such lot, or restrict the use of the Associations Common Areas by the owners and occupants of the Lot, shall not be impaired or abridged by reason of the transfer.

(f) The Association, as authorized by the Board, may pursue any other remedy available to the Association pursuant to Ohio law, and without limiting the generality of the foregoing, may obtain a lien to secure payment of delinquent assessments, interest, late charges and costs, bring an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these or other remedies. In any foreclosure action, the owner or owners 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 sale.

(g) No owner may waive or otherwise escape liability for the assessments provided for in these Covenants by non-use of the Common Areas, or any part thereof, or by abandonment of his, her or its Lot.

Section 5. **Subordination of the Lien to First Mortgages.** The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arises, 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 installments of assessments or charges against the mortgaged Lot which became due and payable prior to the time such holder or purchaser took title to that Lot, provided that the Association has been made a party to such action.

Section 6. **Certificate Regarding Assessments.** The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative 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.

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## ARTICLE VIII. NOTICES TO MORTGAGEES

Any holder, insurer or guarantor of a first mortgage, upon written request to the Association (which request states the name and address of such holder, insurer or guarantor and the Lot designation), shall be entitled to timely written notice by the Association of:

1. any proposed addition or amendment of the Association Organizational Documents effecting a material change or addition in provisions establishing, providing for, governing or regulating (a) voting, (b) the division of assessments, assessment liens or subordination of such liens, (c) reserves for maintenance, repair and replacement of Association property, (d) insurance or fidelity bonds, (e) rights to use of the Common Areas, (f) responsibility for maintenance and repair, (g) the leasing of any Lot or residence or part thereof, (h) the imposition of any right of first refusal or similar restriction on the right of a Lot owner to sell, transfer, or otherwise convey his or her Lot, or (i) any provisions which are for the express benefit of the holder, insurer or guarantor of any first mortgage on a Lot;
2. any proposed termination of the Association;
3. any condemnation or eminent domain proceeding which may affect a material portion of the Common Areas;
4. any decision by the Association not to restore substantially damaged property comprising a part of the Common Area;

5. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association where substantially identical replacement insurance is not obtained;
6. any decision by the Association to construct significant new capital improvements not replacing existing improvements;
7. times and places of Lot owners' meetings for which any of the preceding items is on the meeting's agenda; and
8. any default under the Association Organizational Documents which gives rise to a cause of action against a Lot owner whose Lot is subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days.

No addition or amendment of the Association Organizational Documents shall be considered material if it is for the purpose of correcting technical errors or for clarification only.

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## ARTICLE IX. AMENDMENTS

Section 1. Power to Amend. Except as hereinafter provided, amendment of these Covenants (or the Articles of the Association) shall require (a) the consent of Lot owners exercising not less than seventy-five percent (75%) of the voting power of Lot owners, and (b) the consent of eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by eligible holders of first mortgages appertain. Notwithstanding the foregoing:

- a. the consent of all Lot owners shall be required for any amendment effecting a change in:
  - i) the method of allocating liability for common expenses;
  - ii) the number of votes in the Association appertaining to any Lot; or
  - iii) the fundamental purposes to which the Common Areas are restricted;
- b. the consent of Lot owners exercising not less than eighty percent (80%) of the voting power of Lot owners and the consent of eligible holders of first mortgages on Lots to which at least seventy-five percent (75%) of the votes of Lots subject to mortgages held by eligible holders of first mortgage liens appertain shall be required to terminate the Association;
- c. the consent of eligible holders of first mortgages on Lots to amendments to the Association Organizational Documents shall not be required except in those instances, previously described, in which the eligible holders of first mortgages on Lots are entitled to written notice of such proposed amendment; and
- d. in any event, Declarant reserves the right and power, and each Lot owner 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 the land and is irrevocable (except by Declarant), for a period of three (3) years from the date of the filing of these Covenants, to amend the Association Organizational Documents, to the extent necessary to conform to the requirements then governing the purchase or insurance of mortgages by The Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Federal Housing Administration, the Veterans Administration, or any other such agency or organization, provided that the appropriate percentage (as described elsewhere herein) of eligible holders of first mortgage liens is obtained, or to correct typographical errors or obvious factual errors the correction of which would not impair the interest of any Lot owner or mortgagee.

An eligible holder of a first mortgage on a Lot who receives a written request to approve amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 2. Method to Amend. An amendment to these Covenants, adopted with the consents hereinbefore provided, shall be executed with the same formalities as these Covenants by two officers of the Association and shall contain their certification that the amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to these Covenants shall be duly executed by them with

the same formalities as the execution of these Covenants and shall contain the certification of such signors that such amendment is made pursuant to authority vested in the Declarant or any duly empowered successor Declarant by these Covenants. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recorder of Fairfield County, Ohio.

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**ARTICLE X.  
ADDITION OF LOTS AND RESERVES**

Section 1. **Reservation of Option to Amend to Add Lots and Reserves.** Notwithstanding any provision in these Covenants to the contrary, the Declarant may amend these Covenants, without the consent of any other Lot owner, mortgagee, or any other party, and in its absolute discretion, to subject additional lots and reserves in later phases of Heather Lake Subdivision to the terms of these Covenants.

Section 2. **Maximum Addition Time.** Declarant's option to subject additional lots and reserves to the terms of these Covenants shall expire and terminate at the end of seven years from the date this Declaration is filed for record.

Section 3. **Procedures for Addition.** Additional Lots and Reserves in Heather Lake Subdivision may be subjected to the provisions of these Covenants by either (1) the filing for record by the Declarant of an amendment to these Covenants, adding the lots and reserves to the definition of Lots and Reserves contained herein, or (2) the filing of similar Covenants affecting such additional lots and reserves.

Section 4. **Effects of Addition.** Upon the addition of lots and/or reserves in the manner described in Section 3, above:

- (a) the added lots and reserves shall thereafter be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if they had been included in the definition of Lots and/or Reserves contained herein;
  - (b) the owner or owners of the added lots 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;
  - (c) assessments shall be divided equally among all of the Lots then subject to these Covenants; and
  - (d) in all other respects, all of the provisions of these Covenants shall include and apply to such additional lots and/or reserves, and to the owners, mortgagees and lessees thereof, with equal meaning and of like force and effect.
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**ARTICLE XI.  
GENERAL PROVISIONS**

Section 1. **Covenants Running With the Land.** The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby 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 Subdivision, and the Association and the Declarant and their respective heirs, executors, administrators, successors and assigns.

Section 2. **Enforcement.** In addition to any other remedies provided in these Covenants, the Declarant, the Association, and each Lot owner, 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 in the Articles or By-Laws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Lot owner 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, reservation, easement, lien or charge. Further, the Association and each Lot owner shall have rights of action against each other for failure to comply with the provisions of the Association Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Lot owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing, in the event of any dispute between the Association and any Lot owner or occupant, other than with regard to assessments,

that cannot be settled by an agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board.

Section 3. **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 provisions shall remain in full force and effect.

Section 4. **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, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 5. **Captions.** The captions of the various provisions of these Covenants are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer

*HG-REV-C.DOC/8-96*