

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR MICHELS FARM SUBDIVISION**

THIS DECLARATION, made this 15 day of January, 1999, by James M. Dixon, Trustee, hereinafter sometimes referred to as the "Declarant."

**WITNESSETH:**

WHEREAS, the Declarant is the owner of the real Property described in Exhibit "A" hereof and desires to create a residential community consisting of single family residences with permanent common areas and community facilities for the benefit of said community; and

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

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

WHEREAS, the Declarant has formed the "Michels Farm Homeowners Association, Inc.," as a non-profit Ohio corporation for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the Properties described in Exhibit "A" and such other property as may be subjected to the provisions hereof pursuant to Article 2, shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE 1

### DEFINITIONS

1.1 Definitions. The following words when used in this Declaration shall have the following meanings:

- 1.1.1 "Articles" and "Articles of Incorporation" shall mean those Articles, filed with the Secretary of Ohio, incorporating Michels Farm Homeowners Association, Inc., as a corporation not for profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be amended from time to time. A true copy of the Articles as shown in Exhibit "C" is attached hereto and made a part hereof.
- 1.1.2 "Association" shall mean and refer to the Michels Farm Homeowners Association, Inc., and its successors and assigns.
- 1.1.3 "Board" and "Board of Trustees" shall mean the Board of Trustees of the Association as provided in the Articles of Incorporation and By-Laws of the Association.
- 1.1.4 "By-Laws" shall mean the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time, pursuant to Section 1702 of the Revised Code of Ohio. A true copy of the By-Laws as shown in Exhibit "D" is attached hereto and made a part hereof.
- 1.1.5 "Common Areas" shall mean and refer to all real property, together with improvements located thereon, owned by or leased to the Association for the benefit, use and enjoyment of its Members, including but not limited to certain greenbelt areas and open space, walking trails, entryway, swimming pool and facilities ("Pool Facilities"), and the undedicated portion of any roadway or street conveyed to the Association, and lots and parcels containing private detention basins and facilities.  
  
"Common Areas" shall include any areas that have been specifically designated by the Declarant on a record plat as "Common Areas."
- 1.1.6 "Declarant" shall mean and refer to James M. Dixon, Trustee and its successors and assigns.
- 1.1.7 "Developer" shall mean and refer to James M. Dixon, Trustee, and his successors and assigns if such successors or assigns should acquire one or more developed Lots from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner. Any assignee described herein shall be a "Developer" for purposes of this Declaration only as to the Lot or Lots which such assignee has acquired for the purpose of resale or for the purpose of constructing improvements thereon for resale to an Owner.

- 1.1.8 "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of (a) the day ten (10) years after such date, or (b) the day next following the day on which the Developer or Declarant owns no part of the Property.
- 1.1.9 "Living Unit" shall mean and refer to any structure designated and intended for use and occupancy as a residence by a single family.
- 1.1.10 "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision plat of the Property or recorded re-subdivision thereof with the exception of the Common Areas and community facilities.
- 1.1.11 "Member" shall mean any one of those Owners who are members of the Association as provided in Article 4 hereof.
- 1.1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.1.13 "Property" and "Properties" shall mean and refer to that certain real property hereinafter described, and such additions thereto as may hereafter be annexed pursuant to Article 2.
- 1.1.14 "Trustee" and "Trustees" shall mean that person or those persons serving, at the time pertinent, as a Trustee or Trustees of the Association, and mean that same person or those persons serving in the capacity of a member of the Board of Trustees of the Association.

## ARTICLE 2

### PROPERTY DEVELOPMENT - ANNEXATION

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

2.2 Annexation of Additional Property. For a period of fifteen (15) years from and after the date this Declaration is filed for record, additional property, not limited to the Property described in Exhibit "B", may be annexed to the above-described Property by the Declarant without the assent of the Members of the Association, if any. Thereafter, such additional property may be annexed only with the consent of fifty-one (51%) percent of each class of Members of the Association. Any additional Property so annexed, however,

must be adjacent to or in the immediate vicinity of the above-described Property. The scheme of the within Covenants and Restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on Exhibit "A" as hereinafter provided.

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

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

2.4 Construction of Pool Facilities. Declarant agrees that it shall commence construction of the Pool Facilities no later than the date upon which the eightieth (80<sup>th</sup>) certificate of occupancy is issued for the Property.

### ARTICLE 3

#### PROPERTY RIGHTS

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

- 3.1.1 The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas; and
- 3.1.2 Easements and restrictions of record; and
- 3.1.3 The right of the Association to levy reasonable admission and other fees for the use of any community facility situated upon the Common Areas by the Members of the Association and their guests; and
- 3.1.4 The right of the Association to take such steps as are reasonably necessary to protect the above-described Property against mortgage default and/or foreclosure; and

- 3.1.5 The right of the Association or the Declarant to reserve or grant easements over the Common Areas and Lots as provided in Sections 3.3 and 3.4; and
- 3.1.6 The right of the Association to limit the number of guests of Members; and
- 3.1.7 The right of the Association to suspend the voting rights and the rights to use of the Common Areas for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided that the rights set forth in subparagraph 3.1.9 below shall not be suspended; and
- 3.1.8 The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration; and
- 3.1.9 The rights of the Association and Owners of Lots to a perpetual easement over any Common Areas, and upon other Lots, and for necessary pedestrian and automotive ingress and egress to and from such Lot and for gas, electric, telephone, water, sewer, drain, cable television connections, and other utility conduits with rights to repair, maintain, and replace same, as they may be established over, upon, and through the said Common Areas and community facilities, which rights are hereby expressly established, granted, and reserved for the benefit of the individual lots.

3.2 Delegation of Use. Any Owner may delegate, in accordance with the applicable By-Laws of the Association, his right of enjoyment in and use of the Common Areas to the members of his family, guests, and his tenants or contract purchasers who reside on the Property, provided that in the instance of a delegation to tenants or contract purchasers who reside in the Property, the Owner's right of enjoyment in and use of the Common Areas and Limited Common Areas and that of his family and guests shall be suspended unless the Owner shall likewise reside on the Property, subject however to the provisions of Section 3.4 below.

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

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

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

3.5 Rights Not Subject to Suspension. Notwithstanding anything herein contained to the contrary, the rights and easements created in Section 3.1.9 of this Article 3 shall not be suspended by the Association for any reason.

## ARTICLE 4

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Members. Every Lot Owner shall be a Member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of any Lot. During the Development Period, the Association shall have Class A Members (being all Owners except Developer) and a Class B Member (Developer). After the Class A Members are entitled to elect all of the Board, the Class B membership shall terminate and Developer, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner.

4.2 Voting Members.

4.2.1 With the exception of a Developer until Class B membership has lapsed and becomes a nullity, every person, group of persons or entity who is an Owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Class A Member of the Association. Class A Members shall be entitled to one vote per each Lot in which they hold the interest required for membership.

4.2.2 Class B Members shall be the Developer which shall be entitled to five votes for each Lot in which any Developer holds the interest otherwise required for Class A membership multiplied by the number of living units located or proposed by the Declarant to be located on such Lot, provided, however, that each Class B membership shall terminate after the Class A Members are entitled to elect all of the Board.

4.2.3 At such time as Class B membership shall terminate, any Developer which, for any Lot, holds an interest therein otherwise required for Class A membership, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member. If more than one person, group of persons, or entity is the record Owner of a fee interest in any Lot, then the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

## ARTICLE 5

### ASSESSMENTS

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

5.2 Annual Assessments, Purposes. The Annual Assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Property and preserving the aesthetic and scenic qualities of the development.

5.3 Annual General Assessment. To carry out these purposes, an Annual General Assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for (i) charges levied against the Association by the Community Association pursuant to the Community Declaration, the improvement, expansion and maintenance of the Common Areas and community facilities, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision, and including the maintenance, repair and landscaping of streets, mailboxes and street signs, right of ways and walkways and fountains and other landscaped areas, excluding Limited Common Areas, and, in the discretion of the Association, including any entrance roads or adjoining roads or areas, whether public or private, which may affect the recreation, scenic enjoyment, health, welfare and safety of the residents even though not owned by the Association.

5.4 Annual General Assessments, Initial Amount. Until January 1, 2000, the Maximum Annual General Assessment for each Class A membership for general purposes provided in Section 5.3 shall not exceed Two Hundred Dollars (\$200.00) per Living Unit.

The assessment may be billed in advance on a monthly, quarterly or annual basis. The Board of Trustees may fix the Annual General Assessment for any amount not in excess of the maximum hereinabove provided for. The assessment shall be fixed at a uniform rate based upon the number of Living Units.

5.5 Annual General Assessment, Maximum Increase.

- 5.5.1 From and after January 1, 2000, the amount of the Maximum Annual General Assessment, set out in Section 5.4, above for all membership will increase automatically ten (10%) percent per year in addition to the maximum sum allowed for the previous year (whether changed or not), unless prior to the levying of such new assessment year, the Board of Trustees vote to reduce the assessment below that allowed to be changed in such year. As used herein, the term "allowed to be changed" shall mean the sum set out in Section 5.4, above, increased and compounded ten (10%) percent per year beginning with the year immediately following the conveyance of the first Lot to an Owner.
- 5.5.2 From and after January 1, 2000, the Maximum Annual General Assessment for all membership may be increased above that established by the preceding paragraph, by a vote of Members as hereinafter provided for the next succeeding year and at the end of such year for each succeeding year. Any change made pursuant to this paragraph shall have the assent of a fifty-one (51%) percent of the total number of votes held by Class A Members and fifty-one (51%) percent of the total number of votes held by the Class B Member.
- 5.5.3 The assessment may be billed in advance on a monthly, quarterly, or annual basis. The Board of Trustees may fix the annual assessment at any amount not in excess of the maximum thereinabove provided for. The assessment shall be fixed at a uniform rate based upon Living Units.

5.6 Individual Assessments. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees and such maintenance is not that to be provided by the Association under Section 5.3 or 5.4 above for which assessments are provided, then the Association, after approval by sixty-six and two-thirds (66-2/3%) vote of all Members of the Board shall have the right through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance and repair (including charges incurred by the Association for attorney's fees, court costs, or other expenses incurred to obtain access to the subject Lot or unit) shall be added to and become part of the total assessment to which such Lot is subject.

5.7 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement located upon the Common Areas, which cost has not otherwise been provided for in full as part of the applicable Annual General Assessment, including the necessary fixtures and personal property related thereto, provided that any such assessment affecting the Common Areas shall have the approval of fifty-one (51%) percent of the total number of votes held by Class A Members and fifty-one (51%) percent of the total number of votes held by the Class B Member. Any Special Assessments levied by the Association pursuant to the provisions of this section shall be fixed at a uniform rate based upon the number of applicable Living Units. All monies received by the Association as



a Special Assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of the Special Assessment and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association. The assessment may be billed in advance on a monthly, quarterly or annual basis.

5.8 Commencement of Assessments. The Annual Assessments shall commence on the first day of the month following the conveyance to the Association of the Common Areas. The first assessment for any such membership may be made for the balance of the calendar year and shall become due and payable and a lien on the date aforesaid. The Board may from time to time determine the manner and schedule of payments.

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

5.9 Assessment of Declarant and Developer. Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association notwithstanding, the Developer and/or Declarant, while there exists a Class B Member, shall be required to pay an assessment for any recorded, unsettled Lot in which it has the interest otherwise required for Class A membership only in an amount equal to twenty-five (25%) percent of the Annual Assessments and Special Assessments which the Association levies under Article 5. The provisions of this Section 5.11 shall not apply to the assessment of any Living Unit held by a Developer for rental purposes that is or has been occupied as a Living Unit; in which event the Developer shall be required to pay the full amount of the assessments levied thereon.

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

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

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

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

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

## ARTICLE 6

### INSURANCE

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

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

6.3 Owners Insurance. Any Owner, tenant, or occupant may carry such insurance in addition to that provided by the Association pursuant to this Declaration, as that Owner, tenant, or occupant may determine, subject to the provision hereof and provided that no Owner, tenant, or occupant of any Attached Single Family Living Unit may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried by the Association pursuant to Section 5.4.4. Each Owner of a Detached Single Family Living Unit shall be responsible for obtaining casualty and liability insurance for his Unit.

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

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

## ARTICLE 7

### USE RESTRICTIONS

7.1 Prohibited Uses and Nuisances. Except for activities of the Developer during the Development Period, the following provisions shall apply to all Living Units and Lots:

- 7.1.1 Harmful Discharges. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (other than normal residential chimney emissions), no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emission, production, storage or discharge may adversely affect the use or intended use of any portion of the Property or may adversely affect the health, safety or comfort of any person. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer.
- 7.1.2 Compliance with Laws. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner.
- 7.1.3 Noise. No person shall cause any unreasonable loud noise (except for security devices) anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.

- 7.1.4 No Trade or Business. No trade or business of any kind may be conducted in or from any Lot or living unit except that an Owner or occupant of a Lot or Living Unit may conduct such business activity within the Lot or Living Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Living Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Lot who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property.

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

- 7.1.5 Signs. No signs, billboards, or advertisements of any kind shall be displayed on or about any Lot to public view except for signs advertising the Property for sale or rent. During the construction and sales period, signs used by the Developer, builders, or realtors to advertise the Property shall be uniform in style, color, and must be approved by the Developer. Political signs will be permitted to be put up no sooner than 30 days before an election and must be removed within seven days after the election.
- 7.1.6 Trash. Except in connection with construction activities, no burning of any trash and no accumulation or storage or litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Trash containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any Lot.
- 7.1.7 Parking: Vehicle Repairs. No trailers, campers, mobile homes, motor homes, buses, or trucks exceeding a 3/4 ton rating shall be permitted to be regularly parked upon any Lot or on the street in front of any Lot or parked in excess of forty-eight (48) hours except that any of such vehicles may be stored or parked in an enclosed garage. It is further provided that any vehicles being used for the purpose of construction or repair work upon any Lot or residence shall be permitted to park on or in front of a Lot for a reasonable period of time necessary for such purpose. No recreational vehicle, boat, or travel trailer shall be parked or stored on any Lot, unless the same is in an enclosure or garage and completely out of view.
- 7.1.8 Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) is permitted. Such pets are not to be kept or maintained for commercial

purposes or for breeding. All animals must be kept within the Lot boundary and not allowed to run unattended. There will be no outdoor kennels or dog runs permitted.

7.1.9 Open Fires. Open burning is not permitted on the Property, except that outdoor fireplaces, grills, and chimneys may be used if equipped with fire screens to prevent the discharge of embers or ashes.

7.1.10 Lighting. No exterior lighting shall be directed outside the boundaries of a Lot.

7.1.11 Street Cleaning. Builders of each residence and the Owners of the Lots in this subdivision shall be responsible for the cleaning and removal of mud or debris on the streets caused during the construction of such residence and may be billed by the Association for the cost of such cleaning and removal.

7.1.12 Other Structures. No structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

7.2 Residential Use. All of the Living Units shall be used for private residential purposes exclusively except that a Developer may use Living Units as models and as offices in connection with the marketing or sale of Lots or Living Units in Michels Farm.

7.3 Right of Association to Remove or Correct Violations of this Article. The Association may, in the interest or the general welfare of all of the Owners, enter upon any Lot or the exterior of any dwelling at reasonable hours on any day except Sunday for the purpose of removing or correcting any violation or breach of any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided however, that no such action shall be taken without a resolution of the Board of Trustees of the Association in obtaining access to any Lot or Property covered under this Section and any charges incurred by the Association in correcting the violation hereunder, (including court costs and reasonable attorney's fees) shall constitute a charge against the subject Property and a personal obligation of the Owner thereof, and the Association shall have a lien upon the Property and Lot for such expenses, and including costs of collection of said lien amount, which lien shall be subordinate to first mortgages as provided in Section 5.14.

7.4 Developer's Reservation of Entry Rights. The Declarant for itself and any Developer reserves the right for a period of five (5) years after the sale of a Lot by the Declarant or Developer to an Owner to enter upon the Lot for purposes of correcting grade and drainage patterns for the benefit of the entire Properties, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.

7.5 Declarant's and Association's Right to Grant Easements. Notwithstanding the provisions of Article 3, or other provisions of this Declaration, as long as there exists Class B membership, the Declarant, and thereafter the Association is authorized without consent of the Members to grant across, through or under any Lot, Common Area or Limited Common Area any utility easement, including a

Television Cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the Properties, provided no easement shall be granted across, through or under any Living Unit or building which restricts ingress or egress to such Living Unit or building.

7.6 Support Easements for Other Buildings. Declarant hereby reserves the right and easement for itself, and its successors and assigns, to use the Property for and to install thereon such structures as Declarant may deem necessary or desirable to support that portion of other buildings and structures that are not part of the Property, but may be constructed as part of the Project and also the right to enter upon the Property as Declarant may deem necessary or desirable to construct, maintain or repair such buildings and structures and the support structures for the same. However, any utilization of the foregoing rights and easements reserved shall not damage the Property, and, if any damage occurs to the Property as a result of such utilization, the Property shall be restored to the condition which existed immediately prior to said utilization at the sole expense of the person or persons making such utilization.

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

## ARTICLE 8

### ARCHITECTURAL RESTRICTIONS

8.1 The following architectural restrictions shall be applicable to the Property:

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

8.1.2 Dwelling Floor Area. The floor area of the Living Unit exclusive of porches, decks, basements and garage shall be no less than 1000 square feet for a ranch type dwelling, 1100 square feet for a tri-level dwelling, 1100 square feet for a bi-level dwelling, 1100 square feet for a 3-bedroom 2-story dwelling, and 1200 square feet for a 4-bedroom 2-story dwelling. Contemporary designs having a lesser floor area than the above stated, however, may be approved if said design shall have a volume comparable to the above stated. Any other design may be approved if submitted as herein provided. No structure shall be constructed, erected, placed or permitted to remain upon any Lot unless the plans and specifications for such structure and location of the structure on the Lot are approved in writing by James M. Dixon, 7924

Jessie's Way, Hamilton, Ohio 45011, his successors or assigns. Plans and specifications shall be in such form and contain such detailed information as James M. Dixon may reasonably require. In all cases, plans and specifications shall include a site plan showing the locations of all proposed and existing structures on the Lot, exterior elevations for the proposed building, specifications of materials, color schemes and other details affecting the exterior appearance of the proposed building.

- 8.1.3 Construction Materials. No Living Units shall be constructed of concrete block, cinder block or other similar materials unless the entire exterior of the Living Unit is covered with brick. No underground Living Units shall be permitted.
- 8.1.4 Siding Materials. All sheeting materials used as siding shall require written consent, except vinyl or aluminum siding may be used.
- 8.1.5 Conformance to Code. All dwellings shall be built in such a manner so to comply with the zoning laws, health regulations, and building, plumbing and electrical codes of the Township of Hamilton and/or Warren County, State of Ohio.
- 8.1.6 Living Unit Placement and Yard Grading. Living Units shall conform to existing grade and drainage patterns. Each Lot owner and/or builder shall endeavor to retain as much of the natural woods as is practical.
- 8.1.7 Radio and Television Antennas. Satellite dishes are permitted as long as they do not exceed 18" in diameter and shall be located in rear yards only. Radio or television antennas of any kind which exceed the highest point of the roof of the residence by more than ten (10) feet are prohibited.
- 8.1.8 Air Conditioning and Heat Pump Equipment. Such equipment shall be located only in side or rear yards.
- 8.1.9 Awnings. No metal or plastic awnings for windows, doors or patios may be erected or used.
- 8.1.10 Exterior Carpeting. No exterior carpeting shall be allowed if it is visible from the street or any neighboring Lot.
- 8.1.11 Other Structures. No above ground swimming pools shall be permitted on any Lot. No structure of a temporary character, trailer, shack, barn, storage sheds or other outbuildings, shall be permitted on any Lot, except storage buildings may be permitted if they are constructed with material and colors compatible with the house. Plans, specifications, and site plans for such building must be approved in writing by James M. Dixon, Trustee, prior to construction.

- 8.1.12 Fences. No fence shall be erected or placed on any Lot in front of the set back line. Split rail (with wire mesh pet guard) in rear yard only will be permitted without approval. No other type of fence shall be installed without the prior written approval of James M. Dixon, Trustee.
- 8.1.13 Completion. Construction of a Living Unit, established lawn, including shrubs and mulching in conformity with the neighborhood or such as James M. Dixon shall require on any Lot shall be completed within one (1) year from the date construction is started.
- 8.1.14 Storm Water. Storm water must be disposed of in accordance with drainage plans on file with the Warren County Engineer. All drainage patterns on above said plans must be conformed to and all drainage swales shall be maintained and may not be filled.
- 8.1.15 Mailboxes. Mailbox design and location will be identical and will be installed by Declarant at notification that the home is completed. Any mailbox damaged or destroyed will be repaired or replaced as necessary by and at the expense of the individual Lot Owner with the same style of mailbox as originally installed.

## ARTICLE 9

### FEDERAL HOME LOAN MORTGAGE CORPORATION PROVISIONS

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

9.2 It is provided as follows:

- 9.2.1 Unless at least two-thirds (66-2/3%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant or Developer) of the individual units in Michels Farm have given their prior written approval, the Association shall not be entitled to:
- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common Property owned, directly or indirectly, by such homeowners association for the benefit of the units in Michels Farm (the



granting of easements for public utilities or for other public purposes consistent with the intended use of such common Property by the Association shall not be deemed a transfer within the meaning of this clause);

- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a unit owner;
- (c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of units, the maintenance of the common property party walks or common fences and driveways, or the upkeep of lawns and plantings in Michels Farm;
- (d) fail to maintain fire and extended coverage on insurable Michels Farm common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (e) use hazard insurance proceeds for losses to any PUD common property for other than the repair, replacement or reconstruction of such common property.

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

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

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

## ARTICLE 10

### MISCELLANEOUS

10.1 Duration. Except where permanent or perpetual easements or other permanent rights or interest are herein created the terms and provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument signed by the then Owners of two-thirds (2/3) of the Lots have been recorded, agreeing to terminate the Declaration.

10.2 Amendment. The Declaration may be amended, from time to time as follows:

10.2.1 By Declarant: The Declarant reserves the right and power, and each Lot Owner by acceptance of a deed to a Lot is deemed to consent to and does with an interest, which shall run with the title to the Lot, and is irrevocable except by Declarant for a period of five (5) years from the date hereof, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lots Owners, or to the extent necessary to enable Declarant or any other Developer to meet any other reasonable need or requirement in order to complete the development of the Property and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall take effect only upon recording.

10.2.2 By lot Owners. Except as otherwise provided in this Declaration, this Declaration may be amended at any time by an instrument executed by persons or entities enabled to exercise seventy-five percent (75%) of the voting power of both classes of the Association; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be recorded and shall take effect only upon recording.

10.3 Personal Liability. Nothing in this Declaration, the Articles or the regulations of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any Member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the maintenance, repair or replacement of any Living Unit or of any part of the Common Areas or Limited Common Areas or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and in such event the amount of recovery shall be limited in the amount of insurance.

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

10.5 Enforcement. Except as provided in Article 8, enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restrictions, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.6 Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.

10.7 Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By-Laws of the Association, the Declaration shall control.

10.8 Condemnation.

10.8.1 In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Lot Owner and the holder of the first mortgage, to the extent of their respective interests. Each Lot Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

10.8.2 In the event any Common Area or Limited Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the appropriate Members and the holders of first mortgages on the Lots of such Members.

10.9 Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause or without payment of a termination fee on ninety (90) days or less written notice.

10.10 Non-Liability of Declarant or Developer. Neither Declarant nor Developer or their representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to them by or pursuant to this Declaration or the By-Laws, whether or not such claims shall be asserted by an Owner, Occupant, the

Association, or by any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof becoming out of repair or by reason of any act or neglect of any Owner, Occupant, the Association and their representative agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.), except as provided by any written warranty provided by the Developer to an Owner or the Association.

10.11 Gender and Grammar. The singular, whenever 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 or other forms of business organizations, or individuals, men or women, shall in all cases by assumed as though in such case fully expressed.

IN WITNESS WHEREOF, the said James M. Dixon, Trustee, has hereunto set his signature on the day and year first written above.

Signed and acknowledged  
in the presence of:

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

By: \_\_\_\_\_  
James M. Dixon, Trustee

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

STATE OF OHIO :  
 : SS:  
COUNTY OF :

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 1999, by James M. Dixon, Trustee.

\_\_\_\_\_  
Notary Public

This instrument was prepared by Mark D. Schraffenberger, Esq., Aronoff, Rosen & Hunt, 2400 Star Bank Center, 425 Walnut Street, Cincinnati, Ohio 45202.

April 24, 2005/cas DECLARATION OF COVENANTS.doc

Copy: See Signatures, recorded at Warren County Government Center, 2<sup>nd</sup> Floor, Recorder's Office,  
Microfiche: Disc 1688 – Page 968

Supplements: See Microfiche:

Disc 1789 – Page 460

Disc 1797 – Page 189

Disc 1798 – Page 457

Disc 1848 – Page 641

Disc 2483 – Page 219

Disc 2653 – Page 567

Disc 3324 – Page 792