

**DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**KINGSBURY RECREATION ASSOCIATION**

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DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
KINGSBURY RECREATION ASSOCIATION

This Declaration of Easements, Covenants, Conditions and Restrictions is made this 8<sup>th</sup> day of April, 1997, by Kingsbury Trace Development Company, Ltd., an Ohio limited liability company, as the fee-simple owner of the real estate hereinafter described ("Declarant").

RECITALS

1. Declarant is or was the owner of the real property described in Exhibit A attached hereto and incorporated herein by this reference ("Properties"). Declarant has developed a portion of the Properties and intends to develop a portion of the remainder of the Properties into single-family residential subdivisions ("Kingsbury Trace Subdivision"). Declarant also intends to sell a portion of the Properties to a developer who intends to develop either condominiums or some other type of planned unit development ("PUD Property"). Declarant intends to develop a portion of the Properties into a recreation facility ("Recreation Facilities") to serve the Kingsbury Trace Subdivision, the PUD Property, and those residents of another subdivision being developed by the Declarant and know as "Kingsbury Crossings" ("Kingsbury Crossings Subdivision"), and which residents join the Kingsbury Crossings Recreational Association.

2. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions concerning the improvement, ownership, development, maintenance, repair and replacement of the Recreational Facilities.

3. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Recreational Facilities, and the interrelationship of the component residential and recreational associations, and to establish a method for the administration, maintenance, preservation, use, and enjoyment of the Recreational Facilities, and all appurtenances relating thereto.

NOW, THEREFORE, Declarant hereby declares that the Properties described in Exhibit A, and any Additional Land as may by subsequent amendment and by Supplementary Declaration be added to and subjected to this Declaration, shall be held, sold, and conveyed, subject to the folio wing easements, covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Additional Land" shall mean and refer to additional real property, subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration.

Section 2. "Articles and Articles of Incorporation" shall mean the articles filed with the Secretary of the State of Ohio, incorporating Kingsbury Recreation Association, Inc. as a corporation not-for-profit, under the provision of chapter 1702 of the Revised Code of Ohio as the same may be lawfully amended from time to time (State of Ohio's Non-Profit Corporation Statutory Act.)

Section 3. "Assessments" shall mean the determination of the share of common expenses and other charges which shall be payable by each Member.

Section 4. "Association" shall mean and refer to the Kingsbury Recreation Association, Inc. and its successors and assigns.

Section 5. "Board" shall mean the board of trustees of the Association.

Section 6. "Book of Resolutions" shall mean and refer to the document containing the rules, regulations and policies of the Association as they may be amended.

Section 7. "Bylaws" shall mean the bylaws of the Association as the same may be lawfully amended from time to time, created under and pursuant to the provisions of this Declaration, and which shall also serve as the code of regulations of the Association, under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code. A true copy of the Bylaws is attached hereto as Exhibit B and made a part hereof.

Section 8. "Common Area and Facilities" shall mean all of the real estate described on Exhibit C and all improvements constructed thereon, including a clubhouse, swimming pool, tennis courts, and parking areas. The Common Area and Facilities shall include tangible personal property existing for the common use, enjoyment, or safety of the Members and Owners, and for the maintenance of other parts of the Common Area and Facilities, such as decorations, furnishings, furniture, equipment, tools and supplies.

Section 9. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles.

Section 10. "Declarant" shall mean and refer to Kingsbury Trace Development Company, Ltd., the prior or current fee-simple owner of the Properties and the Additional Land in its capacity as an Ohio limited liability company. The rights specifically reserved to the Declarant under the Declaration shall accrue to the Declarant, its successors and assigns, as are designated hi writing by Declarant as successors and assigns of such rights. In the event another, other than the first Declarant, comes to stand in the same relation to the Properties and the Additional Land or any portion thereof as the first Dedarant, that Declarant shall hold the same rights and obligations as would then have been held by the first Declarant; moreover, in the event that any lending institution of the Declarant would come to stand in the same relation to the Properties, or any part thereof, as a Dedarant, then said lending institution shall hold the same rights and obligations as would then have been held by the Declarant.

Section 11. "Declaration" shall mean and refer to the easements, covenants, conditions and restrictions, and all other provisions herein set forth in this entire document, as they may from time to time be amended.

Section 12. "Founding Documents" shall mean or refer to the Articles, the Declaration and the Bylaws, all as initially drawn by the Declarant and filed and recorded as the case may be, and all as may be duly amended from time to time.

Section 13. "Governing Documents" shall mean or refer collectively and severally to the Founding Documents, and the Book of Resolutions, as such may be amended from time to time.

Section 14. "Homeowners' Association" shall mean the Kingsbury Trace Homeowners' Association, Inc. created in the Kingsbury Trace Subdivision and any other homeowners' association as may be created on the Properties and on the Additional Land.

Section 15. "Kingsbury Crossings Recreational Association" shall mean the recreational association formed by and consisting of owners of lots in the Kingsbury Crossings Subdivision who desire to utilize the Common Areas and Facilities.

Section 16. "Lot" shall mean or refer to a lot hi the Kingsbury Trace Subdivision, and each lot owned by a member of the Kingsbury Crossings Recreational Association, or any lots that may be created on the Additional Land.

Section 17. "Members" shall mean and refer to members of the Association, which Members shall consist of the PUD Association(s), the Homeowners' Association, and the Kingsbury Crossings Recreational Association.

Section 18. "Notice and Hearing" shall mean a written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at the Owner's expense, in the manner further provided in the Bylaws.

Section 19. "Owner" shall mean or refer to the record holder of the fee simple title to any Lots or PUD Units. The term shall exclude the Declarant and those having such an interest merely as security for the performance of an obligation.

Section 20. "Person" shall mean and refer to a natural person, corporation, partnership, limited partnership, trust, and any other legal entity to which the law attributes the capacity of having rights and duties.

Section 21. "Properties" shall mean and refer to all real property which is hereby subjected to the Declaration and described on Exhibit A, together with such other real property as may, from time to time, be annexed thereto under the provisions of Article II hereof.

Section 22. "PUD Association" shall mean the association created on the PUD real property described on Exhibit D.

Section 23. PUD Property" shall mean and refer to all real property which is hereby subjected to the Declaration and described on Exhibit D and on which some form of planned unit development is constructed, such as a condominium development.

Section 24. PUD Unit" shall mean and refer to a living unit developed on the PUD Property.

Section 25. "Supplementary Declaration" shall mean and refer to any declaration filed by Declarant and submitting and subjecting any portion of the Additional Land to the rights and obligations imposed by this Declaration.

Section 26. "Voting Power of the Board" shall mean and refer to the total number of votes that may be cast by all members of the Board.

## ARTICLE II PROPERTIES: ADDITIONS AND WITHDRAWALS

Section 1. Properties. The real estate which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Summit, Township of Copley, and is more particularly described in Exhibit A.

Section 2. Additions to the Properties. The Declarant shall have the right to subject to the Declaration, any portion of the Additional Land, provided that not more than 15 years have elapsed since the filing of this Declaration. The additions authorized hereunder shall be made by filing one or more Supplementary Declarations with respect to that portion of the Additional Land.

Section 3. Withdrawals From the Properties. The Declaration may, and hereby does reserve the right to withdraw from the effect and operation of this Declaration, at any time or times prior to the expiration of 15 years from the date of the filing of this Declaration, any part or parts of the Properties the Declarant selects, subject to the following conditions: (i) the property selected is not leased or owned by the Association; and (ii) the Declarant owns the fee simple title to the property selected.

### ARTICLE III PROPERTY RIGHTS

Section 1. Obligations of the Declarant. The Declarant shall allocate \$1,000 from the sale of each Lot in the Kingsbury Trace Subdivision and \$200 per unit from the sale of the PUD Property for the cost of the construction and development of the Common Areas and Facilities. These cost-of-construction funds shall be deposited in an escrow account entitled "Construction Fund Escrow Account". Declarant, subject to its obligation to cause the Common Areas and Facilities to be constructed, shall have the exclusive right to the Construction Fund. Upon completion of the construction of the Common Areas and Facilities and the payment in full for the construction of the Common Areas and Facilities the Declarant shall cease allocating any funds from the sale of any lots in the Kingsbury Trace Subdivision or the sale of any of the PUD Property for the construction of the Common Areas and Facilities. Any funds remaining in the Construction Fund Escrow Account, after the payment in full for the construction of the Common Areas and Facilities shall be disbursed to the Declarant and shall be the property of the Declarant.

Section 2. Obligations of the Association. The Association shall maintain the Common Area and Facilities in a clean, safe, neat, healthy and workable condition and in good repair, and shall promptly make all necessary repairs and replacements structural or non-structural, ordinary as well as extraordinary, subject only to the provisions of the Governing Documents. The Association shall provide equipment and supplies necessary for the maintenance and enjoyment of the Common Area and Facilities.

Section 3. Easement of Enjoyment of Common Area. All Members and Owners shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area and Facilities, which shall be appurtenant to and shall pass with the title to every Lot and PUD Unit, subject to the following provisions:



- A. the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and Facilities, and to impose reasonable limits on the number of guests who may use the facility;
- B. the right of the Association, after Notice and Hearing pursuant to Article X of the Bylaws, to suspend an Owner's and/or a Member's right to use any of the Common Area and Facilities for any infraction by an Owner and/or a Member of the terms and conditions of this Declaration and the Association's rules and regulations for the duration of the infraction, and for an additional period thereafter not to exceed 30 days;
- C. the right of the Declarant with regard to the Properties, to grant easements in and to the Common Area and Facilities to any public agency, authority, or utility for such purposes as benefits the Properties, the Additional Land and is not to the detriment of the Common Area and Facilities, and for such other purposes as the Declarant determines in its sole discretion and which purposes do not adversely affect the Properties or the Additional Land;
- D. the right of the Association to give as security for the payment of any loan, a mortgage conveying all or a portion of the Common Area and Facilities, provided the Owners of 50% of the PUD Units and Lots shall approve, and further provided the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interest, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant, or any Member or Owner.

Section 4. Title To Common Areas. The Declarant may, at its sole discretion, retain the legal title to the Common Area and Facilities until the earlier of: (i) the completion of the sale by the Declarant of 90% of the total number of Lots, and 90% of the total number of PUD Units have been constructed and occupied; or (ii) January 1, 2001. At such time, or at such earlier time at the sole discretion of the Declarant, the Declarant shall convey for \$1 fee simple title to the Common Area and Facilities to the Association, free and clear of all liens and encumbrances, save and except easements and restrictions of record. Declarant shall, prior to January 1, 2001, improve the Common Area and Facilities by causing to be constructed, at no charge to the Association, a swimming pool, clubhouse, tennis courts, and parking area.

Section 5. Extension of Privileges. An Owner's right of enjoyment in the Common Area and Facilities shall extend automatically to all members of (Ms) immediate family residing with the Owner. No guest shall be entitled to such right of enjoyment except as provided in rules and regulations promulgated by the Association.

ARTICLE IV  
KINGSBURY RECREATION ASSOCIATION. INC.

Section 1. Organization. The Association shall be a non-profit, non-stock corporation organized and existing under the laws of this state and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents than this Declaration, shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall be in existence not later than the date of the conveyance of the Common Area and Facilities to the Association.

Section 2. Membership.

- A. Basis. Each PUD Association and Homeowners' Association established on the Properties, and the Additional Land, and the Kingsbury Crossings Recreational Association shall automatically become a Member of the Association.
- B. Members Rights and Duties. Members shall have all such rights and be burdened with such obligations as are set forth in this Declaration, the Articles, Bylaws, and Book of Resolutions. An Owner upon acquisition of fee simple title to his Lot or PUD Unit, shall be deemed to have acquired all rights and obligations of the Member association to which the Owner belongs, to be exercised non-exclusively with all other Members and Owners, except for voting rights which shall only be exercised by Members unless otherwise provided herein. Each Member shall enforce all obligations hereunder against Owners and members of their respective associations.
- C. Voting Rights. The voting rights of the Association shall be divided into four classes. The four classes shall be Homeowners' Association, Kingsbury Crossings Recreational Association, PUD Association, and Declarant and shall possess the following rights and obligations:
1. Homeowners' Association. The Homeowners' Association Member shall be the Kingsbury Trace Homeowners' Association and shall be entitled to elect 3 Board members. This class membership shall include and extend to encompass any subsequent homeowner associations established on the Properties or on the Additional Land upon which the Declarant has imposed and filed a Supplementary Declaration.



2. Kingsbury Crossings Recreational Association. This Member shall be the Kingsbury Crossings Recreational Association and shall be entitled to elect 1 Board member.
3. PUD Association. The PUD Association Member shall be any PUD Association established on the Properties. This Member shall be entitled to elect 2 Board members. This class membership shall include and extend to encompass any subsequent PUD associations established on the Additional Land upon which the Declarant has imposed and filed a Supplementary Declaration.
4. Declarant. The Declarant Member shall be the Declarant. The Declarant Member shall be entitled to 7 Board votes, and which 7 votes may be cast by the member(s) of the Board designated by the Declarant, and according to the Declarant's designated allocation of votes. A Board member designated by the Declarant Member can be vested with more than one of the Declarant Member's votes. An example of this voting right is if the Declarant designates 2 Board members, then the Declarant shall also designate how the 7 votes shall be allocated amongst its designated Board member(s) representatives, i.e. 3 1/2 votes for each member, or 5 votes for one member and 2 votes for the other member, etc. The Declarant shall also be entitled to negate any action of the Board which the Declarant deems, in its sole discretion, to adversely affect the Properties. The Declarant Membership shall cease upon the earlier of: (i) the expiration of 10 years from the date of the filing of this Declaration, (ii) upon 90% of the total acreage of the land described on Exhibit A being sold; or (iii) at any time earlier, at the sole discretion of the Declarant.

### Section 3. Board of Trustees.

- A. Number, Qualification, and Election. Until the first annual meeting of the Members of the Association, the Board of Trustees shall consist of 3 persons appointed by the Declarant. None of such 3 persons, or their replacement, need be Members or Owners. At the time of the first annual meeting of the Association, which annual meeting shall be held not later than 30 days following the date that: (i) fee simple title to 200 Lots have been transferred from the Declarant to Owners, and 80 PUD Units have been transferred to Owners, the three persons serving as trustees shall resign and thereafter, the Board shall consist of a minimum of 7 persons and maximum of 13 persons, 3 of which shall be

elected by the Homeowners' Association, 1 which shall be elected by the Kingsbury Trace Recreational Association, 2 of which shall be elected by the PUD Association, and between 1 and 7 of which shall be appointed by the Declarant. Upon the Declarant membership ceasing, the Board shall then consist of 6 members, 3 of which shall be elected by the Homeowners' Association, 1 which shall be elected by the Kingsbury Trace Recreational Association, and 2 of which shall be elected by the PUD Association.

B. Authority of Board. Each Member and Owner hereby expressly and specifically constitutes and appoints the Board its true and lawful attorney, to execute any and all documents or instruments with respect to the use, enjoyment, care, operation and maintenance of the Common Area and Facilities.

C. Duties. In addition to any duties required by law, the Articles, the Bylaws, and Ohio Revised Code Chapter 1702, the Board shall:

1. fix the date of commencement and the amount of the Assessment against each Member for each Assessment period at least 30 days in advance of such date or period, and shall, at that time, prepare a listing of the Assessments which shall be kept at the office of the Association and shall be open to inspection by any Member or Owner;
2. send written notice of any Assessment to every Member;
3. upon demand at any time, furnish to any Member liable for said Assessment, a certificate in writing, signed by an officer of the Association, and setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence of any Assessment therein stated to have been paid.

D. Responsibility for Maintenance. Except as provided herein, the management, replacement, repair, alteration and improvement of the Common Area and Facilities shall be the responsibility of the Association and shall be conducted, operated and administered by the Board. The Association may delegate all or any portion of its authority to discharge such responsibility to an agent. The Board shall have the power and authority to hire an agent for a period not to exceed two years, and to authorize said agent to enter into any contracts which are necessary for the comfort and convenience of Members and Owners. The agent's fee shall be reasonable and not more than the normal fee for such services.

ARTICLE V  
COVENANTS FOR MAINTENANCE AND ASSESSMENTS

Section 1. Obligation of Assessments. Each Member covenants to pay to the Association, such Assessments to be fixed, established, and collected from time to time as hereinafter provided. All Owners shall be assessed equally, based upon number of Lots and/ or PUD Units owned. In addition, each Member shall maintain, repair and replace at its expense and pursuant to a special Assessment, all portions of the Common Area and Facilities which may be damaged or destroyed by reason of the willful or negligent act or neglect of any Owner or an Owner's guest.

Section 2. Association's Maintenance Responsibilities. The Association shall be responsible for keeping the Common Areas and Facilities and all improvements thereon, in good order and repair, including, but not limited to, the seeding, watering, and mowing of all grounds, the priming and replacing of dead trees and shrubbery, leaf raking, upkeep and repair of the swimming pool, tennis courts, clubhouse, and parking area, and the painting and repair (or other appropriate care) of all buildings and other improvements thereon, in a manner and with such frequency as is consistent with good property management.

**Section 3. Assessment.**

- A. Purpose. The Assessment shall be used exclusively to promote the health, safety and welfare of the Members and Owners, and in particular, to improve, maintain and operate the Common Area and Facilities, including funding of appropriate reserves for future repair and replacement.
- B. Basis for Assessment. Assessments shall be apportioned among each Member as follows:
1. Homeowners' Association Member each Lot developed and not owned by the Declarant, or a member of the Kingsbury Trace Recreational Association, shall be assessed to the Homeowners' Association Member. The term "Lot developed" shall mean any Lot where streets and improvements such as sewer and water lines have been installed.
  2. Kingsbury Trace Recreational Association: each member of the Kingsbury Crossings Recreational Association shall be assessed to the Kingsbury Crossings Recreational Association Member.
  3. PUD Owners' Association: upon transfer of title by the Declarant to any portion of the Properties to be developed into PUD Units,

this Member shall be assessed and shall commence paying Assessments at that time based upon the total number of PUD Units that are to be constructed thereon. The allocation of Assessments shall be adjusted according to the actual number of PUD Units constructed thereon.

An example of the apportionment of Assessments is as follows: assume the Declarant has commenced development of phases of the Kingsbury Trace Subdivision which will total 100 Lots. Declarant has transferred title to 80 of these Lots. The Kingsbury Crossings Recreational Association has 20 members. Declarant has sold a portion of the PUD real estate described on Exhibit D on which portion the PUD Developer intends to construct 100 PUD Units. The total Assessment for the year is \$20,000. The Assessment will be determined as follows: 200 total current potential users divided by the assessment amount of \$20,000. The assessment will be apportioned :

1. Homeowners' Association Member =  $80 \times \$100$ ;
2. Kingsbury Crossings Recreational Association Member =  $20 \times \$100$ ;
3. PUD Association Member =  $100 \times \$100$

C. Method of Assessment. By a vote of two-thirds of the Voting Power of the Board, the Board shall fix the annual Assessment at an amount that shall be sufficient to meet the obligations imposed herein. In the event the Board fails to fix an Assessment for any fiscal year, then the Assessment established for the prior year shall automatically be continued until such time as the Board fixes the new Assessment.

D. Commencement Date of Assessments. The Assessments provided for herein shall commence on the first day of the month designated by the Board as a commencement date. Partial annual Assessments shall be adjusted according to the number of months remaining in the calendar year, and such Assessment shall thereafter be on a full calendar year basis. The Board shall fix the amount of annual Assessment at least 30 days in advance of each annual Assessment period. The due date for such Assessment shall be established by the Board. Each Member shall pay one-twelfth of its annual Assessment each month, commencing with

the date designated by the Board to be the date of commencement. Separate due dates may be established by the Board for partial annual Assessments and special Assessments, as long as made 30 days in advance thereof. Written notice of the annual and special Assessments shall be sent to each member who, in turn, shall distribute copies to the respective Owners.

Section 4. Special Assessments. The Association may levy in any Assessment year, a special Assessment for the purpose of deferring, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Area and Facilities, provided that any such Assessment shall have the assent of Owners of 50% of the PUD Units and 50% of the Lots. The Association shall only make capital improvements exceeding \$500 per PUD Unit and per Lot, upon obtaining the written consent of Owners of 50% of the PUD Units and 50% of the Lots. A special Assessment may also be assessed against the Member association violating the Declaration, the Bylaws, or the rules and regulations of the Association, if such violation causes damages or special expenses to the Association or the Properties, and after Notice and Hearing pursuant to the Bylaws.

Section 5. Effect of Non-Payment of Assessment. If the annual or special Assessments are not paid by a Member on the date when due, then such Assessment shall become delinquent. A delinquent Assessment shall bear interest from the date of delinquency, at the rate of 15% per annum, and the Association shall have the right to prohibit the use of the Common Area and Facilities by Owners who are members of the delinquent Member of the Association, or by the Declarant if it is delinquent. The Association may bring an action at law against the Member or Declarant for collection of the delinquent Assessment. Upon obtaining a judgment, such judgment shall include interest on the Assessment as provided and reasonable attorney's fees to be fixed by the court, together with costs of the action.

Section 6. Exempt Property. Any portion of the Properties not developed, except for any portion of the Properties transferred by Declarant to a PUD developer, shall be exempt from Assessments. The term "Properties not developed" shall mean any of the Properties owned by the Declarant where streets and improvements such as sewer and water lines have not been installed.

## ARTICLE VI EASEMENT

The Properties are subject to all easements and rights-of-way of record, including the easement of enjoyment provided in Section 3, Article III of this Declaration.



ARTICLE VII  
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Board shall have the authority to, and shall obtain insurance for all insurable improvements on the Common Area and Facilities. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the Common Area and Facilities in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Area and Facilities, the Association, its Members, Owners, the Board and the Declarant for all damage or injury caused by the negligence of the Association or any of its Members, Owners or agents, and, if reasonably available, directors' (trustees) and officers' liability insurance. The public liability policy shall be a \$1,000,000 single limit policy, written on a comprehensive general liability form. Premiums for all insurance shall be Common Expenses of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the fact amount of the policy in determining whether the insurance at least equals the full replacement cost.

Section 2. Insurance Provisions. All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee. All policies shall be written with companies licensed to do business in Ohio and holding a rating of XI or better in the financial category established by A.M. Best Company, Inc., if available, or if not available, the most nearly equivalent rating. All policies shall be for the benefit of the Members. Exclusive authority to adjust losses under policies in force, shall be vested in the Board. The Board shall make every reasonable effort to secure policies that provide the following:

- A. a waiver of subrogation by the insurer as to any claims against the Board, the Members, the Owners and their respective tenants, servants, agents and guests;
- B. a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- C. that no policy may be cancelled, invalidated or suspended on account of the conduct of any trustee, officer, or employee of the Association without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter in which the defect may be cured by the Association.
- D. that any "other insurance" clause in any policy exclude Owners' policies from consideration.

ARTICLE VIII  
GENERAL PROVISIONS

Section 1. Certain Rights of Declarant. For such time as the Declarant shall own any portion of the Properties, its rights and interest shall not be prejudiced by any actions of Members and Owners, unless it shall, in writing, join in such action.

Section 2. Limitations. As long as the Declarant has an interest in developing the Properties, the Association may not use its financial resources to defray any cost of opposing the Declarant's activities so long as they remain consistent with the general intent of the development plan of the Properties.

Section 3. 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, 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.

Section 4. Construction of the Provisions of the Governing Documents. The Board, where specifically authorized herein to act, shall have the right to construe and interpret the provisions of the Governing Documents, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefits bound by the provisions hereof. Any conflict between any construction or interpretation of the Board, and that of any other person or entitled to enforce the provisions hereof, shall be resolved in favor of the construction or interpretation of the Board.

Section 5. Rules, Regulations, and Policies. The Board, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any findings, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorization, approvals, rules or regulations, the Board shall take into consideration the best interest of the Members, Owners, and Declarant in the Common Area and Facilities, to the end that the Common Areas and Facilities shall be preserved and maintained as a high quality recreation facility. In granting any permit, authorization, or approval, as herein provided, the Board may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in this paragraph.

Section 6. Validity of Mortgages. No violation of this Declaration shall defeat or render invalid the lien of any mortgagee made in good faith and for value upon and portion of the Common Area and Facilities; provided, however, that any mortgagee in actual possession or any purchaser at any mortgagee's foreclosure sale, shall be

bound by and subject to this Declaration as fully as any other Owner of any portion of the Properties.

Section 7. Governing Documents Binding on Grantees and Lessees. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot or PUD Unit, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

Section 8. Assignability. The Declarant, its successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all of its right, title and interest under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all obligations also contained herein.

Section 9. No Waiver. The failure of Declarant or the Association, Member or Owner, their respective legal representatives, heirs, successors and assigns, to enforce any covenant and restriction herein contained, shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

Section 10. Injunctive Relief. Damages shall not be deemed adequate compensation of any breach or violation of any provision hereof, any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity.

Section 11. Non-Liability of Declarant. Neither Declarant nor its representatives, successors or assigns, nor any of Declarant's agents, 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 it by or pursuant to this Declaration or in Declarant's (or its representative's or agent's) capacity as Declarant, contractor, owner, manager, or seller of any portion of the Properties, if any, whether or not such claim: (i) shall be asserted by any Owner or Member, the Association, or by any person or entity claiming through any of them; or (ii) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (iii) shall arise ex contractu or (except in the case of gross negligence) ex delicto. The foregoing enumerations are Limited to all claims for, or arising by reason of, the Common Area and Facilities or any part thereof, being or becoming out of repair, or containing any patent or latent defects, or by reason of any act or neglect of any Owner or Member, or the Association and their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Common Area and Facilities or by reason of the failure to function or disrepair of any



utility services (heat, air conditioning, electricity, gas, water, sewage, etc.)

Section 12. Binding Effect. Each grantee accepting a deed, lease, or other instrument conveying any interest in the Properties, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by the terms of this Declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

Section 13. Variations in Pronouns. Words in the singular number shall include the plural. Words in the masculine gender shall include the feminine and vice-versa when the context in which such words are used indicate that such is the intent. Words in the singular followed by a plural suffix are to be read as singular or plural, depending on the situation under the agreement at the time of reading.

Section 14. Covenants Running With the Properties. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the Properties, 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 Properties and the Association, each Member and Owner, and their respective heirs, executors, administrators, successors and assigns.

Section 15. Enforcement. In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefitting the Declarant), the Association, and each Member and 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 Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure 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 restrictions, condition, covenant, reservation, easement, lien or charge. Further, the Association shall have rights of action against each Member for failure to comply with the provisions of the Governing 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 Member who fails to comply with the same, including the right to assess charges for costs of enforcement and arbitration.

Section 16. Amendment. This Declaration may be amended only by the affirmative vote or written consent of Owners of 50% of the PUD Units and the Lots. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant. So long as the Declarant class membership exists, the Declarant may, without vote of the members, amend this

Declaration, so long as the substantive rights of existing Members are not adversely affected.

Section 17. Corrections. Declarant reserves the right to make amendments to the Declaration, Bylaws and exhibits to correct any scrivener's error or other inadvertent error so long as such correction does not adversely affect any Member or Owner. Further, Declarant reserves the right at any time or times to amend the Declaration and Bylaws in any manner whatsoever by addition, deletion or modification to permit the Declaration and Bylaws to comply with any law, rule, or regulation now or thereafter adopted by any federal, state, or local governmental authority and laws and regulations. In furtherance of the foregoing rights reserved to Declarant, each Member shall and does hereby irrevocably grant to Declarant and its successor in interest and title irrevocable special power of attorney and right to execute for and on *behalf* of the Association, and Member, all documents, instruments and forms as may be necessary to effectuate the amendment and modifications permitted pursuant to this paragraph.

Section 18. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of: (i) any rule against perpetuities or any analogous statutory provision; (ii) any rules restricting restraints on alienation; or (iii) any other statutory or common law rules imposing time limitations, then such provision shall continue in effect for only 21 years after the death of the last survivor of the now living descents of William Clinton, President of the U.S.A.

Section 19. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easement by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect.


Section 20. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, Kingsbury Trace Development Company, Ltd. has executed this Declaration as of the date first above written.

Signed in the Presence of:

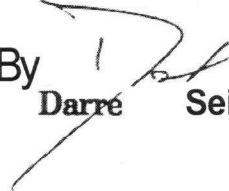

KINGSBURY TRACE DEVELOPMENT COMPANY, LTD.

(print name)

By   
Darrel L. Seibert, Trustee of The Darrel L/Seibert Living Trust U/A Dated May 24, 1991, Member

(print name)

(print name):

By    
Darrel Seibert, II, Member

(print name)"

STATE OF OHIO

SUMMIT COUNTY

BEFORE ME, a notary public in and for said county and state, personally appeared the above-named member, **DARREL L. SEIBERT, TRUSTEE OF THE DARREL L. SEIBERT LIVING TRUST U/A DATED MAY 24, 1991**, a member of Kingsbury Trace Development Company, Ltd., who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Hudson, Ohio this 8<sup>th</sup> day of April, 1997.

Notary Public 

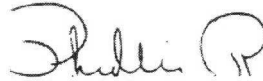
PHYLLIS R EBERSOLE, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires Nov. 2, 2000

STATE OF OHIO )  
 )  
SS  
SUMMIT COUNTY )

BEFORE ME, a notary public in and for said county and state, personally appeared the above-named member, DARREL L. SEIBERT, II, a member of Kingsbury Trace Development Company, Ltd., who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Hudson, Ohio this 8<sup>th</sup> day of April, 1997.

**liu**  
**Notary Public**



KINGSIDE-1 smd  
Residence - Summit County  
State Wide Jurisdiction, Oh My Commission Expires Nov. 2.2000

04/07/97 12:07pm

EXHIBIT "A"

KINGSBURY DEVELOPMENT  
TOTAL BOUNDARY

Situated in the Township of Copley, County of Summit, State of Ohio and being part of original Lot 12, being further bounded and described as follows;

Beginning at a stone found at the northwest corner of Lot 12, said point being the true place of beginning for the parcel intended to be described herein;

Thence along the north line of Lot 12, S 89 degrees 12'40" E, a distance of 2619.76 feet to a lead center pipe found;

Thence S 00 degrees 24'41" W, a distance of 1331.80 feet to a lead center pipe found;

Thence N 88 degrees 57'19" W, a distance of 345.51 feet to a 5/8" capped iron pin set;

Thence S 00 degrees 13'34" W, a distance of 1340.26 feet to a point on the sough line of original Lot No. 12, witnessed by a lead center pipe found S 00 degrees 13'34" W, a distance of 1.70 feet;

Thence along the south line of Lot 12, N 89 degrees 17'12" W, a distance of 2299.39 feet to a 1" iron pin found at the southwest corner of said lot No. 12;

Thence N 00 degrees 51'26" E, 2673.46 feet along the west line of said Lot No. 12 to the true place of beginning for the parcel described herein and containing 150.763 acres of land but subject to all legal highways, easements and restrictions if any, and determined by Robert J. Warner, P.S., 6931 for Environmental Design Group, Inc. In January of 1995.