

RE-RECORDED to correct the Deed previously recorded  
at O.R.738, Page782 by attaching a signed copy of page  
18 of the Declaration attached at Exhibit "A".

340295

# GENERAL WARRANTY DEED

[With Dedication of Utility Easements Pursuant to Note "F" on Page 3 of the City Gate Plat]

CONNOLLY CONSTRUCTION CO., aka Connolly Construction Company,  
a(n) Ohio corporation ("Grantor"), of Union County, Ohio, for valuable consideration  
paid, grants, with general warranty covenants, to PHILLIP F. CONNOLLY, TRUSTEE,  
a(n) individual acting as Trustee ("Grantee"), whose tax mailing address is: P.O. Box 271,  
Marysville, OH 43040, the following real property situated in the State of Ohio, County of  
Union, and the City of Marysville:

Being Lots Numbers 6987, 6988, 6989, 6990, 6991, 6992, 6993, 6994, 6995, 6996,  
6997, 6998, 6999, 7000, 7001, 7002, 7003, 7004, and 7005 (total of 19 Lots) in CITY  
GATE Subdivision, as the same are numbered and delineated upon the recorded plat  
thereof, of record in Plat Book 5, Pages 243A through 243C, Recorder's Office, Union  
County, Ohio (the "Plat").

VMS# : 3351

Lot Number	Parcel Number	Map Number	Street Address
6987	29-0004411.019	102-02-01-007.000	1050 Lydia Drive
6988	29-0004411.017	102-02-01-005.000	1060 Lydia Drive
6989	29-0004411.016	102-02-01-004.000	1070 Lydia Drive
6990	29-0004411.015	102-02-01-003.000	1080 Lydia Drive
6991	29-0004411.014	102-02-01-002.000	1090 Lydia Drive
6992	29-0004411.013	102-02-01-001.000	1099 Lydia Drive
6993	29-0004411.025	102-02-01-013.000	1091 Lydia Drive
6994	29-0004411.024	102-02-01-012.000	1081 Lydia Drive
6995	29-0004411.023	102-02-01-011.000	1071 Lydia Drive
6996	29-0004411.022	102-02-01-010.000	1061 Lydia Drive
6997	29-0004411.009	102-01-01-009.000	1051 Lydia Drive
6998	29-0004411.010	102-01-01-010.000	1041 Lydia Drive
6999	29-0004411.011	102-01-01-011.000	1001 Lydia Drive
7000	29-0004411.007	102-01-01-008.000	Coleman's Crossing Blvd.
7001	29-0004411.002	090-13-03-065.000	Coleman's Crossing Blvd.
7002	29-0004411.001	090-13-03-001.000	Coleman's Crossing Blvd.
7003	29-0004411.003	090-14-04-001.000	Coleman's Crossing Blvd.
7004	29-0004411.004	090-14-04-002.000	Coleman's Crossing Blvd.
7005	29-0004411.005	090-14-04-003.000	Coleman's Crossing Blvd.

Grantor and Grantee hereby agree that the above-described Lots are hereby conveyed and shall be hereafter held, conveyed, encumbered, leased, occupied and otherwise used, improved and transferred, in whole or in part, subject to the Declaration of Covenants, Conditions, Restrictions and Assessments, and Reservation of Easements for City Gate ("Covenants") attached hereto as Exhibit "A" and made a part hereof by reference, which Covenants and the following described Utility Easements shall run with the above-described Lots and shall be binding upon and inure to the benefit of Grantee and all future owners of said Lots.

FURTHER, as contemplated by Note "F" on page 3 of the Plat, and in lieu of re-recording an amended Plat, and in addition to the easements already dedicated on the Plat and available for utility purposes, Grantor hereby grants and dedicates utility easements ("Utility Easements") to all providers of utilities to Lots in the City Gate Subdivision, including: **The City of Marysville, Ohio; The Dayton Power and Light Company; Columbia Gas of Ohio, Inc.; Time Warner Entertainment Company L.P.; and United Telephone Company of Ohio (a/k/a "Sprint")**; and their respective successors, assigns, lessees, licensees and agents, for the non-exclusive rights to construct, operate, maintain, repair, change size of, and replace underground utility lines and associated facilities (i) within the Easement areas already depicted on the Plat, (ii) within strips of land ten feet (10') wide on both sides of the rights-of-way of Lydia Drive and Coleman's Crossing Boulevard dedicated on the Plat, (iii) within strips of land five feet (5') wide on both sides of the common lot boundary line between Lot 6999 and Lot 7000 delineated on the Plat, and (iv), subject to obtaining permission from the City of Marysville, within the street rights-of-way dedicated by the Plat. Grantor reserves the right in the future to grant non-exclusive easements for underground utilities and associated facilities to providers of utilities to Lots in the City Gate Subdivision within the easement areas described in items (i) through (iii) above whether or not Grantor then owns the Lot across which such easement is granted.

Subject to real estate taxes and assessments not yet due and payable; zoning and building ordinances; public rights-of-way; and easements, conditions, restrictions and liens of record.

Prior Instrument Reference: DB 198, Pg. 721; and OR 173, Pg. 204; 183, Pg. 287; 646, Pg. 731; 647, Pg. 27; 650, Pg. 882; and 651, Pg. 783 , Recorder's Office, Union County, Ohio.

Executed effective this 9<sup>th</sup> day of June, 2007.

GRANTOR:

CONNOLLY CONSTRUCTION CO.,  
aka Connolly Construction Company,  
an Ohio corporation

By: [Signature]  
Printed Name: Phillip F. Connolly  
Title: President

STATE OF OHIO,  
COUNTY OF UNION ~~UNION~~ FRANKLIN, SS:

The foregoing instrument was acknowledge before me this 9<sup>th</sup> day of June, 2007, by  
Phillip F. Connolly, the President of Connolly Construction Co.,  
an Ohio corporation on behalf of said corporation.

[Signature]  
Notary Public

[SEAL]

Commission Expiration: \_\_\_\_\_



DAVID G. BAKER, Attorney at Law  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Has No Expiration Date  
Section 147.03 R.C.

This instrument prepared by: David G. Baker, Esq., Bricker & Eckler LLP,  
100 South Third Street, Columbus, Ohio 43215

**DECLARATION**

**OF**

**COVENANTS, CONDITIONS, RESTRICTIONS AND  
ASSESSMENTS, AND RESERVATION OF  
EASEMENTS**

**FOR**

**CITY GATE**  
**MARYSVILLE, OHIO**

~~OR 738 PG 785~~

OR 739 PG 543

# TABLE OF CONTENTS

<b>ARTICLE 1 PURPOSE AND DEFINITIONS.....</b>	<b>1</b>
1.01 Purpose of Declaration.....	1
1.02 Definitions.....	2
<b>ARTICLE 2 LAND USE RESTRICTIONS.....</b>	<b>4</b>
2.01 Minimum Setback Lines.....	4
2.02 Completion of Construction.....	4
2.03 Excavation.....	4
2.04 Exterior Materials and Colors.....	4
2.05 Driveways, Curb Cuts and Walks.....	4
2.06 Storage Tanks.....	4
2.07 Signs.....	4
2.08 Landscaping.....	5
2.09 Outdoor Storage.....	5
2.10 Nuisances.....	5
2.11 Maintenance of Lots and Buildings.....	5
2.12 Mineral Exploration.....	5
2.13 Hazardous Materials.....	5
2.14 Drainage and Grading.....	6
2.15 Use Restrictions.....	6
2.16 Parking.....	6
<b>ARTICLE 3 DESIGN CONTROL COMMITTEE.....</b>	<b>6</b>
3.01 Purposes of Committee.....	6
3.02 Committee Responsibilities; Effect of Actions.....	7
3.03 Composition and Appointment of Committee.....	7
<b>ARTICLE 4 APPROVAL OF PLANS.....</b>	<b>8</b>
4.01 Requirement of Approval:.....	8
4.02 Basis of Approval.....	8
4.03 Liability Relating to Approvals.....	8
4.04 Certificate of Compliance.....	9
<b>ARTICLE 5 THE ASSOCIATION.....</b>	<b>9</b>
5.01 Membership.....	9
5.02 Classes of Membership.....	9
5.03 Voting.....	10
5.04 Suspension of Voting Rights.....	10
5.05 Proxies.....	10
5.06 By-Laws.....	10
5.07 Notice of Sale or Transfer of Title.....	10

~~OR 738 PG 786~~

OR 739 PG 544

<b>ARTICLE 6 POWERS AND DUTIES OF THE ASSOCIATION .....</b>	<b>10</b>
6.01 Management Body .....	10
6.02 Board Powers .....	10
6.03 Duties .....	10
6.04 Delegation of Duties .....	11
<b>ARTICLE 7 ASSESSMENT OF THE ANNUAL REGULAR ASSESSMENT .....</b>	<b>11</b>
7.01 Establishment of Regular Assessment .....	11
7.02 Annual Budget and Statements .....	11
7.03 Interest on Delinquent Assessment .....	12
7.04 Delinquency for More than 90 Days .....	12
7.05 Rules and Procedures for Billing and Collecting Assessments .....	12
7.06 Certification of Status of Assessments .....	12
<b>ARTICLE 8 IMPOSITION OF CHARGE AND LIEN UPON LOTS .....</b>	<b>12</b>
8.01 Establishment of Lien for Regular Assessments .....	12
8.02 Establishment of Lien for Other Assessments .....	13
8.03 Personal Liability for Assessments .....	13
8.04 Foreclosure of Lien for Assessments .....	13
<b>ARTICLE 9 USE OF FUNDS .....</b>	<b>13</b>
9.01 Application of Assessments .....	13
9.02 Authority to Borrow Funds .....	13
9.03 Authority to Maintain Surplus .....	14
9.04 Authority to Enter in to Contracts .....	14
<b>ARTICLE 10 ENFORCEMENT .....</b>	<b>14</b>
10.01 Interpretation .....	14
10.02 Abatement and Suit .....	15
10.03 Failure to Enforce Not a Waiver of Rights .....	15
10.04 Assignment by Declarant .....	15
<b>ARTICLE 11 AMENDMENTS, PERIOD OF DURATION .....</b>	<b>15</b>
11.01 Amendments .....	15
11.02 Periods of Duration .....	15
11.03 Perpetuities .....	16
<b>ARTICLE 12 CONSTRUCTIVE NOTICE AND ACCEPTANCE .....</b>	<b>16</b>
<b>ARTICLE 13 EASEMENTS .....</b>	<b>16</b>
13.01 Platted Easements; Grant to Lot Owners .....	16
13.02 Use of Easement Areas .....	16
13.03 Grant to Association .....	17
13.04 Rights of Owners .....	17
13.05 Maintenance of Common Facility Easements .....	17

<b>ARTICLE 14 MUTUALITY</b> .....	17
<b>ARTICLE 15 PARAGRAPH HEADINGS</b> .....	17
<b>ARTICLE 16 GOVERNING LAW; EFFECT OF INVALIDATION; SEVERABILITY</b> .....	18

Schedule of Exhibits:

Exhibit "A"	Drawing Depicting Master Site/Property
Exhibit "B"	Legal Description of Property
Exhibit "C"	Drawing Depicting South Basin and North Retention Basin
Exhibit "D"	Schedule of Proportionate Shares

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OR 739 PG 546

# DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND ASSESSMENTS, AND RESERVATION OF EASEMENTS

**WHEREAS, CONNOLLY CONSTRUCTION CO.,** (aka Connolly Construction Company), an Ohio corporation ("Declarant"), is the owner of certain real property located in the City of Marysville, County of Union and State of Ohio that is depicted on Exhibit "A" attached hereto and made a part hereof (the "Master Site"), and Declarant intends to develop thereon a commercial subdivision to be known as "City Gate"; and

**WHEREAS,** Declarant intends to develop, and/or sell portions of the Master Site for commercial uses (e.g. retail, office, restaurants, hotels, etc.); and

**WHEREAS,** Declarant desires to provide for the establishment and ongoing enforcement of certain covenants, conditions, restrictions, assessments, liens and easements for the Master Site in pursuance of a general plan for the protection and benefit and the mutual advantage of all the property subject to this Declaration and all persons who may now or hereafter become owners or tenants of, or otherwise occupy any part of property within the Master Site;

**NOW, THEREFORE,** in pursuance of said general plan, Declarant, by the Deed to which this Declaration is attached, submits the Master Site, as more particularly described in the attached Exhibit "B" (hereinafter also referred to as the "Property") to the following covenants, conditions and restrictions, and the Grantee in the foregoing Deed, for itself and its successors and assigns, hereby agrees that all portions of the Property shall hereafter be held, conveyed, leased, occupied, used and improved subject to the covenants, conditions, restrictions, assessments, liens and easements as set forth herein, which shall run with the Property for all purposes and shall be binding upon the Property and the Grantee, together with Grantee's respective successors and assigns, and all owners, tenants, and occupants of any portion of the Property, and shall inure to the benefit of the Property, the Grantee, Declarant, and owners of any portion of the Property, and their respective successors and assigns:

## ARTICLE 1

### PURPOSE AND DEFINITIONS

#### 1.01 Purpose of Declaration

The purpose of this Declaration and the various covenants, conditions, restrictions and easements contained herein, is to insure the proper development and use of the Property; to protect against such improper development and use of any portion of the Property as might decrease the value of other portions of the Property; to prevent the erection of any structure of improper or incompatible design or materials on the Property; to encourage the erection of aesthetically attractive improvements and landscaping at appropriate locations; to prevent dangerous or hazardous activities on the Property; to prevent uses upon the Property which are inconsistent with the uses planned for the Property; to prevent haphazard and inharmonious development of the Property; to establish and maintain proper setbacks from streets, adequate open space between structures and appropriate elevations for the grade of such lots and

~~OR 738 PG 789~~

OR 739 PG 547



the structures erected thereon; and, in general, to adequately provide for high quality land development upon the Property consistent with the general plan reflected in this Declaration.

1.02 Definitions.

A. Assessments shall be used as a generic term which shall include the following:

(i) Regular Assessment shall mean the charge against each Owner and each Owner's respective Lot representing an allocable portion of the Common Expenses of the Association;

(ii) Compliance Assessment shall mean the charge against an Owner representing the costs incurred by the Association in bringing such Owner and such Owner's Lot into compliance with this Declaration, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration;

(iii) Special Assessment shall mean the charge against an Owner and such Owner's respective Lot representing a portion of the cost of taking any extraordinary action for the benefit of the membership of the Association pursuant to the provisions of this Declaration; and

(iv) Membership Fees shall mean the Initial Membership Fee and any Annual Membership Fee adopted by the Association pursuant to Section 5.01 hereof.

B. Association shall mean City Gate Owners' Association, an Ohio non-profit corporation, and its successors and assigns, which shall be established by Declarant.

C. Board shall mean the Board of Trustees of the Association.

D. By-Laws shall mean to the By-Laws of the Association adopted by the Board, as such By-Laws may be amended, from time to time.

E. City shall mean to the City of Marysville, Ohio.

F. Committee shall mean the City Gate Design Review Committee created pursuant to Article 3 hereof.

G. Common Expenses shall mean and refer to the actual and estimated costs to be paid by the Association for the following: (a) managing and administering the Association; (b) providing insurance, as provided for herein; (c) paying that portion of any Assessments not paid by the Owner responsible for payment; (d) paying the cost of administering and enforcing this Declaration incurred by the Association; (e) paying the costs and expenses of the Committee in excess of the plan review fees collected by the Committee, pursuant to Article 3 hereof; and (f) paying for all other expenses incurred by the Association for the benefit of all Owners.

H. Common Facilities means all landscaping, storm water retention/detention basins in Reserve "A" and the Common Facility Easement serving the Property, fountain in Reserve "A", the City Gate entrance monument sign, and City Gate signage on Reserve "G" (signage to identify City Gate and/or the City of Marysville, not a particular occupant of City Gate), and all other improvements located on the Reserves, excluding the street lights and underground power lines servicing the street lights, which are to be owned and maintained by the City.

I. Common Facilities Maintenance Costs shall mean the costs necessary for the Association to perform its obligations hereunder to keep the Common Facilities in good operating condition and in attractive appearance, including, but not limited to, the cost of all upkeep, maintenance, repair, and replacement of all or any part of the Common Facilities; and any other expense reasonably necessary or prudent for the satisfactory operation of the Common Facilities. Common Facilities Maintenance Costs shall in no event include the initial cost of constructing the Common Facilities.

J. Common Facility Easement means the one area on Lot #7004 of City Gate Subdivision labeled "South Basin" on the Drawing attached hereto and made a part hereof as **Exhibit "C"** (the "South Basin"), which is part of a storm water retention/detention system that benefits all the Lots, together with the easement for the piping connection that connects the South Basin with the basin in Reserve "A"

DR 738 PG 790

DR 739 PG 548

depicted on **Exhibit "C"** hereto and labeled "North Retention Basin" (the "North Retention Basin") and the easements in which the outflow pipes are installed to direct storm water from such basins into the public drainage system.

K. Declarant shall mean and refer to Connolly Construction Co., an Ohio corporation, and to any person or entity acquiring all of Declarant's then remaining interests in the Master Site, if Connolly Construction Co. or its successor, so designates such acquiring person or entity as Declarant.

L. Declaration shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Assessments and Reservation of Easements.

M. Design Guidelines shall mean the guidelines adopted by the Committee from time to time, pursuant to Article 3 hereof.

N. Improvements shall mean and include, without limitation, buildings, roads, driveways, parking areas, fences, grading, excavating, retaining walls, screening walls, ornamentation, signs, stairs, patios, sport courts, exterior lighting, hedges, wind-breaks, plantings, planted trees and shrubs, poles, irrigation equipment, exterior air conditioning equipment and all other installations, structures and landscaping.

O. Lot shall mean any plot of land designated and shown upon the Plat as a numbered lot. The term "Lot" shall also mean any combination of such numbered lots designated on the Plat (both combinations of entire adjoining numbered lots, and combinations of a portion of a numbered lot with another numbered lot or portion thereof) approved by Declarant (until December 31, 2009, after which date Declarant's approval will not be required) and all necessary governmental authorities, that represents a single tax parcel after said combination, as well as the remainder of any such numbered lot(s) after a portion thereof has been combined with another adjoining numbered lot or portion thereof with the foregoing required approvals.

P. Member shall mean every person or entity who holds membership in the Association.

Q. Owner shall mean the holder of record title to the fee interest in the Property or any portion thereof, whether or not such title holder actually occupies the Property.

R. Proportionate Share shall mean with respect to a given Owner a fraction having a numerator equal to the acreage of the Owner's Lot, and a denominator equal to the total acreage of all Lots included in the Property. A schedule of Proportionate Shares for the Lots as initially created by the Plat is attached hereto and made a part hereof as **Exhibit "D"**.

S. Public Agencies shall mean and refer collectively to the various local, State and Federal governmental entities, agencies and courts having jurisdiction over the Property.

T. Plat means the Subdivision Plat of City Gate recorded in Plat Book 5, Page 243, Recorder's Office, Union County, Ohio, and any amendments thereto or re-subdivision thereof.

U. Property shall mean all land described in the attached **Exhibit "B"** and all Improvements now or hereafter built, installed or erected thereon.

V. Reserves shall mean the "Reserves" depicted on the Plat (e.g. Reserve "A", being the land within the turnaround at the north end of Coleman's Crossing Boulevard, including the North Retention Basin and fountain feature located thereon), title to which will be dedicated to the City as part of the right-of-way (except for title to Reserve "H" which shall be retained by the Developer until such time as it is joined with the adjoining parcel to the south pursuant to Note "D" on the Plat) and maintained by the Association (except the street lights and underground power lines servicing the street lights as noted in Subsection 1.02(H) above).

W. Restrictions shall mean these covenants, conditions, restrictions, assessments, liens and easements contained in this Declaration, together with all of the provisions contained herein as they now appear or as they may be amended.

X. Tenant shall mean a person, firm, partnership, corporation or other entity possessing a leasehold interest in any Improvements or portion of the Property.

## ARTICLE 2

### LAND USE RESTRICTIONS

The following use restrictions shall be maintained and enforced with respect to the Property:

**2.01 Minimum Setback Lines:**

(a) General - No Improvement of any kind, and no part thereof, shall be placed on any site closer to a property line than herein provided. The following Improvements are specifically excluded from those setback provisions:

- (1) Roof overhangs, subject to the specific approval of the Committee in writing.
- (2) Steps and walks.
- (3) Paving and associated curbing, except that vehicle parking areas shall not be permitted within then (10) feet of the street property line or lines.
- (4) Fences and retaining walls, except that no fence or retaining wall shall be placed within the street setback area unless specific approval is given by the Committee in writing.
- (5) Landscaping.
- (6) Planters, not to exceed three (3) feet in height.
- (7) Displays identifying the Owner or Tenant, subject to the specific approval of the Committee in writing.

(b) Setback from Interior Property Lines - The setback lines are depicted on the Plat, provided, however, if adjoining Lots are combined as one tax parcel and are developed together as one tract, the Committee may waive said setbacks from an interior property line shown on the Plat (or move said interior setbacks to the new Lot line, if only a portion of a numbered lot is combined with another numbered lot or portion thereof) so as to permit construction of Improvements across said interior property line shown on the Plat, subject to any governmental approvals that may be required.

(c) Setback from Street Property Lines - The setback lines are depicted on the Plat.

**2.02 Completion of Construction:** After commencement of construction of any Improvement, the Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

**2.03 Excavation:** No excavation shall be made except in connection with construction of an improvement, and, upon completion thereof, the exposed opening shall be backfilled and disturbed ground shall be graded and leveled.

**2.04 Exterior Materials and Colors:** The Committee shall have the sole right to approve or disapprove materials and colors, including changes in colors, for any Improvements.

**2.05 Driveways, Curb Cuts and Walks:** Sidewalks and curb cuts shall be installed and maintained by the Owner of the property upon which they are located. Driveways, curb cuts and walks shall be constructed or altered only in accordance with plans and specifications submitted to and approved in writing by the Committee. Lots may share curb cuts and driveways.

**2.06 Storage Tanks:** No underground or aboveground storage tanks, including, but not limited to, those used for storage of water, gasoline, oil, other liquid or any gas, shall be permitted on the Property, except as approved by the Committee.

**2.07 Signs:**

(a) No billboard or advertising sign shall be permitted, other than the following:

~~OR 738 PG 792~~

OR 739 PG 550

- (1) Those identifying the name, business and products of the person or firm occupying the Property; and
- (2) Those offering the premises for sale or lease.
- (b) Signs shall conform with all City standards and to setback lines unless specific approval to the contrary is granted by the Committee in writing.
- (c) Signs and identification on buildings or building sites shall only be of such size, design and color as is specifically approved by the Committee in writing.

2.08 Landscaping:

- (a) Every site on which a building shall have been placed shall be landscaped according to plans approved as specified herein and said landscaping shall be maintained thereafter in a sightly and well-kept condition.
- (b) The Owner shall landscape and maintain unpaved areas between the property lines and the setback lines. The first ten (10) feet of the setback from street property lines shall be used exclusively for landscaping, except for walks and driveways bisecting the required landscape area.
- (c) Landscaping as approved by the Committee shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first.

2.09 Outdoor Storage or Sales. Except as approved in advance in writing by the Committee: no outdoor storage of supplies, merchandise or other items shall be permitted on a Lot after construction of Improvements and opening for business; and no outdoor sales of merchandise or other items shall be permitted on a Lot.

2.10 Nuisances: No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property and no objectionable odors (other than normal smells associated with a restaurant operation), smoke or dust shall be permitted to arise or be emitted therefrom so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to any of the remainder of the Property, or to the Owners or Tenants thereof. In addition, no loud horns, whistles, bells or other similar sound devices (which specifically shall not include customer paging systems, drive-through speakers, like used at fast food restaurants, drive-in restaurants and banks, reasonable music on outdoor restaurant or hotel patios areas, and other sound emittance not generally deemed a nuisance), shall be located, used or placed on the Property so that they can be heard beyond the boundary of a Lot, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

2.11 Maintenance of Lots and Buildings: Neither the Property nor any Improvement shall be permitted to become overgrown, unsightly or to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair.

2.12 Mineral Exploration: The Property shall not be used in any manner to explore for, use, or exploit commercially any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other substance located in or under the ground.

2.13 Hazardous Materials: Each Owner and Tenant shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the "Hazardous Materials"). No Owner or Tenant, or any of their guests, invitees, or permittees shall use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about the

~~OR 738 PG 793~~

OR 739 PG 551

Property, or any portion of the Property, or transport to or from any portion of the Property any Hazardous Materials, except in compliance with the Environmental Laws.

2.14 Drainage and Grading: No drainage ditches, swales, streams, impoundments, ponds, or lakes; no mounds, knobs, dams, or hills; and no other physical improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be destroyed, altered or modified by or at the direction or with the consent of any Owner without the prior written consent of the Committee. No Improvements shall be made in any manner whatsoever that is inconsistent with the master grading plans established by Declarant for the Property, without the prior written consent of the Committee. In the event of any destruction, alteration, modification, or improvement made or occurring without such prior consent of the Committee, the Committee and/or Declarant, and their respective representatives shall have the joint and several rights to enter upon any Lot and to remedy or repair, at the expense of the Owner any such destruction, alteration, modification, or improvement without being guilty of trespass and without liability to any Owner with respect to the same or the consequences thereof. Whenever, because of construction of Improvements on the Property or for some other reason, silt would run off onto any adjacent property, the Owner shall be obligated to provide a means of siltation control to prevent silt from running off of its Lot onto such adjacent property.

2.15 Use Restrictions. No portion of the Property or any Improvement located thereon shall be used for any of the following uses:

- (b) Any dangerous or noxious trade or business, or any other purpose which is in violation of any certificate of occupancy for the Improvement, or rule, ordinance or order of any Public Agencies;
- (c) An adult or "X" rated video store, adult bookstore, any facility selling or displaying pornographic materials or movies, or other pornographic business, or for the sale of paraphernalia primarily for use with illicit drugs;
- (d) Raising of livestock, stockyard, tannery, fat rendering, glue production, distillation of bones, or fertilizer manufacturing;
- (e) Junk yard, land fill, or other dumping, disposal or incineration of garbage, sewage or refuse;
- (f) Mobile home or trailer court;
- (g) Jail, prison, reformatory or labor camp;
- (h) Any building, improvement or use which violates the applicable zoning ordinance or any other applicable law or regulation;
- (i) Paper or pulp mill; or
- (j) Smelting of iron, tin, zinc or other ores.

2.16 Parking: There shall be adequate employee and customer/visitor parking on each Lot so that on-street parking shall not occur in connection with the use of each Lot, except during construction of Improvements thereon, and each Lot (or Lots or portions thereof combined for development as one parcel) shall independently (without reliance on adjacent property) comply with parking ratios established by the City.

### ARTICLE 3

#### DESIGN REVIEW COMMITTEE

3.01 Purposes of Committee: The Declarant shall establish a Design Review Committee (the "Committee") for the following purposes:

- (a) To provide a staff of persons for reviewing, evaluating, approving and disapproving proposed plans for Improvements.

OR 738 PG 794

OR 739 PG 552

- (b) To establish, maintain and preserve specific architectural guidelines to carry out the intent of these Restrictions, which guidelines from time to time in effect with respect to all or any portion of the Property shall hereinafter be referred to as the "Design Guidelines".
- (c) To enforce the provisions of these Restrictions through the plan review process; and
- (d) To develop a reasonable plan review fee schedule for the submission, and resubmission, if applicable, of plans for approval, intended to cover all the costs associated with said review, which review fee is hereby initially shall be set at One Thousand Dollars (\$1,000.00), until modified by the Committee, and further governed by the provisions of Section 3.03 below.

3.02 Committee Responsibilities; Effect of Actions: The Committee shall exercise its reasonable judgment to see that all Improvements on the Property conform to the various terms of this Declaration and the Design Guidelines as to external design, quality and types of construction, materials, colors, setting, height, grade, finished ground elevation, and landscaping. The actions of the Committee, through its approval or disapproval of plans and other information submitted pursuant hereto, shall be conclusive and binding on all interested parties. Any two (2) members of the Committee may take action in writing without a meeting of all three (3) members. The Committee shall operate by procedures adopted from time to time in its sole discretion. No formal meetings or corporate action shall be required for the Committee to exercise its discretion in carrying out any or all of its duties. No person shall have any formal due process right or recourse related to an action of the Committee, including a right to a hearing, and the Committee's records shall not be considered public records for purposes of access.

3.03 Composition and Appointment of Committee; Compensation and Costs: There shall be three (3) members of the Committee, one of whom shall be elected by the Committee to serve as Chairperson. Declarant shall appoint the initial three (3) members who will serve at the will of the Declarant. The Declarant, if an individual, or any of the Declarant's officers or employees may serve as members of the Committee. Vacancies shall be filled by Declarant until such time as Declarant assigns said right to appoint to the Board, and, thereafter, the Board will appoint members of the Committee and the members shall serve at the will of the Board. If Declarant has not earlier assigned its right to fill vacancies on the Committee, at any time after December 31, 2009, if Declarant has sold and deeded Lots that have an aggregate Proportionate Share in excess of eighty percent (80%), the Board will thereafter fill vacancies on the Committee and the members of the Committee shall serve at the will of the Board. The members of the Committee shall be compensated for their service at a reasonable market rate, which shall be paid from the review fee posted by the requesting party, and said requesting party shall be responsible for any such member compensation and costs incurred by the Committee in connection with such review in excess of the initial review fee required to be submitted with the request ("Additional Review Fee"), and shall pay any such Additional Review Fee promptly when billed (and, conversely, any portion of the initial review fee collected in excess of the Committee member's compensation and costs incurred by the Committee in connection with such review shall be refunded to the party who paid the fee).

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## ARTICLE 4

### APPROVAL OF PLANS

4.01 Requirement of Approval: No Improvements, including no excavation, grading, improvement, changes, construction, addition, landscaping, or other work or action which in any way alters the exterior appearance of the Property or any portion thereof from its theretofore natural or improved state (and no change, alteration or other modification of any of the foregoing previously approved hereunder), and no addition to or modification of any Improvement (whether or not theretofore approved hereunder), shall be commenced or continued until the same shall have first been approved in writing by the Committee in accordance with this Declaration and the Design Guidelines. Approval shall be requested by submission to the Committee of two (2) sets of complete plans and specifications, showing the following, together with a review fee pursuant to a schedule developed by the Committee:

- (a) Proposed land contours and grades;
- (b) All buildings, and other structures, access drives, parking lots, sidewalks, and other improved areas, and the locations thereof on the site;
- (c) All landscaping, including existing and proposed tree locations and planting areas (and specie thereof), and exterior ornamentation;
- (d) Plans for all floors, cross sections and elevations, including projections and wing-walls;
- (e) Exterior lighting plans;
- (f) Walls, fencing, and screening;
- (g) Patios, walks, decks and porches;
- (h) Signs and parking areas;
- (i) Samples of all exterior materials and colors; and
- (j) Such other information, data, and drawings as may be reasonably requested by the Committee.

Specifications shall describe types of construction and exterior materials to be used, including, without limitation, the colors and manufacturers thereof, and shall otherwise be prepared according to the Design Guidelines.

4.02 Basis of Approval: Approval shall be based, among other things, upon conformity and harmony of the proposed plans with the Design Guidelines and other structures located upon the Property; the effect of the location and function of Improvements on neighboring portions of the Property; and conformity of the plans and specifications to the general intent of and specific provisions of these Restrictions.

4.03 Liability Relating to Approvals: Neither Declarant nor the Committee, nor any member thereof, nor any of their respective agents, contractors, consultants, architects, heirs, personal representatives, successors or assigns, shall be liable to anyone submitting plans for approval by reason of mistakes in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans. Every person and entity who submits plans to the Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee or Declarant, or any of their members, agents, contractors, consultants or architects to act or to recover any damages.

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4.04 Certificate of Compliance: After any Improvement is completed in compliance with all provisions of this Article 4, the Owner may request in writing that the Committee issue a certificate certifying that said Improvement is completed and in compliance with all provisions of this Article 4, which certificate shall be issued by the Committee within thirty (30) days of its receipt of written request therefor, and which certificate shall be evidence that said Improvement is completed and in compliance with all provisions of this Article 4. The Committee may make a reasonable charge for the issuance of such certificates, which, along with any unpaid Additional Review Fee, must be paid at the time that the request for such certificate is made.

## ARTICLE 5

### THE ASSOCIATION

5.01 Membership: When the Declarant incorporates the Association, every person or entity who is then an Owner or thereafter becomes an Owner shall be a Member of the Association. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The Association may adopt a membership fee to be collected at the time a new owner purchases a Lot ("Initial Membership Fee"), and may adopt an annual membership fee ("Annual Membership Fee"), all by a majority vote of the Members attending a duly called meeting called for that purpose. Unpaid Membership Fees shall be a lien on Lots owned by Members who fail to pay such Membership Fees. Notwithstanding the foregoing, until January 1, 2010, the Initial Membership Fee shall be \$250.00 per Lot purchased and the Annual Membership Fee shall be \$100.00 per Lot owned, which may not be changed by the Association, but the Declarant will not pay any Initial Membership Fee for Lots it owns or develops, nor any Annual Membership Fees for Lots it owns until calendar year 2010, in recognition of Declarant's undertaking relative to Common Facilities through December 1, 2009, as set forth at the end of Subsection 6.03(b) hereof.

5.02 Classes of Membership: The Association shall have two (2) classes of voting membership, as follows:

Class A. Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds title to a single Lot, all co-Owners of that Lot shall be Members, provided, however, in no event shall more than one (1) vote be cast with respect to any Lot, and if the co-Owners cannot unanimously agree on how the vote should be cast, no vote will be counted for that Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot it owns, provided, that the Class B membership shall cease and be converted to Class A membership (e.g. one vote per Lot) on the fifth (5th) anniversary of the date this Declaration is filed for record with the Union County, Ohio Recorder, or earlier, at Declarant's option.

Any action taken by the Association which must have the approval of the membership of the Association before being undertaken shall require a majority vote of the membership in attendance at a duly called meeting of the Association, unless a specific provision of this Declaration or the By-Laws or Articles of the Association requires the approval of a greater percentage of the voting membership.

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5.03 Voting: Those Members appearing in the official records of the Association as record Owners of Lots shall be entitled to notice of any meeting of Members. In the event of any dispute as to the entitlement of any Member to vote or the results thereof, the Board shall act as arbitrators and a decision of the Board shall, if rendered in writing, be final and binding upon the Members; provided, however, that the Board shall have no jurisdiction to determine any matters relating to the entitlement of Declarant to vote or the manner of the exercise of its vote.

5.04 Suspension of Voting Rights: The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment.

5.05 Proxies: Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Board before the appointed time for each meeting. The proxy shall also identify the person or persons authorized to exercise the proxy.

5.06 By-Laws: The Board shall adopt By-Laws to govern the Association and its Board. Said By-Laws may be amended as provided by the applicable terms of said By-Laws, provided, however, no amendments may be adopted which are inconsistent with the terms of this Article 5.

5.07 Notice of Sale or Transfer of Title: In the event that any Owner desires to sell or otherwise transfer title to such Owner's Lot, such Owner shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require.

## ARTICLE 6

### POWERS AND DUTIES OF THE ASSOCIATION

6.01 Management Body: When incorporated, the affairs of the Association shall be managed by a Board of Trustees. The number of trustees of the Association shall be three (3), each who shall serve staggered terms of three (3) years each. The initial Board shall be appointed by the Declarant; one for a one (1) year term, the second for a two (2) year term, and the third for a three (3) year term. Thereafter, the Board shall be elected as provided in the By-Laws.

6.02 Board Powers: The Board shall have the right and power to perform all lawful acts which may be necessary to manage and control the affairs of the Association. The Board shall have the following specific powers:

- (a) Enforce the provisions of this Declaration;
- (b) Levy and collect Assessments from the Owners of all Lots and enforce payment of such Assessments;
- (c) Retain, if deemed appropriate by the Board, and pay for legal and accounting services necessary and proper for the efficient operation of the Association; and
- (d) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of Ohio as empowered to do, which may be necessary, convenient or appropriate in connection with the administration of the Association's affairs and the carrying out the Association's duties as set forth in this Declaration.

6.03 Duties: The Board shall perform and execute the following duties of the Association to the extent sufficient funds are available from Assessments paid by the Owners:

- (a) Obtain liability insurance for the Association and Board members and naming all Lot Owners as additional insureds;

OR 738 PG 798

(b) Maintain and keep in good repair, consistent with the high quality of City Gate, all Common Facilities and any property owned by the Association. Notwithstanding the foregoing, Declarant agrees to not only cause the initial Common Facilities to be installed, but to also attempt to enforce warranties on said Common Facilities and maintain and keep them in good repair through December 31, 2009 at Declarant's sole cost and expense. In the event any maintenance or repairs are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s), and reimburse Declarant for any such costs advanced by Declarant;

(c) Pay any real or personal property taxes and assessments which the Association is required to pay;

(d) Cause financial statements for the Association to be regularly prepared;

(e) Assume and pay out of the Assessments all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume;

(f) Enforce all applicable provisions of this Declaration; and

(g) Within ten (10) business days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration and the Articles and By-Laws for the Association (unless the same have already been made available to Owners electronically on-line at an internet web site that the Association may establish or otherwise electronically available), together with a true statement in writing as to the amount of any delinquent Assessment, penalties, attorneys' fees and other charges which are due relative to a particular Lot as of the date of such request, subject to a reasonable charge therefore, as determined by the Board.

6.04 Delegation of Duties: In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated. Each Owner may exercise the right of self-help in the event Declarant or the Association fails or refuses to properly or timely maintain, insure and operate the facilities that are required to be maintained by Declarant or the Association, after giving the failing party written notice of said failure and thirty (30) days opportunity to cure said failure (or such longer cure period of time as may be reasonable under the circumstances).

## ARTICLE 7

### ASSESSMENT OF THE ANNUAL REGULAR ASSESSMENT

7.01 Establishment of Regular Assessment: For the purpose of providing funds for uses specified in Article 9 hereof, the Board shall for each calendar year commencing with the calendar year 2010, fix and assess the yearly assessment referred to in Section 1.02 (A)(i) hereof against each Lot by establishing a budget, and determining each Lot Owner's Proportionate Share thereof. Notwithstanding anything in this Section 7.01 to the contrary, there shall be a minimum yearly Regular Assessment for each Lot in the amount of Two Hundred Fifty Dollars (\$250.00) per acre commencing in calendar year 2010, payable no later than February 1st of each year, until adjusted by the Board. In making each such assessment, the Board shall separately assess each Lot, and each such Lot shall be charged with and be subject to a lien for the amount of the Regular Assessment, whether or not improved with Improvements, including Lots owned by Declarant.

7.02 Annual Budget and Statements: On or before December 1st of each year (commencing December 1, 2009), or as soon as shall be practicable thereafter, the Board shall establish a budget for the

OR 738 PG 799

OR 739 PG 557

Association for the ensuing calendar year, which shall be the basis of the Regular Assessment calculations referred to in Section 7.01 above. As soon after said budget is established as possible the Board shall send a written statement to each Owner setting forth the amount of the budget established for the ensuing calendar year, together with the amount of the Regular Assessment set for the ensuing year and the frequency of payment therefor (e.g. monthly, quarterly, annually, etc.), payable in advance so that the Association has funds available to pay expenses as they come due. Said budget and amount of Regular Assessment shall be binding upon the Owners unless modified by a majority vote of the Members attending a duly called meeting called for that purpose. In the event the Board determines for some reason that the budget must be adjusted after the initial budget has been distributed to the Owners, the Board may send a written statement to each Owner setting forth the amount of the revised budget, together with the amount of the adjusted Regular Assessment required to fund said revised budget.

7.03 Interest on Delinquent Assessment: If an Owner shall fail to pay any Assessment within thirty (30) days following the date of issuance of the statement therefor, the same shall be deemed delinquent and will bear interests at the rate of ten percent (10%) per annum, or such other legal rate as may be set by the Board from time to time.

7.04 Delinquency for More than 90 Days: If an Owner shall fail to pay any Assessment or any installment thereof within ninety (90) days following the date of issuance of the statement therefor, the Association shall have the right to sue such Owner for a personal judgment, and, in addition, shall have the right to enforce the lien imposed by this Declaration. The amount due by such Owner shall include the unpaid Assessment or installment thereof, as well as the cost of such proceedings, including reasonable attorneys' fees, and the aforesaid interest.

7.05 Rules and Procedures for Billing and Collecting Assessments: The Board shall have the power and authority to adopt rules and procedures respecting the billing and collection of the Assessments which shall be binding on all Owners, provided that such procedures shall not be inconsistent with the provisions of this Article 7.

7.06 Certification of Status of Assessments: Within ten (10) business days after receipt of written demand by an Owner, the Association shall issue and furnish to such Owner a certificate stating that all Assessments or installments thereof (including interests and costs, if any) have been paid with respect to any specified Lot as of the date of such certificate, or, if all Assessments and installments thereof have not been paid, setting forth the amount (including interest and costs, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificate, which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

## ARTICLE 8

### IMPOSITION OF CHARGE AND LIEN UPON LOTS

8.01 Establishment of Lien for Regular Assessments: The Regular Assessment, together with the continuing obligation to pay all future Regular Assessments assessed in all future years and all installments thereof, shall be and remain a first charge against, and a continuing first lien upon each Lot, which shall bind such property in the hands of the then Owner, her, his or its heirs, executors, administrators, successors and assigns, and said charge and lien shall be superior to any and all other charges, liens, or encumbrances which may hereafter in any manner arise or be imposed upon the Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law

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OR 739 PG 558

made superior thereto and the lien of a bond fide first mortgage on the subject Lot. If a Regular Assessment is past due more than thirty (30) days, the Board may, at its discretion, file notice of the amount of the lien with the Union County, Ohio Recorder. Notwithstanding whether any such filing of a notice of the amount of the lien for a Regular Assessment is made, the lien therefor is an automatic and continuing lien as above stated.

8.02 Establishment of Lien for Other Assessments: Any Membership Fee, Compliance Assessment or Special Assessment shall be and remain a charge against, and a continuing lien upon each Lot upon which such lien is assessed from the date such Assessment is assessed, and shall have the priority equal to a lien filed the date of such assessment. If a Membership Fee, Compliance Assessment or Special Assessment is past due more than thirty (30) days, the Board may, at its discretion, file a notice of the amount of the lien with the Union County, Ohio Recorder. Notwithstanding whether any such filing of a notice of the amount of the lien for a Membership Fee, Compliance Assessment or Special Assessment is made, the lien therefore is an automatic and continuous lien as above stated from the date assessed.

8.03 Personal Liability for Assessments: In addition to taking subject to the charge and lien imposed by Sections 8.01 and 8.02 hereof, each Owner of each Lot, by the acceptance of a deed or other instrument of conveyance therefor, whether or not it shall be so expressed in such deed or instrument of conveyance, and every other Owner, regardless of how he, she or it acquired title to a Lot, shall be deemed to have agreed to be personally liable for the payment of all Assessments assessed by the Association against such Lot to which such Owner holds title. If more than one Owner holds title to a Lot, all such co-Owners shall be jointly and severally liable for all Assessments assessed against their Lot.

8.04 Foreclosure of Lien for Assessments: The lien for any Assessment may be enforced by judicial foreclosure by the Association in the same manner in which mortgage on real property may be foreclosed in Ohio. In any such foreclosure, the Owner shall be required to pay all costs of foreclosure, including reasonable attorneys' fees incurred by the Association. All such costs and expenses shall be secured by the lien being foreclosed. The Association shall have the right and power to bid at the foreclosure sale or other legal sale to acquire the Lot foreclosed upon, and thereafter to hold, sell, lease, convey, use, encumber or otherwise deal with the same as the owner thereof.

## ARTICLE 9

### USE OF FUNDS

9.01 Application of Assessments: The Association shall apply all funds received by it pursuant to these Restrictions, and all other funds and property received by it from any source, including without limitation, the proceeds of loans referred to in Section 9.02 hereof and the surplus funds referred to in Section 9.03 hereof, to the following, in the order stated:

- (1) The payment of all principal and interest, when due, on all sums borrowed by or loaned to the Association, to the extent required under any agreement with holders or owners of debt obligations referred to in Section 9.02 hereof;
- (2) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority, and duties described in this Declaration; and
- (3) Payment of the Common Facilities Maintenance Costs.

9.02 Authority to Borrow Funds: In order to secure the repayment of any and all sums borrowed by or loaned to it, from time to time, the Association is hereby granted the right and power:

OR 738 PG 801

OR 739 PG 559

- (a) To assign and pledge all revenues received and to be received by it under any provision of this Declaration, including, but not limited to, the proceeds of the Regular Assessments payable hereunder; and
- (b) To enter into agreements with holders and owners of any debt obligations with respect to the collection and disbursement of funds, including, but not limited to, agreements wherein the Association covenants;
  - (i) to assess the Regular Assessments on a given day in each year and, to assess the same in a particular amount;
  - (ii) to establish sinking funds or other security deposits;
  - (iii) to apply all funds received by the Association first to the payment of all principal and interest, when due, on such debts, or to apply the same to such purpose after providing for costs of collection;
  - (iv) to establish such collection, payment and lien enforcement procedures, not inconsistent with the provisions of this Declaration, as may be required by holders or owners of any such debt obligation; and
  - (v) to provide for the custody and safeguarding of all funds received by the Association.

The amounts, terms and rates of all borrowing and the provisions of all agreements with holders or owners of any such debt obligation shall be subject solely to the decision of the Board acting in its absolute discretion.

9.03 Authority to Maintain Surplus: The Association shall not be obligated to spend in any particular time period all the sums collected or received by it in such time period or in any other time period and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Regular Assessment in any year, but may carry forward from year to year and time to time such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes as set forth in this Declaration and its By-Laws.

9.04 Authority to Enter into Contracts: The Association shall have the power and authority to contract with any person, corporation, firm or other entity, including, but not limited to, Declarant, for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder, and to delegate such powers and authority to any agent or employee of the Association, and the exercise of those powers and authority by such person, corporation, firm, entity, agent or employee shall be deemed the exercise of those powers and authority by the Association, except that no independent contractor shall be deemed by virtue of these provisions to be the agent of the Association. There shall be no requirement of any bond or surety for the Association, its agents, employees, or others assuring the exercise of the powers and authority granted hereunder, except as the Board shall in its sole discretion deem necessary or desirable for the safeguarding of any funds received by the Association.

## ARTICLE 10

### ENFORCEMENT

10.01 Interpretation: In case of uncertainty as to the meaning of any article, paragraph, sentence, clause, phrase or word in this Declaration, the reasonable interpretation by the Declarant, as the author, shall be final and conclusive upon all interested parties until December 31, 2009; and thereafter the reasonable interpretation by the Board shall be final and conclusive upon all interested parties, unless contradicted by the ruling of a Court having jurisdiction.

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10.02 Abatement and Suit: Violation or breach of any of these Restrictions shall give to Declarant and the Association the joint and several rights, after written notice and a reasonable cure period under the circumstances (customarily thirty [30] days), that must be stated in the notice, to enter the Property involved and abate and remove the same at the expense of the Owner involved or to proceed at law or in equity against such Owner or any person or persons who have violated or are attempting to violate them from doing so, and to cause said violation or attempted violation to be remedied, or to recover damages therefor. In addition, any Owner may take legal action to enforce the use restrictions contained in Article 2 of this Declaration against any other Owner who is in violation thereof. In any legal or equitable proceedings for the enforcement of the provisions of this Declaration, the Owner or person found by the Court to be in violation or breach shall pay the reasonable attorneys' fees of the prevailing Association, Declarant or Owner, as applicable. All remedies provided herein or at law or in equity shall be cumulative and not exclusive. Each Owner of each Lot, by acquiring title to a Lot, agrees that any action brought relating to these Restrictions shall be brought in the Common Pleas Court of Union County, Ohio.

10.03 Failure to Enforce Not a Waiver of Rights: Failure of the Association, the Committee or the Declarant, or any Owner, to enforce any of these Restrictions shall in no way be deemed a waiver of the right to enforce any other of these Restrictions. Litigation should be a last resort for the resolution of disputes, and the parties should be encouraged to settle their disputes short of litigation where such is a feasible alternative. Providing a reasonable amount of time for the parties to remedy any violation is a justifiable reason for delaying litigation. Owners hereby waive any claim to damages due to any delay of enforcement of the Restrictions.

10.04 Assignment by Declarant: All or any portion of the rights of Declarant under this Declaration may be assigned in whole or in part by Declarant to any successor-in-interest in the Property, or to the Board and/or the Committee by an express written assignment recorded in the Records of Union County, Ohio.

## ARTICLE 11

### AMENDMENTS, PERIOD OF DURATION

11.01 Amendments: Until the deed to the first Lot sold by Declarant has been recorded in the Union County Recorder's Office, Declarant may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time. Any such amendment may impose covenants, conditions, restrictions and easements upon the Property and the Owners in addition to those set forth herein, including, without limitation, restrictions on use. After the deed to the first Lot sold by Declarant has been recorded, Declarant may unilaterally amend this Declaration only if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Property or, any portion thereof; or (c) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Owner's Lot unless the Owner thereof has consented to such amendment in writing. This Declaration may also be amended by 100% of the Owners of Property subjected hereto, all of their mortgagees, and the Declarant, if all of them execute the written amendment and record said amendment with the Union County, Ohio Recorder. Such an amendment shall be effective upon its recording with the Union County, Ohio Recorder. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

OR 739 PG 561

11.02 Periods of Duration: This Declaration, shall run with the land, and shall continue in full force and effect for a period of fifty (50) years from the date hereof set forth below, provided, however,

OR 738 PG 803

the Association and its ownership and maintenance of the Common Facilities, the rights and obligations relative to Assessments, and the easements granted herein shall survive said fifty (50) year term and be perpetual.

11.03 Perpetuities: If any of the covenants, conditions, restrictions, assessments, liens, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

## ARTICLE 12

### CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every person who now or hereafter owns or acquires any rights, title or estate in any portion of the Property is and shall be conclusively deemed to have consented and agreed to every Restriction contained herein whether or not a reference to these Restrictions is contained in the instrument by which such person acquired an interest in said Property.

## ARTICLE 13

### EASEMENTS

13.01 Platted Easements; Grant to Lot Owners: Declarant hereby reserves utility easements for the purpose of constructing utility lines over or through the Property within the easements depicted or referred to on the Plat, and Declarant may grant easements to any utility over and across said platted easements whether or not the underlying Lot is owned by Declarant, any Reserves appearing on the Plat, and other portions of the Property owned by Declarant. Further, Declarant does hereby grant to the Owners of each and every Lot a perpetual, non-exclusive easement appurtenant to such Lots, over, under, across and through: (a) areas denoted on the Plat as "Easements", including the lines and the South Retention Basin in the Common Facility Easement; (b) the rights-of-way of Coleman's Crossing Boulevard and Lydia Drive dedicated by the Plat; and (c) the North Basin, to use for storm water drainage in the lines and into the basins installed by Declarant pursuant to the Street, Storm and Water Improvement Plan for City Gate, prepared by Evans, Mechwart, Hambleton & Tilton, Inc. dated April, 2006 and most recently revised May 16, 2007, as filed with and approved by the City of Marysville, and dedicated to the City, and the City may repair, maintain, up-size, use and replace the storm drainage lines so installed by Declarant. All easement areas reserved on the Plat shall permit the construction, installation, operation, maintenance, repair and replacement of utility lines therein that service the Lots.

13.02 Use of Easement Areas: Within the easement areas designated on the Plat, no buildings shall be erected. In addition, no planting or other material shall be placed or permitted to remain within any such easement areas which may damage or interfere with utility installations located in the easement, or interfere with the direction of the flow of the drainage swales, ditches or channels or water over said easement areas. Such easement area and all surface improvements thereon shall be maintained continuously by the Owner, except for those improvements for which a public authority or public utility company is responsible. Notwithstanding anything to the contrary contained herein, (1) the rights of Declarant, the Association and the City created under this Declaration and/or by the Plat to install, construct or maintain drainage and utility lines and facilities on the Property shall be limited as to time and manner so that, among other things, after initial installation of such facilities, Lots shall not be disturbed by construction, installation, up-sizing or maintenance activities without at least seven (7) days prior written notice to the Owner of the Lot being disturbed, except in the case of emergency repairs where prior written notice is not practical, and (2) such activities shall be prohibited from taking place,

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OR 739 PG 562

without the disturbed Lot's Owner's consent, between November 1st and the immediately succeeding January 1st in any given calendar year, except in the case of emergency. Any such construction, installation, up-sizing or maintenance activities shall not, however, block access to any operating business on a Lot during its operating hours.

13.03. Grant to Association: Developer hereby also grants to the Association the Common Facility Easement for the South Basin, and the piping connecting it with the North Retention Basin, so that the Association may maintain the storm water drainage, detention and retention features thereof in accordance with Section 6.03(b) hereof for the common use and benefit of the Lots.

13.04. Rights of Owners: Any Common Facility Easement granted to the Association shall constitute an easement for the common use and benefit of all Owners. The rights of each Owner in and to each Common Facility Easement shall be subject to the right of the Association to regulate the use of the Common Facility Easement for the benefit of all Owners.

13.05 Maintenance of Common Facility Easement: Each Owner who owns a Lot upon which a Common Facility Easement is located shall keep any portion of said Common Facility Easement located on its Lot in grass, keep it regularly mowed, and keep it generally free of litter, trash and debris. To the extent the storm water retention/detention basin thereon or piping connecting the basins otherwise require maintenance, repair or replacement, the Association shall be responsible for such work and the cost thereof. The Association shall maintain and operate, in good working, clean, and safe condition, the retention/detention basins in the Common Facility Easement and Reserve "A", and the connecting piping, to the extent that such facilities have not been dedicated to and accepted (for both ownership and maintenance purposes) by the City, and all Owners shall pay or cause to be paid their respective Proportionate Share of the costs thereof as a portion of the Assessments provided for in this Declaration.

## ARTICLE 14

### MUTUALITY

All restrictions, condition and covenants contained herein are made for the direct, mutual and reciprocal benefit of Declarant and the Owners, and their respective successors and assigns; these Restrictions shall create mutual equitable servitudes upon the Property in favor of other real property within the Property; these Restrictions shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees thereof; and these Restrictions shall, as to any Owner, his, her or its heirs, personal representatives, successors and assigns, operate as covenants running with the land for the benefit of all of the Property and the Owners.

## ARTICLE 15

### PARAGRAPH HEADINGS

The paragraph headings are intended for convenience only and are not intended to be a part of this Declaration in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

OR ~~738~~ PG ~~805~~

OR 739 PG 563



ARTICLE 16

**GOVERNING LAW; EFFECT OF INVALIDATION; SEVERABILITY**

These Restrictions shall be governed by the laws of the State of Ohio, being the State in which the Property is located. If any provision of these Restrictions is held to be invalid by the Court of Common Pleas, Union County, Ohio, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

IN WITNESS WHEREOF, Declarant has duly signed and acknowledged this Declaration effective the 9<sup>th</sup> day of June, 2007.

CONNOLLY CONSTRUCTION CO.,  
(aka Connolly Construction Company),  
an Ohio corporation

By: [Signature]  
Printed Name: Phillip F. Connolly  
Title: President

STATE OF OHIO :  
COUNTY OF UNION : ss.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 2007, by Phillip F. Connolly, the President of Connolly Construction Co., an Ohio corporation, who acknowledges that this is his free act and deed on behalf of said corporation as such officer.

[SEAL]

[Signature]  
Notary Public

My Commission Expires:



JACKIE R. OTTO  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES

3/22/2011

This instrument prepared by: David G. Baker, Esq., Bricker & Eckler LLP  
100 South Third Street, Columbus, Ohio 43215

rev 6/6/07

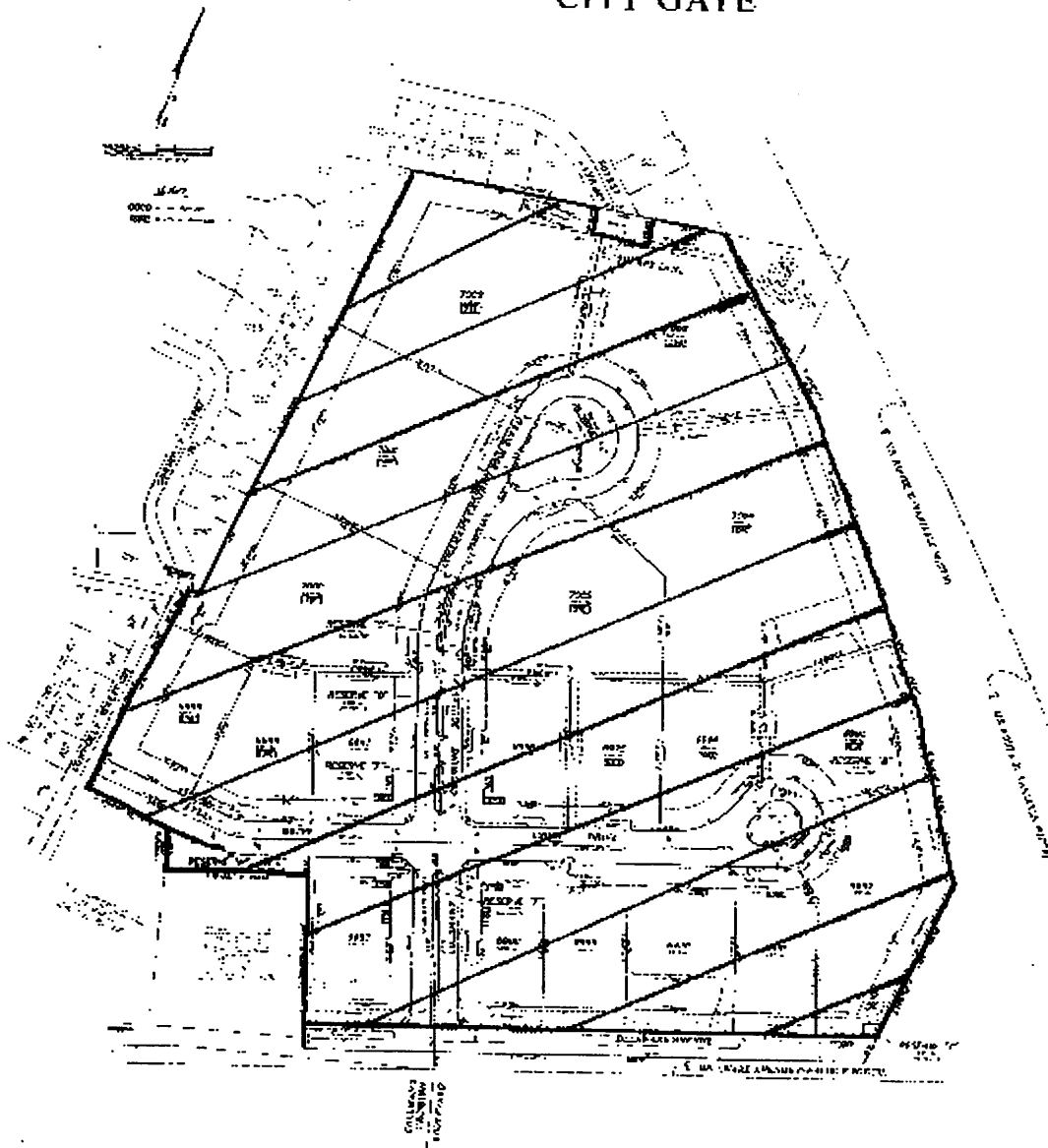
~~DR 738 PG 806~~

DR 739 PG 564

EXHIBIT "A"

DRAWING OF MASTER SITE/PROPERTY

CITY GATE



OR 738 PG 807

OR 739 PG 565

EXHIBIT "B"

DESCRIPTION OF PROPERTY

The following described real property situated in the City of Marysville, County of Union, and State of Ohio:

Being Lots Nos. 6987, 6988, 6989, 6990, 6991, 6992, 6993, 6994, 6995, 6996, 6997, 6998, 6999, 7000, 7001, 7002, 7003, 7004 and 7005 of CITY GATE Subdivision of Marysville, Ohio, as the same are numbered and delineated on the recorded plat thereof, of record in Plat Book 5, Page 243, Recorder's Office, Union County, Ohio.

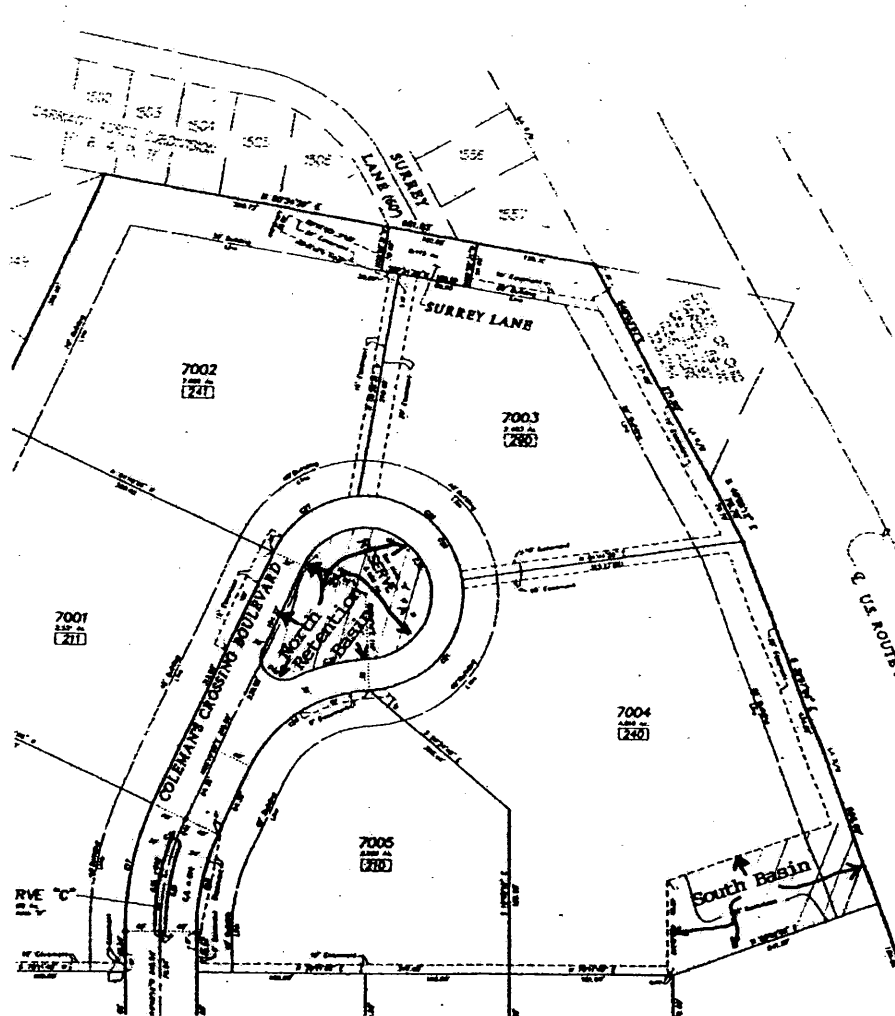
~~DR 738 PG 808~~

DR 739 PG 566

EXHIBIT "C"

DRAWING DEPICTING SOUTH BASIN AND NORTH RETENTION BASIN

CITY GATE



OR 739 PG 567

~~OR 738 PG 809~~

## EXHIBIT "D"

SCHEDULE OF PROPORTIONATE SHARES

<u>Lot #</u>	<u>Acreage</u>	<u>Proportionate Share</u>
Lot 6987	1.264	4.015%
Lot 6988	1.006	3.196%
Lot 6989	1.006	3.196%
Lot 6990	1.343	4.266%
Lot 6991	0.971	3.085%
Lot 6992	1.960	6.226%
Lot 6993	1.458	4.632%
Lot 6994	1.003	3.186%
Lot 6995	1.004	3.189%
Lot 6996	1.144	3.634%
Lot 6997	1.112	3.533%
Lot 6998	1.011	3.212%
Lot 6999	1.007	3.199%
Lot 7000	2.274	7.224%
Lot 7001	2.531	8.041%
Lot 7002	2.956	9.391%
Lot 7003	2.403	7.634%
Lot 7004	4.019	12.768%
Lot 7005	2.006	6.373%
TOTAL	31.478	100.00%

TERESA L. MARKHAM  
RECORDER, UNION CO., OHIO

2007 JUN 12 PM 2:49

\$244.00

*Record*  
TERESA L. MARKHAM  
RECORDER, UNION CO., OHIO

2007 JUN 15 AM 8:44

\$248.00

**TRANSFERRED**

JUN 12 2007

MARY H. SNIDER, AUDITOR  
This conveyance has been examined and the Grantor  
complied with section 319.202 of the Revised Code.

FEE \$  
EXEMPT *X* *KMA*

OR 738 PG 810

OR 739 PG 568