

RR 5461 PAGE 677

THE TRAILS OF DUTCHLAND WOODS  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS

THIS DECLARATION of Covenants, Conditions, Restrictions and Reservation of Easements ("Declaration") is made this 11<sup>th</sup> day of October, 1995, as follows:

WITNESSETH:

WHEREAS, the Declarant is or was the owner of all of the Lots in The Trails of Dutchland Woods Subdivision, Section One, Block A, Section 26, Town 3, Range 3, Liberty Township, Butler County, Ohio, as recorded in Plat Book 2572, Pages A & B of the Butler County, Ohio records (the "Subdivision") located on the property more fully described in Exhibit A hereto (the "Property"); and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in the Subdivision; and to this end, desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and the subsequent owners thereof and Declarant further desires to protect its rights to subject the remainder of the Property to this Declaration; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Subdivision, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering easement areas and administering and enforcing the within covenants and restrictions and collecting and disbursing the charges and assessments hereinafter created or in the alternative to cause the Property to be further subjected to the restriction that the owners of any Lot in the Subdivision shall become Members of the Dutchland Woods- Property Owners Association, Inc. ("DWPOA"); and

WHEREAS, the Declarant shall form The Trails of Dutchland Woods Community Association, Inc., a non-profit Ohio Corporation (the "Association") for the purpose of carrying out the aforesaid powers and duties in the event that the DWPOA does not consent to the owners of the Property or any part thereof becoming Members of the DWPOA within 120 days of the date of this Declaration;

NOW, THEREFORE, the Declarant hereby declares that the Subdivision shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with, the land comprising the Subdivision and be binding on all parties having any right, title, or interest in the Subdivision or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof and that Declarant reserves the right to subject all or any portion of the remainder of the Property to the requirements of this Declaration.

950050236  
Filed for Record in  
BUTLER COUNTY, OHIO  
JOYCE B THAL  
On 10-11-1995 At 03:09 pm.  
DECL 56.00  
Book OR Vol. 5461 Page 677

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ARTICLE IDEFINITIONS

**Section 1. Definitions.** The following words when used in this Declaration shall have the following meanings:

- (a) "Articles" and "Articles of Incorporation" shall mean those Articles, filed with the Secretary of State of Ohio, incorporating the Association as a corporation not for profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be amended from time to time.
- (b) "Association" shall mean and refer to The Trails of Dutchland Woods Community Association, Inc., and its successors and assigns including the DWPOA, in the event the DWPOA accepts the owners of the Subdivision as members of the DWPOA, in which case all references to the Association or any subpart thereof or any documents related thereto shall refer to the DWPOA or any subpart thereof or any document related thereto.
- (c) "Board" and "Board of Trustees" shall mean the Board of Trustees of the Association as provided in the Articles of Incorporation and By-Laws of the Association.
- (d) "By-Laws" shall mean the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time, pursuant to Section 1702 of the Revised Code of Ohio.
- (e) "Common Area" shall mean all real property and improvements thereon, owned by the Association including those areas designated as such on the record plat(s) of the Subdivision. In the event an agreement is entered into with the DWPOA for the inclusion of the owners of Lots in the Subdivision in the DWPOA, the Common Areas shall include the common areas owned by the DWPOA, provided that the Owners of Lots in the Subdivision have the same rights to use of such common areas as the other owners of lots in Dutchland Woods Subdivision.
- (f) "Declarant" shall mean and refer to Blackberry Hills Development Company, Ltd., an Ohio limited liability company, and its successors and assigns.
- (g) "Development" shall mean and refer to the Subdivision and all improvements located or constructed thereon.
- (h) "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of (a) the day fifteen (15) years after such date, or (b) the day next following the day on which the Declarant owns no part of the Property.
- (i) "Living Unit" shall mean any portion of a building situated upon a Lot designated and intended for use as a single family residence.

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(j) "Lot" shall mean and refer to any separate parcel of land shown upon the recorded Subdivision plat.

(k) "Members" shall mean the Owners who are members of the Association as provided in Article III hereof.

(l) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or undeveloped tract which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(m) "Structure" shall mean and refer to anything built, placed upon or constructed upon a Lot.

(n) "Trustee" and "Trustees" shall mean that person or those persons serving, at the pertinent time, in the capacity of a member of the Board of Trustees of the Association.

## ARTICLE II

### PROPERTY DEVELOPMENT

Section 1. Property Subject to Declaration. The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is described more fully as all of the Lots in the Trails of Dutchland Woods Subdivision as recorded in Plat Book 2572, Pages A & B. In addition all or any portion of the remainder of the Property may be subjected to the Declaration by Declarant filing a supplement to this Declaration.

## ARTICLE III

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every Owner shall be a Member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of any Lot. During the Development Period, the Association shall have Class A Members (being all Owners except Declarant) and a Class B Member (Declarant). After the Class B membership terminates Declarant, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner.

### Section 2. Voting Members.

(a) With the exception of Declarant until Class B membership has lapsed and becomes a nullity, every person, group of persons or entity who is an Owner of a fee interest in any Lot and which is or becomes subject to assessment by the Association, shall be a Class A Member

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of the Association. Class A Members shall be entitled to a total of one vote per Lot in which they hold the fee interest. If more than one person, group of persons, or entity is the record Owner of a fee interest in any Lot, then the vote for such Lot shall be exercised as they determine among themselves but in no event shall more than one vote be cast with respect to any Lot.

(b) The Class B Member shall be the Declarant and shall be entitled to eight votes for each Lot in which the Declarant holds the interest otherwise required for Class A membership.

(c) At such time as Class B membership shall terminate, Declarant shall be deemed a Class A Member with reference to the Lot or Lots in which Declarant holds the fee interest and Declarant shall be entitled to the voting and all other rights of a Class A Member.

#### ARTICLE IV

##### ASSESSMENTS

Section 1. Covenant for Assessments. Each person, group of persons, or entity who becomes an Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: Annual Assessments and Special Assessments (collectively the "Assessments"). The Assessments shall be fixed, established and collected from time to time. All Assessments, together with interest thereon as hereafter provided and costs of collection thereof (including court costs and reasonable attorney's fees) shall be a continuing lien upon the Lot against which such Assessment is made. Each Assessment, together with interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person, group of persons, or entity who was the Owner of such Lot at the time when the Assessment fell due.

Section 2. Annual Assessments, Purposes. The Annual Assessments levied by the Association are for the purpose of promoting, protecting and enhancing the value of the Lots in the Subdivision and for maintaining, repairing and replacing the Common Areas. To carry out these purposes, an Annual Assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision. The Annual Assessment may be billed in advance on a monthly, quarterly or annual basis. The Board of Trustees shall fix the Annual Assessment after approving the following year's budget. The Annual Assessment for the Common Areas shall be fixed at a uniform rate based upon the number of Lots.

Section 3. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy, in any assessment year, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement for which the

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Association is responsible which cost has not otherwise been provided for in full as part of the Annual Assessment, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall have the approval of fifty-one percent (51%) of the total number of votes held by Class A Members and in addition, approval by the Class B Member. Any Special Assessments levied by the Association pursuant to the provisions of this section shall be fixed at a uniform rate based upon the number of applicable Lots. All monies received by the Association as a Special Assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of the Special Assessment and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association. The Special Assessment may be billed in advance on a monthly, quarterly or annual basis.

**Section 4. Commencement of Assessments.** The Annual Assessments shall commence on the first day of the first month after the recording of the record plat for the Subdivision. The first Annual Assessment shall be made for the balance of the calendar year and shall become due and payable and a lien on the date aforesaid. The Board may from time to time determine the manner and schedule of payments.

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

**Section 5. Assessment of Declarant.** Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association notwithstanding, the Declarant, while it is a Class B Member, shall not be required to pay Assessments.

**Section 6. Assessment Certificates.** The Association shall, upon demand, at any reasonable time, furnish to the Owner liable for the Assessments, a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of payment of the Assessments. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A charge not to exceed Ten (\$10.00) Dollars may be levied in advance by the Association for each certificate so delivered.

**Section 7. Non-Payment of Assessment.** Any Assessment levied pursuant to this Declaration which is not paid on the date when due together with interest thereon and cost of collection thereof, shall become a continuing lien upon the Lot, and shall be the personal obligation of the

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then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (except as a lien against the Lot) unless expressly assumed by such successors with the consent of the Association.

If the Assessments are not paid within fifteen (15) days after the due date, the Assessments shall bear interest at the rate of ten (10%) percent per annum, and the Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, in either of which events, interest, costs and reasonable attorney's fees shall be added to the amount of the Assessments.

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

**Section 8. Subordination of Lien to Mortgage.** The lien of the Assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any tax lien foreclosure, or any proceeding in lien thereof, shall extinguish the lien of such Assessment as to payment which becomes due prior to such sale or transfer.

**ARTICLE V****INSURANCE**

**Section 1. Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of public liability insurance insuring the Association, Trustees, and Owners and members of their respective families, tenants and occupants in an amount of not less than five hundred thousand dollars (\$500,000.00), per occurrence for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. The insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a residential Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants or occupants.

**Section 2. Other Insurance.** In addition, the Association may obtain and maintain casualty insurance, Trustees' and Officers' liability insurance and such other insurance as the Board deems desirable from time to time.

**Section 3. Insufficient Insurance.** In the event the improvements forming a part of the Lots or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds are sufficient to pay the cost of

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repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots for which the amount was so advanced, and such Assessment shall have the same force and effect, and if not paid, may be enforced in the same manner as herein provided for the nonpayment of Assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

**ARTICLE VI****USE RESTRICTIONS**

**Section 1. Prohibited Uses and Nuisances - All Living Units and Lots.** Except for activities of the Declarant during the Development Period, the following provisions shall apply to all Living Units and Lots:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Living Unit located in the Subdivision, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the other Owners in the Subdivision.

(b) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Living Unit located in the Subdivision, except that this shall not prohibit the keeping of dogs, cats and/or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes. Dogs and cats must be kept within the confines of the Owner's Living Unit or Lot, except when being held on hand leash by person attending animal. However, no doghouse, animals or livestock of any kind may be kept outside. Owners and/or harbinger of dogs and cats shall be liable for any damage caused by such animals. Subject only to the provisions of Article III, the Association acting through its Board of Trustees may suspend for a reasonable length of time the voting rights of any person who violates this subparagraph (b).

(c) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

(d) Trash and garbage containers shall not be permitted to remain outside any Living Unit except on days of trash collection. No Lot shall be used or maintained as a dumping ground for rubbish, except during the period of construction of the Living Unit on the particular Lot. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

(e) All plantings in median strips, landscaping islands or along right-of-ways shall be subject to review by the Butler County Engineer's Office. The Butler County Engineer shall

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have the final authority to remove any planting which impedes traffic or traffic visibility to insure public safety.

(f) No Structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels. Any Structure, planting or other material which represents a safety problem (e.g. sight restriction) shall be removed at Owner's expense.

(g) Garages shall be used only for the parking of vehicles and other customary uses.

(h) No fence or wall of any kind, specifically including the use of hedge or other growing plants as a fence, and for any purpose, except a retaining wall, shall be erected, placed or suffered to remain upon any Lot nearer to any public right of way than the minimum building set back line. Only split rail fencing shall be permitted to be installed beyond the minimum building setback line.

(i) Except as otherwise provided herein, no junk vehicles, commercial vehicles, trailers, boats, trucks of more than one ton, Structures of a temporary character, recreational vehicles, trailers, tents, shacks, barns or temporary or permanent outbuildings shall be kept or used upon the Lots for more than 48 hours nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Notwithstanding the provisions hereof, Declarant, the builder of a Living Unit and their contractors may, for the purpose of business use in connection with the development of the Lots or construction of Living Units thereon, maintain trucks, equipment, temporary offices (including trailers) and structures in connection with such development and construction.

(j) No signs, letters, numbers, symbols, markings or illustrations shall be erected, posted, attached, or displayed upon, or on any Lot or Living Unit except:

- (i) street and identification signs installed by the Association or the Declarant;
- (ii) one temporary sign informing the public that the real estate is for sale, lease or rent, provided that the sign must not exceed five square feet in area and must be erected upon the real estate to which it refers;
- (iii) a post office house number for designation of home location.

(iv) political signs of not more than five square feet each side will be permitted 30 days prior to an election and must be removed within seven (7) days after an election.

No sign, name plate or postal house number shall be animated or illuminated. This subsection shall not apply to Declarant as long as it is a Class B member, or at any time, to a sign, placed by or on behalf of Declarant, advertising or marketing the Subdivision or any part thereof.



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(k) No Structure shall be erected, placed or permitted to remain on any Lot except one single family residence, which residence shall include an attached garage having the capacity to hold at least two automobiles. No other Structure shall be erected, placed or permitted to remain on any Lot, except as provided herein. Without limiting the generality thereof, the word Structure as used herein, means any thing or object, which, if placed upon any Lot may affect the appearance of such Lot, including any building, garage, shed, barn, greenhouse, coop, cage, shack, trailer, above-ground swimming pool, or any other temporary or permanent improvement on such Lot. However, the word Structure does not include in its definition, patios or decks, swing sets or jungle gyms.

(l) All dwellings shall be constructed to such a manner as to conform with the Zoning laws, Building Codes and Plumbing Codes of Butler County, Ohio, and any state health regulations which apply to this development.

(m) The construction of concrete block, cinder blockhouses, or houses constructed of other similar brick material is prohibited, unless the entire exterior is covered with brick. Underground homes are not permitted. Boarding houses, group homes and lodging homes are not permitted.

(n) No outside television or radio aerial or antenna, or other aerial or antenna for reception or transmission, or satellite dish larger than 18" in diameter shall be erected, placed on, maintained or allowed to remain on any Lot or Living Unit.

(o) The grades of all Lots shall not be materially altered or changed so as to adversely affect or interfere with any other Owner.

(p) In the event an in-ground Swimming Pool is installed, a small storage shed will be permitted for the purposes of housing the pool filter, pump, heater, equipment and chemicals.

(q) Minimum square footage of living area of Living Units will be as follows:

Ranch Homes on Basement	1300 s.f.
Ranch Home no Basement	1400 s.f.
Tri-Level	1600 s.f.
Bi-Level	1700 s.f.
Two-Story - 3 Bedroom	1500 s.q.
Two-Story - 4 Bedroom	1800 s.f.

Square footage of basements and garages are excluded from above minimum square footage requirement. All outside walls are included in living area requirements.

(r) The Owner of each Lot shall be responsible for the cleaning and removal of mud or debris on the streets caused by the construction on such Lot and if such Owner fails to keep the street clean and free of debris, the Association or Declarant may cause the cleaning to occur and charge the Owner for such cost.

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(s) Storm water must be disposed of in accordance with drainage plans on file with the Butler County Engineer. All drainage patterns on such plans must be conformed to and all drainage swales shall be maintained and may not be filled or otherwise modified without the consent of the Butler County Engineer and the Association.

(t) The covenants and restrictions set forth in this Section I pertaining to Lots may be altered, amended or rescinded, in full or in part by resolution approved by seventy-five (75%) percent of the total number of votes held by Class A Members and in addition, by the Class B Member.

**Section 2. Residential Use.** All of the Living Units shall be used for private residential purposes exclusively except that Declarant may and the builders of Living Units may allow the use of Living Units as models and as offices in connection with the marketing or sale of Lots or Living Units in the Subdivision.

**Section 3. Right of Association to Remove or Correct Violations of this Article.** The Association may, in the interest of the general welfare of the Owners, and after reasonable notice to the affected Owner, enter upon any Lot or the exterior of any Living Unit at reasonable hours for the purpose of removing or correcting any violation or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided however, that no such action shall be taken without a resolution of the Board of Trustees. All charges incurred by the Association in obtaining access to any Lot or Living Unit covered under this Section and any charges incurred by the Association in correcting the violation hereunder, (including court costs and reasonable attorney's fees) shall constitute a charge against the Lot and a personal obligation of the Owner thereof, and the Association shall have a lien upon the property and Lot for such expenses, and including costs of collection of said lien amount, which lien shall be subordinate to first mortgages as provided in Article IV, Section 9.

**Section 4. Declarant's Reservation of Entry Rights.** The Declarant reserves the right for a period of five (5) years after the sale of a Lot by the Declarant to enter upon the Lot for purposes of correcting grade and drainage patterns for the benefit of the Subdivision Property, provided that the Lot shall be restored to a like condition as to pavement, grass or sod which shall have been removed.

**Section 5. Declarant's & Association's Right to Grant Easements.** Notwithstanding any other provision of this Declaration, during the Development Period, the Declarant, and thereafter the Association, is authorized, without consent of the Members, to grant easements across, through or under any Lot for utilities, public services, walks, trails, signage maintenance and for construction purposes, deemed by the granting party to be necessary or convenient for the enjoyment of the Subdivision or any part thereof, provided that no easement shall be granted across, through, or under any Living Unit or Structure, which restricts ingress or egress to such Living Unit or Structure.

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**Section 6. Arbitration.** In the event of any dispute between Owners regarding the application of this Declaration or any rule or regulation, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time and place for a hearing thereon within thirty (30) days thereafter, and give written notice to each party thereof not less than five days in advance of such hearing. The Board shall act as arbitrator and, after hearing such evidence and arguments as it deems proper, shall render a written decision on the matter to each party within thirty (30) days after such hearing. No legal action may be instituted by either party on such a dispute unless the arbitration provided for herein has occurred, or unless both parties have waived the requirement for arbitration.

## ARTICLE VII

### MISCELLANEOUS

**Section 1. Duration.** The terms and provisions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, and except where permanent or perpetual assessments or other permanent rights are herein created, the term of the covenants, conditions and restrictions shall be for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument agreeing to terminate the Declaration signed by the then Owners of two-thirds (2/3) of the Lots has been recorded.

**Section 2. Amendment.** The Declaration may be amended, from time to time as follows:

A. **By Declarant:** The Declarant reserves the right and power to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, without the approval of the Owners, or to the extent necessary to enable Declarant to meet any other reasonable need or requirement in order to complete the development of the Subdivision and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall take effect only upon recording. Each Owner, by acceptance of a deed to a Lot, consents to such right to amend the Declaration by Declarant.

B. **By Lot Owners.** Except as otherwise provided in this Declaration, this Declaration may be amended at any time by an instrument executed by persons or entities enabled to exercise seventy-five (75%) percent of the voting power of both classes of the Association. Any amendment must be recorded and shall take effect only upon recording.

**Section 3. Personal Liability.** Nothing in this Declaration, the Articles or the Regulations or By-Laws of the Association, or any rules or regulations enacted pursuant to any of the aforesaid,

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shall impose personal liability upon any member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the maintenance, repair or replacement of the Common Areas or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct. Each person who becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an officer or Trustee, or both, from any liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and, in such event, the amount of recovery shall be limited to the amount of insurance.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage prepaid, 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 5. Enforcement. Except as provided in Article VIII, enforcement of this Declaration shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created or allowed by this Declaration; and the failure or forbearance by the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 6. Severability. Invalidation of any part of this Declaration by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 7. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By-Laws of the Association, the Declaration shall control.

Section 8. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause or without payment of a termination fee on ninety (90) days or less written notice.

Section 9. Non-Liability of Declarant. Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted or delegated to it, by or pursuant to, this Declaration, the Articles or the By-Laws, whether or not such claims shall be asserted by an Owner, the Association, or by any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Subdivision or any part thereof not being maintained or repaired by reason of any act or neglect of any Owner, the Association or their representative

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agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Subdivision, or by reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.) except as provided by any written warranty provided to an Owner or the Association.

Section 10. Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other forms of business organizations, or individuals, men or women, shall in all cases be assumed as though in such case fully expressed.

IN WITNESS WHEREOF, Blackberry Hills Development Company, Ltd., an Ohio limited liability company, by and through its authorized managing member, Mercurio Realty, Inc., by Richard M. Kimbler, its President, has executed this Declaration as of the day and year first written above.

Signed and acknowledged  
in the presence of:

Blackberry Hills Development Company, Ltd.  
an Ohio limited liability company  
By Mercurio Realty, Inc., its managing  
member

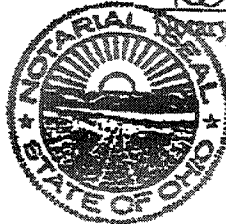
Renee Cipriani  
Julia Howard

By: [Signature]  
Richard M. Kimbler, President

STATE OF OHIO, COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October, 1995, by Richard M. Kimbler, President of Mercurio Realty, Inc., an Ohio corporation, managing member of Blackberry Hills Development Company, Ltd., an Ohio limited liability company, on behalf of the corporation and the limited liability company.

Renee A. R. Cipriani  
Notary Public



**RENEE A. R. CIPRIANI**  
Notary Public, State of Ohio  
My Commission Expires Nov. 18, 1998

This instrument was prepared by:  
Kevin R. Flynn, ESQ.  
BARRON, PECK & BENNIE  
1420 Central Trust Tower  
Cincinnati, Ohio 45202  
513/721-1350

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## EXHIBIT "A"

## DESCRIPTION:

## LOCATION:

Princeton Road  
 Liberty Township  
 Butler County, Ohio

Situated in Section 26, Town 3, Range 3, Liberty Township, Butler County, Ohio and being more particularly described as follows:

Begin at the Southeast corner of Section 26;

thence from the point of beginning, North 85°48'02" West, 1316.70 feet along the South line of Section 26 and the North line of Dutchland Woods, Holland Section to a point in the East right-of-way of Consolidated Rail Corporation;

thence along the East right-of-way of Consolidated Rail Corporation, the following courses: North 36°50'33" West, 208.37 feet;

thence North 29°11'54" East, 106.26 feet;

thence North 36°03'06" West, 122.10 feet;

thence North 17°33'06" West, 217.80 feet to a point in the South right-of-way of Princeton Road;

thence along the South right-of-way of Princeton Road, the following courses: North 59°56'54" East, 240.54 feet;

thence on a curve to the right, having a radius of 1850.00 feet, an arc length of 209.88 feet (chord = North 63°11'54" East, 209.76 feet);

thence on a curve to the right, having a radius of 1575.00 feet, an arc length of 357.36 feet (chord = North 72°56'54" East, 356.59 feet);

thence on a curve to the right, having a radius of 585.00 feet, an arc length of 339.49 feet (chord = South 83°55'36" East, 334.74 feet);

thence South 67°18'06" East, 101.27 feet;

thence on a curve to the left, having a radius of 775.00 feet, an arc length of 378.74 feet (chord = South 81°18'06" East, 374.98 feet);

thence North 84°41'54" East, 76.41 feet to a point in the East line of Section 26;

thence along the East line of Section and then passing the North Corner of Dutchland Woods, Holland Section, South 05°41'54" West, 862.03 feet to the point of beginning; containing plus or minus 28.7 acres of land and being subject to all easements and rights-of-way of record.