

8/1/03

**DECLARATION OF RESTRICTIONS
AS TO
BRECKENRIDGE PLAT FOUR
A SUBDIVISION IN MONCLOVA TOWNSHIP
LUCAS COUNTY, OHIO**

This Declaration of Restrictions is made and adopted by Breckenridge Plat IV, LLC, an Ohio limited liability company, with offices at 1890A S. Crissey Road, Monclova, Ohio 43542 ("Developer") and by Breckenridge Homeowners' Association, an Ohio nonprofit corporation (the "Association") with offices at 8779 Stitt Road, Whitehouse, Ohio 43571.

Developer is the owner of all of the residential lots shown on the plat of Breckenridge Plat Four, which plat has been recorded on _____ in _____ of the Lucas County, Ohio records. Developer shall be deemed the "Developer" solely for purposes of the Declaration of Restrictions as to Breckenridge Plat Four.

The Association has been formed to be the owner of that portion of Breckenridge designated as common area on the recorded plats of Breckenridge Plat One, Two and Three and which will be designated as common area on subsequent plats of Breckenridge, such common area to be used for roadway, utility and recreational purposes and as open space. The members of the Association are the owners of all of the residential lots in Breckenridge.

Developer and the Association desire to establish a general plan for the development of Breckenridge Four as an extension of Breckenridge Plat One, Two and Three (Breckenridge Plat One, Two, Three and Four are herein sometimes collectively called "Breckenridge" and/or "Subdivision") and to establish restrictions upon the manner of use, improvement and enjoyment of the residential lots in Breckenridge which will make such residential lots more attractive for residential purposes and will protect present and future owners of such lots in the enjoyment of their use for residential purposes.

NOW, THEREFORE, Developer and the Association in consideration of the enhancement in the value of the lots in Breckenridge by reason of the adoption of the restrictions hereinafter set forth, do for themselves, their successors and assigns subject to the foregoing recitals and to the following restrictions, covenants and conditions:

ARTICLE I

USE OF LAND

1.1 **Residential Lots.** The lots located and shown on the recorded plats of Breckenridge shall be referred to herein as "residential lots." No structure or improvement shall be erected, placed or maintained on any residential lot other than one (1) single-family dwelling of not less than three thousand (3,000) square feet of living area saving a private entrance and a private attached garage of not less than (2) car capacity, an inground only swimming pool (which shall be constructed and used in accordance with all applicable federal, state and local laws and regulations) and such accessory buildings and uses all as are approved in writing in advance by the Architectural Control Committee as provided under Article II hereof. With respect to each structure erected or maintained in the subdivision, all utility services shall be underground. Notwithstanding the above, a garage, accessory building or structure of no more than a four (4) car capacity may be erected, placed or maintained on each residential lot that is detached from the residential structure. Any such garage, accessory building or structure constructed shall be of the identical architectural design, construction material and quality, and color scheme of the single-family dwelling located on the residential lot.

1.2 **Description of Residential Lots.** The six (6) residential lots located and shown on the recorded plat of Breckenridge Plat Four consist of six (6) residential lots which adjoin each other. The lots are numbered _____ () through _____ ().

1.3 **Common Area and Streets.** The real estate designated on the recorded plat as common area, utility easements and streets shall be used exclusively for roadway and utility purposes, for noncommercial recreational purposes and for open space. It is Developer's intent that the common area designated on the recorded plat of Breckenridge Plat Four shall be primarily for the use and enjoyment of the owners of residential lots in Breckenridge Plat Four. Developer and/or the Association may adopt rules and regulations governing the use of the common area within Breckenridge. Except as expressly authorized under Paragraph 2.4 hereof, the common area shall not be built upon or be otherwise improved (but shall be maintained by the Association) and shall not be conveyed or be otherwise transferable. Developer shall contribute sufficient initial capital to the Association to manage, maintain, and repair the common area until ownership of the common area is conveyed by Developer to the Association, subject to the provisions of Article V hereof.

1.4 **Use Restrictions.** No building or structure on any residential lot and no portion of any residential lot shall be used for other than residential purposes. Until the adoption by the Association of rules and regulations governing the rental of dwellings, no dwelling may be rented by the owner to others, in whole or in part, except

in accordance with such rules and regulations, except for the completion of leases entered into prior to the adoption of such rules and regulations. No noxious, offensive or unreasonably disturbing activities shall be carried upon any part of the Subdivision, nor shall anything be done within the Subdivision which may be or become an annoyance or nuisance. No clothing, bedclothes, laundry or similar articles or other items or materials shall be hung out or exposed from any residence or on any part of any residential lot or on any part of the common areas of the Subdivision provided, however, that the foregoing shall not prohibit such activity within enclosures which completely shield such laundry from view and which have been approved in advance of construction by the Architectural Control Committee. No well for gas, water, oil or any other substance shall at any time be erected, placed or maintained on any of the residential lots other than a well for water for recreation or maintenance purposes which has been approved in writing in advance of construction by the Architectural Control Committee as provided under Article II hereof. No lot shall be used for storage of automobiles, motor homes, boats, trailers, scrap, scrap iron, water, paper, glass or any reclamation products or material except that during the period while a structure is being erected upon any residential lot, building materials to be used in the construction of such structure may be stored thereon, provided however, that any building materials not incorporated into the structure within ninety (90) days after its delivery to such residential lot shall be removed therefrom.

1.5 **Completion of Structures; No Occupancy of Incomplete Dwellings or Other Shelters.** All structures must be completed by an owner within one (1) year following the commencement of construction. No sod, dirt or gravel other than that incidental to construction of approved structures shall be removed from residential lots without the written approval in advance from the Architectural Committee as provided under Article II hereof. No dwelling erected in the Subdivision shall be used as a residence until the exterior thereof has been completed in accordance with the detailed plans and specifications approved therefore by the Architectural Control Committee as provided under Article II hereof. Except as otherwise provided herein, no trailer, basement, tent, shack, barn, mobile home or other temporary shelter or housing device shall be maintained or used as a residence, temporarily or permanently, in the Subdivision.

1.6 **Pets.** Only domesticated dogs, cats or other household pets calculated not to cause a nuisance or create an unreasonable disturbance suitably maintained and housed within a dwelling, may be kept on any residential lot. Such pets shall be kept subject to rules and regulations adopted by the Association. No other animals may be kept on any residential lot. No animal may be kept, bred or maintained for any commercial purpose. No dog runs, dog houses or the like may be placed or constructed on any residential lot. Such pets will be permitted on the common area of the Subdivision only if on a leash. Any pet causing or creating a nuisance or unreasonable disturbance shall be subject to permanent removal and exclusion for the Subdivision in accordance with rules and regulations adopted by the Association.

1.7 **Signs.** Other than one (1) professionally prepared sign of no more than five (5) square feet advertising a residential lot for sale, no signs of any character shall be erected, placed, posted or otherwise displayed on or about any residential lot without the written approval of this Association. The Association shall have the right to prohibit, restrict, and control the size, construction, material, wording, location and height of all signs.

1.8 **Storage of Personal Property.** Any truck, boat, bus, tent, mobile home, trailer or other similar housing device, if stored on any residential lot in the Subdivision, shall be suitably housed within the garage.

1.9 **Disposal of Rubbish.** All rubbish, debris and garbage shall be stored and maintained in containers, entirely within a structure or enclosed behind an approved wall with a minimum height of five (5) feet and with an approved access gate, both such structures shall be approved in advance in writing by the Architectural Control Committee as provided under Article II hereof. Additional rules and regulations for the storage, maintenance and disposal of rubbish, debris, leaves and garbage may from time to time be established by the Association.

ARTICLE II

ARCHITECTURAL CONTROL

2.1 **Submission and Approval of Plans and Specifications.** The plans and specifications for all buildings and other improvements and structures (including, but not limited to, signs, fences, walls, decks, patios, driveways, hedges, garages, basements, wells (for recreation or maintenance purposes only) and other enclosures) to be constructed within the Subdivision shall be submitted for examination to the Architectural Control Committee (hereinafter described) and written approval for the Architectural Control Committee to such plans and specifications shall be obtained before any such building, structure or improvement shall be constructed or placed upon any residential lot and before any addition, change or alteration may be made to any building or other structure situated on a residential lot. The Architectural Control Committee shall approve, reject or approve with modifications all submissions within fourteen (14) days after submission of the plans and specification required hereunder to the Committee. Failure to so respond within such period shall be deemed to be disapproval of the submission. The plans and specifications to be submitted shall show the size, location, type, architectural design, quality, use, construction materials and color scheme of the proposed building, structure improvement, the grading plan for the building site, the finished grade elevation thereof, and the finish of the exposed surface of the common wall along the lot line dividing each pair of residential lots in Plat Four. Such plans and specifications shall be prepared by a competent architect or draftsman and shall be furnished to the Architectural Control Committee in sufficient numbers so that

the Committee may retain a true copy thereof with its records. In approving plans and specifications for residential lots in Plat Four, the Architectural Control Committee may require that the exposed surface of common walls be suitably finished by the owner thereof if construction of the adjoining residence is not commenced within a reasonable time after completion of the common wall, as determined by the Committee.

2.2 **Membership of Architectural Control Committee.** The Architectural Control Committee shall be composed of three (3) members, one of whom shall be a member of Palmer-Vance Properties, Ltd., an Ohio limited liability company ("Palmer-Vance"), until such time as Palmer-Vance shall have sold and conveyed all of the residential lots it owns in the Subdivision and residences shall have been erected on those lots, one (1) of whom shall be a member of Developer, and one (1) of whom shall be appointed by the Association.

2.3 **Architectural Standards, Harmonious Plan.** In requiring the submission of detailed plans specifications as herein set forth, Association intends to assure the development of Breckenridge as an architecturally harmonious, artistic and desirable residential subdivision, having a park-like atmosphere with residences located in an apparent random and casual manner but following a precise landscape plan as provided under paragraph 2.6 hereof, with individual residences to be constructed in such architectural styles, of such materials, in such colors, and located in such manner as to, in the judgment of the Architectural Control Committee, complement each other and promote the harmony and desirability of the Subdivision taken as a whole. In approving or withholding its approval of any plans and specifications, the Architectural Control Committee shall have the right to consider the suitability of the proposed building or structure and of the materials of which it is to be built to the building site upon which it is to be erected and the appropriateness and harmony of the contemplated improvements in relation to improvements on adjacent residential lots and in relation to the general plan for the development of Breckenridge as well as the artistic and architectural merits of the proposed building or structure, its effect on the view and outlook from neighboring residential lots, natural attributes, including the trees thereon, of the residential lot, and such other matters as may be deemed to be in the interest approving or withholding its approval of any plans and specifications, the Architectural Control Committee shall also have the right to consider the terms of the document entitled "Construction Within Breckenridge" as from time to time amended. Any determination made by the Architectural Control Committee, in good faith, shall be binding on all parties in interest.

2.4 **Location of Structures; Extensions into Common Areas.** All dwellings and accessory structures in the Subdivision shall be erected wholly within the residential lot lines and no closer to any of the roadways than the set-back lines of the residential lots as shown on the recorded plats. If approved in advance in writing by the Architectural Control Committee, roof overhangs, and shrubbery any extend into the common area immediately adjacent to dwellings which have been erected wholly within the residential lot lines.

2.5 **Minimum and Maximum Height.** No structure constructed or erected within the subdivision shall be greater than two (2) stories above grade at the main (first) floor level, unless approved in advance in writing by the Architectural Control Committee. The minimum height of a structure shall be twenty (20) feet above grade and the maximum height of a structure shall be thirty-five (35) feet above grade.

2.6 **Landscaping.** Association shall establish a master plan for the landscaping of the Subdivision, which master plan shall serve as a model or guide in the preparation of all individual landscaping plans for residential lots. True copies of the master landscaping plan shall be filed with the Association and with the Architectural Control Committee. Prior to commencement of construction on any residential lot, an individual landscaping plan for such lot shall be submitted to and approved in writing by the Architectural Control Committee. All landscaping shall be installed and completed within six (6) months following the date of occupancy of a residence.

2.7 **Trees.** Subject to the provisions for yards and plantings under Section 2.6 above, Association shall preserve, insofar as possible and consistent with the development of Breckenridge the trees and natural attributes of the common areas. No trees greater than six (6) inches in diameter at four feet above grade shall be removed in connection with the development of any residential lot except as approved in advance in writing by the Architectural Control Committee and as shown on the approved site plan for the construction.

2.8 **Establishment of Grades.** Subject to the requirements shown on the recorded plats of Breckenridge, the Association shall have the sole and exclusive right to establish grades, slopes and swales on the common area and on all residential lots and to fix the grade at which any building or structure, shall be erected or placed thereon, so that the same may conform to a general plan for the development and use of Breckenridge.

2.9 **Construction in Violation of Approved Plan.** In all instances where plans and specifications are required to be submitted to and approved by the Architectural Control Committee, if subsequent to receiving such approval there shall be any variance from the approved plans and specifications in the actual construction or location of the improvement without the written consent of the Architectural Control Committee, such variance shall be deemed a violation of these restrictions.

2.10 **Voting by Architectural Control Committee, Non-Liability for Determinations.** Determinations by the Architectural Control Committee shall be made by a majority of the members present at any meeting. Unless waived by all members of the Committee, not less than two (2) days notice of a meeting shall be given each member in writing or by telephone at her or his residence address. Two (2) members of the Architectural Control Committee shall constitute a quorum. Although the Architectural Control Committee and the Association are granted by this Declaration

of Restrictions certain discretion and rights of approval, disapproval and interpretation, the owners of residential lots in Breckenridge, as further consideration for the conveyance to them of such lots, do, for themselves, their heirs, personal representatives, successors and assigns, and their successors in the ownership of such lots, by their acceptance of the conveyance of such lots, releases and forever discharge the Architectural Control Committee from any claims they may have against the Architectural Control Committee arising out of their exercise of such discretion and such rights of approval, disapproval and interpretation and/or for their failure to exercise such discretion, rights of approval, disapproval and interpretation.

ARTICLE III

PARTY WALLS: UTILITY EASEMENTS OVER RESIDENTIAL LOTS: DRIVEWAY EASEMENTS

3.1 **General Rules of Law to Apply to Party Walls.** To the extent not inconsistent with the provisions of this Article III and unless the owners of adjoining residential lots should otherwise agree, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built or maintained at anytime within Breckenridge pursuant to plans and specifications approved in advance in writing by the Architectural Control Committee. In the event that any portion of any structure, including any foundation, footer, overhang, firewall, party wall, decorative wall, or fence, which has been constructed on or along a lot line in accordance with plans and specifications approved by the Architectural Control Committee shall protrude not more than six inches (6") onto or over an adjoining residential lot, such protrusion shall not be deemed to be an encroachment upon the adjoining lot or lots, but the rights and obligations of the adjoining lot or lots, but the rights and obligations of the adjoining lot owners with respect thereto shall be governed by this Article III and no lot owner shall maintain any action for the removal of such protrusion. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that there shall be a perpetual easement in favor of the encroaching party, so long as such use shall be maintained, for: (i) continuing maintenance and use of such protrusion, including the right to extend, enlarge, remodel and reconstruct such protrusion; and (ii) lateral supports of such protrusion by the subsoil of the minerals in and under the servient parcel; provided, however, that the foregoing easement shall not be construed to prevent the owner of any residential lot from making excavations on her or his lot for construction, reconstruction, enlargement, maintenance or repair of her or his dwelling so long as she or he shall protect the rights granted the adjoining lot owner hereunder in making such excavations. The foregoing shall also apply to any replacements of the original structure, party wall, decorative wall or fence. The foregoing rights, once established, shall not be subject to amendment or change in any way of amendment of this Declaration of Restrictions. This section shall apply only to party walls which have been properly located under plans and specifications approved in writing by the Architectural Control

Committee in advance of construction and shall not be deemed to validate or to waive the right of any residential lot owner to require the removal of any encroachment which has not been so approved by the Architectural Control Committee.

3.2 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall or party fence shall be equally shared by the residential lot owners who make use of the wall or fence in proportion to such use.

3.3 **Destruction by Fire or Other Causality.** If a party wall or party fence is destroyed or damaged by fire or other casualty, any lot owner who has used the wall or fence may restore it, and if the adjoining residential lot owner thereafter makes use of the wall or fence, she or he shall contribute to the cost of restoration thereof in proportion to such use without prejudice however, to the right of the residential lot owner who restores the wall or fence to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

3.4 **Right to Contribution Runs with Land.** The right of any lot owner to contribution from any other lot owner under this Article III shall be appurtenant to the land and shall pass to such lot owner's successors in title.

3.5 **Arbitration.** In the event any dispute shall arise concerning a party wall or party fence under the provisions of this Article III, the owners of the lots affected shall be deemed to have agreed to submit the dispute to arbitration under Chapter 2711 Ohio Revised Code and the decision of the arbitrators shall be binding upon the parties. Upon demand by either party the dispute shall be presented to three (3) arbitrators. Each party shall choose one (1) arbitrator, the arbitrators so chosen shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The place of arbitration shall be Lucas County, Ohio. Each party shall pay all costs of her or his arbitrator. The costs of the third arbitrator and of the arbitration proceeding shall be borne equally by the parties.

3.6 **Utility Easements Across Lots and Through Dwellings.** In establishing the easements for and location of utility lines over the common area of the Subdivision the Association may determine it to be an aesthetic benefit to and in the best interest of the Subdivision to locate such utility lines and surface improvements serving such lines (such as electrical transformers and meters) in the common area lying between pairs of residential lots to minimize the number of such installations that will be visible in the residential lot in a pair of lots may extend over the adjacent residential lot. Where such situation should occur, there is hereby created an easement for such lines over the servient lot and, to the extent necessary, through any dwelling located thereon for the benefit of the benefited lot and the dwelling located thereon with right of access, upon reasonable notice, to maintain, replace and repair such lines at the sole cost of the benefited lot and in such manner as will cause the least disturbance to the servient lot.

ARTICLE IV

BRECKENRIDGE HOMEOWNERS' ASSOCIATION

4.1 **Membership in Association.** All owners of residential lots in Breckenridge, and all persons who hereafter acquire title to a residential lot in the Subdivision, shall automatically become members of the Association and shall be entitled to all the rights and privileges of such membership, including, but not limited to, one (1) vote on each matter submitted to a vote of members of the Association for each residential lot in the Subdivision owned by her or him and subject to all of the duties and obligations thereof as set forth in the recorded plats of Breckenridge, this Declaration of Restrictions, and the Articles of Incorporation, Code of Regulations, and the rules and regulations of the Association.

4.2 **Rights of Members.** Subject to the provisions of Section 1.3 above, each member of the Association, in common with all other members, shall have the right to use the roadways, the common area and the utility easements in the Subdivision for all purposes incident to the use and occupancy of her or his residential lot as a place of residence and shall have a nonexclusive easement together with the other owners of residential lots to the use and enjoyment of the roadways, the common area and the utility easements. All members of the Association shall use the roadways, the common area and the utility easements in such manner as will not restrict, impede or interfere with the use thereof by other members, and their respective families, guests, invitees, and servants, except the extent that the Architectural Control Committee has approved in advance in writing the extension into the common areas immediately adjacent to dwellings erected on a residential lot of patios, open porches, docks, walkways, driveways, decorative walls, private screens or shrubbery.

- 4.3 **Association Rights.** The Association shall have the power and right:
- (a) to acquire title from Developer to all roadways, common areas, buffer lots and utility easements which may be designated for the common use and enjoyment of residential lot owners in the recorded plats of Breckenridge and to manage, maintain and repair such roadways, common area, buffer lots and utility easements;
 - (b) to enforce all provisions herein and in the recorded plats of Breckenridge;

- (c) to adopt rules and regulations of general application governing the management, maintenance, repair and rental of dwellings and roadways, common area and utility easements on the recorded plats of the Subdivision;
- (d) in the event an owner of any residential lot fails to repair and maintain the exterior of her or his residence in first-class condition within forty-five (45) days after delivery of notice from the Association to her or his residence or to such other address as to which such owner shall have designated to the Association in writing specifying the remedy required (if such notice is not hand delivered, it shall be sent by registered mail, post paid, return receipt requested) then the Association, upon the affirmative vote of a majority of its Trustees, shall have the right to enter upon the residential lot and to repair and maintain the exterior of such residence with the cost of any such repair or maintenance being added to and becoming a part of the Association's assessment against the residential lot; and
- (e) to carry out all other purposes for which it was organized or which it may hereafter be authorized to undertake.

4.4 **Ownership of Common Area.** Notwithstanding the provisions of paragraph 4.1 of this Article IV and any designation of "common area" on the recorded plats of Breckenridge and subject to the terms of the Owner's Certifications contained in such plats, neither the Association nor any owner of any residential lot shall have any ownership interest in or any right to control the use or development of any such common area unless and until Developer of Breckenridge Plats One, Two and Three shall convey such common area to or for the benefit of the Association. Thereafter, the owners of the residential lots in the Subdivision shall have only those rights with respect to the common area as are granted them hereunder and under the recorded plats of Breckenridge, Articles of Incorporation, Code of Regulations and rules and regulations of the Association. Developer, by its execution and recording of these restrictions and the platting of Breckenridge does not represent or warrant that it will, and shall not be obligated to, convey any such common area to or for the benefit of the Association prior to the conveyance of the first residential lot by Developer to a third party.

ARTICLE V

ASSESSMENT OF OWNER

5.1. **Annual Assessment.** For the year commencing January 1, 2003 and each calendar year thereafter, each and every residential lot and residential lot owner in Breckenridge shall be subject to an annual assessment in such amount as may be annually

determined by the Association. The assessment for each calendar year shall be determined by the Association prior to the end of the preceding calendar year and shall be paid to the Association in not more than four (4) equal installments not later than the first days of January, April, July and October of each year. The annual assessments shall become a lien against each residential lot on the first day of the year in which it to due and shall also be the personal obligation of the owner (and the joint and several obligation of the owners) of each residential lot at the time when the assessment becomes a lien. If default occurs in any payment of the annual assessment for a period of sixty (60) days after its due date, a "Notice of Lien" in substantially the following form may be filed and recorded in the lien records at the office of the Recorder of Lucas County, Ohio:

Notice of Lien

Notice is hereby given that Breckenridge Homeowners' Association claims a lien for unpaid annual assessments for the year(s) in the amount of against the following described premises:

(insert legal description)

The records of the Association indicate that _____ is (are) the present owner(s) of such premises.

Breckenridge Homeowners'
Association

By _____

Its: _____

STATE OF OHIO)
)SS:
COUNTY OF LUCAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ of Breckenridge Homeowners' Association, an Ohio non-profit corporation, on behalf of the corporation.

Notary Public

In the event any payment of the annual assessment is not paid when due, the Association may, when and as often as delinquencies occur, proceed by process of law to collect the amount then due by foreclosure of the above-described lien or otherwise and in such event the Association shall also be entitled to recover and have and enforce against each

residential lot a lien for its costs and expenses in that behalf, including attorney fees. No owner may waive or otherwise escape liability for the annual assessments provided for herein by non-use of the common areas or any facilities located thereon or by abandonment of her or his residential lot. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage encumbering a residential lot. Sale or transfer of any residential lot shall not affect the assessment lien; provided, however, that the sale or transfer of any residential lot pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve a residential lot from liability for any assessments thereafter becoming due or from the lien thereof.

5.2 **Application of Assessments.** The annual assessments shall be levied against all residential lots in Breckenridge except for any lot owned or leased by the Association for the common use and enjoyment of the owners of residential lots to the Subdivision. The assessments shall be applied toward the payment of the following costs and expenses:

- (a) Utilities and waste removal for the roadways, the common area and the utility easement areas;
- (b) Fire, casualty and liability insurance to protect the Trustees and Officers of the Association, as well as the Association and its members, for liability incident to the ownership of the roadways, the common area and the utility easement areas;
- (c) Landscaping, gardening, snow and trash removal, and management, maintenance, repair and replacement of the roadways, common area and the utility easement areas;
- (d) Employment, if any, of security personnel and facilities for the benefit of all of the owners of the residential lots in the Subdivision;
- (e) Employment of services and personnel required for the management, maintenance, repair and replacement of the roadways, the common area and the utility easement areas and facilities located thereon, including legal and accounting services and to enforce, if necessary, the terms and conditions of the Declaration of Restrictions, the Articles of Incorporation, Code of Regulations and rules and regulations of the Association, and any violations or infractions thereof;
- (f) All real estate, personal property and other taxes levied against the Association or any of the common areas and utility easement areas

and to discharge any lien or encumbrance for taxes or otherwise against the Association or its assets;

- (g) Operation and maintenance of all underground utility lines owned by the Association;
- (h) Any other costs and expenses reasonably incurred by the Association in performing its obligations under the recorded plats of Breckenridge, these Restrictions or under the Articles of Incorporation or Code of Regulations of the Association; and
- (i) The establishment of reserves to pay the estimated future costs of any of the foregoing.

Annual assessments may be increased, decreased or adjusted from year to year by the Association as the interests of the residential lot owners may, in its judgment as to the amount of its funds to be expended in connection with each of the purposes for which its funds are collected, and its discretion in reference thereto shall be binding upon all interested parties. Notwithstanding the foregoing, the Association shall not allocate more than ten percent (10%) of the annual costs and expenses related to the management, maintenance, repair and replacement of the common area of Breckenridge to the residential lots in Breckenridge Plat Two. Upon demand of any residential lot owner and after payment of a reasonable charge therefore the Secretary or Treasurer of the Association shall promptly issue a certificate setting forth whether all assessments have been paid for such owner's residential lot, and, if not, the total amount of any unpaid assessments. Any such certificate stating that all assessments have been paid shall be conclusive evidence of such payment.

ARTICLE VI

EASEMENTS

6.1 **Reservation of Easement Rights.** The undersigned Developer acknowledges that the developer of Breckenridge Plats One, Two and Three reserves to itself, and to its successors and assigns, the exclusive right to grant consents, easements and rights of way for the construction, operation, maintenance and use of electric light, cablevision, telephone and telegraph poles, wires and conduits, including underground facilities for the public roadways within the Subdivision; and for drainage, sewers and any other facilities or utilities deemed convenient or necessary by said developer or its successors and assigns for the service of the Subdivision on, over, below, or under all of the areas designated as "common area," "utility easement," "drainage easement," "sanitary easement," or with words similar import, on the recorded plats of Breckenridge, and along and upon all roadways now existing or hereafter established and abutting all the residential lots in the Subdivision. Developer further acknowledges that the

developer of Breckenridge Plats One, Two and Three also reserves to itself, and to its successors and assigns, the right to go upon or permit any public or quasi-public utility company to go upon the residential lots from time to time to construct, install, relocate, repair, maintain and replace such utility lines and to trim trees, shrubbery, or other growth or obstructions which may interfere with the structures, or any part thereof, shall be erected or maintained over or upon any part of the areas designated as "common area," "utility easement," "drainage easement," "sanitary easement" or with words of similar import, upon the recorded plats of Breckenridge, except as expressly authorized under Paragraph 2.4 hereof. The term "structures" as used in the preceding sentence shall include, but not be limited to, houses, garages, other buildings and swimming pools, but shall not include residential lot improvements authorized under Paragraph 2.4 hereof. No owner of any residential lot shall have the right to reserve or grant any easements or rights of way upon or over any of the residential lots without the prior written consent of the developer of Breckenridge Plats One, Two and Three, its successors and assigns.

ARTICLE VII

CONSTRUCTION OF SIDEWALKS

7.1 **Sidewalks to be Constructed by Lot Owners.** Weather permitting, not later than the date of initial occupancy of a dwelling the owner of each residential lot shall construct a four (4) foot wide concrete sidewalk parallel to the roadway. The exact date of completion and location of the sidewalk shall be determined and designated by the Architectural Control Committee at the time it approves the plans and specifications for such owner's residence. Should a lot owner fail to construct sidewalks in accordance with the preceding sentence, suit may be brought under Article IX of these restrictions to enforce such restriction contained herein. Further, upon such failure of a lot owner to construct sidewalks, the Association, Monclova Township, Ohio or Lucas County, Ohio, shall have the right to construct such sidewalks or cause such sidewalks to be constructed at the expense of the owner of such lot(s). In such event, the cost of construction of such sidewalks shall be and become a lien against the residential lot which bears the responsibility for the construction thereof from the date of perfection thereof as hereafter provided. The holder of any such lien may perfect such lien against third parties by filing an affidavit stating the facts giving rise to the lien with the Recorder of Lucas County, Ohio.

ARTICLE VIII

DURATION OF RESTRICTIONS, AMENDMENTS

8.1 **Term.** These covenants and restrictions shall run with the land and shall be binding upon Developer, the Association, and all persons claiming under or through Developer or the Association until the first day of January, 2018, at which time these

covenants and restrictions shall be automatically extended for successive periods of ten (10) years.

8.2 **Amendments.** These covenants and restrictions may be amended at any time, and from time to time, prior to January 1, 2018 with the written approval of the then owners of not less than seventy-five percent (75%) of the residential lots in Breckenridge, which amendment shall become effective from and after the filing with the Recorder of Lucas County, Ohio of an instrument stating the amendment and evidencing the consent of the approving residential lot owners thereto. These covenants and restrictions may be terminated as of January 1, 2018 and may be amended or terminated thereafter with the written approval of the owners of not less than seventy-five per cent (75%) of the residential lots in Breckenridge upon the filing of an instrument as aforesaid with the Recorder of Lucas County, Ohio.

ARTICLE IX
ENFORCEMENT OF RESTRICTIONS, OTHER GENERAL
MATTERS

9.1 **Violations Unlawful.** Any violation or attempt to violate any of the covenants or restrictions herein shall be unlawful. The Association, the Architectural Control Committee or any person or persons owning any residential lot in the Subdivision, may prosecute any proceedings at law, or in equity, against the person or persons violating or attempting to violate any such restrictions to prevent her, him or them from so doing, to cause the removal of any violation, and/or to recover damages for such violation or attempted violation.

9.2 **Saving Clause.** Invalidation of any of the restrictions herein contained by judgment or court order or amendment hereof by act of the owners of residential lots in Breckenridge shall not affect any of the other provisions contained in this Declaration of Restrictions, which shall remain in full force and effect.

9.3 **Transfers Subject to Restrictions.** All transfers and conveyances of each and every residential lot in Breckenridge shall be made subject to these restrictions.

9.4 **Notices.** Any notice required to be sent to any owner of a residential lot or any part thereof or to the Association or to the Architectural Control Committee shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as such owner or to the Association or to any member of the Architectural Control Committee as such address appears on the applicable public record or on the records of the Association or the Architectural Control Committee.

9.5 **No Waiver of Violations.** No restrictions imposed hereby shall be abrogated or waived by any failure to enforce the provisions hereof, no matter how many violations or breaches may occur.

9.6 **Limitation of Warranties; Indemnification of Trustees, etc. of Association.** By acceptance and recording of a deed to a residential lot in Breckenridge, each lot owner shall be deemed to have acknowledged and agreed that there are no representations or warranties, express or implied, by the Association with respect to the merchantability, fitness, or suitability of the residential lots for the construction of residences or with respect to the Subdivision other than as expressly stated in writing (i) by the Declaration of Restrictions; or, (ii) in the Articles of Incorporation and Code of Regulations of the Association. The Articles of Incorporation of the Association provide that the Trustees, officers, employees and agents of the Association to the fullest extent permitted by law for their actions taken on behalf of the Association, including their actions taken under this Declaration of Restrictions.

9.7 **Waiver of Restrictions by Architectural Control Committee.** Each residential lot owner, by acceptance of a deed to a residential lot, agrees and consents and shall be deemed to agree and consent for herself or himself and for her or his heirs, personal representatives, successors and assigns, that if, in the opinion of the Architectural Control Committee, the shape, dimensions, number of structures, location of natural features such as trees, or topography of the residential lot upon which a building or improvement is proposed to be made, is such that a strict construction or enforcement of the requirements of the recorded plat or of any provision of these restrictions would work a hardship, the Architectural Control Committee may, in writing, grant waivers from these restrictions as to such residential lot so as to permit the erection of such building or the making of the proposed improvements.

9.8 **Modification of Restrictions, Hardship.** In the event of a material change in conditions or circumstances from those existing at the time these restrictions are adopted which would cause the enforcement of these restrictions to become a hardship upon any of the owners of residential lots, or which would cause such restrictions to cease being beneficial to the owners of such residential lots, any owner or owners of residential lots shall have the right to modify these restrictions such as to be beneficial to all residential lot owners, by filing for record with the Lucas County, Ohio Recorder an instrument adopting such modification to these restrictions. The provisions of this paragraph shall not be construed as a limitation upon the right of the Architectural Control Committee to modify the provisions of these restrictions as provided in paragraph 9.7 of this Article IX, not shall it limit the provisions of Article VII hereof.

9.9 **Paragraph Headings.** The paragraph headings contained in this Declaration of Restrictions have been inserted for convenience of reference only and are not to be used in the construction and/or interpretation of these restrictions.

IN WITNESS WHEREOF, Breckenridge Plat IV, LLC, the Developer, has caused this Declaration of Restrictions to be executed on its behalf by it duly authorized member this 1st day of August, 2003 and the Breckenridge Homeowners' Association, the Ohio nonprofit corporation, acting by and through its duly authorized officer, Michael Siravo, has caused this Declaration of Restrictions to be executed on its behalf this 1st day of August, 2003.

Breckenridge Plat IV, LLC

By: [Signature] its authorized member
Jeffrey M. Uchic, its authorized member

STATE OF OHIO)
)SS:
COUNTY OF LUCAS)

The foregoing was acknowledged before me this 1st day of August, 2003 by Jeffrey M. Uchic, of Breckenridge Plat IV, LLC an Ohio limited liability company, on behalf of the company.

KRISTIN L. SMENNER
Notary Public, State of Ohio
My Commission Expires 5-3-2004



[Signature]
Notary Public

Breckenridge Homeowners' Association

By: [Signature]
Michael Siravo, its President

STATE OF OHIO)
)SS:
COUNTY OF LUCAS)

The foregoing was acknowledged before me this 1st day of August, 2003 by Michael Siravo, president of the Breckenridge Homeowners' Association, an Ohio nonprofit corporation, on behalf of the corporation.



KRISTIN L. SMENNER
Notary Public, State of Ohio
My Commission Expires 5-3-2004

[Signature]
Notary Public

This instrument prepared by:
Peter A. Dewhirst Esq.
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