

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

**FOR
COLONIAL MANOR SQUARE HOME OWNERS' ASSOCIATION**

THIS DECLARATION, made on the date hereinafter set forth by J-II Homes, Inc., J. Harold Maggard, Trustee, hereinafter referred to as "Declarants".

WITNESSETH:

WHEREAS, Declarants are the owners of certain property in The City of Monroe, Butler County, State of Ohio, which is more particularly described in Exhibit "A" attached hereto.

WHEREAS, Declarants filed a Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Colonial Manor Square Home Owners' Association with the Recorder of Butler County, Ohio on September 24, 1999, which is recorded in Volume 6409, Page 794 of the Official Records of Butler County, Ohio; and

WHEREAS, to correct certain errors contained in the Declaration, the Declarants filed a revised Declaration with the Recorder of Butler County, Ohio on November 2, 1999, which is recorded in Volume 6421, Page 612 of the Official Records of Butler County, Ohio; and

WHEREAS, the Declarants desire to make additional revisions to the Declaration and hereby the Declaration in its entirety.

NOW THEREFORE, Declarants hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1.1 "Assessments" shall mean the charges against the Lots for Common Expenses and other charges provided herein or by any supplementary Declaration as provided in Article IV, Section 4.2 of this Declaration.

TRANSFER NOT NECESSARY
KAY ROGERS
BY DEPT.
AUDITOR, BUTLER CO., OHIO

19990090387
Filed for Record in
BUTLER COUNTY, OHIO
JOYCE B THALL
On 12-10-1999 At 12:08:38 PM.
DECLARATION 78.00
OR Book 6432 Page 677 - 694

1.2 "Association" shall mean and refer to the Colonial Manor Square Home Owners Association, its successors and assigns. Except as the context otherwise requires, "Association" shall mean the Board of Trustees acting on behalf of the Association.

1.3 "Builder" shall mean any person or entity who acquires a Lot for the purpose of construction of a house on the Lot and sale to an Owner.

1.4 "Common Expenses" shall mean and include the actual and estimated expense of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Association.

1.5 "Declarants" shall mean and refer to J-II Homes, Inc. and J. Harold Maggard Trustee and their successors and assigns.

1.6 "Lot" shall mean and refer to any individual plot of land upon any recorded subdivision plat of the Properties.

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

1.8 "Property or Properties" shall mean and refer to that certain real property described in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.9 "Record Plan" shall mean the plat of the Colonial Manor Square subdivision recorded in the office of the Butler County Recorder's Office and any replats or subsequent plats for the subdivision.

ARTICLE II

PROPERTY RIGHTS

2.1 **General.** Each Lot shall be subject to and be benefitted by such easements as set forth on the Record Plan, in this Declaration or contained in any deed. Such easements shall be subject to the restrictions and condition as set forth on the Record Plan, in this Declaration or contained in any deed. Each Owner shall have the easement rights set forth which shall be nonexclusive, but which do not inure to the benefit of the public at large. All easements shall be appurtenant to the Lots, shall run with the land and shall be binding on each Owner, his or her heirs, successors and assigns. No Owner shall take any action or make any improvements within

any easement which would interfere with its intended purpose.

2.2 **Sign Easement.** Lots No.3147 and 3198 as shown on the Record Plat are subject to an easement denominated as "Sign Easement". This easement is for the benefit of the Association for installation and maintenance of signage, entry walls, landscaping and fencing.

2.3 **Delegation of Use.** Each Owner may delegate his or her easement rights to members of his or her family, tenants, and social invitees, subject to reasonable regulations by the Association and in accordance with the procedures which it may adopt.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 **Membership.** Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

3.2 **Voting Rights.** The Association shall have two classes of voting membership:

3.2.1 Class A Members shall be all Owners, with the exception of the Declarants, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

3.2.2 Class B Member(s) shall be the Declarants and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the Declarant no longer owns any Lots.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENT

4.1 **Creation of the Lien Personal Obligation of Assessments.** The Declarants, for each Lot owned within the Properties, hereby covenant, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, covenant and agree to pay the Association: (1) Annual Assessments or charges, and (2) Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The Annual and Special Assessments, together with interest, costs and reasonable attorney's fees,

shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due.

4.2 **Purpose of Assessments.** Assessments shall mean the charges against the Lots for Common Expenses and other charges provided herein or by any supplementary Declaration and shall be used for the purpose of maintenance, repair and replacement of the entry walls, landscaping, fencing at front; enforcement of the provisions of this Declaration and promoting the general health, safety and welfare of the Owners as may be specifically authorized from time to time by the Association.

4.3 **Maximum Annual Assessment.** Until July 1, 2005, the maximum Annual Assessment shall be One Hundred Dollars (\$100.00).

4.3.1 From and after July 1, 2005, the Annual Assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the membership.

4.3.2 From and after July 1, 2005, the Annual Assessment may be increased more than ten (10%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.3.3 The Board of Trustees may fix the Annual Assessment at an amount not in excess of the maximum.

4.3.4 Declarants may, but are not obligated to, for a period of five (5) years, subsidize the Common Expenses and in such event, no Assessments shall be due.

4.4 **Special Assessments for Capital Improvements.** In addition to the Annual Assessments authorized above, 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, reconstruction, repair or replacement of a capital improvement within the Sign Easement, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of Two-Thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

4.5 **Notice and Quorum for Any Action Authorized Under Section 4.3 and 4.4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent or hand delivered to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following

the preceding meeting.

4.6 **Uniform Rate of Assessment.** Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis.

4.7 **Date of Commencement of Annual Assessments:** Due Dates. The Annual Assessments provided for herein for each Lot shall commence on the first day of the month following occupation of a dwelling built on that Lot. Such initial assessment shall be prorated to the end of the Association's fiscal year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent or hand delivered to every Owner subject thereto. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

4.8 **Effect of Nonpayment of Assessments: Remedies of the Association.** Any Assessment not paid by its due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may establish reasonable late charges for delinquent Assessments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of any easements or abandonment of his or her Lot.

4.9 **Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the liens thereof.

ARTICLE V

RESTRICTIONS

5.1 **General.** The architectural and use restrictions set forth in this Article shall be applicable to the Property, except that nothing herein shall be construed to provide for any prior plan approval or consent.

5.2 The following requirements shall be applicable to the Property:

5.2.1 **General Conditions:** Each Lot shall be used only for residential purposes.

No building shall be erected, altered, placed or be permitted to remain on any Lot other than one detached single family dwelling with a private garage for not more than four cars or less than two, which is to be attached to the principal dwelling. No home shall be built with less than a 4/12 pitch roof.

5.2.2 Dwelling Floor Areas: The floor area of the main dwelling exclusive of porches, decks, basements and garage shall be no less than 800 square feet for the first floor and a total of 1450 square feet for the dwelling.

5.2.3 Siding Materials: Aluminum and vinyl, wood, brick, or stone shall be permitted as siding materials. All other sheeting materials used as siding shall require the written consent of Declarants. Cedar or redwood siding that is to be exposed for natural weather must be treated with a bleaching stain.

5.2.4 House Placement and Yard Grading: Houses shall conform to existing grade and drainage patterns. Existing grades at lot lines shall not be altered more than three (3) feet without the written consent of Declarants. Each Lot Owner and /or builder shall endeavor to retain as much of the natural trees as is practical.

5.2.5 Underground Houses and Log Houses: Underground and log structures are prohibited. Boarding Homes are prohibited.

5.2.6 Driveways: Gravel or dirt driveways are prohibited.

5.2.7 Water Discharge: Storm water must be disposed of in accordance with drainage plans on file with the Butler County Engineer. Declarants shall review all drainage plans and have the right to require changes.

5.2.8 Radio and Television Antennas: Satellite Dishes over 30" are prohibited. Radio or television antennas of any kind which exceed the highest point of the roof of the residence are prohibited. Any antennas not attached to the residence are prohibited.

5.2.9 Air Conditioning and Heat Pump Equipment: Such equipment shall be located only in side or rear yards.

5.2.10 Exterior Carpeting: No carpeting shall be allowed if it is visible from the street or any neighboring Lot.

5.2.11 Lighting Exterior: Christmas lights may be erected no sooner than four weeks prior to and shall be removed no later than four weeks after Christmas.

5.3 **Use Restrictions:** The following use restrictions shall be applicable to the Property.

5.3.1 **Purpose of the Property.** The Property shall be used only for single family residential purposes and common recreational purposes auxiliary thereto.

5.3.2 **Nuisance.** No activity deemed to be obnoxious or offensive by reason of sight, sound or odor shall be engaged in or on any Lot nor shall any Owner or occupant thereof engage in any activities that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent neighboring Lots.

5.3.3 **Animals and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and pets must be kept in the house. Exterior compounds, cages or kennels for the keeping of household pets or hunting dogs are prohibited. Any pets causing problems by means of damages, excessive noise or unsanitary conditions shall be removed from the Properties upon three (3) days notice to the Owner.

5.3.4 **Signage.** Except for entry way sign allowed for in the Sign Easement, no sign of any kind shall be displayed to the public view on any Lot except (a) one sign of not more than five square feet advertising the property for sale; (b) and signs used by the builder or the Declarants to advertise the property during the construction or sale period; (c) political signs erected 30 days before any election and removed no later than 7 days after the election.

5.3.5 **Temporary Structures.** No temporary building, mobile home, trailer, tent or storage shed, placed upon a Lot shall be used at any time as a residence, temporarily, or permanently before, during or after construction.

5.3.6 **Maintenance.** Each and every Lot and house thereon shall be maintained by the Owner thereof in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All Lots shall be kept free of debris and clutter and shall be kept mowed.

5.3.7 **Fencing, Storage Sheds, Pools.** No clothes hanging fixtures may be erected. No detached garages, storage sheds or barns are permitted.

Above ground pools are prohibited.

Vinyl or split rail fence will be permitted in rear yard only. Any other fence must have written approval by the Declarants or their successors.

5.3.8 **Recreational Vehicles, Boats, Travel Trailers.** No recreational vehicles, boats, travel trailers, utility trailers or trucks over 3/4 ton shall be parked or stored on any Lot unless the same is in a garage and completely out of view.

No vehicle in inoperable condition shall be stored on any Lot for a period

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No vehicle in inoperable condition shall be stored on any Lot for a period

in excess of five days.

5.3.9 **Garage and Yard Sales.** There shall be no more than one garage or yard sales held on any Lot during a one year period.

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

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

5.4 **Maintenance.** The Property shall be maintained as follows:

5.4.1 **Lots.** Each Owner shall maintain his or her own Lot and dwelling in accordance with the prevailing custom in the Property. Such maintenance shall include, but not be limited to, landscaping, lawn installation and mowing, painting and general repair.

5.4.2 **Entryways.** Entryway shrubs and white vinyl fence shall be maintained by the Association; however, the cutting of the grass at the entryways and the mounds is the responsibility of the individual Lot Owner.

ARTICLE VI

GENERAL PROVISIONS

6.1 **Enforcement.** The Declarants, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarants, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force

and effect.

6.3 **Amendment.** Any restrictions herein contained may be waived or suspended, amended in whole or in part or terminated or again revived at any time by an instrument in writing recorded in the Recorder's Office of Butler county, Ohio, signed by the then Owners of not less than two-thirds of the Lots included in Colonial Manor Square Subdivision.

6.4 **Right to Amend Documents.** Notwithstanding anything above to the contrary, this Declaration may be amended at any time without the vote of Owners by a written instrument executed by the Declarants for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarants' original intent; making any change necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, or any other agency which may insure or purchase loans on a Lot: provided, however, that no such amendment shall materially affect any Owner's interest in the Association. Each Owner and his mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarants as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarants, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarants to be necessary or proper to effectuate the provisions of this paragraph.

6.5 **Annexation.** The Declarants may, without the consent of the Owners, annex additional properties to the terms of this Declaration. Other residential properties may be annexed to the Property of the Association by a vote of two-thirds (2/3) of each class of membership. Such annexation shall be accomplished by the filing of a supplemental declaration with the Recorder of Butler County, Ohio. Any declaration by the Association shall be signed by the President of the Association who shall certify that the requisite vote was obtained. The members need not sign the declaration.

IN WITNESS WHEREOF, the undersigned being the Declarants herein have hereunto set their hands and seal this 9th day of December, 1999.

**Signed and Acknowledged
In the Presence of:**

Ronald E. Randolph
Christine A. Engler

J-II Homes, Inc..

By: Joseph W. Schwarz, President

J. Harold Maggard, Trustee

STATE OF OHIO }
COUNTY OF BUTLER }

ss:

The foregoing instrument was signed and acknowledged before me this 9th day of

December, 1999 by Joseph W Schwarz, President of J-II Homes, Inc. an Ohio Corporation on behalf of said Corporation, & J. Harold Maggard Trustee.

This Instrument Prepared By:
J-II Homes, Inc.
3895 Woodridge Blvd.
Fairfield, OH 45014



Christine A Engler

Notary Public

CHRISTINE A. ENGLER
Notary Public, State of Ohio
My Commission Expires Sept. 10, 2000

IN WITNESS WHEREOF, Gehrlich Group LLC, an Ohio limited liability company, owner of Lot 3151, has signed this Declaration this 7th day of December, 1999.

Signed and acknowledged
in the presence of us:

Ronald E. Randall
[Print Name: Ronald E. Randall]
Frank Cento
[Print Name: Frank Cento]

GEHRLICH GROUP, LLC
By: Keith M. Gehrlich
Keith M. Gehrlich, Managing Member

STATE OF OHIO, COUNTY OF BUTLER, SS:

This instrument was acknowledged before me this 7th day of December, 1999 by Keith M. Gehrlich, Managing Member of Gehrlich Group, LLC, an Ohio limited liability company, on behalf of said limited liability company.



Cynthia Kay Mitchell
Notary Public, State of Ohio
My Commission Expires July 22, 2003

Cynthia Kay Mitchell
Notary Public, State of Ohio

IN WITNESS WHEREOF, P.R. Properties, Inc., an Ohio corporation, owner of Lot 3158, has signed this Declaration this 7th day of December, 1999.

Signed and acknowledged
in the presence of us:

Ronald E. Randolph
[Print Name: RONALD E. RANDOLPH]

Paula K. Sams
[Print Name: Paula K Sams]

P.R. PROPERTIES, INC.

By: Paul A. Berding SEC. & TREAS.
Paul A. Berding, President

STATE OF OHIO, COUNTY OF BUTLER, SS:

This instrument was acknowledged before me this 7th day of December, 1999 by Paul A. Berding, President of P.R. Properties, Inc., an Ohio corporation, on behalf of said corporation.



Paula Kay Sams
Notary Public, State of Ohio

PAULA KAY SAMS
Notary Public, State of Ohio
My Commission Expires Aug. 15, 2004

IN WITNESS WHEREOF, Schmidt Builders, Inc., an Ohio corporation, owner of Lot 3159 and Lot 3160, has signed this Declaration this 7th day of December, 1999.

Signed and acknowledged
in the presence of us:

Ronald E. Randolph
[Print Name: Ronald E. Randolph]

Brenda F. Williamson
[Print Name: BRENDA F. WILLIAMSON]

SCHMIDT BUILDERS, INC.

By: Alan G. Schmidt
Alan G. Schmidt, President

STATE OF OHIO, COUNTY OF BUTLER, SS:

This instrument was acknowledged before me this 7th day of December, 1999 by Alan G. Schmidt, President of Schmidt Builders, Inc., an Ohio corporation, on behalf of said corporation.



Brenda F. Williamson
Notary Public, State of Ohio

BRENDA F. WILLAMSON
Notary Public, State of Ohio
My Commission Expires 3-16-2004