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DECLARATION OF RESTRICTIONS

FOR

BROOK CLIFFE HILLS SUBDIVISION

PLAT TWO

CITY OF TOLEDO, LUCAS COUNTY, OHIO

This DECLARATION OF RESTRICTIONS adopted by MCCARTHY BUILDERS, INC., an Ohio corporation, hereinafter called "Developer", and THE BROOK CLIFFE HILLS HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit corporation, hereinafter called "Association", on the day and year hereinafter set forth.

WITNESSETH THAT:

WHEREAS, Developer is the record owner of all of the lots in Brook Cliffe Hills, Plat Two, a Subdivision in the City of Toledo, Lucas County, Ohio as shown on the recorded plat of same ("plat" or "Plat Two") recorded at Volume 136, Page 78, of the Lucas County, Ohio Record of Plats (hereinafter sometimes called "subdivision" or "Brook Cliffe"), platted on the real property described on Exhibit "A" attached hereto; and

WHEREAS, Association is an Ohio non-profit corporation formed by Developer whose members shall be all of the owners of all of the lots ("lots" or "residential lots") in the Brook Cliffe subdivision; and

WHEREAS, Association is the record owner of all that portion of Brook Cliffe subdivision designated as Common Area Lot "B" (sometimes also "Common Areas") on the plat including any portions thereof shown to be used for roadway and utility purposes, as well as recreational, drainage and open space purposes; and

WHEREAS, Brook Cliffe is a residential subdivision developed as a community development plan or planned unit development within the meaning of such terms as defined by the Revised Code of Ohio, Lucas County Subdivision Rules and Regulations, and Zoning Ordinances of the City of Toledo, Lucas County, Ohio.

NOW, THEREFORE, Developer and Association in consideration of the enhancement in the value of said property by reason of the adoption of the restrictions hereinafter set forth and in furtherance of the community development plan do for themselves, their respective successors and assigns, hereby declare, covenant and stipulate that all property as shown on the plat of Brook Cliffe, a subdivision in the City of Toledo, Lucas County, Ohio, shall hereafter be conveyed by them, their respective successors and assigns, subject to the following restrictions, covenants and conditions, which restrictions shall to the extent legally permissible, supersede any and all other restrictions heretofore enforced on said property by any other instrument.
RESTRICTIONS

All transfers and conveyances of each and every lot in the subdivision shall be made subject to these covenants and restrictions.

Except as may be otherwise provided for herein, these covenants and restrictions shall run with the land and shall be binding upon Developer, Association and all persons claiming under or through them until January 1, 2011, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years.

These covenants and restrictions may be amended prior to January 1, 2011, or may be amended or terminated after January 1, 2011, by the then owners of at least two-thirds (2/3) of the lots in said subdivision, provided, however, that any easements granted or reserved herein shall not be amended or terminated without the written consent of the then record owner(s) of the property benefitted by such easement or easements.

Any amendment or termination shall be in the form of a written instrument setting forth the changes herein or termination hereof, as the case may be, signed and acknowledged by the then owners of at least two-thirds (2/3) of said lots with the same formalities then required for the execution of a deed to real estate in Lucas County, Ohio, which instrument shall be filed for record with the Recorder of Lucas County, Ohio.

The effective date of any amendment or termination shall be as of the date such instrument is recorded with the Recorder of Lucas County, Ohio, unless a later effective date is indicated in such instrument, in which event such later date shall be the effective date hereof.

Any violation or attempt to violate any of the restrictions or covenants herein contained while the same are in force shall be unlawful. Developer, the Association, the architectural control committee (as hereafter defined), or the owner of any lot in Brook Corte shall each have the right, independent of one another, to maintain an action at law or in equity against any person or persons, or entity, violating or attempting to violate any of these restrictions or covenants, to enjoin such violation, to cause the removal of any structure in violation, to recover damages for any such violation or attempted violation, and/or to obtain whatever other relief they may be entitled in enforcing this Declaration.

The failure to enforce any violation or breach of any of these provisions no matter how frequent, shall not abrogate or invalidate any such provisions or restrictions.

In the event any of the restrictions and covenants contained herein shall be unlawful or void by reason of violation of any rule against perpetuities or similar statutory or common law rule imposing time limitations therefore then such restrictions and covenants shall continue only for and until the day preceding expiration of the maximum length of time for which such conditions and restrictions may legally exist and on such date shall thereafter terminate.

In validation of any of the restrictions and covenants, in whole or in part, herein, by judgment or court order or by act of the owners as herein provided, shall not affect, in any manner, the validity, enforceability or effect of any other provisions contained herein, all of which shall remain in full force and effect.
RESIDENTIAL LOTS

The entire subdivision comprising the community development plan and the structures to be erected thereon shall be used only for single-family dwellings or two-family dwellings purposes, together with the usual accessory uses pertaining thereto such as private or storage garages. Group homes are specifically deemed not to be "single or two-family" purposes.

The six (6) residential lots located as shown on the plat shall be residential lots and the remainder of the real estate included in the subdivision designated as Common Areas shall, except as otherwise provided for herein, be used exclusively for roadway, drainage and/or utility and open space purposes as shown on the plat.

Each single-family residential lot as shown on the plat for Brook Cliffe shall contain at least six thousand (6,000) square feet. Each two (2) family residential site, as defined below, shall contain at least twelve thousand (12,000) square feet or at least six thousand (6,000) square feet per lot.

Although all six (6) lots in the subdivision can be characterized as single-family sites, the Developer intends to develop the lots in pairs of adjoining lots. Therefore, Lots 13 and 14, 15 and 16, and 17 and 18, shall each be designated as two-family residential sites. On each such pair of adjoining lots comprising a two-family residential site there may therefore be constructed either two (2) residential structures, each being a single-family dwelling, or in the alternative, one (1) residential structure which shall be either a single-family dwelling or a two-family dwelling occupying both lots comprising such two-family residential site.

ARCHITECTURAL CONTROL

No structure or other improvement, including but not limited to, homes, garages, basements, swimming pools, tennis courts, driveways (which shall all be asphalt), landscape hedges, or other enclosures, shall be erected, improved, changed or altered on any lot or area in the subdivision until detailed plans and specifications therefor have been first approved in writing by the architectural control committee (hereinafter sometimes called "committee").

Such detailed plans and specifications shall show the size, location, type, architectural design, quality, cost, use, material construction, color scheme and grading plan for the lot or area and the finished grade elevation thereof and must be prepared by a competent architect or draftsman.

Such plans and specifications shall be furnished to the committee in sufficient numbers so that the committee can retain a true copy thereof with its records.

All residential dwellings and accessory structures must be erected wholly within the residential lot lines and no closer to any of the roadways than the building lines of the residential lots as shown on the recorded plat.

If approved by the committee and the Association, patios, open porches, decks, walkways, privacy screens and shrubbery which service a particular dwelling in Plat Two may extend into any portion of the Common Area Lot "B" located immediately adjacent to said dwelling.

The maximum height of all residential dwellings erected within the subdivision shall be thirty-five (35) feet. The minimum square footage of all residential dwellings erected within the subdivision (exclusive of garages, basements and patios) shall be one thousand two hundred (1,200.00) square feet.
BROOK

The purpose of requiring detailed plans and specifications as herein set forth is to develop Brookcliffe as an architecturally harmonious, artistic and desirable residential subdivision having an open-space atmosphere with residences located in a planned manner following a precise landscape plan.

Developer shall establish a master plan for landscaping of the entire subdivision which master plan shall take priority over individual landscaping plans. Such master plan for landscaping shall be filed with the Association. Fences shall not be permitted within any of the Common Areas.

Developer shall establish a general architectural theme for roof design, color and material, trim colors, brick specifications and window detail and reserves the sole and exclusive right to establish the location of all driveways as well as all grades and slopes of lots and to fix the grade at which any building or structure shall hereafter be erected or placed thereon so that the same may conform to the master plan for the development and use of the subdivision; it being expressly understood and acknowledged that Developer has already established such a theme with respect to driveway locations, brick specifications, trim colors and roof color, design and materials. Included within such established theme are conditions that the exterior front gables of all structures within the subdivision must be brick, with any remaining exterior covered by vinyl siding, except for garage doors which shall be wood-framed and which shall be steel in composition.

In approving or withholding approval of any detailed plans and specifications submitted to it, the architectural control committee may consider the appropriateness of the improvement contemplated with relation to the improvements on contiguous or adjacent lots, its adaptability to the lot on which it is proposed to be constructed and such other matters as may be deemed to be in the interest and benefit of the owners of lots in the subdivision as a whole. Any determination made by the committee in good faith shall be binding on all parties in interest.

The committee shall consist of three individuals or members. All decisions of the committee shall be made by a simple majority vote of the members. Members of the committee shall be appointed by the Developer until such time as Developer has conveyed to others all of the residential lots in the subdivision and residential structures have been erected on each of such residential lots. Thereafter, members of the committee shall be appointed by the Association. Developer reserves the right, prior to conveyance of all lots in the subdivision to others and erection of structures thereon, to relinquish his power to appoint the members of the committee by written instrument delivered to the Association whereupon the right to appoint members of the committee shall thereafter be exercised by the Association.

No structures or any part thereof shall be erected or maintained over any part of the areas designated as easement, utility easement, drainage easement or words of similar import on the recorded plat of the subdivision. The term structures for this purpose shall include houses, garages, other buildings, swimming pools and similar structures but shall not include driveways, walkways, patios and other similar improvements.

Until such time as Developer has conveyed to others all residential lots and dwellings owned by it in the subdivision, then notwithstanding any of the provisions contained in this Declaration of Restrictions, the Developer shall be permitted to construct and use sales and construction offices and model homes on one (1) or more of the lots in the subdivision and maintain a large temporary sign on the roads abutting the subdivision advertising the sale of property in the subdivision.
THE BROOK CLIFFE HOMEOWNERS' ASSOCIATION

All owners of lots in the subdivision and all persons who hereafter acquire title to a residential lot in the subdivision shall automatically become a member of the Association entitled to all the rights and privileges of such membership and subject to all of the duties and obligations thereof as set forth in the plat, this Declaration of Restrictions and the Articles and Code of Regulations of such Association. Each lot shall be entitled to one (1) vote in all Association matters regardless of the number of owners of any particular lot.

Each member of the Association, in common with all other members as owners of residential lots in the subdivision, shall have the right to use the Common Areas in the subdivision for all purposes incident to the use and occupancy of his residential lot as a place of residence and other incidental uses.

All members shall use the Common Areas in such manner as will not restrict, interfere or impede with the use thereof by other members of the Association and their respective families, guests, invitees, and servants except to the extent that the committee has approved the extension into any portion thereof immediately adjacent to dwellings erected on a residential lot of patios, open porches, decks, walkways, privacy screens and shrubbery as herein previously provided.

The Association shall collect and disburse funds for all purposes which the Board of Trustees of the Association determines from time to time to be for the general benefit of the owners of all residential lots in the subdivision.

ASSESSMENTS

For the calendar year 1996 and thereafter, each residential lot in the subdivision and the owners thereof shall be subject to an annual assessment for each calendar year in amounts as determined by the Association prior to the end of the preceding calendar year.

Such annual assessment shall be payable in equal quarterly installments on or before the first day of each third month during the calendar year for which the assessment is levied.

Commencing in 1996, each annual assessment shall become a lien, against each residential lot on the first day of the calendar year in which it becomes due and payable.

A Notice of Lien may be recorded in the Lien Records of the Recorder of Lucas County, Ohio if any quarterly installment of an annual assessment is in arrears for more than thirty (30) days from the date it is due and payable.

Such Notice of Lien shall identify the residential lot, the year and amount of the annual assessment, and be executed by the president of the Association with the formalities then required to record a lien against real estate in Lucas County, Ohio.

The Association's Lien shall be subordinate to the lien of any real estate mortgage on any residential lot recorded prior to recording of the aforesaid Notice of Lien.

The sale or transfer of any residential lot pursuant to judicial foreclosure proceedings of a mortgage thereon shall extinguish such lien with respect to payments which became due and payable prior thereto but shall not relieve such lot from liability for assessments thereafter becoming due or payable or from the lien thereof.
It is contemplated that among the Association’s responsibilities will be the contracting for necessary insurance upon, and maintenance and repair of the Common Areas, including but not limited to, the watering of all landscaping and the maintenance of any lighting facilities (including street lights) placed thereon, as well as for snow removal on all driveways of each lot. In addition, the Association shall be responsible for the payment of all watering charges associated with the sprinkling of all landscaping located on the lots pursuant to a separate meter or meters for same and the maintenance and repair of any private streets and/or utilities servicing the subdivision. If so entrusted with such responsibilities, or any other maintenance responsibilities for property in the Brook Cliffs subdivision, other than Common Areas (such as all landscaping throughout the subdivision), the owners of residential lots in the subdivision understand and agree that their share of such costs will also be established and collected under the assessment procedures established herein and hereby the charge for same shall constitute a lien against their respective lots as just stipulated above.

USE AND ACTIVITIES

No portion of any residential lot or structure thereon shall be used or permitted to be used for any business purposes whatsoever and no noxious, offensive or unreasonably disturbing activities shall be carried on upon any part of the subdivision, nor shall anything be done thereon which may be or become an annoyance or nuisance in the subdivision.

No well for gas, water, oil or other substance shall at any time be erected, placed or maintained on any of such residential lots other than a well for water for recreation or maintenance purposes which shall first have been approved by the architectural control committee.

No residential lot shall be used for the storage of automobiles, trailers, scrap, scrap iron, water, paper, glass or any reclamation products or material except that during the period which the structure is being erected, upon any such lot, building materials to be used on the construction of such structure may be stored thereon, provided, however, any building material not incorporated in said structure within ninety (90) days after its delivery to such lot, shall be removed therefrom.

All structures must be completed by an owner within one (1) year of the date of the beginning of the construction thereof. No sod, dirt or gravel other than that incidental to construction of approved structures shall be removed from said lots without the approval of the architectural control committee.

No trailer, basement, tent, shack, garage, barn, mobile home or other temporary shelter or housing device shall be maintained or used as a residence temporarily or permanently in the subdivision. No dwellings 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 therefor by the architectural control committee.

Any truck, boat, bus, tent, mobile home, trailer or other similar housing device, if stored on any lot, shall be suitably housed within a garage building.

No more than two (2) household pets (such as dogs, cats, etc.) suitably maintained and housed within the residential dwelling may be kept by the owner of a dwelling and will at all times be subject to the rules and regulations adopted by the Association, provided, however, no animal of any sort may be kept, bred or maintained for any commercial purpose and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be subject to permanent removal and exclusion from the subdivision in accordance with rules and regulations adopted by the Association.
All rubbish, debris and garbage shall be stored in underground containers or entirely within the dwelling structure.

No signs of any character other than small signs of not more than ten (10) square feet advertising the sale of the lot on which such sign is located shall be erected, placed, posted or otherwise displayed on or about any lot without the written consent of the Association, and the Association shall have the right and discretion to prohibit, restrict and control the size, construction, material, wording, location and height of all such signs.

All lots shall at all times have installed and in place underground sprinkling systems which will be tied into a separate meter located on the Common Areas and operated and maintained by the Association. The Association shall therefore determine how often and when the lots are watered or sprinkled.

All mailboxes within the subdivision shall be uniform and conform at all times to that type of mailbox installed by the Developer and/or subsequently approved by the committee or Association.

**DEVELOPER RESERVATION OF RIGHTS AND GRANT OF COMMON WALL EASEMENTS**

Developer shall have the exclusive right to consent and grant easements and rights of way for the construction, operation and maintenance of electric light, telephone, telegraph and other public or quasi-public utilities, lines, poles, wires and conduits including underground facilities on, over, below or under the Common Areas designated on the plat and along and upon all highways now existing or hereafter established and abutting the subdivision.

Developer also reserves the right to go upon or permit any public or quasi-public utility company to go upon the lots in the subdivision from time to time to install, maintain and remove such equipment and to trim trees and shrubbery which may interfere with the successful and convenient operation of such equipment.

Developer reserves the right to relinquish his powers with respect to the easements granted and/or reserved herein by written instrument delivered to the Association whereupon all rights with respect to said easements shall thereafter be exercised by the Association.

Developer shall have the right to construe and interpret these restrictions and his construction or interpretation made in good faith shall be conclusive and binding as to all persons and property benefited or bound by these restrictions.

Developer reserves the right to relinquish his power to construe and interpret these restrictions by written instrument delivered to the Association whereupon all rights with respect thereto shall thereafter be exercised by the Association.

Developer also hereby reserves and creates for the benefit of all adjoining lot owners perpetual exclusive easements on the common boundary between all adjoining lots upon which any adjoining residences are constructed or placed for the sole purpose of permitting the placement thereupon of a common wall between said adjoining residences together with the additional right of easement to have, if necessary, de minimis building encroachments (not more than six (6) inches) upon and under each of said adjoining lots in connection with the placement of said common walls.
Developer also hereby reserves the right to expand the subdivision to include certain property immediately adjacent to the plat on the east and to include such adjacent property within the subdivision under subsequent plats so that the subdivision as so expanded may contain up to twenty-six (26) residential lots. Such additional lots shall be subject to restrictions similar to those contained in this Declaration, and all such additional lot owners shall thereupon become members of the Association.

GENERAL

Any lot owner may request and upon payment of the reasonable expense therefore shall receive from the Secretary of the Association a Certificate with the seal of the Association affixed thereto setting forth whether all assessments have been paid for such owners lot and the total amount of unpaid assessments, if any. Such Certificate shall be conclusive evidence of such payment and of the amount of any unpaid assessments.

In the event the Association shall be dissolved or otherwise cease to exist, ownership of its property; including, but not limited to, the Common Areas, shall automatically thereupon be transferred to the then owners of the residential lots in the subdivision with each owner having an equal undivided interest in the Common Areas for each residential lot owned, provided, however, that in no event and under no circumstances shall there be any partition of the Common Areas through judicial proceedings or otherwise unless approved by the owners of at least two-thirds (2/3) of the residential lots in the subdivision.

Until December 31, 1996, Developer shall maintain all Common Areas in the subdivision as herein required and guarantee to all lot owners that the annual assessment herein provided per lot shall not exceed for said calendar year of 1996 the sum of Eight Hundred Forty Dollars ($840.00). Such assessment shall be payable and be a lien in the same manner as set forth in the paragraph captioned ASSESSMENTS hereof.

IN WITNESS WHEREOF, McCarthy Builders, Inc., an Ohio corporation, and The Brook Cliffe Homeowners’ Association, Inc., an Ohio non-profit corporation, have executed this Declaration of Restrictions this 25th day of July 1996.

WITNESSES:

MCCARTHY BUILDERS, INC., an Ohio corporation

By: Brian McCarthy, President

THE BROOK CLIFFE HILLS HOMEOWNERS’ ASSOCIATION, INC.

an Ohio non-profit corporation

By: Brian McCarthy, President
STATE OF OHIO, COUNTY OF LUCAS, SS:

The foregoing instrument was acknowledged before me this ___ day of ___ , 1996 by Brian McCarthy, the President of McCarthy Builders, Inc., an Ohio corporation, on behalf of said corporation.

Notary Public

ROBYN K. SCHMITZ
Notary Public State of Ohio
Commission Expires 4-3-99

STATE OF OHIO, COUNTY OF LUCAS, SS:

The foregoing instrument was acknowledged before me this ___ day of ___ , 1996, by Brian McCarthy, the President of The Brook Cliffs Homeowners' Association, Inc., an Ohio non-profit corporation, on behalf of said corporation.

Notary Public

ROBYN K. SCHMITZ
Notary Public State of Ohio
Commission Expires 4-3-99

THIS INSTRUMENT PREPARED BY:
Jerome R. Parker, Esq.
Gressley, Kaplin & Parker
608 Madison Avenue, Suite 930
Toledo, Ohio 43604
DESCRIPTION

BROOK CLIFFE HILLS PLAT No. 1, of which this is a correct plot, is laid out on and comprises all that part of the Southwest 1/4 of Section 23, Town 2, United States Reserve, City of Toledo, Lucas County, Ohio, bounded and described as follows:
Starting at the Southeast corner of White-Cliffe Plat 1 (a subdivision Recorded in Volume 22 of Plat, pages 31 and 32, Lucas County Plat Records); thence North 00°10'00" East, along the external boundary line of said White-Cliffe Plat 1 (also being the East right-of-way line of White Chapel Drive); a distance of 50.00 feet to the Point of Beginning of the premises hereafter described; thence continuing North 00°10'00" East, along the external boundary line of said White-Cliffe Plat 1, a distance of 202.92 feet to an angle point in said external boundary line; thence South 89°42'30" East, continuing along the external boundary line of said White-Cliffe Plat 1 and also along the South line of White-Cliffe Plat 11 (a subdivision Recorded in Volume 76 of Plat, pages 33, Lucas County Plat Records) and also being along the South right-of-way line of Brook Cliffe Road, a distance of 203.47 feet to the Northwest corner of Brook Cliffe Hills Plat One; thence South 00°17'32" West, along the West line of Brook Cliffe Hills Plat One, a distance of 261.09 feet to a point that is 50.00 feet Northerly of the South line of said Section 23 (said point also being on the North right-of-way line of Heatherdowns Boulevard), thence North 89°59'30" West, along the North right-of-way line of Heatherdowns Boulevard, a distance of 207.03 feet to the Point of Beginning, or-west line of Heatherdowns Boulevard, thence North 09°39'30" West, along the North right-of-way containing 1.35 acres, more or less.

The bearings referred to herein are based upon an assumed meridian and are used only for the purpose of describing angular measurements.