Brookside Plat Three

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DECLARATION OF RESTRICTIONS

As To Brookside Plat Three

A Subdivision in Sylvania Township  
Lucas County, Ohio

WHEREAS, SYLVANIA COBBLESTONES DEVELOPERS, INC., an Ohio corporation qualified to do business in the State of Ohio, having an office and mailing address at 2727 N. Holland Sylvania Rd., Toledo, Ohio 43615. Hereinafter called "Developer" is the owner in fee simple of the following described property:

Lots number fifty-three (53) through sixty-two (62) inclusive, in Brookside, a Subdivision in Sylvania Township, Lucas County, Ohio.

WHEREAS, such property is designated on a plat recorded in Official Record No. 200401025-0086524 Lucas County, Ohio, Record of Plats, as Brookside Plat Three, a Subdivision in Sylvania Township, Lucas County, Ohio (hereinafter sometimes called "Brookside Plat Three"); and

WHEREAS, Developer desires to establish a general plan for the development of Brookside Plat Three and to establish restrictions upon the manner of use, improvement and enjoyment of the numbered lots in Brookside Plat Three which will make said lots more attractive for residential purposes and will protect present and future owners of said lots in the enjoyment of their use for residential purposes;

NOW, THEREFORE, Developer, in consideration of the enhancement in the value of said property by reason of the adoption of the restrictions hereinafter set forth does for itself and its successors and assigns, hereby declare, covenant and stipulate that all numbered lots as shown on the recorded plat of Brookside Plat Three, a subdivision in Sylvania Township, Lucas County, Ohio, shall hereafter be conveyed by it, its successors and assigns, subject to the following restrictions:

ARTICLE I

Use of Land

1. No dwelling shall be erected, placed or maintained on any such residential lot other than one (1) single-family residence dwelling, and an attached garage. Such residence dwelling shall be used and occupied solely and exclusively for private residence purposes by a single family and such family's servants. (Nothing herein contained shall prevent the use of a parcel of land composed of more or less than a single lot for one (1) single-family residence dwelling provided that such parcel is no smaller than the smallest lot in the subdivision.)

Detached auxiliary structures may be permitted with the Architectural Control Committee's approval including in-ground swimming pools. Fences including privacy fences may be permitted with the Architectural Control Committee's approval. Cyclone (chain link) fences are not permitted. Four foot high split-rail type fencing are hereby prior approved for all properties. All fences and structures must meet the applicable zoning and building regulations. Permanent above-ground swimming pools are not permitted. Seasonal - small/shallow-type above-ground pools shall be allowed during summer months only.
2. 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, on Brookside Plat Three. No dwelling erected in Brookside Plat Three shall be used as a residence until the exterior thereof has been completed in accordance with the detailed plans and specifications approved therefor as provided under Article II hereof.

3. Any truck, boat, bus, tent, mobile home, motor home, recreational vehicle, or other similar object, if stored on any lot, shall be housed within said attached garage.

4. No lot shall be used for the storage of automobiles, trailers, scrap, scrap iron, water, paper, glass or any reclamation products or materials; except that during the period a structure is being erected upon any such lot, building materials to be used in 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 thereon. No sod, dirt, or gravel shall be removed from said lots without the written approval of the Developer, its successors and assigns.

5. All rubbish and debris, combustible and non-combustible, and all garbage shall be stored in underground containers, or stored and maintained in containers entirely within the garage or basement. Additional regulations for the storage, maintenance and disposal of rubbish, debris, leaves and garbage may from time to time be established by the Developer, or its successors and assigns.

6. No signs of any character other than signs of not more than ten 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 permission of the Developer, its successors and assigns, and the Developer, or its successors and assigns, shall have the right, and discretion, to prohibit, restrict and control the size, construction, material, wording, location, and height of all such signs.

7. All utility services shall be underground; no external radio or television antenna shall be permitted. Satellite dishes shall be allowed as long as they are screened with landscaping or located in an inconspicuous location. The Developer has the right to require additional screening or designate an acceptable location for satellite dishes.

8. No portion of any lot nearer to any street than the building setback line or lines shown upon the recorded plat of Brookside Plat Three shall be used for any purpose other than that of a lawn, provided, however, this covenant shall not be construed to prevent the use of such portion of said lot for walks, drives, trees, shrubbery, flowers, flower beds, ornamental plants, statuary, fountains, fence, hedge, wall or other enclosure which shall first have been approved as provided under Article II hereof for the purpose of beautifying said lot, but shall be construed to prohibit the planting or maintaining of vegetables and grains thereon.

9. Notwithstanding any other provision contained in this Declaration of Restrictions, the Developer shall not be prohibited from the construction and use of construction trailer and/or sales office(s) trailer and/or model home(s) on one or more lots in Brookside Plat Three, for his own use.
10. Every lot shall have a minimum of four (4) trees located between the curb and the front of the dwelling. At least two (2) of these trees shall be "street trees" planted at approximately 40" o. c. (located between the curb and sidewalk) for all lots except Lot #61 shall have a minimum of three (3) "street trees". Some Cul-de-sac lots with small front frontages may have street trees spaced at less than 40" o. c. in either direction. All "street trees" shall be a deciduous species and conform to the Developer's and Lucas County's "street tree" schedule and plan(s). Evergreens must be at least six (6) feet high and all other trees are to be at least 2-1/2 inches in diameter and eight (8) feet high. Such trees shall be planted and maintained at the lot owner's expense, and must be planted when dwelling is completed. If not planted by the lot owner as stated above, then the developer may plant and pursue collection of his costs per Article VI of this Declaration. It is the lot owner's responsibility to maintain the above trees at his expense. If the lot owner fails to maintain such trees or replace dead trees, the Developer and/or the Property Owners' Association may maintain/replace and lien the property in the amount of these costs (per Article VI) if not promptly reimbursed by the lot owner. These costs may include any attorney fees or legal costs associated with any such proceedings.

STREET TREE SCHEDULE: Min. = 2 1/2" (Cal.) & 8' height

TYPE: Sugar Maple (Acer Saccharum)

ARTICLE II

Approval of Plans

1. Developer, its successors and assigns, shall act as the Architectural Control Committee to which all plans and specifications for any structures and other improvements must be submitted for examination and approval before any erection or improvements shall be made upon any lot and before additions, changes or alterations may be made to any structure or other improvement then situated on a lot. The aforesaid detailed plans and specifications shall show size, location, type, architectural design, quality, acreage, material construction, color scheme and grading plan for the lot and the finished grade elevation thereof and must be prepared by a competent architect or draftsman. Such plans and specifications must be furnished to the Architectural Control Committee in sufficient numbers so that the Architectural Control Committee may retain a true copy thereof for retention with its records. The Developer hereby expressly reserves to itself, and to its successors and assigns, the right and privilege of assigning or relinquishing its said rights and duties as such Architectural Control Committee from time to time and for such limited periods of time and purposes as it may desire.

Such assignment or relinquishment will become effective from and after the time a written instrument evidencing the fact of such assignment or relinquishment, signed by the Developer or by its successors and assigns is filed for record with the Lucas County, Ohio, Recorder.

2. In requiring the submission of detailed plans and specifications as herein set forth, Developer has in mind the development "Brookside" Plat Three as an architecturally harmonious and desirable residential subdivision. In approving or withholding its approval of any detailed plans and specifications so submitted, the Architectural Control Committee may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent lots, its artistic and architectural merits, 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 Brookside Plat Three as a whole. In keeping with these guidelines the Architectural Control Committee shall have the right to waive strict compliance with the terms of these restrictions so long as the plans and specs are deemed to present substantial compliance. Any determination made by the said Architectural Control Committee, in good faith, shall be binding on all parties in interest.

3. It is the Lot Owner and the Lot Owner's Builders responsibility to follow the Lucas County Engineer's Approved Site Grading Plan at the time of building construction and final lot grading.

Upon notification from the Developer, the Architectural Control Committee or Lucas County of non-conformity to the site grading plan, a Lot Owner shall immediately correct the non-conformance.

Should a lot owner fail to correct the lot grading in accordance with the Approved Site Grading Plan, suit may be brought under Article VI of this Declaration to enforce such restriction as in the case of the violation of any other covenant or restriction contained in this Declaration. Further, upon such failure of a lot owner to comply with the Approved Site Grading Plan the Developer his successor and assigns or Lucas County shall have the right to enter upon the lot(s) in question and to correct such grading or cause the same to be corrected at the expense of the owner of such lot(s).

4. The Architectural Control Committee shall have the right to assign appropriate driveway locations for each lot, driveways shall be appropriately staggered to improve the overall appearance of the Development.

5. All attached garages shall be side-loading, unless otherwise approved by the Developer/Architectural Committee.

6. Every owner of a residence dwelling in said subdivision shall be required to install and maintain a mailbox identical in design and appearance as approved by the Developer.

7. Only wood, brick or stone shall be used on dwelling front elevations (facing the front yard).

8. The minimum floor area shall be 1900 s.f. of "living area" for a ranch (single story) house and 2300 s.f. for a two-story home. The "living area" shall be exclusive of any basement, third floor, enclosed porches and garages.

9. 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 improved improvements without the written consent of the Architectural Control Committee such variance shall be deemed a violation of these restrictions.

ARTICLE III

Easements

The Developer reserves to itself, and to its successors and assigns the exclusive right to grant consents, easements and rights of way for the construction, operation and maintenance of electric light, telephone and telegraph poles, wires and conduits, including underground facilities, and for drainage and sewers on, over, below, or under all of the areas designated as "Easement", "Utility
Easement(s)”, “Toledo Edison Easement”, “Drainage Easement”, or with words of similar import, on the plat of Brookside Plat Three and along and upon all highways now existing or hereafter established and abutting all the lots in Brookside Plat Three. The Developer also reserves to itself, and to its successors and assigns, the right to go upon or permit any public or quasi-public utility to go upon the lots in Brookside Plat Three 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. No structures, or any part thereof, shall be erected or maintained over or upon any part of the areas designated as "Easement", "Utility Reservation", "Drainage Easement", or with words of similar import, upon the plat of Brookside Plat Three. The term "structures" as used in the foregoing portion of this paragraph shall include those structures in the nature of houses, garages, other buildings and swimming pools, but shall not include lot improvements such as driveways and fences. No owner of any lot in Brookside Plat Three shall have the right to reserve or grant any easements or rights of way upon or over any of the lots in Brookside Plat Three without the prior written consent of the Developer, its successors and assigns.

ARTICLE IV

Construction of Sidewalks; Street Improvements

1. Within eighteen (18) months after the recording of the deed to each lot in Brookside Plat Three from Developer to the purchaser thereof, the owner of each lot shall construct sidewalk(s) across the frontage of such as per construction specifications and location requirements of Lucas County, Ohio. Should a lot owner fail to construct sidewalks in accordance with the preceding sentence, suit may be brought under Article VI of this declaration to enforce such restriction as in the case of the violation of any other covenant or restriction contained in this Declaration. Further upon such failure of a lot owner to construct sidewalks Developer or Lucas County shall have the right to enter upon the lot(s) in question and to construct such sidewalks or cause the same to be constructed at the expense of the owner of such lot(s). In such event, the costs of construction of such sidewalks shall be and become a lien against the lot or lots upon which the sidewalks have been constructed from the date of perfection thereof as hereafter provided and, if the costs of construction of such sidewalks shall not be paid immediately upon demand therefor, such lien may be foreclosed by an action brought by the Developer or Lucas County, as in the case of foreclosure of liens against real estate. 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 V

Duration of Restrictions, Amendments

1. These covenants and restrictions shall run with the land and shall be binding upon the Developer and all persons claiming under or through the Developer until the first day of January, 2023, at which time these covenants and restrictions shall be automatically extended for successive periods of ten (10) years.

2. These covenants and restrictions may not be amended, except by the Developer until the Developer, or his assigns, renews control of the Architectural Control Committee and the Property Owner's Association, after which time they may be amended prior to January 1, 2023 by the written approval of the then owners of not less than two-thirds (2/3) of the lots in Brookside Plat Three which amendment shall become effective from and after the filing with the Recorder of Lucas County, Ohio of an instrument stating the amendment and signed by all approving lot owners with
the formalities required by law. All lot owners must be notified of the proposed amendment either in person or by certified mail. These covenants and restrictions may be terminated as of January 1, 2023, and may be amended or terminated thereafter with the written approval of the owners of not less than one-half (1/2) of the lots in Brookside Plat Three upon the filing of an instrument as aforesaid with the Recorder of Lucas County, Ohio.

3. The Developer or its successors and assigns hereby reserve the right to amend or modify these covenants and restrictions at any time prior to releasing control of the Architectural Control Committee and the Property Owner’s Association.

ARTICLE VI

Enforcement of Restrictions, Other Matters

1. Any violation or attempt to violate any of the covenants or restrictions herewith while the same are in force shall be unlawful. The Developer, the Architectural Control Committee or any person or persons owning any lot in Brookside Plat Three may prosecute any proceedings at law, or in equity, against the person or persons violating or attempting to violate any such covenant or restriction to prevent him or them from so doing, to cause the removal of any such violation and/or to recover damages (including legal/attorney costs) for such violations or attempted violation.

2. Developer, its successors and assigns reserves and is hereby granted the right in case of any violation or breach of any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions herein contained, to enter the property upon or to which such violation or breach exists, and to summand abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof interpreted by Developer, and Developer shall not, by reason thereof be deemed guilty of any manner of trespass for such entry, abatement or removal. In such event, the costs of such corrections (including, architectural, engineering, surveying fees and/or any legal/attorney fees) shall be and become a lien against the lot on which such corrective measures are attributed from the date of perfection thereof as hereinafter provided and, if the costs of such corrections shall not be paid immediately upon demand therefore, such lien may be foreclosed by an action brought by the Developer or Lucas County, as in the case of foreclosure of liens against real estate. The holder of 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.

3. A failure of Developer to enforce any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed, taken or held to be a waiver therefore or acquiescence in or consent to any continuing further or succeeding breach or violation thereof, and Developer shall at any and all times have the right to enforce the same.

4. Invalidation of any of the restrictions and covenants herein contained by judgment or court order or amendment hereof by act of the owners of lots in Brookside Plat Three shall not affect any of the other provisions contained in this Declaration of Restrictions, which shall remain in full force and effect.

5. All transfers and conveyances of each and every lot in Brookside Plat Three shall be made subject to these covenants and restrictions.

6. Any notice required to be sent to any owner of a lot in
Brookside Plat Three or to the Developer 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 Developer or to any other member of the Architectural Control Committee as such address appears on the applicable public records or on the records of the Architectural Control Committee.

7. The rights, privileges and powers granted by this Declaration of Restrictions to, and/or reserved by, the Developer shall be assignable and shall inure to the benefit of the successors and assigns of the Developer.

8. Developer shall have the rights to construe and interpret these restrictions, and its construction or interpretation, in good faith, shall be final and binding as to all persons and property benefited or bound by such restrictions. Developer shall be "held harmless" for his actions or non-actions pertaining to these restrictions.

9. No owner of any lot in Brookside Plat Three shall subdivide the same or convey less than the whole of any lot without first obtaining the written consent of Developer, its successors or assigns.

10. 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.

11. Each lot owner, by acceptance of a deed to a lot in Brookside Plat Three agrees and consents and shall be deemed to agree and consent that if, in the opinion of Developer, the shape or dimensions, number of structures or topography of the lot upon which a building or improvements is proposed to be made, is such that strict construction or enforcement of the building lines as shown on the plat of Brookside Plat Three or in the yard requirements stated herein or of any other provision of these reservations and restrictions would work a hardship, Developer may, in writing, modify these restrictions as to such lots so as to permit the erection of such building or the making of the proposed improvements. Developer shall not be limited in its exercise of its aforesaid right to modify these reservations and restrictions by reason of the fact that it may be the owner and/or builder for whose benefit such modification is granted.

12. Wherever used herein, the term "structure" shall mean and refer to any thing or device (other than trees, shrubbery which is less than two (2) feet high if in the form of a hedge, and landscaping, the placement of which upon any lot may affect the appearance of such lot, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothesline, radio or television antenna, fence, curbing, paving, wall, hedge more than two (2) feet in height, signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such lot. "Structure" shall also mean and refer to (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any lot, or which affects or alters that flow of waters in any natural or artificial stream, wash or drainage channel from, upon or across any lot, and (ii) any change in the grade of any lot of more than six (6) inches from the Approved Site Grading Plan.

ARTICLE VII

Property Owner's Association

1. Developer shall cause to be incorporated an Ohio Nonprofit
Corporation, to be called Brookside, or name similar thereto, and upon the formation of such association, every owner or subsequent owner of a residential lot in the Brookside subdivision, including all subsequent plats, shall automatically become a member thereof, 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 recorded plat, this Declaration of Restrictions and the Articles and Code of Regulations of such Association.

2. The Developer, its successors and assigns, shall collect assessments (per Article VII below) and manage the Association until such time it assigns or relinquishes these duties to the members of the Association. Until such time the Developer hereby expressly reserves to itself and to its successors and assigns, the right and privilege of assigning or relinquishing its above mentioned rights and duties from time to time and for such limited periods of time and purposes as it may desire.

3. The Developers may charge a management fee to the Association for its above mentioned duties. Such management fee shall be no greater than would customarily be charged by any other independent real estate management company for performing the above mentioned duties.

4. Each lot owner, including Developer, shall be entitled to one (1) vote for each lot owned and where title to a lot is jointly owned, such co-owners acting jointly shall be entitled to only one (1) vote.

5. The Association and/or the Developer, per the Articles and Code of Regulations of such Association, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the subdivision, and for the health, comfort, safety and general welfare of its residents. The Association shall maintain the landscaping in the boulevards and cul-de-sac areas within the dedicated roadways, common areas and walkways, if any, and the landscape and sign easement areas at the entrances to the subdivision as shown on the recorded plats, ditch easements Lots E & F and Lots A & B, Plats One and Two (detention/retention ponds) and any other detention/retention ponds in Plat Three and in any subsequent plats.

6. Developer, and/or Architectural Control Committee, may, by instrument in writing, assign and vest in the Association all of its rights, privileges and powers herein retained which assignment shall be recorded in Lucas County, Ohio Recorder's Office.

7. The Association and/or the Developer shall collect and disburse funds which the Developer and/or Board of Trustee determines, from time to time, to be for the general benefit of the owners of all residential lots in the subdivision and as required to carry out the purposes herein set forth.

8. The Association and/or the Developer may enforce all provisions of the recorded plat, these covenants and restrictions, and the regulations promulgated by it with respect to the use and occupancy of residential lots in the subdivision.

9. In the event the Association shall be dissolved or otherwise cease to exist, all of its rights, duties and obligations shall automatically inure to the benefit of the owners of the residential lots in Brookside, and such adjacent subdivisions as may become members of the Association.

10. The Association may assign all or part of its duties or functions to an adjacent Brookside Association.
ARTICLE VIII

Assessments

1. In carrying out its purposes, after the Association is formed, 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 members of the Association and/or the Developer prior to the end of the preceding calendar year. For the first year, and each year thereafter until changed by the Association and/or the Developer, the annual assessment shall be $150.00 for each lot, or at least an amount that will cover the expenses of maintaining the entrances, cul-de-sacs and detention/retention ponds, etc. mentioned in Article VII, Item #5 above. The annual assessment may be pro-rated at the time of the lot closing and first transfer from the Developer.

2. The Developer’s portion of the above mentioned assessments shall be the difference between the actual maintenance costs and the annual assessments collected from all other lot owners (per Item #1 above) in Brookside Plat Three and all subsequent plats for that year. However, the Developer’s total annual assessment for each year shall not exceed the per lot cost of any other lot owner based on the total number of platted lots the Developer owns as of January 1 of each year (pro-rated accordingly).

3. 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. Assessments shall be payable as determined by the Developer and/or the Association during the calendar year for which the assessment is levied and a notice of lien may be recorded in the lien records of the Recorder of Lucas County, Ohio if any payment of an annual assessment is in arrears for more than sixty (60) days from the date it is due and payable. If such an assessment is in arrears by more than sixty (60) days, as stated above, it shall automatically include at least a 20% (minimum) late fee. In addition to the late fee, any applicable attorney/legal costs associated with filing such lien or collecting the assessment may be included.

4. A notice of lien shall identify the residential lot, the year and amount of the annual assessment, and be executed by the Developer and/or the Association with the formalities then required to record a lien against real estate in Lucas County, Ohio. Judicial foreclosure proceedings of a mortgage thereon shall extinguish such lien with respect to payments which become 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.

5. Any lot owner may request and upon payment of the reasonable expense therefore, shall receive, from the Developer and/or the Secretary of the Association, a certificate setting forth whether all assessments have been paid for such owner's lot and the total amount of any unpaid assessments.

IN WITNESS WHEREOF, Sylvania Cobblestones Developers, Inc., the Developer herein, acting by and through its duly authorized officer, has caused this Declaration of Restrictions to be executed on its behalf this 20th day of October, 2004.

Signed and Acknowledged in the Presence of:

Kirk M. Fulton
Claude M. Brown, III
President

Sylvania Cobblestones Developers, Inc.
STATE OF OHIO
COUNTY OF LUCAS

The foregoing instrument was acknowledged before me this 20th day of October, 2004 by Claude M. Brown, III, President of Sylvania Cobblestones Developers, Inc., on behalf of the corporation.

Melanie A. Jockett
Notary Public