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DECLARATION OF RESTRICTIONS FOR
HEATHERWYCK PLAT THREE
A SUBDIVISION IN THE CITY OF TOLEDO,
LUCAS COUNTY, OHIO

THIS DECLARATION, made and entered into by HEATHERWYCK ASSOCIATES, a partnership, and FALZONE REALTY & CONST. CO., an Ohio corporation, this 22nd day of June, 1979.

WITNESSETH:

WHEREAS, Heatherwyck Associates, a partnership, is the owner of the following described real estate, situated in the City of Toledo, Lucas County, Ohio, viz:

Lots numbers seventy-eight (78) through eighty-five (85) and eighty-eight (88) through one hundred two (102), inclusive, in Heatherwyck Plat Three, a Subdivision in the City of Toledo, Lucas County, Ohio; and

WHEREAS, Falzone Realty & Const. Co., an Ohio corporation, is the owner of the following described real estate, situated in the City of Toledo, Lucas County, Ohio, viz:

Lots numbers eighty-six (86) and eighty-seven (87) in Heatherwyck Plat Three, a Subdivision in the City of Toledo, Lucas County, Ohio; and

WHEREAS, Heatherwyck Associates and Falzone Realty & Const. Co., as owners, desire to establish a general plan for the development of Heatherwyck Plat Three, and which will be for their benefit and the benefit of all future owners or occupants of all or any part of said premises, of any lot, lots or part thereof, located and situated in Heatherwyck Plat Three, and in order to perpetuate such Subdivision as an architecturally harmonious, and desirable district, and to continue to maintain this general plan as originally made effective upon the platting of said Subdivision.

NOW, THEREFORE, Heatherwyck Associates and Falzone Realty & Const. Co., in consideration of future enhancement in value of said property and of the benefits accruing to the future owners of said lots, and for the mutual benefit and protection of each present and future owner of any interest in and to any lot or part thereof in Heatherwyck Plat Three, and by reason of the adoption of the Restrictions hereinafter set forth, do for themselves, and their successors and assigns, hereby declare and stipulate that said lots shall be conveyed subject to the Restrictions hereinafter declared and that the same shall run with the land.

Section 1 - Duration of Restrictions. These covenants and restrictions shall bind and run with the land and shall be binding upon said owners and all persons claiming under or through them, said owners and/or mortgagees, until twenty-five (25) years from the date hereof, at which time said covenants and restrictions

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shall be automatically extended for successive periods of ten (10) years unless by then owners of a majority of the lots in Heathervyck Plat Three agree to change said restrictions and covenants in whole or part. Such changes shall be by instrument setting forth said changes and signed, witnessed and acknowledged by at least the then owners of a majority of said lots, which instrument shall be recorded in the Office of the Recorder of Lucas County, Ohio, previous to the termination of the successive periods mentioned herein and shall be effective and operative to effect such change from and after the termination of such successive period as follows the date of the filing thereof for record with the Recorder of Lucas County, Ohio.

Section 2 - Plan Approval. No apartment, condominium, swimming pool, fence, hedge, wall or any addition thereto or any alterations thereof shall be erected, reconstructed, placed or suffered to remain upon said premises, unless nor until the size, location, type, style of architecture, use, the materials of construction thereof, the color scheme therefor, the grading plan of the lot, including the grade elevations of said apartment or condominium, the landscape plan, the plot plan showing the proposed location of said apartment or condominium, upon said premises and the plans, specifications and details of said apartment or condominum shall have been approved in writing by the Architectural Control Committee, or its successor, and a true copy of said plans, specifications and details shall have been lodged permanently with Falzone Realty & Const. Co., and no apartment or condominium, except such as conforms to said plans, specifications and details, shall be erected, reconstructed, placed or suffered to remain upon the said premises.

Section 3 - Residential Use. Lots seventy-eight (78) through one hundred two (102), inclusive, shall be used and occupied solely and exclusively for residence purposes by two-family or four-family apartment units including combinations of the same for condominium purposes.

Section 4 - Building Location on Lot. No apartment or condominium shall be erected, reconstructed, placed or suffered to remain upon said premises, nearer the front or street line or lines than the building setback line or lines shown upon the plat of said Subdivision or nearer to any side line or rear line than shall be determined by Falzone Realty & Const. Co. in writing at the time of the approval of the plans and specifications for said dwelling. This restriction as to the distances at which said apartment or condominium shall be placed from the front, side and rear lines of said premises, shall apply to and include porches, verandas, portes cochere and other similar projections of said apartment or condominium. The parcel of land upon which an apartment or condominium is to be constructed and/or maintained together with the land adjacent thereto and used in conjunction therewith may include one lot or part of one, two or more lots delineated on the recorded plat of Heathervyck Plat Three, but only with the written consent of Falzone Realty & Const. Co.
Section 5 - Architectural Control Committee. The Architectural Control Committee shall at all times be composed of three (3) members appointed by Falzone Realty & Const. Co. who shall be empowered to change members of the Committee and fill vacancies on said Committee. The original members of said Committee shall be Anthony J. Falzone, Fred L. Hotchkiss and Peter J. Cardillo. The approval in writing of any two (2) members of said Committee of three (3) shall be sufficient for the approval of plans and specifications which may come within the purview of said Committee. The senior member of said Committee is the Chairman and shall be empowered to fill vacancies as they occur.

Section 6 - Lot Use. No portion of any lot nearer to any street than the building setback line or lines shown upon the recorded plat of said Subdivision shall be used for any purpose other than that of a lawn; provided, however, that nothing contained herein shall be construed to prevent the use of such portion of said lot for walks, drives, trees, shrubbery, flowers, flower beds, ornamental plants, statuary, fountains or similar ornamentations for the purpose of beautifying said lot; but shall be construed to prohibit the planting or growing of vegetables and grains thereon and the construction or planting of a fence of any kind. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain anywhere upon such lot and no unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon, and failing in which, Falzone Realty & Const. Co. may cause same to be cut or removed at the expense of said lot owner. No fence, hedge, wall or enclosure of any kind shall be erected, placed or suffered to remain upon said lots, unless and until the written consent of the Architectural Control Committee shall have been first obtained therefor, which consent may specify in writing the type, height, width, color, upkeep and any general conditions pertaining thereto. Any fence to be installed on any lot in said Heatherwyck Plat Three shall have prior approval in writing. Fences from the setback line along the side lot line to the rear of the premises shall not be over four (4) feet high and along the rear line of said premises shall not be over four (4) feet in height.

Section 7 - Utility Easements. Falzone Realty & Const. Co. reserves to itself, its successors and assigns, a perpetual easement in, through, under and/or over those portions of the rear and sides of each lot, as shown on the plat of Heatherwyck Plat Three designated as utility rights-of-way, for the construction, operation and maintenance of electric lights, telephone and telegraph poles, lines and conduits, and for water, gas and sewer lines, and conduits, or any other public utility facilities, together with the necessary or proper incidents and appurtenances; and no building or other structure, or any part thereof, shall be erected or maintained upon any part of the property in Heatherwyck Plat Three, over or upon which easements for the installation and maintenance of public utilities and storm sewers will be or have been granted.

Section 8 - Noxious Uses. No spirituous or fermented liquors of any kind shall be manufactured or sold either at whole-
sale or retail, upon said premises, no industry, business or trade, occupation or profession of any kind shall be conducted, maintained or permitted upon said premises. No well for gas, water, oil or other substance, shall at any time, whether intended for temporary or permanent purpose, be erected, placed or suffered to remain upon said premises; nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the quiet of the owner or owners of any adjoining land. No pole, or overhead or exposed wires, whether for use in connection with radio, telephone, television, electric light or any other purposes, and no advertising sign, billboard or other advertising device, except real estate "For Sale" signs not to exceed 3 feet by 4 feet, shall be erected, placed or suffered to remain upon said premises or upon or visible from the outside of said apartment or condominium without the consent of Falzone Realty & Const. Co. first having been obtained.

Section 9 - Nuisances. No animals or fowl of any kind or character shall be kept or maintained upon any part of any lot or tract. The Architectural Control Committee reserves the right to adopt reasonable regulations governing the keeping within any apartment or condominium unit of domestic dogs, cats or other household pets, calculated not to become and not becoming a nuisance to the owners or inhabitants of Heatherwyck Unit Three. The keeping within any apartment or condominium unit of one (1) domestic dog or cat is hereby permitted, so long as such dog or cat does not become a nuisance to the owners or occupants of lots in said Subdivision.

Section 10 - Grades. Falzone Realty & Const. Co. reserves the sole and exclusive right to establish grades and slopes on the premises herein described, and to fix the grade at which any apartment or condominium shall hereafter be erected or placed thereon, so that the same may conform to a general plan.

Section 11 - Laundry Facilities. No clothes, sheets, blankets or other articles shall be hung out or exposed on any part of said premises, except in the rear yards and then only on portable laundry dryers of a revolving type not higher than seven (7) feet from the ground. No more than one dryer may be used for each apartment or condominium unit. No laundry shall be hung for drying on Sundays or holidays. No laundry of any kind, or other articles, shall be exposed or hung for drying at any time on any front porch or in the front of any building.

Section 12 - Temporary Structures and Storage. No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot in this Subdivision as a residence. No boats, buses, trucks; vacation trailers, camping trailers or house trailers, etc., shall be stored or parked in the yards (front, side or rear) or on the driveway of any of said lots in said Subdivision.

Section 13 - Debris and Rubbish. No debris, garbage or rubbish shall be permitted to be stored on any lot in said Subdi-
vision except such as may be stored in a garage, basement or underground containers.

Section 14 - Sidewalks. All owners of lots in Heatherwyck Plat Three shall install sidewalks at the locations designed by the developer in accordance with building standards and requirements of the City of Toledo and approved by said City's Engineering and Construction Division on or before one (1) month after the completion of the apartment or condominium.

Section 15 - Enforcement. Falzone Realty & Const. Co. and 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 as to which such violation or breach exists, and to summarily 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 as interpreted by Falzone Realty & Const. Co., and Falzone Realty & Const. Co. shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement or removal. A failure of Falzone Realty & Const. Co. 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 therefor or acquiescence in or consent to and continuing further or succeeding breach or violation thereof, and Falzone Realty & Const. Co. shall at any and all times have the right to enforce the same.

Section 16 - Modification. In connection with the provisions herein contained and with special reference to the Architectural Control Committee, its duties and functions, it is hereby provided that if, in the opinion of the developer, by reason of the shape, dimensions or topography of the premises herein described, or by reason of the type of apartment or condominium to be erected thereon, or for any reason satisfactory to it, the endorsement of the provisions of said Sections would work a hardship, Falzone Realty & Const. Co. may modify such provisions so as to permit variations in cost, size, type, location or otherwise that will not, in its judgment, do material damage to any abutting or adjacent property.

Section 17 - Severability. If any provision of these restrictions shall be determined by a court to be invalid or unenforceable, the remainder of these restrictions shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 18 - Violation. In all instances where plans and specifications are required to be submitted to and are approved by the Architectural Control Committee, if subsequent thereto, there
shall be any variance in the actual construction and location of any alteration or addition, fence, wall, hedge or roadway, any such variance shall be deemed a violation of these restrictions.

IN WITNESS WHEREOF, Heatherwyck Associates, a partnership, and Falzone Realty & Const. Co., an Ohio corporation, have hereunto set their hands on the day and year first mentioned.

Signed and acknowledged in the presence of:

HEATHERWYCK ASSOCIATES

By

Peter J. Cardillo, Partner

By

Anthony J. Falzone, Partner

FALZONE REALTY & CONST. CO.

By

Anthony J. Falzone, President

STATE OF OHIO; COUNTY OF LUCAS, ss:

Be it remembered, that on the 22 day of June, 1979, before me, the subscriber, a Notary Public within and for said County, personally came Peter J. Cardillo and Anthony J. Falzone, of Heatherwyck Associates, a partnership, who being duly authorized by all the partners of Heatherwyck Associates, acknowledged the signing of the foregoing instrument to be their voluntary act and deed and the voluntary act and deed of said partnership, for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

Notary Public

STATE OF OHIO, COUNTY OF LUCAS, ss:

Before me, a Notary Public in and for said County, personally appeared Anthony J. Falzone of said Falzone Realty &
Const. Co., an Ohio corporation, who acknowledged that he did sign said instrument as President of said Falzone Realty & Const. Co. in behalf of said corporation; and that said instrument is the voluntary act and deed of Anthony J. Falzone as such officer and the voluntary act and deed of said corporation for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed by official seal this 22nd day of June, 1979.

[Signature]
Notary Public

This instrument prepared by:
John F. McCarthy, Esq.

Filed for record June 27, 1979 at 11:23 A.M. and recorded as Mortgage No. 79-697-A01.
By Instrument dated April 17, 1953, Challace G. Manley and Lulu A. Manley, deeded to the State of Ohio that part of said Section 26 lying within a strip of land 235 feet wide, the northerly line of said strip being 120 feet northerly of the center line of Ohio Turnpike Project No. 1. Said deed contained the following:

Grantors, for their heirs, administrators, executors and assigns, covenant that they shall not establish, maintain or permit any natural or legal person to establish or maintain on any remaining land any billboard, sign, notice, poster, advertising device or other display which is visible from the travelway of Ohio Turnpike Project No. 1 and which is not at the date of hereof in existence.

Received for record June 17, 1953 and recorded in Volume 1500 of Deeds, page 316.