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MCO FOUNDATION PARK
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and adopted as of the 11th day of February, 2002 by Foundation Park Investors, LLC, an Ohio limited liability company and Medical College of Ohio at Toledo Foundation, an Ohio not-for-profit corporation (collectively "Owners").

Owners own that real property located in the City of Toledo, Lucas County, Ohio as described on Exhibit A attached hereto and incorporated herein (the "Property"). Owners desire to establish a general plan for the development, use and maintenance of the Property as a first-class, high quality office/research/laboratory development known as MCO Foundation Park, and to establish restrictions upon the manner of use, improvement and enjoyment of the Property which will make the Property attractive for its intended purposes and will protect present and future owners of portions of the Property in their enjoyment and use of the Property for said intended purposes.

The term "lot" as used in this Declaration shall mean any legally separate and distinct parcel of real estate within the Property.

The term "development site" as used in this Declaration shall mean any lot, lots or portion thereof, not included within the common areas (as hereinafter defined), and intended or utilized for the improvement and development as the site of one or more building(s) or structure(s) and any accessory structure(s), lawns, landscaped areas, parking lots, lighting and signs.

The term "common area(s)") as used in this Declaration shall mean those areas or portions of the Property not included within any development sites, intended for the limited common and non-exclusive use, enjoyment and benefit of all present and future owners of lots, and designated by Owners as common area(s), common area and drainage easement, open space, green space, lake(s), pond(s), private roadways, and bridges, or with words of similar import (a) on any plat or plats of the Property (as hereinafter defined) or any portion thereof, or (b) by any other recorded instrument relating to the Property, or any portion(s) thereof. Owners, or either of them, may create or dedicate portions of the Property as common areas by recording a document with the Lucas County, Ohio Records legally describing such areas to be dedicated, as common areas. At such time, if any, as the Association is incorporated as an Ohio non-profit corporation as permitted in Section 3.1 of this Declaration, the Owners may convey, by recordable Quit-Claim Deed, the common areas owned by the Owners to the incorporated Association and the Association shall thereafter be deemed the owner of such common areas without any other consent of the Association.

NOW, THEREFORE, in consideration of the enhancement in value of the Property by reason of the adoption of this Declaration, Owners, for themselves and their successors and assigns, hereby declare, covenant and stipulate that the Property and all lands comprising the
Property, shall be subject to and shall hereafter be conveyed by Owners, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, successors and assigns, subject to the following covenants, conditions and restrictions:

ARTICLE I

Use of Land; Location of Buildings and Improvements

1.1 Use Restrictions. The Property shall be developed, improved, maintained and used as a first-class, high quality business office and research development known as the MCO FOUNDATION PARK. In particular, no building shall be erected and no portion of the Property shall be used for any use or purpose other than those purposes permitted under the provisions of all applicable zoning, building and other governmental ordinances, codes and regulations, as amended from time to time (the "Codes"). In addition, the Property is subject to and shall be used in compliance with all previously recorded use restrictions including those recorded with the Lucas County, Ohio Recorder at Mortgage Records 96-3122C10, 01-6270A09, 00-1010E07, and 02-2469A01.

1.2 Building Setback Lines. No building or structure or any part thereof shall be erected, placed or maintained on any lot in violation of any set back requirements, building lines or front, rear or side yard requirements prescribed by the Codes or by any Declaration or plat affecting said lot. No portion of any lot nearer to any street than the minimum required front, rear or side yards or set back lines shall be used for any purpose other than that of a lawn; provided, however, that this restriction shall not be construed to prevent the use of such portions of lots for walks, drives, parking areas, trees, shrubbery, flowers, flower beds, ornamental plants and advertising signs or other structures which shall first have been approved as provided under Article II hereof; and provided further, that the depth of the landscaping strip between any parking area and public right-of-way shall not be less than the greater of: (i) one-third (1/3) of any building setback line prescribed by the Codes or by any Declaration or plat affecting said lot or (ii) 25 feet in the front yards and 15 feet on side and rear yards.

1.3 Building Heights. No building shall be constructed on any development site which exceeds the maximum height permitted by the Codes.

1.4 Underground Utility Service. All electric, television, cable and other utility lines and facilities servicing buildings or structures located on the Property shall be underground, except (i) temporary lines and facilities utilized during the construction or rehabilitation of buildings or structures on the Property and (ii) such lines and facilities existing on the date of recording hereof provided, however, that at such time as such existing lines and facilities need to be replaced, such replacements shall be underground.
1.5 **Signs or Advertising.** No billboards, advertising signs or other signs and displays except for a sign identifying the name, business and product of the firm occupying a particular development site and of a size, shape, color and illumination meeting the requirements of this Paragraph 1.5 and of Article II hereof shall be erected, placed or maintained on any lot or on any building or other structure located within the Property. The Architectural Control Committee established pursuant to Article II hereof may, in its discretion, establish uniform standards of size, shape, color and illumination for all such signs and displays within the Property.

1.6 **Loading Docks.** All loading docks on the Property shall be so placed that trucks and other vehicles or machinery using such loading docks will at no time project into a public street, sidewalk, or off-street parking area when in the process of loading or unloading. In addition, no loading docks shall be placed on or along the front elevation of any building or structure located on any development site. Loading dock areas must be screened in such manner and with such materials and landscaping as are approved by the Architectural Control Committee under Article II hereof.

1.7 **Trash Burners.** No trash burner, outdoor fireplace or other device expelling gas or smoke shall be permitted on or at the Property without the prior approval of the Architectural Control Committee established pursuant to Article II hereof.

1.8 **Outside Storage.** No outside storage of equipment, machinery or building supplies or materials shall be permitted on the Property except during and in connection with the construction or rehabilitation of improvements on the Property (or portion thereof), unless fully and attractively screened in such manner and with such materials as are approved by the Architectural Control Committee under Article II hereof. It is the intention of this restriction to limit unsightly storage of equipment, machinery, inventory, etc. In this regard, it is understood that outside storage will be strongly discouraged by the Architectural Control Committee. However, upon prior written request to and approval of the Architectural Control Committee and under certain uses such outside storage would be acceptable and permitted with adequate landscaping and screening. The acceptability of such outside storage will be at the sole discretion of the Architectural Control Committee.

1.9 **Accessory Structures.** No outside or rooftop air conditioning units, telecommunications systems and equipment, satellite dishes, communications towers and other rooftop or outside accessory units or structures shall be installed unless first approved by the Architectural Control Committee pursuant to Article II hereof. If approved, such facilities, units or structures shall be located so as to reasonably minimize their visibility from adjoining lots and attractively screened in such manner and with such materials as are stipulated by the Architectural Control Committee.
1.10 Emissions. No portion of the Property shall be used in any manner which subjects adjacent lots to offensive noise, odors or emissions, except during and in connection with the construction or rehabilitation of improvements at the Property.

1.11 General Maintenance. Each owner of any lot shall keep its land, buildings, improvements and appurtenances thereon in a safe, neat, clean and wholesome condition and shall comply in all respects with all governmental statutes, ordinances, regulations, health, police and fire requirements. Notwithstanding any other provisions of this Declaration, all of the lots shall be maintained in a first-class, high quality manner consistent with the standard for the Property as set forth in the recitals, Article I hereof, and in Article II hereof.

1.12 Drainage. Each owner of a lot shall provide adequate drainage facilities, including storm water detention, in accordance with (a) approved plans on file with the Lucas County Engineer or the City of Toledo, (b) the existing storm sewer system and topography, (c) any plans of the Property, and (d) such methods as may be prescribed by the Architectural Control Committee pursuant to Article II.

ARTICLE II

Approval of Plans

2.1 Architectural Control Committee: Submission of Plans. The plans, drawings and specifications ("Plans and Specifications") for all buildings, structures and other improvements (including, but not limited to, signs, advertising displays, drainage systems, fences, walls, driveways, hedges and other enclosures) to be constructed, reconstructed, enlarged, changed, altered or rehabilitated at or within the Property (collectively herein "Improvements") shall be submitted for examination to the MCO Foundation Park Architectural Control Committee (the "Architectural Control Committee"), and written approval of the Architectural Control Committee to the Plans and Specifications shall be obtained before any such Improvements shall be constructed or placed upon any development site and before any material addition, change or alteration may be made to any Improvements then situated on a development site. The submitted Plans and Specifications shall be prepared by a competent architect or engineer and shall show (a) the size, location, type, architectural design, quality, use, construction and material color scheme of the Improvements, (b) the grading and landscaping plan for the development site, including, where applicable, an underground irrigation system, (c) the lighting plan for the development site, (d) the signage plan and details, including materials, colors, and method of construction, and (e) the finished grade elevations for the development site. The number of sets of such Plans and Specifications to be furnished to the Architectural Control Committee shall be not less than the number of members of the Architectural Control Committee from time to time. The Architectural Control Committee shall approve, reject or approve with modifications all Plans and Specifications within 30 days after written acknowledgment of receipt thereof by the Architectural Control Committee. The failure of the
Architectural Control Committee to so respond within such time period shall be deemed to be approval of the submitted Plans and Specifications.

2.2 Membership of Architectural Control Committee. The Architectural Control Committee shall consist of not less than 3 members and not more than 5 members, and shall be designated and appointed by the vote of the Association (as hereinafter defined) from time to time. Members of the Architectural Control Committee need not be members of the Association. The number of members and voting rights of members of the Architectural Control Committee shall be determined by the Association.

2.3 Architectural Standards, Harmonious Plan. In requiring the submission of Plans and Specifications as herein set forth, the Owners intend to assure the development of the Property as a high quality, architecturally harmonious and desirable business office and research development, with all Improvements to be constructed in such architectural styles, of such materials and colors, and located in such manner as to, in the judgement of the Architectural Control Committee, compliment one another and promote the harmony and desirability of the Property as a whole. In approving or withholding its approval of any Plans and Specifications so submitted, the Architectural Control Committee shall have the right to consider the compliance of the proposed Improvement with this Declaration, the suitability of the proposed Improvement and of the materials of which it is to be built to the development site upon which it is proposed to be erected or added, the appropriateness and harmony of the proposed Improvement in relation to improvements on contiguous or adjacent development sites and in relation to the general plan for the development of the Property, its architectural merits, the effect of the proposed Improvement on the outlook from adjacent or neighboring development sites, the extent to which its location, configuration and landscaping preserve the natural attributes (including any trees thereon) of the development site, and such other matters as may be deemed to be in the interested and to the benefit of the owners of lots as a whole.

2.4 Establishment of Grades. The Architectural Control Committee shall have the right to establish grades, slopes and swales on all development sites and to fix the grade at which any Improvement shall hereafter be erected or placed thereon, so that the same may conform to the general plan for the development and use of the Property. Notwithstanding anything else contained herein, any Improvement shall be erected at an elevation of not less than one foot higher than the 100-year flood level.

2.5 Landscaping. All landscaping shall be fully installed and completed, pursuant to landscaping plans approved by the Architectural Control Committee as part of the Plans and Specifications, not later than 180 days following the date of occupancy of any Improvement. All landscaping material and design must conform with any master landscaping plans which the Architectural Control Committee may adopt. If any landscaping installed pursuant to this Paragraph 2.5 is destroyed, whether by natural or man-made causes, such landscaping shall be promptly replaced with landscaping which, in the judgement of the Architectural Control Committee, is of the same or higher quality.
2.6 Construction in Violation of Approved Plan. In all instances where Plans and Specifications are required to be submitted to and approved by the Architectural Control Committee, if subsequent to receiving such approval, there shall be any variance from the approved Plans and Specifications in the actual construction or location of the Improvements without the written consent of the Architectural Control Committee, such variance shall be deemed a violation of this Declaration.

2.7 Waiver of Restriction. Each lot owner, by acceptance of a deed to a lot, agrees and consents for itself and for its heirs, executors, administrators, personal representatives, successors and assigns, that if, in the opinion of the Architectural Control Committee, the shape, dimensions, location of natural features such as trees, or topography of any lot is such that a strict construction or enforcement of any provision of this Declaration would work a hardship, the Architectural Control Committee may, at its discretion and in writing, grant waivers from this Declaration as to such lot.

2.8 Architectural Control Committee Not Liable for Determinations. Although the Architectural Control Committee is granted by this Declaration certain discretion and rights of approval, disapproval and interpretation, the Owners do hereby for themselves, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, assigns and successors in the ownership of all of the lots, release and forever discharge the Architectural Control Committee and its successors and assigns, from any claims they may have against the Architectural Control Committee and said successors and assigns arising out of the exercise by the Architectural Control Committee or its said successors and assigns of such discretion and such rights of approval, disapproval and interpretation and/or for the failure of the Architectural Control Committee or its said successors and assigns to exercise such discretion, rights of approval, disapproval and interpretation.

2.9 Application Fees. The Architectural Control Committee at its option may require that the Plans and Specifications be accompanied by an application fee to be applied by the Architectural Control Committee toward the costs associated with its review of such Plans and Specifications. Initially, the application fee shall be $100.00, and such fee may be reasonably increased by the Architectural Control Committee from time to time. If the Architectural Control Committee’s actual costs incurred in connection with any application exceed the application fee paid, the owner making such application shall reimburse the Architectural Control Committee, upon invoice therefor, for any such excess.

2.10 Street Trees. The Owners intend to establish and prepare a master plan for the planting and preserving of trees on each development site, generally in the areas along the public and private rights-of-way adjacent to such development sites and in and around parking areas. A copy of said master plan will be maintained at the offices of the Owners. All trees to be planted shall have trunks of between one and one-half inches (1-1/2") and two inches (2") at twelve inches (12") above grade, and shall have balled and burlapped roots. Each development site owner shall plant trees in the quantities and of the types set forth on said
master plan on or before the date which is 6 months after commencement of construction of a structure thereon. If a development site owner fails to plant said trees in accordance with this Paragraph 2.10., the Architectural Control Committee or the Owners shall have the right, without notice to the development site owner, to enter upon said development site and cause said trees to be planted. In such case, the cost of such tree planting plus fifteen percent (15%) shall be added to and become a part of the next annual assessment to which such development site is subject.

2.11 Sidewalks. It is the duty of the owner of each lot, at the expense of each such owner, to keep and maintain the sidewalks and walkways located on and adjacent to such lot (even if same are common areas) in a good and clean manner and to clear the aforesaid sidewalks and walkways of snow, ice, dirt and any other debris within twenty-four (24) hours after deposit thereon, and each such owner shall indemnify and hold The City of Toledo, the Owners, the Association, and the Architectural Control Committee harmless from any liability to any person resulting from such owner's neglect, failure or refusal in performing said duty.

ARTICLE III

The Association

3.1 Membership and Powers. There is hereby created by Owners, who own all of the lots comprising the Property at the present time, the MCO Foundation Park Owners' Association ("Association"). The members of the Association shall be the owners, from time to time, of all of the development sites within the Property. Said owners or their respective heirs, executors, administrators, personal representatives, successors and assigns, and any other parties who may then be members of the Association, shall be permitted, at any time, to convey and assign all of their rights and duties hereunder to an Ohio non-profit corporation which shall thereafter act and function as the Association, and whose membership shall similarly be the owners, from time to time, of all the development sites within the Property. In addition, the Owners of all or a portion of the common areas shall have the right, at any time, to convey fee simple title to all or any portion of the common areas to the Association, and in such instance, the Association shall be required to accept delivery of a recordable quit-claim deed for such purpose. In addition, upon the majority vote of the members of the Association, all owners of such common area shall convey, fee simple title to all of the common area owned by them to the Association to the extent legally conveyable. The Association shall incur all costs and expenses necessary to subdivide or plat the Property in order to allow this conveyance of the common areas to the Association.

3.2 Association Powers and Rights. The Association shall have the following powers and rights:
(a) to promulgate rules and regulations, from time to time, limiting, regulating and controlling the use, enjoyment and operation of the common areas;

(b) to appoint the members of the Architectural Control Committee, in accordance with Paragraph 2.2 hereof;

(c) to enforce all provisions hereof within the Property and all regulations which the Association may promulgate with respect to any and all of the common areas;

(d) to collect assessments (annual and special) and disburse and dispose of funds as herein provided;

(e) to prepare or cause to be prepared, on an annual basis, estimated budgets and determinations of the method of payment of assessments (annual and special);

(f) to keep a full and correct set of books of account, and to make said books of account available for inspection by any lot owner or lot owner's representative at reasonable times during normal business hours;

(g) to prepare annual financial statements;

(h) to own, improve, maintain, alter, repair, replace and remove any and all landscaping, signs, Lakes (as hereinafter defined), ponds, private roadways and bridges, lighting fixtures, fences, trees, grass, equipment and drainage facilities (as hereinafter defined) located on the common areas and/or within any reserved easements at the Property, and to contract in whole or in part for such services and activities;

(i) to provide lighting, sweeping, cleaning, trash pickup, grass cutting, landscaping maintenance and other similar services within the common areas;

(j) to pay all real estate taxes and installments of assessments with respect to the common areas, provided, however, that such common areas are a taxing parcel separate from any development site;
(k) to pay all expenses associated with electrical, water, sewer, fuel or other utility services to the common areas;

(i) to maintain all necessary fire, property and public liability insurance with respect to the common areas, and any necessary directors’ and officers’ liability insurance or similar liability insurance with respect to the Association and/or the Architectural Control Committee; and

(m) to take any and all such other actions as may be reasonably necessary to carry out the powers and rights set forth in this Paragraph 3.2.

3.3 Rights of Members. Subject to such rules and regulations as may be promulgated from time to time by the Association, each member of the Association, in common with all other members, shall have the limited right to use the common areas for all purposes incident to the use and occupancy of its development site and shall have a limited, non-exclusive easement together with the other owners of development sites to the use and enjoyment of the common areas. All members of the Association shall use the common areas in such manner as will not restrict, impede or interfere with the use thereof by other members, and their respective tenants, guests, invitees and licensees.

3.4 Voting Rights. Voting rights within the Association shall be allocated among the members of the Association on a pro rata basis, based on the acreage of the development site(s) rounded to the nearest one one hundredth acre owned by each of the members as compared to the total acreage of all development sites provided, however, that when calculating the acreage of any development site and of all development sites, any portions of same that are (i) common areas or are (ii) within the banks of any ponds or Lakes, shall be excluded from the calculation of such acreage. Notwithstanding the foregoing, until Owners own no development site(s), Owners shall for all purposes hereunder have and be entitled to voting rights within the Association equal to the greater of (i) the voting rights otherwise allocable to Owners based on the acreage of the development site(s) then owned by Owners as set forth above or (ii) fifty one percent (51%) of all such voting rights. When more than one person holds an ownership interest in any development site, all persons holding such ownership interest shall be members of the Association and, in such event, the vote for such development site shall be exercised as said owners among themselves determine, but in no event shall the voting rights attached to such development site be greater than the pro rata share of such development site as determined by the formula set forth in this Paragraph 3.4. Where a vote is cast by one of two or more owners of any development site, the Association shall not be obligated to look to the authority of the member casting the vote. The Owners, while exercising their voting rights hereunder, shall act by unanimous consent unless either of them have ceased to own any development site, in which case, the Owner which continues to own one or more development sites shall vote the interest of the Owners.
ARTICLE IV

Assessments

4.1 Annual Assessments. Each development site shall be subject to a yearly assessment in such amount as may be annually determined by the Association, subject to the maximum amounts set forth in this paragraph 4.1. Except as set forth herein, each development site shall be allocated an assessment equal to its pro rata share of the Association's annual operating budget. Said pro rata share to be based on the acreage of each development site rounded to the nearest one one hundredth of an acre as compared to the total acreage of all development sites as determined by the method set forth in the first sentence of Section 3.4 except that the number of acres (exclusive of portions thereof that are (i) common areas or (ii) within the banks of any pond or Lakes) contained in each development site that has been improved with any building or structure shall be multiplied by 3 for purposes of determining the acreage of that development site as well as the acreage of all development sites. The annual assessment for each calendar year shall be determined by the Association prior to the end of the preceding calendar year and shall be payable to the Association on or before the first day of April of each calendar year for such year. The annual assessments of the Association may be increased, decreased or adjusted from year to year by the Association as the interests of the development site owners may, in the Association’s judgement, require.

Consistent with the powers and rights of the Association under Paragraph 3.2 hereof, the annual assessments of the Association shall be applied only toward payment of the following costs and expenses:

(a) the construction, improvement, maintenance, alteration, and removal of all lands, Lakes, ponds, bikeways, walkways, fences, signs, easements, drainage facilities, buildings, structures, private roadways and bridges, lighting fixtures and accessories, and improvements which comprise the common areas and/or which may be included within public rights-of-way or reserved easements at the Property, and including the employment of personnel to maintain, guard and police the same, and the provision of lighting, sweeping, cleaning, trash pickup, landscaping and other similar services within the common areas;

(b) all taxes, assessments, fees and other charges that may be levied or assessed by any governmental body against the common areas provided, however, that such common areas are a tax parcel separate from any development site;

(c) insurance premiums incurred in insuring the Association;
reasonable costs and expenses of collecting assessments provided for under this Article IV, maintaining and managing the Association obtaining and providing necessary insurance coverages, establishing and maintaining a reasonable contingency reserve for common area maintenance and improvements, and any and all other costs and expenses which the Association may determine from time to time to be for the general benefit and in the best interest of the owners of lots; and

(e) all other costs and expenses reasonably related to the carrying out by the Association of its powers and rights.

The Association shall exercise its discretion and judgement as to the amount of its funds to be expended in connection with each of the purposes for which its funds are collected, and its discretion and reference thereof shall be binding upon all interested parties. Further, Owners do not guarantee or make any representations regarding the sufficiency of such assessments for the purposes set forth herein.

4.2 Special Assessments. Each development site shall also be subject to special assessments in such amounts as the Association may determine, from time to time, as being necessary to pay for unusual or non-recurring costs and expenses of maintaining, repairing, replacing and operating the common areas. Such special assessments, when collected by the Association, shall be held in and disbursed from a separately maintained account. The amount of any such special assessment to be charged to the owner of a development site shall be based upon such development site's pro rata share thereof as determined in accordance with the formula set forth in Section 3.4. Special assessments may be determined by the Association at any time and shall be payable by the development site owners to the Association on or before that date occurring 60 days after the Association has sent notice to the development site owners that such determination has been made by the Association. Special assessments shall also be made upon those development sites at such time as they are improved with any building or structure to reimburse the Owners for a pro-rata share (based on Formula of Section 3.4) of the Owners' (or either Owner's) actual costs of constructing those portions of private roadways, bridges, walkways, lighting, signage, and infrastructure improvements on the Property which are available for use by the owners of all development sites, their agents, employees, and invitees (regardless of whether so used).

4.3 Lien to Secure Payment of Assessments. The Association and the Owners shall have a perpetual lien upon the development sites to secure the payment of any and all of the assessments permitted under this Article IV and each other charges as may be owed pursuant to this Declaration and each such lien shall also be the personal obligation of the owner (and the joint and several obligation of the owners) of each development site at the time when the assessment falls due. If default occurs in the payment of any assessment permitted under this Article IV or any other charge due the Association or Owner for a period of 60 days after its
due date, a "notice of lien" in substantially the following form may be filed and recorded in the lien records at the Office of the Recorder of Lucas County, Ohio:

NOTICE OF LIEN

Notice is hereby given that the MCO Foundation Park Owners' Association claims a lien for unpaid annual assessments and/or special assessments or other charges due pursuant to the Declaration of Covenants, Conditions, and Restrictions recorded with the Lucas County, Ohio Recorder at ________________ for the year(s) ________________ in the amount of $______________ against the following described premises:

(insert legal description)

MCO FOUNDATION PARK OWNERS' ASSOCIATION
By __________________________

Its: __________________________

STATE OF OHIO )
)SS:
COUNTY OF ______ )

The foregoing instrument was acknowledged before me this ______ day of __________, 20____________ by __________________________, the __________________________, of MCO Foundation Park Owners' Association, an Ohio

________________________________________________________________________

Notary Public

In the event any assessments or any other charges are not paid when due, the Association or the Owners as the case may be, may, when and as often as such delinquencies occur, proceed by process of law to collect the amount then due (including its costs and expenses of said collection, and attorney fees) by foreclosure of the above-described lien, or otherwise. No owner may waive or otherwise escape liability for annual assessments, special assessments or other charges by non-use of the common areas or by abandonment of a development site. The lien provided for herein shall be subordinate to the lien of any first mortgage. The sale or conveyance of any development site shall not affect said lien(s) or relieve any development site from the liability for any assessments thereafter becoming due or from the lien thereof.
provided, however, that the sale or conveyance of any development site pursuant to foreclosure of a bona fide first mortgage shall extinguish the lien of the Association as to payments which became due prior to such sale or conveyance.

4.4 Prorations: Certificates. Annual assessments and special assessments (made pursuant to Section 4.1 or 4.2) shall be prorated between the owners of parts of development sites in accordance with the proportion which the area of the development site to which each owner holds legal title bears to the total area of the development site against which the annual assessment or special assessment is made. Upon demand of any development site owner and after payment of a reasonable charge therefore, any officer of the Association shall promptly issue a certificate setting forth whether all assessments have been paid for such owner's development site, and, if not, the total amount of any unpaid assessments. Any such certificate stating that all assessments have been paid shall be conclusive evidence of such payment.

ARTICLE V

Easements, Etc.

5.1 Rights of Way. The Owners reserve to themselves and to their successors and assigns, and for the benefit of each Owner's development site, easements and rights-of-way for the construction, operation, maintenance, repair and replacement of electrical, telephone, cable, and telegraph wires and conduits (which shall, except as otherwise approved under Article II hereof, be underground facilities), sewers, swales and conduits for storm water and sanitary purposes, gas and water mains, roadways and for any other facilities or utility deemed convenient or necessary by the Owners or its successors or assigns for the service of or access to the Property. Said reserved easements and rights of way shall be on, over or under (a) the common areas, (b) those areas designated as "easement(s)" or with language of similar import on any plat or plats of the Property, (c) those portions of the development sites adjacent and contiguous to all dedicated public roadways or private roadways (now existing or hereafter established) abutting the lots within the Property and/or (d) those portions of a development site on which a paved driveway is located providing ingress and egress to Research Drive or Detroit Avenue. Owners also reserve to themselves and to their successors and assigns, the right to assign the use of any or all of said easements and rights-of-way on an exclusive or non-exclusive basis to any person, firm or corporation (i) furnishing any one or more of the aforesaid facilities or utilities and/or (ii) for the purpose of ingress and egress to and from a development site. Upon request of the Architectural Control Committee, the owner (or lessee) of any lot shall join in and execute any document assigning such easement rights. The Architectural Control Committee and its successors and assigns shall have the right to go upon such easement areas from time to time to install, maintain and remove such equipment, improvements and facilities.

5.2 Extension of Rights-of-Way. Each of the Owners reserve to themselves and to their successors and assigns, the exclusive right to extend any of the public rights of way and/or
private roads at the Property to any property owned by or for an Owner and adjacent or adjoining the Property.

5.3 Lakes and Ponds. The Owners already have and/or may construct or improve one or more lakes or ponds on the Property (the "Lakes"). The owners of lots (except the lot upon which such Lakes may be situated) shall not have any right to use the Lakes for recreational purposes or for any other purposes, and such uses shall be strictly prohibited unless otherwise provided by the Association or the owners of the lot upon which the Lake is located. In this regard, no power boats, motor boats, electric motors, gasoline-powered motors or other motors of any kind shall be permitted on the Lakes except any such motors used in the maintenance of the Lakes. Further, any necessary maintenance of the Lakes shall be the responsibility of the Association. No owner of any lot shall permit any discharge or erosion of soil, dirt, sediment or other materials from such owner's lot into the Lakes, into any of the drainage easement areas shown on any plat or plats of the Property, or into any other pond, lake or body of water on the Property, whether before, during or after the construction of any structure on any such lot. In addition, under no circumstances shall the owner of any lot (except the owner of the lot upon which such Lake may be situated) have the right to diminish, control or affect the level, volume or amount of water in the Lakes by means of irrigation or otherwise.

5.4 Control of Common Areas. Notwithstanding anything else contained in this Declaration or in any plat of any portion of the Property, neither the Association nor any owner of any lot shall have any ownership interest in or any right to control the use or development of any common areas (except for the rights set forth in Section 5.1 above), unless and until the Owners shall convey the common areas to or for the benefit of the Association. Thereafter, the owners of all lots shall have only those rights with respect to the common areas as are granted them hereunder and under the articles and code of regulations, if any, of the Association.

ARTICLE VI

Duration and Amendments

6.1 Term. This Declaration shall run with the land and shall be binding upon the Owners, all persons claiming under or through the Owners, all other parties who acquire title to any lots (or parts thereof), and all other persons claiming ownership, possession or use of the Property or any portion thereof, until January 1, 2040, at which time this Declaration shall be automatically extended for successive periods of ten (10) years unless prior to such expiration, the lot owners, by vote (determined pursuant to Paragraph 3.4) of owners owning not less than 75% of all development sites, vote not to so extend this Declaration.

6.2 Amendments. This Declaration may be amended from time to time, but only upon and with the written approval of the then owners of not less than 60% of the total acreage of the development sites within the Property. Notwithstanding the foregoing, no such
amendment shall be effective to the extent it does or may diminish (i) any obligations owed to, (ii) any amounts due to, or (iii) any rights of the Owners (including, but not limited to Owner’s rights under Sections 1.1, 3.4, and 4.1) unless approved and agreed in writing by the Owners. Any amendments referred to in this Paragraph 6.2 shall become effective only upon the filing with the Office of the Lucas County Recorder of an instrument stating the amendment and signed by all approving lot owners with the formalities required by law.

ARTICLE VII

Miscellaneous

7.1 Subordination. None of the restrictions, covenants, agreements or other provisions of this Declaration shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. If any lot or any portion of the Property is acquired in lieu of foreclosure or is sold under foreclosure of any mortgage or under any judicial sale, any purchaser at such sale and the executors, administrators, personal representatives, successors and assigns of such purchaser, shall hold said lot or portion of the Property so purchased or acquired subject to all of the restrictions, covenants, conditions, agreements and other provisions of this Declaration.

7.2 Violations Unlawful. Any violation or attempt to violate this Declaration or any provision hereof shall be unlawful. The Owners, the Architectural Control Committee, the Association or any person or persons owning any lot may prosecute any proceedings at law, or in equity, against the person or persons violating or attempting to violate any provision of this Declaration to prevent such person or persons from so doing, to cause the removal of any violation and/or to recover damages for such violation or attempted violation.

7.3 Saving Clause. The invalidation or unenforceability of any provision(s) of this Declaration by judgement, court order, amendment hereof by act of the owners of lots or otherwise, shall not affect any of the other provisions contained herein, which shall remain in full force and effect.

7.4 Transfers Subject to Declaration. All transfers and conveyances of each and every lot or any part thereof shall be subject to this Declaration.

7.5 Notices. Any notice required to be sent to any owner of a lot or any part thereof or to the Owners 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 Owners or to any member of the Architectural Control Committee as such address appears on the applicable public record or on the records of the Architectural Control Committee.
7.6 Owners' Rights Assignable. The rights, privileges and powers granted herein to, and reserved by, the Owners shall be assignable (in whole or in part) and shall inure to the benefit of the successors and assigns of the Owners.

7.7 No Subdivision of Lots Without Consent. No owner of any lot shall subdivide the same or convey less than the whole of any lot without first obtaining the written consent of the Architectural Control Committee, its successors and assigns, which shall permit such conveyance if, in its judgement, the development site or common area so created by such subdivision will permit construction thereon or development or use thereof which will be in conformity with the development of the Property contemplated by and as set forth in this Declaration. This Paragraph 7.7, however, shall not apply to initial subdivisions and conveyances by the Owners.

7.8 No Waiver of Violations. No provisions hereof shall be abrogated or waived by any failure to enforce any of the same, no matter how many violations or breaches may occur.

7.9 Interpretation. In the event of any question of interpretation hereunder, the Association shall have the right to construe and interpret this Declaration, and its construction or interpretation, in good faith, shall be final and binding as to all persons and property benefited or bound by this Declaration.

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

7.11 Definition of owner. As used in this Declaration, the term "owner" (when not beginning with capital "O") of a portion of the Property shall be defined to mean the record title owner of such portion of the Property.

7.12 Dissolution of Association. The Association may be dissolved with the written and signed assent of members having not less than 90% of the voting power of all members of the Association determined under Paragraph 3.4 hereof. Upon dissolution of the Association, other than incident to a merger or consolidation, the common areas owned in fee by the Association and all facilities and improvements thereon and all other assets owned by the Association shall be dedicated to the City of Toledo, Lucas County, or another appropriate public entity or agency to be used for purposes similar to those for which the Association was created and as contemplated by this Declaration. In the event that such dedication is not accepted and thus cannot be accomplished, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such purposes. The articles and code of regulations of any non-profit corporation formed and operating as the Association, pursuant to Paragraph 3.1 hereof, shall be consistent with this Paragraph 7.12.
The Trustee and Owner, acting by and through their duly authorized representatives, have caused this Declaration to be executed.

FOUNDATION PARK INVESTORS, LLC
By: Medical College of Ohio at Toledo Foundation,
   Its Member

   [Signature]

Its President

MEDICAL COLLEGE OF OHIO AT
TOLEDO FOUNDATION

   [Signature]

   [Signature]

Its President
STATE OF OHIO  

COUNTY OF LUCAS)

The foregoing instrument was acknowledged before me this 5th day of February, 2003 by Lawrence J. Burns, * of Foundation Park Investors, LLC, an Ohio limited liability company, on behalf of the company.

[Signature]
Notary Public

WILLIAM W. CONNELLY
NOTARY PUBLIC — STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R.C.

The foregoing instrument was acknowledged before me this 5th day of February, 2003 by Lawrence J. Burns, President of Medical College of Ohio at Toledo Foundation, an Ohio not-for-profit corporation, on behalf of the corporation.

[Signature]
Notary Public

*, President of Medical College of Ohio at Toledo Foundation, an authorized member

This instrument prepared by:
Timothy A. Konieczny
Robison, Curphey & O'Connell
Four SeaGate, Ninth Floor
Toledo, Ohio 43604

RECEIVED & RECORDED
FEB 14 2003

SUE RIOUX
RECORDE, LUCAS COUNTY, OHIO