The Orchard

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DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made and adopted as of this 15th day of June, 2000 by Orchard Centre Associates, LLC, an Ohio limited liability company, whose address is 1545 Timberwolf Drive, P.O. Box 982, Holland, Ohio 43528 ("Developer").

RECITALS:

The facts on which this Declaration is based are as follows:

A. Developer is currently the owner in fee simple of all the Lots.

B. The Developer may lease and/or sell portions of the Lots subject to, and together with, the benefits of the provisions of this Declaration.

C. Developer desires to establish a general plan for the harmonious development, use and maintenance of the Lots as a first class, high quality commercial, retail, residential and office complex known as "The Orchard." To further that objective, Developer desires to establish certain terms, covenants, conditions, restrictions, easements, liens, rights, burdens, uses and privileges upon the use, improvement, operation and enjoyment of the Lots.

NOW, THEREFORE in consideration of the enhancement in value of the Lots by reason of the adoption of this Declaration, Developer declares, covenants and stipulates that the Lots shall be subject to, and shall hereafter be conveyed by Developer and all Owners subject to, the covenants, conditions and restrictions described in this Declaration.

ARTICLE I
DEFINITIONS

1.1 General. Capitalized terms used in this Declaration have the meaning set forth in this Article 1. Any use of the singular in this Declaration also refers to the plural, and any reference to the plural also refers to the singular.

1.2 Defined Terms.

1.2.1 "Building" means any permanent or temporary building located on a Lot, including any storage structures.

1.2.2 "Building Area" means the total, aggregate usable square footage lying within the exterior walls at all floor levels (including the basement level, if any) of any Building erected on any Lot.
1.2.3 "Commercial Vehicles" means any truck, machine or other vehicle weighing more than 10,000 pounds.

1.2.4 "Common Areas" means private roads, parking lots, driveways, common utilities, landscaping, buildings or other facilities constructed or installed for the mutual and reciprocal benefit of the tenants of Lot 1, and the same or similar improvements, if any, created later on other Lots and designated as Common Areas by the Developer.

1.2.5 "Declaration" means this Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions, as the same may be amended from time to time.

1.2.6 "Default" means any failure of any Owner or the Developer to perform or observe any obligation set forth in this Declaration; or any breach or violation of any covenant, condition or restriction set forth in this Declaration by any Owner or the Developer.

1.2.7 "Developer" means Orchard Centre Associates, LLC, its successors and assigns.

1.2.8 "Development" means the development of Lots 1-9 as a first class, high quality, commercial, retail, residential and office complex known as The Orchard.

1.2.9 "Enforcing Party" means the Developer or any Owner, or the Tenant under the Farmer Jack Lease (as defined herein) for the term of the Farmer Jack Lease.

1.2.10 "Farmer Jack Lease" shall mean the lease dated June 15, 2000 by and between Developer as Landlord and Borman's, Inc. as Tenant/Lessee for the Building proposed to be built on a portion of Lot 1 for Farmer Jack, as amended, extended or modified.

1.2.11 "Governmental Authority" means any local, state or federal governmental or quasi governmental agency, authority, board, bureau, commission, corporation, court, department, district, division, instrumentality or political subdivision, including, but not limited to, the Village of Holland, Ohio, the State of Ohio and the United States of America.

1.2.12 "Improvement" means any permanent or temporary structures or improvements of any kind or nature constructed on a Lot.
1.2.13 "Laws" means any law, statute, ordinance, code, regulation, rule, requirement, guideline, order, writ, decree or directive of any Governmental Authority or the common law, as now or hereafter enacted or amended.

1.2.14 "Lot 1" means the parcel of land legally described as Lot 1 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.15 "Lot 2" means the parcel of land legally described as Lot 2 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.16 "Lot 3" means the parcel of land legally described as Lot 3 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.17 "Lot 4" means the parcel of land legally described as Lot 4 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.18 "Lot 5" means the parcel of land legally described as Lot 5 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.19 "Lot 6" means the parcel of land legally described as Lot 6 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.20 "Lot 7" means the parcel of land legally described as Lot 7 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.21 "Lot 8" means the parcel of land legally described as Lot 8 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.22 "Lot 9" means the parcel of land legally described as Lot 9 in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio and any new lots created as a result of a split or subdivision thereof.

1.2.23 "Lots" means Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8 and Lot 9 or any new lots created as a result of a split or subdivision of any of them. If at any time any Lot or Lots are split or subdivided so as to create one or more physically distinct
tracts of land that are separate tax parcels (and not simply separate tax parcels for the
land and/or all or part of the improvements located on that land) and that could be built
upon in accordance with the Zoning Code, then each such new tract of land that is a
separate, buildable tax parcel shall constitute a separate Lot for all purposes hereunder.

1.2.24 "Owner" means any person or entity who or which is the record owner of
fee simple title to the Lot or any portion thereof; provided, however, in the event of the
sale by an Owner of all or a portion of a Lot and a simultaneous leaseback of the Lot or
portions thereof (a "sale/leaseback"), the seller/lessee under such sale/leaseback shall
be deemed to be the "Owner" of such Lot or portion thereof for the purposes of this
Declaration so long as it is designated in the lease as the "Owner" for the purposes of
this Declaration, and provided further, the lessee of a Lot or a portion of a Lot under a
ground lease having an initial term of twenty (20) years or longer shall be deemed to be
an "Owner" of such Lot or a portion thereof for the purposes of this Declaration so long
as it is designated in the ground lease or other lease as the "Owner" for the purposes of
this Declaration.

1.2.25 "Person" means any natural person, corporation, partnership, limited
liability company, trust, business trust, professional association, unincorporated
association or any other entity of any kind or nature.

1.2.26 "Plat" means the Plat of The Orchard as filed on June 15 2000 and

1.2.27 "Public Rights-of-Way" means the Airport Highway, Orchard Centre Drive,
Spring Meadows West Drive, Nightingale Drive, Holloway Road and other dedicated
public rights-of-way adjacent to any Lot, as the same may be changed or designated
from time to time.

1.2.28 "Tenant under the Farmer Jack Lease" means Borman's, Inc., a Tenant
for Lot 1, and Farmer Jack Supermarkets, the operating entity for Borman's, Inc.

1.1.29 "User" means any Owner or any agent, representative, employee, Tenant
(including any subtenant), customer, guest, licensee or invitee of any Owner or tenant
(including any subtenant).

1.2.30 "Zoning Code" means any Laws relating to land use or development
adopted by the Village of Holland or any other successor Governmental Authority
applicable to the Lots, as now or hereafter enacted or amended.
ARTICLE 2
COMMON AREAS; EASEMENTS; PARKING

2.1 Restrictions on Common Areas.

2.1.1 The Developer does not contemplate the creation of any Common Areas in connection with the development of The Orchard, except on Lot 1 for the use and benefit of the Tenant under the Farmer Jack Lease and other tenants of Lot 1, which Lot 1 Common Areas were created via the Plat for The Orchard (the "Plat"), and utility easements for the Development. The Developer has or will address the maintenance, repair and replacement of Lot 1 Common Areas in various leases with tenants of Lot 1. The Developer hereby agrees to hold harmless and indemnify the Tenant under the Farmer Jack Lease for any and all liability regarding Developer's failure to address the maintenance, repair and replacement of the Common Areas in the leases regarding Lot 1. The maintenance, repair and replacement of the utility easements for the Development are addressed in the Plat. The Developer shall not, without the express written consent of the Tenant under the Farmer Jack Lease (during the term of such lease), which consent shall not be unreasonably withheld, conditioned or delayed, establish or create any additional Common Areas within the Development, unless any such Common Area is contained wholly within a Lot or combination or subdivision of Lots other than Lot 1.

2.1.2 Until such time as Buildings have been constructed on each of the Lots, the Owners of the Lots may with respect to their respective Lot: (i) materially reconfigure or modify the Building Areas on such Lots, and (ii) upon agreement of all Owners of the directly affected Lots modify the size of any of the Lots provided that (a) in no event shall any such modifications or reconfigurations reduce the minimum number of parking spaces within Lot 1, (b) increase the Building Area in excess of that permitted pursuant to Paragraph 3.8 hereof or (c) combine or subdivide Lots 2-6 such that any such reconfiguration of Lots 2-6 will result in more than seven Lots. Notwithstanding anything to the contrary contained above in this Subdivision 2.1.2 or elsewhere in this Declaration, throughout the entire term of the Farmer Jack Lease, as such term may be renewed, modified or otherwise extended, the Building Areas on Lot 1 and the Common Areas may not be altered whatsoever without the prior written consent of the Tenant under the Farmer Jack Lease.

2.2 Parking Areas.

2.2.1 There shall at all times be provided and maintained within the Lots the number of parking spaces shown on the Site Plan for Lot 1. As to Lots 2-9 there shall be not less than the minimum number of parking spaces required for such Lots by local ordinance, subject to any duly authorized variance, special use permit, or other
2.2.2 Except as otherwise expressly provided herein, or by separate agreement between or among Owners, the parking spaces for each Lot shall be used only for the parking of private vehicles of customers, invitees, and employees of the occupants and/or tenants of that Lot and for no other purpose. The customers, invitees and employees of any occupant or tenant of one Lot shall not have any right to park on or in the parking area portion of any other Lot, except as may be agreed in writing between or among Owners. With respect to Lot 1, any private drivers shall be used for pedestrian, customer and vehicular traffic within Lot 1 and also for use by vehicles of suppliers and contractors servicing the businesses of Lot 1 or used in connection with the repair and maintenance of Lot 1 and not for any other purpose. Parking by the tenants of Lot 1 shall be by written agreement set forth in each tenant’s lease with the Owner of Lot 1, but in no event shall any tenant or customer of any tenant park in another tenant’s designated parking area as per the applicable lease.

2.3 Utilities.

2.3.1 With respect to the Lots, each Owner and their respective successors, assigns, mortgagees, employees, agents, lessees and sublessees shall have the right to use in common with the other Owner(s) all utilities which are designed and intended for common use of such Lots (i.e., by way of illustration and not limitation, water and sewer) as shown on the Plat. If there are any utilities which are shared between the Owners of the Lots, no Owner shall do, or cause to be done, or permit any activity on its Lot that would interfere with the usage of the shared utility.

2.3.2 Effective as of the date of this Declaration, the Village of Holland has agreed to maintain the utility easements including drainage, sanitary sewer and water lines for the Development. Subject to the foregoing, each Owner shall at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained below ground and in good order, condition or repair, at its sole cost and expense, any utility or other installations exclusively serving the Owner of such Lot or from time to time existing on the Lot of such Owner and serving another Lot pursuant to an easement. Any Owner may, at its cost and expense, relocate any utility main(s) and/or line(s) installed on its Lot at its own cost and expense or install additional utility main(s) and/or line(s) on its Lot; provided, however, no utility main(s) or line(s) which also provide service to another Lot may be relocated or removed without the prior written consent of the Owner(s) of such other Lot(s), and the Tenant under the Farmer Jack Lease, if such relocation impacts Lot 1. At least ten (10) days prior to relocating any such utility main(s) and/or line(s), the Owner seeking such relocation shall deliver to all other Owners and the Tenant under the Farmer Jack Lease, if applicable, plans and specifications for such relocated utilities prepared by a licensed professional engineer.
Any such relocation shall be accomplished: (i) in accordance with all applicable laws, (ii) in an expeditious manner, (iii) in a manner which will minimize any inconvenience to the Owner of the Lot upon which the relocation is being done and all adjoining Lots impacted by such relocation, and (iv) in a manner which will not interfere with any utility service. All relocated lines shall be installed underground. Any damage to one Lot occasioned by the relocation of any utility main(s) and/or line(s) on another Lot shall be repaired to as good or better a condition as existed prior to such damage by the Owner of the Lot initiating such relocation.

2.4 Signs.

2.4.1 No temporary or permanent billboards, signs, pennants, flags or other signs or displays, except for a sign identifying the name, business and product of the Persons occupying a particular Lot or portion thereof and of a type, design, height, size, shape, color and illumination permitted by applicable laws, rules, regulations and ordinances shall be erected, placed or maintained on any Lot or Improvement located thereon. In no event shall any sign be installed on the roof of any Improvement on any of the parcels or installed in such a manner as to project above the top of any parapet wall, if it is to be affixed to the side or front of an Improvement not having a parapet wall. The Developer shall establish uniform standards for all such signs and displays, which standards may be more restrictive than standards established under the Zoning Code; provided however that such uniform standards shall be subject to the review and approval of the Tenant under the Farmer Jack Lease, which approval shall not be unreasonably withheld, conditioned or delayed.

2.4.2 All signage shall be installed and maintained in accordance with all applicable laws, rules, regulations and ordinances. The signs shall be maintained in first-class condition and in good repair by the Owners of the Lots. The Owner of each of the Lots shall be responsible for the payment of all costs related to the maintenance and replacement of the signs on its respective Lot.

2.4.3 There is hereby granted, declared and reserved for the mutual and reciprocal benefit of the Development and any and all parts thereof, the Owners of the Lots and any and all portions thereof, their respective successors, assigns, mortgagees, tenants (including the Tenant under the Farmer Jack Lease), occupants, employees, agents, lessees and sublessees, an easement for a Monument sign and a Pylon sign at the locations shown on the Site Plan attached hereto as Exhibit A. An approximate six foot high masonry Monument sign ("Monument Sign") that matches the materials used in the construction of the buildings located on Lot 1 and otherwise in compliance with the attached drawing shown hereto as Exhibit ______ is hereby permitted. An approximate 47 foot high Pylon sign ("Pylon Sign") that matches the materials used in the construction of the buildings located on Lot 1 and otherwise in compliance with the attached drawings shown hereto as Exhibit ______ is hereby permitted. The Monument
Sign and the Pylon Sign shall be for the exclusive use of the Development, the Owners of the Lots and any and all portions thereof, their respective successors, assigns, mortgagees, tenants (including the Tenant under the Farmer Jack Lease), occupants, employees, agents, lessees and sublessees. The Tenant under the Farmer Jack Lease shall have the right, at its sole cost and expense, to place its sign panels on the aforementioned signs, and shall be entitled to fifty percent (50%) of the signage area available thereon for individual tenants of the Development, in the most prominent location available to an individual tenant and with the largest lettering, and with no other tenant having lettering exceeding seventy-five percent (75%) the size of its lettering, all as shown on Exhibit [B].

2.5 Rules for Use of Common Areas. No business may be conducted or performed in, on or from any Common Areas created, if any (including, without limitation, the sale of merchandise, distribution of flyers, circulars or advertisements) except as may be specifically permitted in any lease (or sublease) which is currently in or hereinafter in effect for any portion of Lot 1. Any permitted display of merchandise on the sidewalk(s) in front of any leased premises within Lot 1 shall not unreasonably impede pedestrian traffic thereon and shall be consistent with the operation of a first class family shopping center. In addition and subject to the limitation set forth elsewhere in this Declaration, the Tenant under the Farmer Jack Lease shall have the right to designate a portion of the parking lot located on Lot 1 for the installation of (a) an automatic teller machine (“ATM”) and, (b) drive thru services for an ATM or other use including but not limited to a pharmacy or bank.

2.6 Indemnification by Owners. Each Owner of a Lot (the "Indemnifying Owner") shall indemnify and hold harmless each other Owner, and their employees, tenants and agents and anyone else an Owner may identify as having an interest in such other Owner's Lot from any and all claims, causes of action, damages, expenses and liability, including reasonable attorneys' fees, sustained or incurred by any persons which are based upon or arise out of illness or injury, including death of any person or property damage to any property and which arise from or in any manner grow out of the acts or omissions of the Indemnifying Owner, its agents, partners or employees on its Lot and in any Common Areas. The Indemnifying Owner shall immediately respond and assume the investigation, defense, and expense of all claims and causes of action arising out of or in connection with occurrences which are the subject of the indemnification obligations under this subparagraph on its Lot or Common Areas.

2.7 Condemnation. In the event of the condemnation of any portion of any Common Areas, the Owner or Owners of the affected Lot shall, to the extent practicable, promptly repair and restore such Common Areas to the condition the same were in immediately prior to the condemnation.
ARTICLE 3
BUILDINGS

3.1 Building Design, Construction and Maintenance.

3.1.1 The size and location of the buildings to be constructed on Lot 1 shall be located entirely within the Permitted Building Area set forth on the site plan. Except for the Building in Lot 1 which is the subject of the Farmer Jack Lease, no structure on any of the Lots shall be of an exterior height greater than twenty-five feet above grade level plus ornamental elements or contain more than one story, provided that Lots 7 and 8 shall be permitted to have Buildings with exterior heights not greater than is permitted under the Zoning Code. The height restrictions for Buildings shall not apply to any mechanical equipment which may be installed on the Building roof. All Buildings constructed in the Development shall be of such construction and material as is architecturally and visually harmonious in appearance with the other Buildings constructed in the Development and shall be subject to the terms and conditions of Section 6.3.

3.1.2 All Building, or other improvements constructed on any of the Lots, and all construction, alteration, and repair work shall be accomplished in an expeditious and good and workmanlike manner, in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience to the other Lots caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other person or to the improvements on any of the Lots. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall promptly restore the affected portion of the Lots and/or any Common Areas caused by such work to a condition that is equal to or better than the condition that existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith or shall promptly bond over any mechanics or construction lien(s) in accordance with applicable laws and shall indemnify and hold all Owners and anyone an Owner may identify as having an interest in the particular parcel, including but not limited to the Tenant under the Farmer Jack Lease, harmless from all damages, losses, or claims, including reasonable attorneys fees, attributable to the performance of such work.

3.2 Maintenance of Buildings. The Owner of each of the Lots shall maintain, or cause to be maintained, in a safe, clean and tenantable condition and in good order and repair, consistent in manner and appearance with the remainder of the Lots, such Lot, all Buildings and Improvements including, but not limited to, all loading docks, truck facilities, dumpsters, trash receptacles and compactor areas located on each of the Lots. The Owner of Lot 1 shall
additionally maintain the Buildings and Improvements on Lot 1 consistent with a first class family shopping center.

3.3 Maintenance of Vacant Building Areas; Restoration. At any time a Building is not constructed on a Lot, the Owner thereof shall take or cause to be taken such measures as may be necessary to control weeds, blowing dirt and sand, and similar matters. Each Owner having unimproved building areas on its Lot or having a portion of the Improvements on its Lot damaged as a result of a casualty or condemnation shall take such measures, at its expense, either promptly (a) to rebuild any Building and Improvements which are destroyed or damaged by fire or other cause on its Lot, or (b) to clear, clean and raze the damaged improvements and grade and landscape or pave such area so that such area(s) shall be visually harmonious with the remainder of the Lots. If an Owner shall fail to commence to undertake any such measures within ninety (90) days after the casualty or condemnation, and to diligently pursue completion of such measures thereafter, the other Owners, or any of them, or the Tenant during the term of the Farmer Jack Lease, may take such measures and shall be entitled to reimbursement from the Owner of said Lot for (i) their expenses in connection therewith, (ii) interest on sums so expended at the lower of twelve percent (12%) per annum or the highest rate permitted by law and (iii) reasonable attorneys fees incurred.

3.4 Insurance on Buildings. Each Owner will keep, or cause to be kept, all improvements on its Lot insured against loss or damage by fire, windstorm, flood (if applicable), hail, explosions, damage from aircraft and vehicles and smoke damage and such other risks as are from time to time included in "extended coverage" endorsements in the State of Ohio, in amounts sufficient to restore the same to, or replace them with, Buildings and Improvements of comparable size and of at least the quality thereof as originally designed. Notwithstanding the preceding sentence, any Owner may satisfy the obligations imposed by this Section 3.4 by requiring any tenant of the Lots to secure such insurance, in which event, the insurance (or self-insurance, if applicable), provided by such tenant shall be required to comply with this Section. The insurance shall be provided by reputable, regionally recognized, financially sound insurance companies authorized to do business in the State of Ohio. The insurance required by this Section 3.4 may be carried by an Owner (or its tenant) under a so-called "blanket" policy covering other operations of an Owner or its affiliates (or its tenant or its affiliates). The insurance required by this Section 3.4 may be carried by an Owner (or its tenant) under any plan of self-insurance from time to time maintained by such Owner (or its tenant) on the condition that such Owner (or its tenant) maintain a tangible net worth of at least $100,000,000.00. At any time that such Owner's (or its tenant's) tangible net worth does not exceed $100,000,000.00, the right to self-insure any portion of such insurance coverage shall cease (but only for such time as such Owner (or its tenants) fails to maintain the net worth required under this Section) and such Owner (or its tenants) shall immediately procure "ground-up" casualty and property and liability coverage which does not include any self-insured retention or deductible amount. Any Owner (or its tenants) electing to self-insure shall indemnify, defend and hold the other Owners (and their tenants) harmless from and against loss or damage which the other Owners or tenants would have avoided if the required insurance had
been provided by a third party provider. Any Owner or Tenant who elects to self-insure will provide proof upon request from time to time that it is in compliance with requirements which permit Owner (or Tenant) to self-insure the coverages pursuant to this Section.

3.5 Waiver of Subrogation. Each Owner of a Lot or a portion thereof, for itself, and, to the extent it is legally possible for it to do so, on behalf of its fire and extended coverage insurer hereby releases the other Owners and their respective tenants and occupants from any liability for (a) any loss or damage to the property of each Owner and its respective tenants, (b) any loss or damage to buildings or other improvements or the contents of either on the Lots, and/or (c) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage under subparagraph (a), (b) and/or (c) of this subsection is of the type generally covered by standard fire and extended coverage insurance in the State of Ohio. Each Owner shall, to the extent such insurance endorsement is available, obtain for the benefit of the other Owners and their respective tenants and occupants a waiver of any right of subrogation which the fire and extended coverage insurer of such Owner may acquire against the other Owners and their respective tenants and occupants by virtue of the payment of any such loss covered by such insurance. The foregoing waiver and release shall be operative only so long as the same shall not preclude any Owner from obtaining insurance, and shall have no effect to the extent that it diminishes, reduces, or impairs the liability of any insurer or the scope of any coverage under any policy applicable to any portion of the Lots or any buildings therein. Notwithstanding anything to the contrary contained above in this paragraph, any waivers of rights set forth in any lease(s) between any Owner(s) and any tenant(s) shall not be affected by the provisions of this paragraph.

3.6 Building Set Back Lines. No Building or any part thereof shall be constructed, placed or maintained on any Lot in violation of any of the front, rear or side lot lines prescribed by the Zoning Code. Any building in excess of 12,000 square feet to be constructed on Lot 3 shall be constructed in its entirety south of the frontage for the building constructed for the Tenant of the Farmer Jack Lease, as such storefront line would be extended from Lot 1 to Lot 8, unless otherwise approved by the Tenant under the Farmer Jack Lease in writing, which approval shall not be unreasonably withheld, conditioned or delayed, and which building or buildings and use shall otherwise be in compliance with this DRE, building code and all applicable governmental laws, rules and regulations. No portion of any Lot nearer to any Public Rights-of-Way than said front, rear or side lot 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 the Lots for walks, drives, parking areas, trees, shrubbery, flowers, flower beds, ornamental plants and signs that have been approved by the Developer.

3.7 Building Sites; Screening. No Building shall be erected or constructed on Lot 1 other than within the Permitted Building Area for such Lot as shown on the Site Plan for Lot 1. The portion of any Building located on any Lot that faces Lot 1 shall be screened and landscaped in a manner acceptable to and approved by the Developer and such screening and landscaping shall at all times be maintained in a good and safe condition.
3.8 Building Size. Notwithstanding any other term or condition hereof, no Building shall be constructed on any one of the Lots which contains more Building Area than fifteen percent (15%) of the total square footage of the land comprising the Lot; provided that, the applicable percentage for measuring permitted Building Area size on any Lot on which a drug store is located is twenty percent (20%); provided that buildings for uses on Lots 7 and 8 only that otherwise comply with this Declaration shall not be required to comply with the aforementioned restriction, provided that the Building or Buildings to be constructed on Lots 7 and 8 shall comply with building code and all other applicable governmental regulations; provided further that, notwithstanding the foregoing, the Building Area restriction for Lot 9 shall be 6,000 square feet.

3.9 Underground Utility Service and Irrigation. All electric, television, cable and other utility lines, equipment, fixtures and facilities servicing any Building or other Improvements shall be underground, except temporary lines, equipment, fixtures and facilities utilized during construction. Each lawn or landscaped area on each Lot shall have installed on it an operational underground irrigation system. Each lawn and landscaped area on each Lot shall be irrigated on a regular basis, except during any water emergency declared by a Governmental Authority.

3.10 Loading Docks. All loading dock portions of any Building shall be so placed that Commercial Vehicles using such loading docks do not project into the sidewalk, off street parking area or Public Rights-of-Way when loading or unloading. No loading docks shall be placed on or along the front elevation of any Building. Loading docks shall be screened in such manner and with such materials and landscaping as are approved by the Developer.

3.11 Smoke; Trash. No trash burner, outdoor fireplace, grill or other device expelling gas or smoke shall be permitted on any Lot without the prior approval of the Developer. All garbage cans, waste containers, dumpsters or other trash receptacles shall be located approved by the Developer and shall be screened by an enclosure made of the same exterior material as the primary Building on the Lot not less than six (6) feet in height completely blocking the same from view except during loading or unloading.

3.12 Outside Storage. No outside storage of boxes, pallets, equipment, machinery, supplies or any other materials shall be permitted on any Lot except during and in connection with the construction or rehabilitation of Improvements on a Lot.

3.13 General Maintenance; Compliance with Laws. Each Owner shall keep that Owner's Lot, including all lawns, landscaping and Improvements, in a clean, safe and neat condition and shall comply with all Laws applicable thereto. All Lots shall be maintained in a first class, high quality manner consistent with the standards for the Lots set forth in this Declaration.
ARTICLE 4
REPAIR AND MAINTENANCE OF COMMON AREAS

4.1 The provisions of Articles 4.1 – 4.4 shall apply only if and to the extent that any one of the following occurs (a) Common Areas are hereafter established at Lots 2-9 by the Developer, (b) if the Village of Holland elects to no longer maintain certain of the Common Areas on Lot 1, or (c) if the Developer elects to have the Common Areas on Lot 1 governed by an Association.

4.1 Repair and Maintenance of Common Areas.

4.1.1 The Developer and/or an association set up by the Owners of the Lots with the written consent of the Developer ("Association") shall operate, maintain and repair and/or replace the Common Areas in good order, condition and repair, consistent with prevailing standards found in first class commercial/retail projects that are located in the same metropolitan area as the Lots. Subject to reimbursement as provided herein, the Developer and/or the Association shall operate, maintain, repair and replace all portions of the Common Areas in a good and commercially sound manner so as to keep all such areas in a clean, safe and functional condition, and in good order and repair at all times. In connection with such operation, maintenance, repair and replacement of Common Areas, but not in limitation thereof, the Developer and/or the Association shall:

4.1.1.1 Maintain, repair, resurface and replace any private roads to prevent the same from becoming unsightly, including repairing all potholes and cracks.

4.1.1.2 Remove all papers, debris, filth, and refuse from (including periodically sweeping) all portions of the private roads and landscape areas, to keep the same in a clean and orderly condition, and store all garbage from the Common Areas in adequate, screened containers and provide for regular collection of such garbage.

4.1.1.3 Promptly clear snow and ice from the private roads.

4.1.1.4 Maintain and replace, if necessary, the lighting facilities.

4.1.1.5 Maintain all landscape areas, including replacing dead shrubs, trees and other landscaping as necessary (replacement of any landscaping item such as trees, shrubs and grass shall not be deemed a capital expenditure or improvement), trimming bushes and trees, regular grass mowing, performing all weeding, pruning and fertilizing, and maintaining and replacing the automatic sprinkler system serving such landscape areas.
4.1.1.6 Maintain, repaint and restripe markers, directional lanes and traffic markers in the private roads, as needed.

4.1.1.7 Maintain, repair and replace all common utility facilities to the extent not maintained by Governmental Authorities.

4.1.1.8 Pay all wages, workers' compensation insurance, unemployment taxes and other costs and expenses of employees necessary to maintain the Common Areas.

4.1.1.9 Pay all contractors' fees in the event maintenance, and operation of the Common Areas are performed by an independent contractor.

4.1.1.10 Pay all taxes and special assessments, including real estate taxes, personal property or leasing taxes on the Common Areas or associated with the operation of the Common Areas.

4.1.1.11 Maintain the identification signs.

4.1.1.12 Keep all private roads lighted during darkness.

4.2 Payment of Common Area Maintenance Costs and Taxes. Each Owner shall pay or require its tenant to pay its share of the Common Area maintenance costs, which share shall be equal to the amount obtained by multiplying each year's annual actual Common Area maintenance costs, as determined by Developer and/or Association, by a fraction, the numerator of which shall be the number of square feet of floor area of the Building constructed or to be constructed within such Owner's Lot and the denominator of which shall be the number of square feet of floor area of (i) such Building, plus (ii) all other Buildings constructed or to be constructed on such Owner's Lot, plus (iii) all other Buildings constructed or to be constructed on all other Lots, as reasonably determined by Developer and/or Association. Such payments shall be made in advance on a monthly basis and shall be determined in accordance with the following:

4.2.1 On or before March 1 of each calendar year, the Developer and/or Association shall cause to be prepared and submitted to each Owner an annual statement ("Annual Statement"), along with copies of reasonable supporting documentation of such Common Area maintenance costs for such Owner or Lot. Upon notice from the Developer, each Owner will pay to the Developer or the Association on a monthly basis (on the first day of each month) an amount equal to one-twelfth (1/12th) of such Owner's Lots' Estimated Cost (hereinafter defined in subparagraph 4.3.2).

4.2.2 Each Annual Statement to an Owner shall: (i) contain a statement of the actual Common Area maintenance costs for the previous calendar year (and reasonable
supporting documentation therefor); (ii) set forth the computation of the Owner's actual share of the Common Area maintenance costs for such previous calendar year based on the actual costs for the same; (iii) be accompanied with the proposed and estimated annual budget for the present calendar year (which estimated budget shall be limited to 103% of previous calendar year's actual Common Area Costs (except no such limitation shall exist for any calendar year for which no previous year's actual Common Area costs exist), but such limitation of 103% shall not in any way be deemed to be a limit on the actual Common Area Costs); and (iv) set forth a computation of the Owner's estimated share of Common Area maintenance costs for the present calendar year based on the proposed annual budget (the "Estimated Cost"). Within thirty (30) days after the delivery of the Annual Statement, the Owner shall make a lump sum payment equal to the amount, if any, by which its payments of the Estimated Costs for the period covered by the Annual Statement are less than the Owner's share of Common Area maintenance costs based on the actual costs for the period in question. If the Annual Statement reveals that the Owner has overpaid its share of Common Area maintenance costs, then the Developer and/or Association shall refund such amount to the Owner within thirty (30) days. The effect of this Section is that each Owner will pay each year its share of Common Area maintenance costs based on the actual costs for the same. Any Owner or any tenant of a Lot may audit Common Area maintenance costs for a period of one year after the applicable calendar year, and upon reasonable notice to the Developer and/or the Association.

4.2.3 Notwithstanding the foregoing provisions of this Section, at any time during the term of the Farmer Jack Lease, the tenant thereunder may, if in its sole and absolute discretion it believes the Developer, Owners, and/or Association are failing to properly repair and maintain the Common Areas as required hereunder, maintain and repair such Common Areas and obtain reimbursement therefor as set forth in Section 4.5 herein.

4.3 Payment of Taxes and Insurance. Each Owner of a Lot shall (i) timely pay the real estate taxes and assessments assessed against its Lot; and (ii) obtain and continuously maintain comprehensive liability insurance on its Lot and on any Common Areas on its Lot in commercially reasonable amounts with respect to loss of life, bodily injury, and/or damage to property arising out of any one occurrence. If any Common Areas are created on Lots 2-9 the liability insurance policies on the Common Areas of each Lot shall name the Owner of the other Lots (and anyone else the Owner may identify as having an interest in such Owner's Lot, including the Tenant under the Farmer Jack Lease) as an additional insured and all such insurance policies shall provide that no cancellation, reduction or other material changes therein shall be effective until at least thirty (30) days after mailing of written notice thereof to such insured party(s).

4.3.1 To the extent not covered by the insurance policies described above, each Owner (the "Indemnitor") will pay, and indemnify and save harmless the other
Owners (and anyone else the Owner may identify as having an interest in such Owner's Lot, including specifically the Tenant under the Farmer Jack Lease) (the "Indemnitee") from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from (i) any injury to or death of a person or loss of or damage to property, including the Indemnitee's real property and the personal property of any tenants of the Indemnitee, occurring on the Indemnitor's Lot; (ii) any use or condition of the Indemnitor's Lot; and (iii) any negligence or tortious acts of the Indemnitor or any of its agents or employees.

4.4 Failure to Perform.

4.4.1 In the event an Owner shall fail to perform its obligations under this Declaration (a "Defaulting Owner"), the Owners of the other Lots and the Tenant under the Farmer Jack Lease, may send notice to the Defaulting Owner setting forth the obligation which the Defaulting Owner has failed to perform. In the event such obligation is not performed within thirty (30) days after receipt of such notice, unless the Defaulting Owner shall have commenced to perform the same within such period and shall at all times thereafter be diligently proceeding to perform the same to completion, then the Owners of the other Lots and the Tenant under the Farmer Jack Lease shall have the right to perform the same; provided that the right of the Tenant under the Farmer Jack Lease to perform such work shall only exist while they are a Tenant of Lot 1 and such lease remains in effect. An Owner shall not be deemed to have failed to perform its obligations hereunder for so long as such delay is prevented or to strikes, lockouts, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of the Owner, provided that lack of funds shall not be deemed a cause beyond the control of the Owner.

4.4.2 In the event failure to perform any repair or maintenance or any of the obligations under this Declaration causes an emergency, or performance of such repair or maintenance or such obligation(s) under this Declaration is necessary to prevent or relieve an emergency, then the notice required to be given under this Declaration need only be such reasonable notice, if any, as is warranted by the nature of the specific condition involved, and notwithstanding anything to the contrary contained in this Declaration, an Owner may immediately undertake any measures necessary to comply with its obligations to, and the rights of, its tenants and the subtenants of its Lot.

4.4.3 In the event any Owner or the Tenant under the Farmer Jack Lease performs any of the obligations of a Defaulting Owner who fails to perform its obligations under this Declaration, such Owner or the Tenant under the Farmer Jack Lease shall be reimbursed by the Defaulting Owner within thirty (30) days of presentation of a statement thereof together with copies of supporting documentation, failing which, such Owner or
the Tenant under the Farmer Jack Lease shall have a lien against the Lot of the
Defaulting Owner for the unpaid amount together with interest thereon from the date said
reimbursement was due until paid in full at the rate of twelve percent (12%) per annum
or the highest rate permitted by law, whichever is lower. Such lien shall be subordinate
to the interest of any mortgagee, lessee or sublessee of the affected Lot, irrespective of
when its interest attached, and may be enforced and foreclosed in a suit or action
brought in any court of competent jurisdiction in the same manner as any mortgage in
the State of Ohio with such Owner or the Tenant under the Farmer Jack Lease being
deemed the mortgagee of such mortgage. Such lien shall be evidenced by a notice filed
in the offices where a mortgage on such property may be filed and shall have priority
with all other interests and encumbrances in accordance with the time of filing. In any
such foreclosure, the Owner of the Lot which is being foreclosed, shall pay to such other
Owner or the Tenant under the Farmer Jack Lease any reasonable attorneys fees
incurred by such party in such proceedings. The remedies provided for herein are in
addition to and not in lieu of any other rights or remedies available at law or in equity,
and any Owner or the Tenant under the Farmer Jack Lease shall have the right to
enforce the provisions of this Declaration by an appropriate action at law or in equity,
including, without limitation, an action for specific performance or an injunction
preventing the non-complying party or those claiming under the non-complying party
from using any easement granted in this Declaration.

ARTICLE 5
LAND USE

5.1 Permitted and Prohibited Uses.

5.1.1 Permitted Uses. The Lots shall be used only for commercial offices,
retail stores, restaurants, and such other uses as may from time to time be approved by
the Developer and the Tenant under the Farmer Jack Lease, together with accessory
facilities relating to such uses, or as otherwise permitted herein. No Lot may be used for
any unlawful purpose or any use prohibited in Section 5.1.2 below.

5.1.2 Prohibited Uses. Other than the premises to be leased pursuant to the
Farmer Jack Lease (or any expansion thereof), for the term of such lease, and Lot B, or
as otherwise provided herein, no portion of the Lots shall be used for the sale of food for
off-premises consumption. Other than the premises to be leased pursuant to the Farmer
Jack Lease (or any expansion thereof), for the term of such lease, no portion of the Lots
shall be used for the sale of health and beauty aids and/or the sale of prescription drugs
except as otherwise provided herein. Developer covenants and agrees that no portion
of Lot 8 shall be used for any of the following purposes:

1. a supermarket
2. a grocery store
3. a produce store
4. a meat market
5. a seafood market
6. a so-called "natural" or "whole" foods market
7. a convenience food store
8. a delicatessen (unless more than fifty percent ($50%) of the sales of such delicatessen shall originate from the sale of foods for on-premises consumption, in which case such a delicatessen style restaurant shall be permitted)
9. a bakery (this restriction shall not, however, prohibit the use, or any portion thereof, for use as a restaurant in the nature of a Big Apple Bagel or Panera Bread Company, or any similar style restaurant), or
10. any use whose principal business is the sale of foods for off-premises consumption.

Additionally, no Lot shall be used for any:

a. business or establishment the primary purpose of which is the staging, presentation, promotion, sale, distribution or dissemination of pornographic, obscene or offensive acts, conduct, shows, events, books, materials, information or data (including but not limited to pornographic and movies) on or in any medium or materials of any kind or nature;
b. obnoxious or offensive use;
c. manufacturing facility (provided, however, for the supermarket operated pursuant to the Farmer Jack lease activities such as, by way of illustration but not limitation, meat cutting, juice extraction, baking and other food processing or preparation activities shall be permitted);
d. restaurant (except as permitted herein);
e. theater, movie house or cinema;
f. bowling alley, skating rink, pool or billiards hall (provided that a pool or billiards hall shall be permitted if it is located not less than 200 linear feet from the demised premises under the Farmer Jack lease and is a "high end" pool or billiards hall similar to the "Breakers" or "Roosevelts" pool halls located in southeastern Michigan, or similar type operation);
g. crematory, funeral parlor or mortuary;
h. warehouse (except as may be incidental to a permitted retail and/or retail services use);
i. office (except for retail service offices on Lot 1 such as, by way of illustration but not limitation, a residential real estate sales office, an insurance sales office, a travel agency office, etc.); provided further, that general office uses shall be permitted on Lots 7 through 9;
j. bar, sl.oon, tavern or other drinking establishment;
k. church or other place of religious worship (except that a church shall be permitted on Lot 8);
l. game room, video or pinball arcade or similar activity;
m. roller rink;
n. dancing establishments other than dance instruction;
o. night club or discotheque;
p. school (but the occasional, temporary, incidental use of space within a permitted retail business for instructional purposes is not prohibited by this restriction), provided that schools shall be permitted on Lot 3 provided that such school building shall not be located nearer than 300 linear feet from the demised premises under the Farmer Jack Lease and the parking shall be self-contained and per municipal building code;
q. motor vehicle sales (provided, however, such sales may be made from the demised premises leased pursuant to the Farmer Jack Lease if not more than two (2) of such vehicles are situated on or about the premises) or service establishment.
r. karate studio, health club, fitness facility, spa or gymnasium (except that any such use shall be permitted on Lots 1 through 6 and 9 if it is located not closer than 250 linear feet from the demised premises under the Farmer Jack Lease, and the building for such use shall not exceed a Building Area of 8,000 square feet; and provided further that such a use shall be permitted on Lot 8 if the building for such use is located not closer than 250 linear feet from the demised premises under the Farmer Jack Lease, and, if the Building Area is greater than 12,000 square feet, then the building to be constructed shall be located in its entirety south of the frontage for the building on the demised premises under the Farmer Jack Lease, as such storefront line is extended from Lot 1 to Lot 8, unless otherwise approved by the Tenant in writing, which approval will not be unreasonably withheld, conditioned or delayed.
s. flea market, second-hand or surplus store (but a store selling in a "first class" manner antiques or estate jewelry shall be permitted);
t. living quarters, sleeping apartments or lodging rooms, mobile home park or trailer court, except for Lots 7 and 8 which may be used for residential purposes, but not including a mobile home park or trailer court;
u. any dumping, disposing, incineration or reduction of garbage (excluding, however, appropriately screened dumpsters or trash compactors located in the rear of the building);
v. fire sales, "going out of business" sales, bankruptcy sales (unless pursuant to a court order or legitimate liquidation of an Owner or tenant) or auction house operation;
w. any dry cleaning plant (except that this prohibition shall not be applicable to on-site service provided solely for pick up and delivery by a retail customer, including nominal supporting facilities);
x. veterinary hospital or animal raising facilities provided, however, that this prohibition shall not prohibit pet shops and/or pet food stores which have incidental veterinarian services and/or the sale of live pets as a part of their business;
y. auditorium, meeting hall or other place of public assembly, provided that a banquet hall of not more than 25,000 square feet may be constructed on Lot 8 so long as the building for such use is not located nearer than 500 linear feet from the demised premises under the Farmer Jack Lease and the parking shall be self-contained and per municipal building code;
z. sports or entertainment facility;
aa. massage or tattoo parlor;
bb. car wash (except a car wash shall be permitted on Lot 8);
cc. bingo parlor, off-track betting facility, gambling casino or gaming hall (but games of chance conducted and/or sponsored by the State of Ohio or any subdivision thereof shall be permitted as an incidental part of any permitted business);
dd. gun or archery range;
ee. providing medical or dental services on Lot 1 including, but not limited to, human reproductive counseling clinics and the like (except that a medical or dental services facility shall be permitted on Lot 1 if located not closer than 200 linear feet from the demised premises under the Farmer Jack Lease and does not exceed 3,000 square feet. Medical and dental offices on Lots 2 through 9 and general offices on Lots 7 through 9 shall be a permitted use provided that, regarding Lot 8 only, such uses are not less than 200 linear feet from the premises under the Farmer Jack Lease.
ff. "Odd Lot" stores or similar type retail operation selling "seconds" or "close outs."

5.1.3 Notwithstanding the restrictions above, the following uses shall be permitted on Lot 1 and other specifically designated Lots:

a. sit-down, dine-in restaurants (with incidental take-out sales) and whose sales of alcoholic beverages within and from any such restaurant shall not exceed fifty (50%) percent of the total sales of such restaurant ("Sit-Down Restaurants") not exceeding 7,500 sq. ft. of ground floor area, provided further that the buildings for such restaurants shall not be located nearer than 200 linear ft. from the demised premises under the Farmer Jack Lease; provided further that Sit-Down Restaurants not exceeding 12,000 sq. ft. of ground floor area shall be permitted on Lot 3 only of the Development provided that such restaurants shall have self-contained parking per local building code and the buildings for such restaurants shall not be located nearer than 300 linear ft. from the demised premises under the Farmer Jack Lease and provided further that Sit-Down Restaurants shall be permitted on Lots 2 through 7, and 9 provided that such
restaurants shall have self-contained parking per local building code and the buildings for such restaurants shall be not less than 200 linear feet from the demised premises under the Farmer Jack Lease.

b. take out or drive thru restaurant on Lots 1 through 9; provided the buildings for such take out or drive thru restaurants on Lot 1 shall be permitted if located not closer than 200 linear feet from the demised premises under the Farmer Jack Lease.

c. retail service office uses such as, by way of illustration and not limitation, (a) an insurance agency sales office and/or (b) a travel agency office and/or (c) a residential real estate sales office and/or (d) a retail financial services office (such as, by way of illustration and not limitation, an Olde Discount brokerage office and/or a Household Finance office, a branch bank with an ATM etc.), and/or (e) an ophtalmologist's office (such as, by way of illustration and not limitation, a Pearle Vision Center and/or a Lenscrafters office, etc.).

d. the incidental sales of candy, gum, mints, and single package or container snack foods and beverages (as distinguished from multiple packs or cartons of such items) from any premises within Lot 1 whose primary business is other than the sale of food items.

5.1.4 Notwithstanding the restrictions above, there shall also be allowed a drugstore on Lot 4 selling, among other things: (i) health and beauty aids; (ii) prescription drugs and/or non-prescription drugs; and (iii) food for off-premises consumption, provided that the following conditions and limitations are satisfied:

a. the total floor area in the space occupied by such drugstore that is devoted to the sale of food items for off-premises consumption shall not exceed 1000 sq. ft. Such square footage shall be determined by including in the calculation of the space devoted to the sale of food items all floor area under any shelving and all floor area under any enclosures (i.e., coolers, etc.) on and from which food items are displayed or otherwise made available for purchase together with one-half of the aisle adjacent to such shelving and enclosures. The term "food items" when used herein shall not include the sales of candy, nuts, gum, alcoholic and non-alcoholic beverages, vitamins, minerals, nutritional supplements, baby food and baby formula;

b. no exterior signage or signage within the interior which is clearly visible from the outside of the building shall indicate that such space is, or contains, a "food mart", "convenience store", or other similar food store operation; and
c. the freestanding monument or pylon sign which identifies the
drugstore or Lot 4 or any portion thereof may indicate "pharmacy", or similar
phrases evidencing services that are available provided, however, that such
signage shall not advertise (i) a "drive-through pharmacy", or (ii) food and/or any
beverage products.

5.2 Compliance with Zoning Code. Each Owner shall fully comply with all applicable
requirements of the Zoning Code, which requirements, as amended from time to time, are
incorporated by reference into this Declaration. Any violation of the Zoning Code may be
enforced in the same manner and to same extent as any other Default. To the extent that any use
of a Lot constitutes a nonconforming use or the Owner of a Lot obtains any variance, exemption,
waiver, conditional or special use permit or other approval contemplated by the Zoning Code,
such Owner's use shall also require the approval of the Developer, and during the term of the
Farmer Jack Lease, from the Tenant thereunder also. The granting of any variance, exemption or
waiver by the Developer shall not relieve the Owner of any Lot from also obtaining any required
approval from any Governmental Authorities under the Zoning Code or any other Laws. To the
extent that this Declaration is more restrictive than the Zoning Code, then this Declaration shall be
deemed to be controlling.

ARTICLE 6
DEVELOPMENT APPROVAL

6.1 Establishment of Standards. The Developer, with the express written approval
of the Tenant under the Farmer Jack Lease during the term of such lease, which approval shall
not be unreasonably withheld or delayed, may develop uniform standards for the design,
development, clearing, grading, construction, installation, erection, maintenance, reconstruction,
operation, improvement, change or alteration of the Lots, which standards shall be consistent with
this Declaration and the Zoning Code. The Developer, with the express written approval of the
Tenant under the Farmer Jack Lease during the term of such lease, is further authorized to implement,
modify, amend and supplement such standards from time to time. Without limiting the
foregoing, the Developer shall have the right to establish grades, slopes and swails on all Lots
and to fix the grade to which any Improvement is erected or placed thereon, so that the same
conform to the general plan for the development and use of the Lots.

6.2 Approval of Plans.

6.2.1 Submission of Plans. Before beginning the construction, renovation,
alteration, modification or change of any new or existing Improvements on a Lot, the
Owner of that Lot shall submit to the Developer a complete set of plans, drawings and
 specifications for the proposed Improvements ("Plans and Specifications"). The Plans and
Specifications shall be prepared by a competent architect and shall show (a) the size,
height, location, type, architectural design, quality, cost uses, construction and color
scheme of the Improvements; (b) the landscaping plan for the Lot, including an
underground sprinkler system; (c) the grading plan for the Lot; and (d) the finished grade elevation.

6.2.2 Tenant Approval. Upon receipt of Plans and Specifications for construction of Improvements to any Lot, the Developer shall submit the Plans and Specifications to the Tenant under the Farmer Jack Lease during the term of such lease. The Tenant under the Farmer Jack Lease, using reasonable discretion, shall approve, reject or approve with modifications the Plans and Specifications within twenty (20) days after receipt thereof. The failure of the Tenant under the Farmer Jack Lease to respond to Developer within such time period shall be deemed to be approval of the submission. The approval rights described herein with respect to the Tenant under the Farmer Jack Lease shall apply only so long as the Farmer Jack Lease is in effect with respect to Lot 1, and shall terminate with respect to each of the Lots upon completion of the initial construction of any Building or Improvements on such Lots.

6.2.3 Time for Approval. The Developer, using reasonable discretion and incorporating the approval or rejection of the Tenant under the Farmer Jack Lease as applicable, shall approve, reject or approve with modifications the Plans and Specifications within 30 days after submission of Plans and Specifications meeting the requirements described herein. The failure of the Developer to respond within such time period shall be deemed to be approval of the submission, provided that any failure by Developer to respond shall not be deemed approval by the Tenant under the Farmer Jack Lease unless such Tenant has approved the Plans and Specifications or failed to respond within the time period specified in Section 6.2.2.

6.3 Architectural Standards, Harmonious Plan. The Developer intends to assure the development of the Lots as a high quality and architecturally harmonious and desirable commercial, office, residential, and retail complex, with all Improvements to be constructed in such architectural styles, of such materials, with such colors and in such a manner as to, in the reasonable judgment of the Developer and the Tenant under the Farmer Jack Lease, complement one another and promote the harmony and desirability of the Lots. In approving, denying or modifying any Plans and Specifications, the Developer and the Tenant under the Farmer Jack Lease, in their reasonable discretion, shall have the right to consider the compliance of the proposed Improvements with this Declaration; the suitability of the proposed Improvements and of the materials of which they are to be built to the Lot upon which they are proposed to be constructed; the appropriateness and harmony of the Improvements in relation to Improvements on contiguous or adjacent Lots and in relation to the general plan for the development of the Lots; architectural merits of the proposed Improvement; the effect of the proposed Improvement on the outlook from adjacent or neighboring Lots; the extent to which the location, configuration and landscaping of the proposed Improvements preserve the natural attributes of the Lot; and such other matters as may be reasonably deemed to be in the interest and to the benefit of the Owners of the Lots and the Tenant under the Farmer Jack Lease. Notwithstanding the preceding, Developer and the Tenant under the Farmer Jack Lease agree that any prospective tenant's or
owner's prototype building plan for a national retail or restaurant operator shall be presumed to be satisfactory, provided that such facility uses reasonable and diligent efforts to have its design and construction comport with the requirements contained in the balance of this paragraph.

6.4 Variances, Waivers and Exemptions. With the express written approval of the Tenant under the Farmer Jack Lease during the term of such lease, the Developer has the right to grant a variance, exemption or waiver from any of the standards established by the Developer or imposed by this Declaration, including any standards or requirements imposed solely as a result of incorporation by reference of the standards and requirements of the Zoning Code into this Declaration. Nothing contained herein shall be deemed to give the Developer any right, power or authority granted to any Governmental Authority under the Zoning Code or to relieve the Owner from obtaining any approvals required under or performing obligations imposed by the Zoning Code or any other easements, agreements or restrictions encumbering the Lots.

6.5 Construction. If the construction of the improvements is not commenced within one (1) year following the date of such approval and is not completed within two (2) years following the date of such approval, the approval shall be void, and the Owner of the Lot on which such improvements are proposed shall resubmit the Plans and Specifications for approval by the Developer.

6.6 Failure to Obtain Approval; Construction in Violation of Approved Plan. If any Owner of a Lot fails to obtain the approval of the Developer or fails to construct the Improvements in strict accordance with the Plans and Specifications approved by the Developer, such construction shall be deemed to be a nuisance and a violation of this Declaration, and each Enforcing Party shall have the rights set forth in Article 4.

6.7 Developer Not Liable to Owner. Notwithstanding anything to the contrary contained in this Declaration, the Developer, so long as it shall have acted reasonably, shall not have any liability or obligation to any Owner of a Lot as a result of the approval, modification or non-approval of any Plans or Specifications. Without limiting the foregoing, the Developer shall not have any liability to any Owner of a Lot as a result of the approval, modification or non-approval of any Plans and Specifications (i) that is inconsistent with any Plans and Specifications previously or subsequently approved for that or any other Lot; (ii) that permits the Owners of one Lot to construct Improvements that were or are denied to Owners of any other Lot; (iii) that is different than any published standards; (iv) that is different than or affords a variance, waiver or exemption of or from any standards set forth in this Declaration or established by the Developer; or (v) to which any Owner of a Lot or the Tenant under the Farmer Jack Lease may otherwise object. Likewise, to the same extent as the Developer, the Tenant under the Farmer Jack Lease shall have no liability or obligation to any Owner of a Lot as a result of such Tenant's approval, modification or non-approval under this Article 6, so long as such Tenant shall have acted reasonably.
6.8 No Subdivision Without Consent. No Owner of any Lot, except for the Developer, shall split or subdivide the same or convey less than the whole of any Lot without first obtaining the written consent of the Developer. Developer shall have the right to split, subdivide or convey less than the whole of any Lot without any approval of the Developer or any other Owner of a Lot. Nothing contained herein shall preclude any Owner from conveying the Improvements or the land separately.

ARTICLE 7
ENFORCEMENT

7.1 Default and Remedies.

7.1.1 Notice. If any Owner is in Default, then any one or more of the Enforcing Parties shall give notice to that Owner of such Default. If the Owner fails to cure such Default within thirty (30) days after written notice, then any one or more of the Enforcing Parties may, in its sole discretion, exercise any of the rights and remedies set forth in this Declaration. Notwithstanding the foregoing, in the case of an emergency, any Enforcing Party may, but is not required, to take such action as the Enforcing Party may reasonably deem necessary.

7.1.2 Rights and Remedies. If an Owner fails to cure any Default within any applicable cure period, then any one or more of the Enforcing Parties may exercise any and all rights and remedies available at law or in equity. Such rights and remedies shall be cumulative and non-exclusive and may be exercised independently, successively or concurrently. Without limiting the foregoing, the Enforcing Parties may (i) bring a suit for damages; (ii) bring an action for a declaratory judgment; or (iii) bring an action for a temporary restraining order, preliminary or permanent injunction, specific performance or any other equitable relief.

7.1.3 Right to Abate. Any violation of this Declaration is declared to be a nuisance. The Developer may, but is not obligated to, enter upon the Lot or portion thereof as to which the violation exists without the same constituting a civil or criminal trespass and summarily abate and remove, without further legal process, to the maximum extent permitted by law, any improvement, thing or condition that may exist in violation of this Declaration or to take any other action permitted by law to abate a nuisance.

7.1.4 No Waivers. No waiver by any Enforcing Party of any Default and no delay or failure to enforce this Declaration or any rights or remedies hereunder shall be construed or held to be a waiver of any such Default or any subsequent Default. No waiver by any Enforcing Party of any Default shall be implied from any omission by the Enforcing Parties to take any action on account of such Default if such Default persists or is repeated. No express waiver shall affect a Default other than as specified in the waiver. Any waiver by
the Developer shall be binding upon all of the Enforcing Parties, except the Tenant under the Farmer Jack Lease for the term of the lease, but any waiver by an Owner or the Tenant under the Farmer Jack Lease shall not be binding upon the Developer. The consent of the Enforcing Parties to any act or omission by an Owner shall not be deemed to waive or render unnecessary any consent to any similar act by that Owner.

7.1.5 Costs of Enforcement; Interest. Each Enforcing Party shall be entitled to recover all costs incurred by that party in connection with the enforcement of this Declaration, the collection of amounts due or the exercise of any right or remedy, including, but not limited to, all attorneys and professional fees and disbursements, court costs and all related costs. All amounts not paid when due or within thirty (30) days thereafter, including all assessments, amounts paid for or on behalf of any Owner, or costs of collection and enforcement, shall accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate allowed by law, compounded annually.

ARTICLE 8
NATURE OF DECLARATION AND GENERAL PROVISIONS

8.1 Binding Effect. This Declaration shall run with the land and shall be binding upon and inure to the benefit of the Developer, the Owners, the Tenant under the Farmer Jack Lease, during the term of such lease, all Persons claiming under or through the said persons and their heirs, personal and legal representatives, successors and assigns.

8.2 Successors. Developer shall have the right to assign to any other Person all or any part of Developer's rights and obligations hereunder, and upon such assignment, assuming the assignee is viable, the Developer shall have no further liability or obligation with respect to the right or obligation assigned. Any such assignment shall be effective only upon the filing with the Lucas County, Ohio Recorder of an instrument setting forth the assignment. No Owner shall have any liability or obligation with respect to a Default occurring after the date that such Owner sells, transfers or conveys all of that Owner's right, title and interest in and to the Lot with respect to which such Default occurred. Notwithstanding the above, any successor in title to any of the Lots shall be subject to an action for specific performance with respect to breaches of undertakings hereunder which occurred during the ownership of any predecessor in title.

8.3 No Dedication to Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Lots to the general public or for any public use or purpose whatsoever (unless such dedication is specifically made by the Owners of all of the Lots), it being the intention of the Developer that this Declaration is for the exclusive benefit of all Owners and the Tenant under the Farmer Jack Lease, during the term of such lease, and their successors, assigns, mortgagees, tenants, customers and invitees and that nothing in this Declaration, expressed or implied, shall confer upon any person, other than such Owners and the Tenant under the Farmer Jack Lease, during the term of such lease, and their successors,
assigns, mortgagees, tenants, customers and invitees, any rights or remedies under or by reason of this Declaration.

8.4 Term of Declaration. The covenants, conditions and restrictions set forth herein shall remain in full force and effect until December 31, 2020, at which time these covenants, conditions and restrictions shall automatically be extended for successive periods of ten (10) years unless the Owners having 80% or more of the Building Area elect to terminate these covenants, conditions and restrictions.

8.5 Amendment. Throughout the entire term of the Farmer Jack Lease, as such term may be renewed, modified or otherwise extended, this Declaration may not be amended, modified or altered without the express prior written consent of the Tenant under the Farmer Jack Lease. If Developer owns fifty-one percent (51%) or more of the Building Area, this Declaration may be amended by Developer, with the approval of the Tenant under the Farmer Jack Lease. If Developer owns less than fifty-one percent (51%) of the Building Area, this Declaration may be amended from time to time or at any time upon the approval of the Tenant under the Farmer Jack Lease (during the term of such lease) and the written approval of the Owners holding not less than eighty percent (80%) of the Building Area. Additionally, under the terms and provisions of this Declaration, any consent required of the Owner of Lot 1 shall also require the consent of the Tenant under the Farmer Jack Lease, during the term of such lease. Any amendments shall be effective only upon the filing with the Lucas County, Ohio Recorder of an instrument setting forth the amendment and signed by all of the necessary parties with the formalities required by law.

8.6 Third Party Beneficiaries. The following party shall be a third party beneficiary of the provisions of this Declaration: The Tenant under the Farmer Jack Lease, during the term of such lease. The third-party beneficiary shall have enforcement rights under this Declaration in strict accordance with its terms.

8.7 Constructive Notice and Acceptance. Each Owner and tenant (including any subtenant) and each employee, agent or tenant (including any subtenant) of an Owner or tenant shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in a Lot. All transfers and conveyances of each Lot shall be subject to this Declaration.

8.8 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Ohio.

8.9 Mortgages. This Declaration shall not reduce the security or affect the validity of any mortgage on a Lot. If any Lot is acquired in lieu of foreclosure or is sold under foreclosure of any mortgage or under any judicial sale, any purchaser at such sale shall hold such Lot or portion thereof subject to all of the covenants, conditions and restrictions contained in this Declaration.
8.10 Saving Clause. If any covenant, condition or restriction herein is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Declaration, and the remainder of this Declaration shall remain in full force and effect. If there are different possible interpretations of any covenant, condition or restriction, one of which would render the covenant, condition or restriction unenforceable and others of which would not, then the interpretation that would render such covenant, condition or restriction enforceable shall be deemed to be the one intended by the Developer. Each covenant, condition or restriction shall be construed to make it enforceable to the maximum extent permitted by law.

8.11 Notices. Any notice, demand, request, consent, approval, designation, or other communication made pursuant to this Declaration to any Owner or to the Tenant under the Farmer Jack Lease shall be in writing and shall be given or made or communicated by personal delivery, by United States registered or certified mail, return receipt requested, postage prepaid, or by prepaid Federal Express or other recognized overnight delivery service addressed to the Owners or the Tenant under the Farmer Jack Lease at their last known addresses. Any such notice, request or other communication shall be considered given or delivered, as the case may be, when received (at any time) or delivery is first attempted (during normal business hours), whichever first occurs. Rejection or other offer to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. Any new Owner of a Lot shall furnish notices to the other Owners and the Tenant under the Farmer Jack Lease, during the term of such lease, by delivery of a notice in compliance with this Section. By giving at least five (5) days prior written notice thereof, any Owner may from time to time at any time change its mailing address hereunder.

8.12 Compliance with Laws. Each Owner shall use and occupy its Lot in compliance with all applicable laws, rules, regulations and ordinances.

8.13 Headings. The section headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration and shall not be considered in any construction or interpretation of this Declaration or any part thereof.

8.14 No Partnership. Nothing in this Declaration shall be construed to make the Owners or the Tenant under the Farmer Jack Lease partners or joint venturers or render any of said parties liable for the debts or obligations of the others.

IN WITNESS WHEREOF, Developer, acting by and through its duly authorized representatives, has caused this Declaration to be executed as of the date first set forth above.
Signed and acknowledged in the presence of:

\[\text{Sign here} \rightarrow \text{Ed Michalek} \]
\[\text{Print here} \rightarrow \text{Ed Michalek} \]
\[\text{Sign here} \rightarrow \text{Mary Ann Noble} \]
\[\text{Print here} \rightarrow \text{Mary Ann Noble} \]

ORCHARD CENTRE ASSOCIATES, LLC,
an Ohio limited liability company
By: BOSTLEMAN CORP.
Its: Manager
By: [Signature]
Its: Vice-President

\(\text{STATE OF OHIO} \)
\(\text{Wayne SS:} \)
\(\text{COUNTY OF LUCAS} \)

The foregoing instrument was acknowledged before me this 15th day of June 2000 by Gary A. Yurko, the Vice-President of Bostleman Corp., an Ohio corporation, on behalf of the corporation, as the Manager of Orchard Centre Associates, LLC, an Ohio limited liability company, on behalf of the company.

\[\text{Mary Ann Noble} \]
Notary Public

CONSENT TO DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS

The undersigned, being the Tenant under the Farmer Jack Lease as defined in Section 2.1.2, hereby consents to this Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions.

\[\text{Sign here} \rightarrow \text{Ed Michalek} \]
\[\text{Print here} \rightarrow \text{Ed Michalek} \]
\[\text{Sign here} \rightarrow \text{Mary Ann Noble} \]
\[\text{Print here} \rightarrow \text{Mary Ann Noble} \]

Borman's, Inc.
By: Craig Sturtevant
Its: President
STATE OF OHIO
COUNTY OF LUCAS

The foregoing instrument was acknowledged before this 15th day of June, 2000 by CRAIG STURKEN, the PRESIDENT of Borman's, Inc., a company, on behalf of said company.

MARK A. NOBLE
Notary Public, Oakland County, Mich Notary Public
Acting in Wayne County
My Commission Expires 5-28-03

CONSENT TO DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS BY MORTGAGOR

The undersigned, being the mortgagee of the Developer of the Lots as defined in the foregoing Declaration hereby consents to this Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions.

Sign here ➔ Gregory S. Shumaker By: LAWRENCE C. ROYER
CAPITAL BANK, N.A.

Print here ➔ Gregory S. Shumaker Vice President

Sign here ➔

Print here ➔ Melissa M. Royer

STATE OF OHIO )
COUNTY OF LUCAS )SS.

The foregoing instrument was acknowledged before this 15th day of June, 2000 by LAWRENCE C. ROYER, the VICE PRESIDENT of Capital Bank, N.A., an Ohio Corp., company, on behalf of said company.

This instrument prepared by:
Kurt R. Vilders, Esq.
Kerr, Russell and Weber, PLC
500 Woodward Avenue, Suite 2500
Detroit, MI 48226

0 1990406
EXHIBIT B

APPROVED Pylon AND MONUMENT SIGNAGE DRAWINGS
(TO BE REVISED PER AGREEMENT OF LANDLORD AND TENANT)

Farmer Jack
Hardware
Computer Store
Signs

0 1996 01 08
Orchard Centre

Farmer Jack
Hardware
Computer Store
Shoes

Note: Actual design may vary from these drawings, however, overall square footage and height above grade will be no larger or higher.

New DF non-illuminated low profile sign to be painted white and have SM Electrocut #

7725-76 Dk Green, 7725-13 TomRed and 2630-12B Bronze.

3852 Airport Highway
Lauderdale, OH 44143
419-366-6666

CLIENT: Orchard Centre

PROJECT: 60x187 "no profile DF sign"

LOCATION:

SALESPEOPLE: Skip Gardner

DESIGNER: Mona L. Coner

DATE: 6/2/00

DESIGN: # KE136-27

SCALE: 1/2"=1'

DRAWN BY: LMC

CLIENT AUTHORIZATION:

SALES APPROVAL:

REVISIONS: 6/2/00 LMC 6/15/00 LMC

Gardner Signs Inc. submitted for your business' use in connection with Design Project #

Design and Color Rendering copyright 1995

Gardner Signs Inc. will not be held responsible for any errors, omissions, or inaccuracies in the artwork, color, or material specifications. Colors shown may vary slightly from the actual finished product due to computer and printer output limitations.
EXHIBIT A

LEGAL DESCRIPTION

Lots No. 1 through 9, both inclusive, in The Orchard, a subdivision in the Village of Holland, Lucas County, Ohio, in accordance with Volume 148 of Plats, Page 19. Add.