Triad Business Park

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TRIAD BUSINESS PARK
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is made and adopted as of November 7, 2002, by the City of Toledo, a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of Ohio and a duly adopted charter, with offices at One Government Center, Suite 2200, Toledo, Ohio 43604 (the “Owner”).

WHEREAS, Owner is the owner in fee simple of all of the property constituting Plat One and Plat Two of the Triad Business Park, a Subdivision in Monclova Township, Lucas County, Ohio, as per Plats thereof recorded at Volume 153, Pages 43-45 and Volume 153, Pages 41-42 of the Lucas County, Ohio Record of Plats (collectively, the “Property”).

WHEREAS, the Owner desires to establish a general plan for the development, use and maintenance of the Property as a first-class, high quality business park known as Triad Business 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 land within the Property in their enjoyment and use of the Property for said intended purposes.

WHEREAS, the term “lot” as used in this Declaration shall be construed to mean any legally separate and distinct parcel of real estate within the Property.

WHEREAS, the term “development site” as used in this Declaration shall be construed to mean any lot, lots or portion thereof, not included within the common areas (as hereinafter defined), and intended or utilized for improvement and development as the site of one or more building(s) or structure(s) and any accessory structure(s).

WHEREAS, the term “common area(s)” as used in this Declaration shall be construed to 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 within the Property, and designated as common area(s), common area and drainage easement, open space, green space, lake(s), pond(s) or with words of similar import (a) on the plat of Triad Business Park or any other plat or plats of the Property or any portion thereof or the Adjacent Property (as hereinafter defined) or any portion thereof, or (b) by any other recorded instrument relating to the Property or any portion thereof.

WHEREAS, Owner may in the future provide for the development of a subsequent plat or plats as an extension of Triad Business Park on certain other lands (the “Adjacent Property”) owned by the Owner and located adjacent and contiguous to the Property; Owner reserves the right to establish restrictions upon the manner of use, improvement and enjoyment of the lands within any said subsequent plat(s) which are in all respects similar to the restrictions on Triad Business Park and which will make the lands in such subsequent plat(s) more attractive for business purposes and will protect present and future owners of such lands in their use and enjoyment thereof for business and commercial purposes; and Owner or its successors and assigns may exercise the
above-mentioned reserved rights by filing subsequent plats of Triad Business Park together with supplemental declarations of restrictions subjecting such subsequent plats to this Declaration.

NOW, THEREFORE, in consideration of the enhancement in value of the Property by reason of the adoption of this Declaration, Owner does for itself and its 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 Owner, its 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 park known as Triad Business 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, signage and other governmental statutes, ordinances, codes and regulations, as amended from time to time (the "Codes").

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 setback requirements, building lines or front, rear or side yard requirements prescribed by the Codes or by any plat(s) of the Property. 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 be not less than twenty-five (25) feet.

1.3 Building Heights. No building shall be constructed on any development site which exceeds forty-five (45) feet in height.

1.4 Underground Utility Service. All electric, television, cable and other utility and communications lines and facilities servicing buildings or structures located at the Property shall be underground, except (a) temporary lines and facilities utilized during the construction or rehabilitation of buildings or structures at the Property, and (b) overhead power lines servicing the electrical substation and the improvements located or to be located on Lot No. Three (3) of Plat One of Triad Business Park.

1.5 Signs or Advertising. No permanent or temporary billboards, advertising signs or other signs and displays except for a sign identifying the name, business and product of the firm occupying (or to occupy) 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 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, other products, materials or supplies shall be permitted at the Property except during and in connection with the construction or rehabilitation of improvements at the Property, unless enclosed within a permanent storage structure or fully and attractively screened in such manner and with such materials as are approved by the Architectural Control Committee under Article II hereof and confined to approved locations.

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 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 development site shall keep the weeds and grass cut; keep and maintain its land, buildings, improvements and appurtenances thereon in a safe, neat, clean and wholesome condition; and comply in all respects with all governmental Codes and all health, police and fire requirements. Notwithstanding any other provisions of this Declaration, all of the lots within the Property shall be maintained in a first-class, high quality manner, consistent with the standard for the Property as set forth in the recitals, in paragraph 1.1 hereof, and in Article II hereof.

1.12 Drainage. Each owner of a development site shall provide adequate drainage facilities, including storm water detention, in accordance with (a) approved plans on file with the Lucas County Engineer, (b) the existing storm sewer system and topography, (c) any plat(s) 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 or rehabilitated at or within the Property shall be submitted for examination to the Triad Business 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 building, structure or improvement shall be constructed or placed upon any development site and before any material addition, change or alteration may be made to any building or other structure then situated on a building site. The submitted Plans and Specifications shall be prepared by a competent architect or engineer and shall show, include and address all requirements of the Architectural Control Committee as set forth on Exhibit A attached hereto. The Architectural Control Committee shall approve, reject or approve with modifications all Plans and Specifications within 45 days after submission thereof.

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 Association (as hereinafter defined) from time to time; provided, however, that at all times one (1) member of the Architectural Control Committee shall be a representative of the owner of Lot No. Three (3) of Plat One of Triad Business Park. Members of the Architectural Control Committee need not be members of the Association. The number of members and voting rights of members shall be determined by the Association.

2.3 Architectural Standards, Harmonious Plan. In requiring the submission of detailed Plans and Specifications as set forth on Exhibit A attached hereto, the Owner intends to assure the development of the Property as a high quality, architecturally harmonious and desirable business park, with all buildings and structures to be constructed in such architectural styles, of such materials and colors, and located in such manner as to, in the judgment 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 detailed Plans and Specifications so submitted, the Architectural Control Committee shall have the right to consider the compliance of the proposed building, structure, improvement, addition, change or alteration 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 improvement contemplated 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 interest and to the benefit of the owners of lots in the Property as a whole.
2.4 Establishement of Grades. Subject to the Codes, 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 building, structure or 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 structure built or constructed upon a development site shall be erected at an elevation of not less than one foot higher than the 100-year flood level as shown on the applicable Flood Insurance Rate Map.

2.5 Landscaping. All landscaping and the related underground irrigation system 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 building, structure or addition. 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 judgment 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 improvement without the written consent of the Architectural Control Committee, such variance shall be deemed a violation of this Declaration.

2.7 Waiver of Restrictions. Each lot owner, by acceptance of a deed to a lot at the Property, 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, 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 Owner does hereby for itself, its successors and assigns, and their respective heirs, executors, administrators, personal representatives, assigns and successors in the ownership of all of the lots at the Property, 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 for any construction, reconstruction, rehabilitation, addition or alteration be accompanied by an application fee to be applied by the Architectural Committee.
Control Committee toward the costs associated with its review of such Plans and Specifications. Initially, the application fee shall be $200.00, and such fee may be reasonably increased by the Architectural Control Committee from time to time.

2.10 Sidewalks, Walkways and Bikeways. It is the duty of the Owner of each lot within the Property, at the expense of each such Owner, to keep and maintain any sidewalks, walkways and/or bikeways located on and adjacent to such Owner’s lot in a good and clean manner and to clear the aforesaid sidewalks, walkways and/or bikeways of snow, ice, dirt and any other debris within twenty-four (24) hours after deposit thereon, and each such Owner shall indemnify and hold harmless the governmental jurisdiction within which the Property is located 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 the Owner, who owns all of the lots comprising the Property at the present time, the Triad Business Park Owners’ Association (the “Association”). The members of the Association shall be the owners, from time to time, of all of the lots 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 lots within the Property. In addition, the Owner or any other owner 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 quit-claim deed for such purpose.

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 improve, maintain, alter, repair, replace and remove any and all landscaping, signs, lakes, ponds, fences, trees, grass, equipment and Drainage Facilities (as hereinafter defined) located on the common areas and/or on the boulevard islands, if any, located within the public rights-of-way at the Property 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;

(k) to pay all expenses associated with electrical, water, sewer, fuel or other utility services to the common areas;

(l) 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, visitors, 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 acre owned by each of the members as a percentage of the total acreage of all development sites at the Property.

When more than one person holds an ownership interest in any development site within the Property, 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.

ARTICLE IV
ASSESSMENTS

3.1 Annual Assessments. Each development site within the Property shall be subject to a yearly assessment in such amount as may be annually determined by the Association in its reasonable discretion. The amount of such assessment shall be based upon each development site's pro rata share of the Association's annual operating budget, said pro rata share to be determined in accordance with the formula set forth in paragraph 3.4 hereof.

The annual assessment for each calendar year shall be determined by the Association in its reasonable discretion 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 in its reasonable judgment, as the interests of the development site owners may 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 improvement, maintenance, alteration and removal of all lands, lakes, ponds, bikeways, walkways, fences, signs, easements, Drainage Facilities, buildings, structures 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 any necessary 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;

(c) 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 within the Property; and

(d) 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 judgment 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 thereto shall be binding upon all interested parties.

4.2 Special Assessments. Each development site within the Property shall also be subject to special assessments in such reasonable 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 incurred by 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 paragraph 3.4. Special assessments may be determined by the Association at any time in its reasonable discretion, and shall be payable by the development site owners to the Association on or before that date occurring 90 days after such determination is made by the Association. Notwithstanding anything else contained herein, the Association shall not determine and make any special assessment in an amount greater than $100.00 per acre without the approving vote or written consent of development site owners representing not less than 60% of the acreage of development sites in accordance with paragraph 3.4; provided, however, that from and after January 1, 2008, the maximum unvoted special assessment amount shall be increased each year by 10% above the maximum special assessment amount for the previous year.

4.3 Lien to Secure Payment of Assessments. The Association shall have a perpetual lien upon the development sites within the Property to secure the payment of the annual assessments and any special assessments, and each such annual assessment and/or special assessment 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 annual assessment or special assessment 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 Triad Business Park Owners' Association claims a lien for unpaid annual assessments and/or special assessments for the year(s) ________ in the amount of $_________ against the following described premises:

(insert legal description)

TRIAD BUSINESS PARK OWNERS' ASSOCIATION

By: __________________________

STATE OF OHIO  )

COUNTY OF LUCAS  ) SS:

The foregoing instrument was acknowledged before me this ___ day of __________, 200__ by __________________________, the ________________________ of Triad Business Park Owners' Association, an Ohio non-profit corporation, on behalf of the corporation.

______________________________
Notary Public

In the event any annual assessments or special assessments are not paid when due, the Association 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 or special assessments by non-use of the common areas or by abandonment of a development site. The lien of the annual assessments and special assessments 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 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 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 therefor, 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 Owner reserves to itself and to its successors and assigns, easements and rights-of-way for the construction, operation, maintenance, repair and replacement of electrical, telephone, cable, telegraph and communications 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 facility or utility deemed convenient or necessary by the Owner or its successors or assigns for the service of 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, and (c) those portions of the development sites adjacent and contiguous to all dedicated public roadways (now existing or hereafter established) abutting the lots within the Property. Owner also reserves to itself and to its 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 public, quasi-public or private person, firm or corporation furnishing any one or more of the aforesaid facilities or utilities. 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. The Owner reserves to itself and to its successors and assigns, the exclusive right to extend any of the public rights-of-way at the Property to any adjacent or adjoining property owned by the Owner.

5.3 Lakes and Ponds. The Owner may construct one or more lakes or ponds on the common areas at the Property (the "Lakes"). The owners of lots 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. 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. 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 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 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 unless and until the Owner shall convey the common areas to or for the benefit of the Association. Thereafter, the owners of the lots at the Property 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.

5.5 Drainage Facilities. In connection with the development and platting of the Property, the Owner has granted or may grant certain drainage easements to the Board of Lucas County Commissioners and/or other governmental jurisdiction(s) over portions of the areas designated on a plat or plats of the Property as "drainage" and "drainage easement" or with words of similar import. Included in the areas subject to these drainage easements are any lakes or other bodies of water that may be located on the Property, and the associated storm outlets and overflow lines, lake level control lines, storm sewer outflow lines outside the roadway rights-of-way, and storm water discharges from the storm drainage system (collectively, the "Drainage Facilities"). The Drainage Facilities, if any, comprise part of the drainage system for the entire Property. The Drainage Facilities shall be kept clean and free of debris and otherwise maintained (as determined by the Lucas County Engineer or other applicable governmental office) by the Association, from time to time. In this regard, all lots shall be subject to drainage maintenance easements in the event that, and at such time as, the Lucas County Engineer (or other applicable governmental office) determines that the Association is not properly maintaining the Drainage Facilities, in which case the amount and method of assessment shall be determined by the Lucas County Engineer (or other applicable governmental office). In such event, no party other than the lot owners shall have any liability or responsibility for maintenance of the Drainage Facilities or for any assessments or costs relating thereto.

5.6 Boulevard Islands. The boulevard islands, if any, located within the Property, although included within the public right-of-way, are intended to be treated as if such boulevard islands are part of the common areas. Said boulevard islands shall contain landscaping and/or signage which shall be maintained and replaced, from time to time, by the Association.

ARTICLE VI
DURATION AND AMENDMENTS

6.1 Term. This Declaration shall run with the land and shall be binding upon the Owner, all persons claiming under or through the Owner, all other parties who acquire title to any lots (or parts thereof) within the Property, and all other persons claiming ownership, possession or use of the Property or any portion thereof, until January 1, 2022, at which time this Declaration shall be automatically extended for successive periods of ten (10) years.

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. 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. All restrictions, covenants, conditions, agreements and other provisions herein contained shall be deemed subject and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereafter encumbering any lot or all or any portion of the Property, and none of said restrictions, covenants, conditions, agreements or other provisions 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 Owner, the Architectural Control Committee, the Association or any person or persons owning any lot at the Property 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 judgment, court order, amendment hereof by act of the owners of lots within the Property 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 Owner or to the Architectural Control Committee shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as such owner or to the Owner 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 Owner’s Rights Assignable. The rights, privileges and powers granted herein to, and reserved by, the Owner shall be assignable and shall inure to the benefit of the successors and assigns of the Owner.

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 only if, in its judgment, 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 Owner or its successors and assigns.
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" shall be defined to mean the record title owner.

7.12 **Exhibits.** This Declaration and all references herein to the "Declaration" shall be deemed to include the Declaration and all Exhibits hereto.

7.13 **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. 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 Township of Monclova, Lucas County, or another appropriate public 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 7.13.
IN WITNESS WHEREOF, the Owner, acting by and through its duly authorized representatives, has caused this Declaration to be executed.

Signed and acknowledged in the presence of:

Julie Koch

Anne Miller

CITY OF TOLEDO, OHIO

By: Jack Ford, Mayor

Approved as to form:

Gary J. Wayner

Approved as to content:

Gene B. Leston

STATE OF OHIO )
COUNTY OF LUCAS ) SS:

The foregoing instrument was acknowledged before me this 28th day of October, 2002, by Jack Ford, the Mayor, of the City of Toledo, Ohio, an Ohio municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of Ohio, on behalf of the municipal corporation.

Jamie L. Miller
Notary Public

NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 3/11/2005

This instrument prepared by:
Joseph A. Rideout, Esq.
Shumaker, Loop & Kendrick
1000 Jackson Street
Toledo, Ohio 43624
EXHIBIT A

The Plans and Specifications submitted to the Architectural Control Committee shall include and address the following:

1. Ten (10) copies of the site plan and elevation drawings, of which three (3) copies must be drawn to scale and the remaining seven (7) copies may be photo reductions not less than 11" X 17" in size. The site plan and elevation drawings shall include proposed land contours and grades; buildings and structures; parking areas with parking spaces or stalls indicated; loading docks and facilities; driveways, access ways and other paved areas; and curbing and storm water drainage and retention.

2. Ten (10) copies of landscaping drawings, including mounding, underground irrigation systems, trees and planting areas, but if such drawings are not yet complete, the applicant may defer submitting such drawings until a later time. Natural resources shall be utilized at the Property wherever possible. Parking areas shall be screened and/or shielded, to the extent reasonably possible, by mounding and/or plantings.

3. Ten (10) copies of plans and specifications showing the types of construction and the colors, surfaces and materials to be incorporated into the building, including a color board for the exterior surfaces. The design and construction of all buildings shall be used to create a structure with four (4) equally attractive sides of high quality rather than to place undue emphasis on the front elevation by neglecting or downgrading the aesthetic appeal of the side and rear elevations. All accessory buildings and enclosures, whether attached to or detached from the main building, shall be of similar compatible design or materials.

4. Ten (10) copies of drawings, plans and specifications (including the size, location, height, letter styles, colors and materials) for all signage to be installed or erected at the development site. Building identification signs must be located in a landscaped setting to provide the desired continuity and street scene effect.

5. Fences, walls and lighting shall be reviewed by the Architectural Control Committee in the same manner as buildings and other improvements. All lighting shall be
arranged, shielded or directed in such fashion as will avoid excessive glare reflecting on to any adjacent lot or street or into the path of oncoming vehicles.

6. The Architectural Control Committee may limit or prohibit parking wherever the same constitutes a hazard, increases congestion or causes inconvenience.

7. A statement of the applicant's intended present and future use of the development site.

8. All of the within-referenced plans, specifications and drawings shall comply in all respects with the Codes; with Article I, Article II and the other provisions of this Declaration; and with such rules, regulations and/or guidelines as may be established from time to time by the Architectural Control Committee.

9. All submittals of such plans, specifications and drawings to the Architectural Control Committee shall be accompanied by such reasonable filing fee(s) as may be established and published by the Architectural Control Committee from time to time.

10. The Architectural Control Committee shall approve, reject or approve with modifications all Plans and Specifications within forty-five (45) days after all required information has been submitted.

11. No application for a building permit shall be made until approval of the full Plans and Specifications has been obtained from the Architectural Control Committee.

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RECORPER, LUCAS COUNTY, OHIO

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