

C76381

MONTGOMERY MEADOWS

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND LIENS

1517

THIS DECLARATION, made this 11th day of November, 1976, by M-M ASSOCIATES, an Ohio general partnership, hereinafter sometimes called the "Declarant",

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described in Article II, Section 1 hereof and desires to create thereon a residential community with permanent common areas and recreational facilities for the benefit of said community; and

WHEREAS, the zoning of the real property was declared invalid, to the extent that it prohibited the construction thereon of townhouse clusters, in the case of Chelsea Development Corp. v. the City of Montgomery, Ohio, being civil action No. A-741203 of the Court of Common Pleas of Hamilton County, Ohio, and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and recreational facilities; and to this end, desires to subject the real property described in Article II, Section 1 hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and recreational facilities, and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed or shall form The Montgomery Meadows Homeowners Association, Inc., as a non-profit Ohio corporation for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the properties described in Article II, Section 1 and such other property as may be subjected to the provisions hereof pursuant to Article II, Section 2, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Per Sec. 1777 .02  
Certificate of Partnership

M-M Associates

Filed 11-5-76

ROBERT D. JENNINGS  
Clerk of Courts

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ARTICLE I

SECTION 1. Definitions. The following words when used in this Declaration shall have the following meanings:

(a) "Association" shall mean and refer to The Montgomery Meadows Homeowners Association, Inc., and its successors and assigns.

(b) "Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of a freehold title to any Lot which is a part of the Properties including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(c) "Properties" shall mean and refer to that certain real property described in Exhibit A hereto, and such additions thereto as may hereafter be annexed pursuant to Article II, Section 2 hereof.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties or recorded re-subdivision thereof with the exception of the Common Areas, and with the exception of land designed by Declarant or Developer to be conveyed or leased to the Association as Common Areas. In the case of a Condominium Building, each Living Unit therein shall be deemed a separate Lot, and the land on which the building is located shall not be considered a Lot.

(e) "Common Areas" shall mean and refer to all real property, including structures thereon, owned by or leased to the Association for the benefit, use and enjoyment of its Members.

(f) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family. Each apartment in a Multi-family Structure as originally designed shall be deemed a separate Living Unit.

(g) "Multi-family Structure" shall mean and refer to any building containing two or more Living Units under one roof, even though such Living Units may be located on more than one Lot.

(h) "Member" shall mean any one of those Owners who are members of the Association as provided in its Articles of Incorporation.

(i) "Developer" shall mean and refer to the Declarant and its successors, and assigns if such assigns should acquire more than one developed Lot from the Declarant for the purpose of resale or for the purpose of constructing improvements thereon for resale.

(j) "Declarant" shall mean and refer to M-M ASSOCIATES.

(k) "Section" shall mean and refer to all of the land area encompassing a group of Lots as designated on a recorded subdivision plat and intended by the Declarant or Developer for use for the same housing type (e.g., townhouse, detached Living Unit, attached Living Unit, apartment rental buildings) and same type of construction, and encompassing the street and parking areas held by the Association for the primary use of such group of Lots.

(l) "Apartment Rental Building" shall mean and refer to any building situated on a single Lot which contains more than one Living Unit, if the Living Units contained in such building are held by the Owner of such Lot for rental purposes. A Multi-family Structure shall not be an "Apartment Rental Building" for purposes of this Declaration if the Living Units contained therein were sold by the Developer to separate Owners.

(m) "Recreational Facilities" shall mean and refer to that part of the Common Areas intended for active recreation, including any common recreational facilities that may in the future be constructed.

## ARTICLE II

SECTION 1. Properties Subject to Declaration. The real property which is, and shall be, held, conveyed, encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in the County of Hamilton, State of Ohio, and is more particularly described on "EXHIBIT A" attached hereto and by this reference made a part hereof.

SECTION 2. Additions. A Developer may annex to this Declaration any real property described in Exhibit B attached hereto, and made a part hereof, without the assent of the Members of the Association. In addition, real property may be annexed with the consent of two-thirds (66-2/3%) of each class of Members of the Association. Any additional property however, must be adjacent to or in the immediate vicinity of the property described in Exhibits A or B attached hereto.

Any annexations made pursuant to this Article II, Section 2 or otherwise, shall be made by recording a supplement to this Declaration of Covenants and Restrictions in the records of the Recorder of Hamilton County, Ohio, which Supplementary Declaration shall extend this Declaration to such annexed property. Such Supplementary Declaration may contain such complementary additions and modifications to the Covenants and Restrictions set forth herein as may be necessary to reflect the different character of use, if any, of such annexed property.

## ARTICLE III

SECTION 1. Member's Right of Enjoyment. Every Member and, in the case of rented Living Units, such Members' tenants, shall have a right to and easement for enjoyment of, in and to the Common Areas for the purposes to which such areas have been designed, constructed or dedicated (but not otherwise), and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and Regulations, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said property. The Association shall not mortgage the Common Areas except by resolution approved by three-quarters (75%) of the total number of votes held by the Members of each class or their respective first mortgagees.

(b) The right of the Association to levy reasonable admission and other fees for the use of the Recreational Facilities by the Members of the Association and their guests;

(c) The right of the Association to permit use of Common Areas by non-members of the Association for such fees as may be established by the Association's Board of Trustees;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against mortgage default and/or foreclosures;

(e) The right of the Association to limit the number of guests of Members;

(f) The right of the Association to suspend the voting rights and the rights to use of the Recreational Facilities for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(g) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purposes of this Declaration and subject to such conditions as may be agreed to by the Members, provided, however, that except in the cases provided for in Section 6 of Article V, no such dedication or transfer shall be effective unless an instrument signed by two-thirds (66-2/3%) of the total number of votes held by the Members of each class has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the proposed agreement and action thereunder is sent to each Member at least ninety (90) days prior to the taking of any action;

(h) The rights of the Association and Owners of Lots to a perpetual easement over any Common Areas and upon other Lots for such portions of their Living Units as may overhang or encroach on said Common Areas or upon any other Lot, and for necessary pedestrian and automotive ingress and egress to and from any such Living Unit over the streets, driveways and walkways of said Common Areas, and for gas, electric, telephone, water, sewer, drain, and other utility conduits with rights to repair, maintain, and replace same, as they may be established over, upon and through said Common Areas, or other Lots, which rights are hereby expressly established, granted, and reserved for the benefit of the individual Lots; and

(i) The right of individual Owners to the exclusive use of parking spaces as provided in this Article; and

(j) The right of any Developer to make any improvements it deems proper upon the Common Areas, even after their lease or conveyance to the Association, so long as any Lots or Living Units contiguous to such Common Areas remain unsold or unrented, which rights are hereby reserved; and

(k) The right of any Developer to use an Association community building on a non-exclusive basis for a sales and rental office so long as any Lots or Living Units of such Developer remain unsold or unrented.

SECTION 2. Parking Rights. Ownership of each Living Unit shall entitle the Owner thereof to the use of not more than two automobile parking spaces, which shall be upon the Owner's Lot or as near and convenient to the Living Unit as reasonably possible, together with the right of ingress and egress to and upon said parking area. The Association shall permanently assign the vehicle parking spaces for each Lot. \*

SECTION 3. Delegation of Use. Any Owner may delegate, in accordance with the applicable Regulations of the Association, his right of enjoyment in the Common Areas to the members of his family resident in the Living Unit, guests, his tenants, or contract purchasers who reside on the Properties.

SECTION 4. Rights Not Subject to Suspension. Notwithstanding anything herein contained to the contrary, the rights and easements created in paragraphs (h) and (j) of Section 1 of this Article III shall not be suspended by the Association for any reason.

#### ARTICLE IV

SECTION 1. Covenant for Assessments. The Declarant and Developers for each Lot owned by them (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons, or entity who becomes an Owner of a Lot whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments; (2) individual assessments; (3) special assessments for capital improvements, or other services, provided by the Association, such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot and its fixtures against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person, group of persons, or entity who was the Owner of such property and Lot at the time when the assessment fell due.

(a) Subordination. The lien provided for in Section 1 of this Article IV shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments, and liens of bona-fide first mortgages which shall be prior to the lien of assessment for the calendar year such mortgage is recorded.

(b) Foreclosure. Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Articles of Incorporation and the Regulations of the Association.

SECTION 2. Annual Assessments, Purposes. The Annual Assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Properties, preserving the aesthetic and scenic qualities of the development, and creating revenues for such purposes. To carry out these purposes, an Annual General Assessment shall be levied by the Association to provide and be used for the improvement and maintenance of the Properties, services and facilities related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes, assessments and insurance for said Common Areas and repair, replacement and additions thereto, and for the cost of labor, equipment and materials, management and supervision thereof, including the maintenance and repair of streets, walkways, driveways and parking areas, and liability insurance for the Association, overall management expenses, and maintenance and repair of all sewer and water lines serving more than one Living Unit. As set forth in Section 5 hereof, an Annual Maintenance Assessment shall be levied by the Association, to provide and be used for the purpose of: (a) providing water waste collection to all Lots owned by all Members, if applicable; (b) providing grass cutting and maintenance of all trees and shrubbery provided by the Developer or the Association (excluding any areas completed fenced in at Owner's request); (c) providing exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces. (excluding the maintenance of any foundation wall or glass surface, and excluding mechanical equipment and air-conditioning pads or foundations); (d) providing fire and extended coverage insurance, and vandalism and malicious mischief coverage, on a blanket basis (or such other varieties of insurance as may be agreed to by the Association and the Owners in the Section affected), on all Living Units, including physical improvements and betterments (Owners shall notify Association of all improvements made, so that adequate insurance can be obtained), but not on the contents thereof, or personal liability or living expense, payable to the Owners, the Association, and their mortgagees, as their interests may appear, the proceeds from which shall be used to restore or replace any Living Unit damaged or destroyed by any peril covered by said insurance (Each initial Owner, other than a Developer, at the time such Owner purchases his Lot from Developer, shall pay to the Association the cost of insurance for such Lot for a twelve (12) month period.); (e) providing reasonable reserves for contingencies, replacements, maintenance, repairs, other costs incurred by the Association and working capital; and (f) providing such additional matters, consistent with the general purposes of the Annual Assessments as may be approved in writing by not less than three-quarters (75%) vote of Members of the Section (as heretofore defined) to be affected thereby, or their respective first mortgagees.

SECTION 3. Annual General Assessments, Initial Amount. Until January 1 of the year immediately following the conveyance of the first lot to an Owner other than to a Developer, the maximum annual general assessment for each Class A membership for general purposes provided in Section 2 of this Article IV shall not exceed Three Hundred Dollars (\$300.00) per Living Unit per annum.

The assessment may be billed in advance on a monthly, quarterly, or annual basis. The Board of Trustees may fix the annual general assessment at any amount not in excess of the maximum herein provided for. The assessment shall be fixed at a uniform rate for all Living Units.

SECTION 4. Annual General Assessment, Maximum Increase.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than to the Developer, the amount of the maximum general assessment set out in Article IV, Section 3, above, for all Members, may be increased by the Board of Trustees without a vote of the membership in excess of the sum set out in Section 3, from year to year, but not more than ten percent (10%) above the higher of the applicable amount set in Section 3 or set for the preceding year.

(b) In each year from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than to the Developer, the maximum annual general assessment for the next year for all Members may be increased above that established by Section 4(a), by a vote of Members as hereinafter provided. Any change made pursuant to this paragraph shall have the assent of three-quarters (75%) of the total number of votes held by the Members of each class, voting in person or proxy, at a meeting called for this purpose. A notice of such meeting shall be sent to all Members at least fifteen (15) days in advance of such meeting, which notice shall set forth the purpose of such meeting.

(c) The assessment may be billed in advance on a monthly, quarterly, or annual basis. The Board of Trustees may fix the annual general assessment at any amount not in excess of the maximum hereinabove provided for. The assessment shall be fixed at a uniform amount per Living Unit.

SECTION 5. Annual Maintenance Assessment.

(a) Except as specifically provided in Section 7 below, the Annual Maintenance Assessment shall be levied on the Lots and Members owning Lots in each particular Section in such amount as is determined for each Owner of a Lot within a Section (as heretofore defined) as may be necessary, in the determination of the Board of Trustees of the Association, to carry out the purposes of the Annual Maintenance Assessment for each Section. Each Section shall be computed individually and a record of funds collected from the respective Sections shall be separately maintained. This assessment may be billed on a monthly, quarterly or annual basis. The assessments shall be fixed at a uniform rate within the Section based upon Lots within the Section, but assessment amounts may vary from Section to Section.

(b) Negligence or Willful Neglect. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment against the individual Lot upon which the maintenance or repairs are performed.

(c) Access to Lot. For the purpose solely of performing the exterior maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any Living Unit at reasonable hours on any day. No notice shall be required for lawn maintenance.

SECTION 6. Individual Assessments. Except as specifically provided in Section 7, in the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees, and such maintenance is not that to be provided by the Association under Section 2 or 5 above for which assessments are provided, then the Association, after approval by at least three-quarters (75%) vote of all members of the Board shall have the right through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of any building or any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the total assessment to which such Lot is subject.

SECTION 7. Annual Maintenance Assessment, Detached Single-Family and Apartment Rental Buildings. No Annual Maintenance Assessment shall be levied on the Lots and Members owning Lots in a Section composed entirely of detached single-family Living Units nor on Lots containing and Members owning Apartment Rental Buildings, and the Association shall not be responsible for providing the waste collection, maintenance, and insurance described in Section 2 or 5 above. The Owner of each Lot described herein shall be responsible for all such exterior maintenance and repair of his Lot. In the event that an Owner of any Lot described herein shall fail to maintain the premises and the improvements situated thereon in a manner consistent with the standards set by the Association, then the Association, after approval by at least 50% of the Board of Trustees, shall notify the Owner in writing of the specific maintenance required by the Board. If the Owner has not complied with the written notice of the Board within thirty (30) days of such notice, the Board may submit the matter to arbitration. Unless the parties agree upon one arbitrator, there shall be a board of three competent disinterested persons, one to be chosen by the Association, one named by the Owner within five days of receipt of notice of arbitration, and the third to be selected by the two arbitrators so chosen. The decision of a majority of the arbitrators shall be binding. The Owner shall pay the reasonable costs incurred by the Association and the costs of such arbitration if a decision is rendered against the Owner; otherwise, each party shall bear one-half of the arbitration costs. If the Owner does not comply with the decision of the arbitrators within the time set by such decision, the Association may, through its agents and employees, enter upon the Lot or Lots in question and repair, maintain and restore same in accordance with the decision of the arbitrators; the cost of such maintenance shall be added to and become part of the total assessment to which such Lot is subject.

\* SECTION 8. Special Assessments. In addition to the annual and individual assessments authorized by this Article, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement, of a capital improvement located upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 75% of the total number of votes held by the Members of each class. A meeting of the Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least fifteen (15) days in advance of such meeting, which notice shall set forth the purpose of the meeting. Any special assessment levied by the Association pursuant to the provisions of this Section 8 shall be fixed at a uniform rate for all Living Units.

SECTION 9. Commencement of Assessments. The Annual Assessments for each Lot shall commence on the first day of the month following the conveyance of such Lot from the Developer, except as provided in Section 10 below. The first assessment for any such membership shall be made for the balance of the calendar year and shall become due and payable and a lien on the date aforesaid. The Board may from time to time determine the manner and schedule of payments, and may extend time for any payment, and may defer the commencement date for assessments.

It shall be the duty of the Board of Trustees of the Association periodically to fix the amount of the assessment against each Lot for each assessment period and the Board of Trustees shall make reasonable efforts to fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owner of any Lot subject thereto. Annual Assessments subsequent to the first Annual Assessment shall become a lien on January 1 of each year; individual and special assessments shall become a lien at the time designated by the Association. No notice of lien other than this Declaration need be recorded to establish the validity of any such lien, and this Declaration shall stand as notice thereof.

SECTION 10. Assessment of Developer. Any Lot owned by a Developer shall be assessed an amount equal to twenty-five percent (25%) of the Annual Assessments which the Association levies for purposes set forth in Section 2 of Article IV, and such Developer's assessment shall commence as to all the Lots in each separate subdivision on the first day of the month following the conveyance of a Lot in such subdivision to an Owner who is not a Developer. The provisions of this Section 10 shall not apply to any Lot on which is situated a completed Living Unit held by a Developer for rental purposes in which cases the Developer shall be required to pay the full amount of the assessments levied from the date any such Living Unit is first rented.

SECTION 11. Assessment Certificates. The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for assessment or to his designee a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessments; i.e., whether the same are paid or unpaid and the amount outstanding. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Ten Dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered. Also, all or any first mortgagee shall have the right to examine at any time the books and records of the Association.

SECTION 12. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a

continuing lien which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after delinquency date, the assessment shall bear interest at the rate of eight per centum (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, in either of which events, interest, costs and reasonable attorneys' fees shall be added to the amount of each assessment. No Owner may waive or otherwise escape liability for the assessments herein provided for by non-use of the Common Areas or abandonment of his Lot or Living Unit. To the extent any assessment lien is not paid out of the proceeds of a foreclosure sale, and is discharged, the amount thus unpaid shall be deemed to be common expenses and shall be levied against all of the Lots subject to such original type of assessment, at the time of the first assessment of the same type or types next following such discharge, or if it is a special or an individual assessment it shall be added to the next Annual General Assessment, and such additional levy shall not be limited by the 10% maximum increase limitation provided in Article IV, Section 4, nor shall it count as part of the 10% increase allowable.

#### ARTICLE V

SECTION 1. Architectural Control Committee. Except for original construction or as otherwise in these covenants provided, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Trustees of the Association, and an architectural control committee (if one exists) composed of three (3) Members appointed by the Board of Trustees. In the event the Board of Trustees and its designated committee fail to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, approval will not be required and this Article V will be deemed to have been fully complied with. Such submission to the Board shall be by registered or certified mail, with return receipt, directed to the Association's Manager, or if there is no Manager to its President.

SECTION 2. Prohibited Uses and Nuisances. Except for the activities of the Developer and subcontractors during original construction or development:

(a) No noxious or offensive trade or activity shall be carried on upon the Properties or within any dwelling situate upon the Properties, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the Owners of the Properties.

(b) The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling situate upon the Properties, except that this shall not prohibit the keeping of dogs, cats and caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes.

(c) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the Properties.

(d) Except as hereinelsewhere provided, no junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat or the like, nor structure of a temporary character, trailer, tent, shack, barn, or other outbuilding, shall be kept or used upon the Properties, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Temporary playhouses or the like may be so maintained provided that their primary purpose is the maintenance or promotion of juvenile recreation. The Association may, in the discretion of its Board of Trustees provide and maintain a suitable area designated for the parking of such vehicles or the like.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection, except for containers maintained for several Living Units by the Association.

(f) In order to facilitate the free movement of passing vehicles, no automobiles belonging to the residents shall be parked on the paved portion of any joint driveway or streets, public or private, except during bona fide temporary emergencies.

(g) No sound hardwood trees shall be removed from the Properties without written approval of the Association acting through its Board of Trustees or duly appointed committee.

(h) No signs of any character shall be erected, posted or displayed upon, in or on any Lot or Living Unit, excepting street and identification signs installed by the Association or the Developer and excepting one (1) temporary real estate sign not to exceed six (6) square feet in area erected upon any Lot or attached to any Living Unit advertising same upon the market for sale or rent.

(i) No structure, planting or other material other than driveway or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

(j) No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission, shall be maintained on any Lot or Living Unit without the prior written consent of the Architectural Control Committee or Board of Trustees.

(k) There shall be no violation of any rules for the use of the Common Areas which may from time to time be adopted by the Board of Trustees and promulgated among the membership by them in writing, and the Board of Trustees is hereby and elsewhere in this Declaration authorized to adopt such rules.

SECTION 3. Residential Use. All of the Lots shall be used for private residential purposes exclusively, and for no other purposes.

SECTION 4. Right of Association to Remove or Correct Violations of This Article. The Association may, in the interest of the general welfare of all the Owners, and after reasonable notice to the Owner, enter upon any Lot or the exterior of any dwelling at reasonable hours on any day except Sunday for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Article V, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Trustees of the Association.

SECTION 5. The Declarant for itself and any Developer reserves the right for a period of three (3) years after sale of each Lot by the Declarant or Developer to an Owner to enter upon that Lot for purposes of correcting grade and drainage patterns for the benefit of the entire Properties, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.

SECTION 6. There are hereby reserved utility easements through the Properties, and as long as there exists Class B membership, the Developer, and at all times the Association, are authorized to grant across, through or under any Lot or Common Areas any utility easement, including television cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the Properties, provided that no easement shall be granted which materially restricts ingress or egress to a Living Unit or building, or unreasonably interferes with the convenient use of a Living Unit as designed. There is reserved to the Developer and the Association the right to enter upon all Lots at any time for the purpose of repairs or saving of property when there is an emergency which affects or threatens other Lots.

#### ARTICLE VI

SECTION 1. Joint Driveways. Any driveway which is built or installed as part of the original construction upon the Properties and which is situated on the dividing line between Lots or partly on one Lot and partly on another Lot or other Lots, shall constitute a joint driveway for the equal and common use and benefit of the Owners of any Lots or other portions of the Properties which it is reasonably designed to serve, and to the extent not inconsistent with the provisions of this Article VI, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

SECTION 2. Repair and Maintenance. The cost of reasonable repair and maintenance of any joint driveways shall be shared by the Owners who make use of the same in equal amounts, unless such repair and maintenance is provided by the Association through assessment.

SECTION 3. Damage or Destruction. Unless provided by the Association through assessment, in the event any joint driveway is destroyed or damaged, any Owner who has used the same may restore it, and if the other Owners thereafter make use of the same, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 4. Easement. There shall be a perpetual and nonexclusive easement in, through and over any such joint driveway reserved to the Owners of any Lot or Lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfere with the free and unobstructed use thereof by said Owners.

SECTION 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article VI shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 6. Rights Not Subject to Suspension. The rights and easements created in this Article VI, Section 1 through 5 inclusive, shall not be suspended by the Association for any reason.

SECTION 7. Garages. One parking space in a garage will be provided for each Living Unit and can be conveyed only when the Living Unit is conveyed and must be conveyed to the same person or persons to whom the Living Unit is conveyed. The portion of the garage allocated to a Living Unit will be conveyed to the Owner of the Living Unit and said Owner shall maintain the interior portion of the garage conveyed to him. The Association will maintain and repair the exterior of each garage. No garage will have any interior partition between parking spaces and no such partition may be constructed.

## ARTICLE VII

SECTION 1. Party Walls. Each wall which is built as part of the original construction of a Living Unit and placed on the dividing line between Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article VII, the general rules of law regarding party walls and of liability for property damaged due to negligent or willful acts or omissions shall apply thereto.

SECTION 2. Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of the

restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 4. Weatherproofing. Notwithstanding any other provision of this Article VII, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 5. For purposes of making inspections and repairs under this Article VII, an Owner, his agents or contractors shall have the right to enter upon the premises of the other Owners of a party wall upon the giving of reasonable advance notice.

SECTION 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### ARTICLE VIII

SECTION 1. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. No such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken, and no such agreement to change shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas herein created. Nevertheless, for a period of three (3) years from date of recording this instrument, Declarant may amend this Declaration to conform to any requirements imposed or requested by any governmental agency. In addition this Declaration may be amended at any time by an instrument executed by ninety percent (90%) of the Owners. Notwithstanding the provisions of this paragraph, no amendment shall affect the rights granted in Article III, Section 1(h) and Section 2, Article V, Section 3, Article VI and Article VII.

(a) Nothing in this Declaration, the Articles or the Regulations of the Association, or any rules or regulations enacted

pursuant to any of the aforesaid, shall impose personal liability upon any member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the maintenance, repair or replacement of any Living Unit or of any part of the Common Areas or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an officer or Trustee, or both, from any liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless said person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.

SECTION 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

SECTION 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restrictions, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages.

SECTION 4. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas by any public or municipal agency, authority or utility.

SECTION 5. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

IN WITNESS WHEREOF, the said M-M ASSOCIATES, an Ohio general partnership, has hereunto set its signature on the day and year first written above.

Signed and acknowledged  
in the presence of:

M-M ASSOCIATES

By CHELSEA MOORE DEVELOPMENT CORP.,  
a general partner

Nancy L. [Signature]  
Robert E. [Signature]

By Robert E. Gugenheim, Jr.  
Robert E. Gugenheim, Jr.  
Vice President

STANDARD FINANCIAL, INC.  
a general partner

For Vice President  
Section 9 (b)(1)

By [Signature]  
New Business Secretary

STATE OF OHIO :  
: SS.  
COUNTY OF HAMILTON :

I hereby certify that on the 28th day of December, 1975 before me a Notary Public in and for the county and state aforesaid, personally appeared M-M ASSOCIATES, by [Signature], President, of Chelsea Moore Development Corp., and [Signature], Secretary, of Standard Financial, Inc., the general partners, known to me to be such officers, and acknowledged that said corporations executed the foregoing Declaration, that they did sign the foregoing Declaration as such officers for, on behalf of and in the name of said corporations and general partnership as their free and voluntary act and deed by authority of their Boards of Directors and that they did sign the foregoing Declaration as their own free and voluntary act and deed as such officers.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal on the day and year written above.

[Signature]  
Notary Public  
REBECCA L. HADDLESTON  
Notary Public, Hamilton County, Ohio  
My Commission Expires Sept. 21, 1980

This instrument prepared by G. Franklin Miller, Attorney at Law.  
2100 Fountain Square Plaza  
Cincinnati, Ohio 45202

# EXHIBIT A

825-2600

**THE THOMAS B. PUNSHON ENGINEERING COMPANY** . *Civil Engineers and Surveyors*  
ESTABLISHED 1856

11306 SOUTHLAND ROAD  
CINCINNATI, OHIO 45240

**DESCRIPTION FOR:** Chelsea-Moore Development Corp.

**LOCATION :** West side of Montgomery Road  
North of Pfeiffer Road  
Block "A" of Condominium Site

Situate in Section 5, Town 4, Entire Range 1, Sycamore Township, City of Montgomery, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the South line of said Section 5 and the center line of Montgomery Road; thence with the center line of said Montgomery Road, the following three courses and distances, North  $11^{\circ} 41'$  East, 390.64 feet, North  $11^{\circ} 09'$  East, 100.32 feet and North  $9^{\circ} 53'$  East, 100.52 feet to a point; thence North  $81^{\circ} 51'$  West, 115.00 feet to the real point of beginning for this description; thence from said real point of beginning, North  $81^{\circ} 51'$  West, 90.00 feet to a point; thence South  $53^{\circ} 07' 21''$  West, 58.12 feet to a point; thence North  $36^{\circ} 52' 39''$  West, 100.00 feet to a point; thence North  $10^{\circ} 30'$  West, 29.43 feet to a point; thence South  $87^{\circ} 30'$  West, 124.80 feet to a point; thence North  $2^{\circ} 30'$  West, 80.00 feet to a point; thence North  $42^{\circ} 38'$  East, 129.66 feet to a point; thence North  $71^{\circ} 10'$  East, 192.22 feet to a point; thence South  $5^{\circ} 00'$  West, 233.00 feet to a point; thence North  $86^{\circ} 35'$  East, 164.47 feet to a point in the West right of way line of said Montgomery Road; thence with the West right of way line of said Montgomery Road, the following two courses and distances, South  $7^{\circ} 51'$  West, 7.19 feet and South  $8^{\circ} 09'$  West, 37.73 feet to a point; thence along an arc deflecting to the right, having a radius of 12.50 feet, a distance of 19.64 feet, the chord of said arc bears South  $53^{\circ} 09'$  West, a distance of 17.68 feet to a point; thence North  $81^{\circ} 51'$  West, 57.50 feet to a point; thence South  $8^{\circ} 09'$  West, 50.00 feet to the point of beginning.

Containing 1.493 acres of land.

Subject to all easements of record.

**PREPARED BY:** THE THOMAS B. PUNSHON ENGINEERING CO.

**DATE :** September 10, 1976

MTGE  
BOOK 4140 PG 1533

# EXHIBIT B

825-2600

## THE THOMAS B. PUNSHON ENGINEERING COMPANY . *Civil Engineers and Surveyors*

ESTABLISHED 1856

11306 SOUTHLAND ROAD  
CINCINNATI, OHIO 45240

DESCRIPTION FOR: Chelsea-Moore Development Corp.

LOCATION : West side of Montgomery Road  
North of Pfeiffer Road  
Blocks "B, C, & D" of Condominium Site

Situate in Section 5, Town 4, Entire Range 1, Sycamore Township, City of Montgomery, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the South line of said Section 5 and the center line of Montgomery Road; thence with the center line of said Montgomery Road the following three courses and distances, North 11° 41' East, 890.64 feet, North 11° 09' East 100.32 feet and North 9° 53' East, 100.52 feet to a point; thence North 81° 51' West, 205.00 feet to a point; thence South 53° 07' 21" West, 58.12 feet to the real point of beginning for this description; thence from said real point of beginning, South 53° 07' 21" West, 231.42 feet to a point; thence South 87° 30' West, 397.52 feet to a point; thence North 49° 00' West, 170.00 feet to a point; thence North 18° 00' West, 105.00 feet to a point; thence North 42° 14' 16" East, 452.01 feet to a point; thence North 88° 22' 30" East, 521.15 feet to a point; thence South 5° 00' West, 64.00 feet to a point; thence South 71° 10' West, 192.22 feet to a point; thence South 42° 38' West, 129.66 feet to a point; thence South 2° 30' East, 80.00 feet to a point; thence North 87° 30' East, 124.80 feet to a point; thence South 10° 30' East, 29.43 feet to a point; thence South 36° 52' 39" East, 100.00 feet to the point of beginning.

Containing 6.809 acres of land.

Subject to all easements of record.

NOV 29 1976  
P 3:00  
PC  
BK

PREPARED BY: THE THOMAS B. PUNSHON ENGINEERING CO.

DATE : September 10, 1976

NTGE BOOK 4140 PC 1534