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JAN 14 1977  
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Muskingum County, Ohio Rec'd JAN 14 1977 1:22 P.M.  
Recorded JAN 15 1977 8:41 P.M. Page 1  
Donald Marshall Recorder

DECLARATION OF COVENANTS AND RESTRICTIONS

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THIS DECLARATION, made this 22nd day of Dec., A.D., 1976, by  
DUNZWEILER DEVELOPERS, INC., an Ohio Corporation, hereinafter called DEVELOPER.

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Exhibit A of this Declaration and desires to create thereon the first section of the first of several tracts to have a planned commercial and office community, consisting of various types of buildings and commercial spaces, open spaces, parking and other facilities necessary for the benefit of said community, and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community contributing to the personal and general convenience, safety welfare and general business interests of owners and occupants and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described in Exhibit A, together with such additions as may hereafter be made thereto (as provided in Article II) 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 each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, the Developer has incorporated under the laws of the State of Ohio, the COLONY NORTH OFFICE PARK & COMMERCIAL ASSN., INC., an Ohio Non-Profit Corporation, hereinafter referred to as ASSOCIATION

NOW THEREFORE, the Developer declares that the real property described

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in Exhibit A, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth;

AND FURTHER, the Developer hereby delegates and assigns to the ASSOCIATION, the powers of owning, maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the convenience, safety, welfare and general business interests of the Members.

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ARTICLE I

DEFINITIONS

Section 1: "Assessable Unit" shall mean and refer to any real property within the Properties which is subject to assessments.

Section 2: "Association" shall mean and refer to the COLONY NORTH OFFICE PARK & COMMERCIAL ASSN., INC., its successors and assigns.

Section 3: "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies of the Association as same may be from time to time amended.

Section 4: "Commercial and Office Space (s)" shall mean and refer to a structure or portion thereof intended to serve as a place for conducting business and office activities.

Section 5: "Common Area" shall mean and refer to all real property and improvements thereon owned or leased by the Association for the common use and enjoyment of the Owners and Members.

Section 6: "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire document, as same may from time to time be amended.

Section 7: "Developer" shall mean and refer to DUNZWEILER DEVELOPERS, INC. its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law.

Section 8: "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, Supplementary Declarations, and the Association Bylaws, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.

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Section 9. "General Plan of Development" shall mean and refer to the total general scheme of intended uses of land in The Properties, as illustrated in Exhibit B, hereof, as may be amended from time to time, and as further defined in Article II.1.

Section 10. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

Section 11. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties, with the exception of Common Area as heretofore defined, and to any condominium unit created under the Condominium Act of Ohio as such may be amended from time to time.

Section 12. "Notice" shall mean and refer to written notice mailed to the last known address of the intended recipient or notice through a community publication delivered to the Members.

Section 13. "Occupant" shall mean and refer to the occupant of a Commercial or Office Space who shall be the Owner, a contract purchaser, or a lessee who holds a written lease.

Section 14. "Owner" shall mean and refer to the recorded holder of the fee simple title to any lot, whether one or more persons or entities, and shall include contract sellers, but exclude those having such interest merely as security for the performance of an obligation.

Section 15. "Parcel" shall mean and refer to all platted subdivisions of one or more lots which are subject to the same Supplementary Declaration.

Section 16. "Parcel Common Area" shall mean and refer to portions of the Common Area within a Parcel which is designated as Limited Common Area in the Governing Documents and which are for the primary use and enjoyment of Members owning or occupying Lots in such Parcel.

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Section 17: "The Properties" shall mean and refer to all real property which becomes subject to the Declaration, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

Section 18: "Quorum of Members" shall mean the representation by presence or proxy of Members who hold fifty percent of the total outstanding votes of each voting class.

Section 19: "Quorum of Owners" shall mean the representation by presence or proxy of Members who hold seventy-five per cent of the outstanding Class A votes and the representation by presence or proxy of the Class C member, so long as it shall exist.

Section 20: "Certified Notice" shall mean and refer to any notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered to the address of the intended recipient. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt when such refusal is witnessed by two other people.

Section 21: "Supplementary Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by the Developer, which extends the provisions of this Declaration to a Parcel and contains such complementary provisions for such Parcel as are deemed appropriate by the Developer and as are herein required.

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ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Zanesville, County of Muskingum, State of Ohio, and is more particularly described in Exhibit A, and represents the first stage of the planned commercial and office community known as Plats One (1) and Two (2) of GARDEN QUARTER OFFICE PARK AT COLONY NORTH, as recorded in Plat Book 14, Pages 66 and 80, of the Plat Records of Muskingum County, Ohio.

Section 2. Additions to Existing Property. Added properties may become subject to this Declaration in the following manner:

(a) Additions by the Developer. The Developer shall have the right to subject to the Declaration any additional property which lies within the land area represented by the General Plan of Development, provided that not more than five years have lapsed since the filing of the last Supplementary Declaration which subjects a Parcel to this Declaration.

(b) Other Additions. Additional land, other than that described above, may be annexed to the Existing Property upon approval of seventy-five percent of the votes of a Quorum of Owners.

The additions authorized under subsection (a) and (b) shall be made by filing of record one or more Supplementary Declarations of covenants and restrictions with respect to the additional property and by filing with the Association the plat plans for such additions.

Section 3. General Plan of Development.

(a) Purpose. The General Plan of Development, illustrated in Exhibit A,

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is the dynamic design for the staged development of The Properties as a planned commercial and office community which will be regularly modified and amended, as provided herein, during the several years required to build the community. Because the General Plan of Development is a temporary design, it shall not bind the Developer to make the additions to the Existing Property which are shown on the General Plan or to improve any portion of such lands in accordance with the Plan unless and until a Supplementary Declaration is filed for such property which subjects it to this Declaration. Thereupon, the Developer shall then be obligated to carry out the development of such Parcel in accordance with the General Plan of Development currently in effect.

(b) Amendments. The Developer hereby reserves the right to amend the General Plan of Development for lands which have yet not been made subject to this Declaration, in response to changes in technological, economic, environmental or social conditions related to the development or marketing of The Properties or to changes in requirements of government agencies and financial institutions.

Section 4. Merger. In accordance with its Articles of Incorporation The Properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided. Such merger or consolidation shall have the assent of seventy-five percent of the votes of a Quorum of Owners.

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ARTICLE III

COLONY NORTH OFFICE PARK & COMMERCIAL ASSN., INC.

Section 1. Organization.

(a) The Association. The Association is a non-profit corporation organized and existing under the laws of Ohio, charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Document than this Declaration shall for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Institutional Plan. As the operating responsibilities of the Association expand from those related to the Existing Property to those required by the fully developed planned commercial and office community of COLONY NORTH OFFICE PARK & COMMERCIAL ASSN., INC., this Declaration and the Governing Documents shall guide the controlled and orderly evolution of the Association into a comprehensive community institution with two major operating and administrative levels, each with associated membership rights and assessment obligations:

- (1) Parcel Level refers to the administrative and operational activities construed to be of material benefit primarily to Members within a single Parcel. A Parcel shall be established by recording a Supplementary Declaration which sets forth its boundaries, purposes, membership constituency and right and obligations of Members which may be unique to such Parcel. A Parcel Committee shall be established for each Parcel in accordance with the Bylaws and serve to advise the Board of Trustees on matters pertaining to such Parcel.



(2) Community Level refers to the administrative and operational activities construed to be of material benefit to the Members at large without respect to the type or location of Commercial or Office Space and lot which they own.

(c) Subsidiary Associations. The Association shall have the right to form one or more subsidiary associations or corporations, for any purpose or purposes deemed appropriate by a majority vote of the Board and of a Quorum of Members. Without limiting the generality of the foregoing, one or more subsidiary associations may be formed for the operation and maintenance of any specific area or function within The Properties; however, such subsidiary association shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Members.

Section 2. Membership.

(a) Definition. Members shall include all Owners of Lots and all Lessees of Commercial or Office Spaces. Membership shall be appurtenant to the lot or Commercial or Office Spaces giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Governing Documents.

(b) Member's Rights and Duties. Each Member shall have the right, duties and obligations set forth in the Governing Documents.

(c) Voting Rights. The Association shall have three classes of voting membership:

Class A. Class A Members shall be all Owners of Lots upon which are constructed Commercial or Office Spaces. Class A Members shall be entitled to one vote for each two hundred (200) square feet of gross Commercial or Office Space, or major fraction thereof, constructed upon a lot.

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Class B. Class B Members shall be all Lessees of Commercial or Office Spaces. Class B Members shall have one vote for each four hundred (400) square feet of gross Commercial or Office Space, or major fraction thereof, they occupy.

Class C. The Class C Member shall be the Developer who shall have one vote for each two hundred (200) square feet of land area subject to this Declaration minus the number of outstanding Class A votes. The Class C Membership shall cease upon the earlier of the following events: when the total number of Class A votes equals the total number of Class C votes, or December 31, 1983.

(d) Exercise of Vote: The vote for any membership, which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted.

Any persons or entity qualifying as a member of more than one voting class, may exercise those votes to which he is entitled for each such class of membership.

Section 3. Board of Trustees.

(a) Composition. The number of Trustees shall be as provided in the Bylaws.

(b) Extent of Power.

(1) The Board of Trustees shall have all powers for the conduct of the affairs of the Association which are enabled by law or the Founding Documents which are not specifically reserved to Members, the Developer, the Appeals Board or the Property Use Review Board by said Documents.

(2) The Board of Trustees shall exercise its powers in accordance with the Governing Documents.

(c) Powers and Duties. Without limiting the generality thereof the Board shall have the power and obligation to perform the following duties:

- (1) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging or disposal of Common Area and/or improvements shall be subject to the provisions of Article II and Article IV, respectively.
- (2) Rule Making. To establish rules and regulations for the use of property as provided in Articles IV and to confirm architectural standards adopted by the Property Use Review Board; and
- (3) Assessments. To fix, levy and collect assessments as provided in Article V; and
- (4) Easements. To grant and convey easements to the Common Area as may become necessary and as provided in Article VII; and
- (5) Employment of Agents. To employ, enter into contract with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct and perform the business obligations and duties of the Association and as provided in the Management Standards Agreement; and
- (6) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in Article II; and
- (7) Appeals. To decide appeals relative to architectural review applications as provided herein; and

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- (8) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, to enforce or effectuate any of the provisions of the Governing Documents, subject to any appeal which may be filed and is pending.

Section 4. The Property Use Review Board.

(a) Purpose. It being the Developer's intent, and it being deemed in the best interest of all Owners, occupants, mortgagees and the general common welfare, that The Properties, including all buildings and all improvements, be maintained in a manner which provides for visual harmony and soundness of repair, and that such activities as take place within The Properties be neither deleterious to the property values and attractiveness of The Properties, nor to the comfort of the owners, their guests and tenants, a Property Use Review Board shall be established.

(b) Powers and Duties. The Property Use Review Board shall regulate the uses, exterior design, appearance and location of The Properties and improvements thereof so as to preserve and enhance property values and to maintain a harmonious relationship among uses, structures, and the Common Areas. In furtherance thereof, the Board shall:

- (1) Adopt Property Use Standards, subject to the confirmation of the Board of Trustees. Such Standards may include, but not be limited to (i) minimum fire casualty and public liability insurance to be maintained by Owners and/or Tenants, (ii) regulation of interior mounted window and door signs and displays which are visible from the Common Areas, (iii) restrictions on storage and use of machinery, the keeping of animals, and such other uses that may affect the health, safety, comfort and general welfare of the

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members and their guests; (iv) criteria for judging applications submitted according to Article VI Section 1.(c); and (v) criteria for administering Article VI Section 2.

- (2) Adopt standards, subject to the confirmation of the Board of Trustees, for the use and improvement of the Common Areas including (i) design, location and appearance of trash containers and methods of trash removal, (ii) storage, parking, and use of vehicles within The Properties, and (iii) signs, displays, and lighting placed on or directed toward the Common Areas.
- (3) Review and approve, modify or disapprove written applications of Owners, which shall be by Certified Notice, and of the Association, for improvements or additions to lots, Commercial or Office Spaces, structures, or Common Areas.
- (4) Review proposed leases and the nature of a proposed lessee's method of business, for conformance to the standards in (1) and (2) above, including parking and traffic loads.
- (5) In accordance with the Bylaws and Book of Resolutions, monitor the Properties for compliance with the above standards and approved plans for alteration, and recommend enforcement actions to the Board of Trustees to effect and ensure compliance.

(c) Composition. The Property Use Review Board shall consist of three or more persons appointed by the Board of Trustees as more fully provided in the Bylaws, except that the Developer should have the right to make such appointments until all Commercial and Office Spaces within The Properties have been occupied, or until December 31, 1983, whichever shall first occur.

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(d) Failure to Act. In the event the Property Use Review Board fails within thirty (30) days to approve, modify or disapprove in writing a correctly filed application, approval will be deemed to be granted.

(e) Appeal. An applicant may appeal an adverse decision of the Property Use Review Board to the Board of Trustees who may reverse or modify such decision by a two-thirds (2/3) vote of the Trustees.

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ARTICLE IV

COMMON AREA

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the exclusive management and control for the benefit of the Members of the Common Area conveyed to it and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with standards contained in the Book of Resolutions.

Section 2. Easement of Enjoyment.

(a) Common Areas. Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment to the Common Area.

(b) Parcel Common Areas. Subject to the provisions herein, the Owners of Lots within a Parcel shall have a priority right and easement of enjoyment in and to the areas designated Parcel Common Areas by the Governing Documents or an amendment thereto, and every Member within such Parcel shall have a priority right of enjoyment to the Parcel Common Areas.

Section 3. Extent of Members' Easements. The Members' easement of enjoyment created hereby shall be subject to the following:

(a) The rights of the Association to suspend the right of an Owner to services provided by the Association and the right of an Owner to vote for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied.

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(b) The right of the Association to mortgage any or all of the facilities with the assent of seventy-five percent of the votes of a Quorum of the Owners.

(c) The right of the Association to convey, dedicate or transfer all or any part of the Common Area, subject to the assent of seventy-five percent of the votes of a Quorum of the Owners.

(d) The right of the Association to establish and enforce reasonable rules and regulations.

Section 4. Delegation of Use. Any Member may delegate his right of enjoyment to the Common Area and facilities to his lessees, and his or the lessee's clientele and such vendors and service people necessary to operations of his Commercial or Office Space subject to such general regulations as may be established from time to time by the Association, and included within the Book of Resolutions as well as to the provisions of the Founding Documents.



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ARTICLE V  
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual and Special Assessments as are established herein and paid in the manner hereinafter provided.

All such assessments, together with 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 property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Assessable Unit.

Section 2. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Assessable Unit shall not affect the assessment lien. However, the sale or transfer of any Assessable Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Assessable Unit from liability for any assessments thereafter becoming due or from the lien thereof.

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Section 3. Method of Assessment. All Assessments shall be levied by the Association against Assessable Units and collected and disbursed by the Association. The Board of Trustees shall fix the amount of the assessments as provided hereinafter and set the date or dates such assessments shall become due.

Section 4. Annual Assessments shall consist of General and Parcel Assessments.

(a) General Assessments.

- (1) Purpose. The General Assessment shall be used exclusively to promote the convenience, safety and welfare of the Members and in particular to improve, maintain, and operate the Common Area and facilities, including funding of appropriate reserves for future repair and replacement.
- (2) Basis for Assessment. The annual General Assessment shall be determined on the same basis for all Assessable Units.
- (3) Maximum. Until January 1, of the year following commencement of assessments, the Maximum General Assessment shall be Sixty (\$60) Dollars per each two hundred (200) square feet of gross Commercial or Office Space, or major fraction thereof, per year.
- (4) Change in Maximum. From and after the first day of the Fiscal year immediately following the commencement of assessments, the Board of Trustees may increase the Maximum each year by a factor of not more than fifteen percent (15%) of the Maximum for the current fiscal year.  
  
From and after the first day of the fiscal year immediately following the commencement of assessments, the Maximum General Assessment may be increased above the amount which can be set by the Board with the assent of two-thirds of the votes of a Quorum of Owners.

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(b) Parcel Assessments.

- (1) Purpose. Parcel Assessments shall be used for such purposes as are authorized by the Supplementary Declaration for a given Parcel.
- (2) Basis. The Supplementary Declaration shall set forth the basis by which all Assessable Units shall be assessed.
- (3) Maximum. The Supplementary Declaration shall set forth the maximum annual Parcel Assessment and methods by which such maximum may be changed.

(c) Method of Assessment. By a vote of two-thirds of the Trustees, the Board shall fix the Annual General, and Parcel Assessments at an amount not in excess of the current maximum for each assessment, provided, however, that the Annual Assessments shall be sufficient to meet the obligations imposed by the Declaration and the Supplementary Declarations. In the event the Board fails to fix an assessment for any fiscal year, then each assessment established for the prior year shall automatically be continued until such time as the Board acts.

(d) Date of Commencement of Annual Assessments. The first Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the initial occupancy of the commercial or office spaces or portion thereof constructed upon such Lot.

Section 5. Special Assessments.

(a) Capital Improvement Assessment. The Association may levy in any assessment year a Special Assessment against Assessable Units, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including

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fixtures and personal property related thereto, providing that any such assessment shall have the assent of the Class C Member, if any, and of two-thirds of the votes of a Quorum of Owners. Special Assessments to Capital Improvements to Parcel Common Areas, which will primarily benefit and be maintained by the Owners of Lots in such Parcel require only the approval of two-thirds of the votes of a Quorum of Owners of the affected Parcel.

(b) Restoration Assessment: The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VI, Section 2. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration and the cost of collection thereof.

Section 6: Developer Assessment: The Developer shall pay an annual Developer Assessment on the aggregate of all unimproved property shown on the General Plan of Development which he owns or has contracted to purchase. The annual Developer Assessment shall be an amount equal to Ten Dollars (\$10) less two and one-half Dollars (\$2.50) for each year following the date of this Declaration for each outstanding Class C vote.

Section 7: Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon the Association may (a) declare the entire balance of such Annual or Special Assessment due and payable in full; (b) charge interest from the due date at a percentage rate no greater than the statutory limit, such rate to be set by the Board for each Assessment period; (c) give Certified Notice to the Owner that in the event payment with accrued interest is not paid within thirty (30) days from the date of notice, then the expressed contractual lien provided for herein shall be foreclosed; (d) after Certified Notice to the Owner, suspend the right of such Owner to vote or to enjoyment of any services provided by the Association until the assessment and accrued interest is paid in full.

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Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (2) all Common Areas; (3) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no Lots upon which there are occupied Commercial or Office Spaces shall be exempt from said assessments, charges or liens.

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ARTICLE VI

USE OF PROPERTY

Section 1: Protective Covenants:

(a) Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to jeopardize property values or be detrimental to the well-being of Members.

(b) Restriction on Further Subdivision. No Lot upon which a Commercial or Office Space has been constructed shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner; provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments and provided that this shall not prohibit the creation, division or combination of condominium units in accordance with law, except that the creation of one or more condominium units shall require the approval of the Class C member, if any. The aforementioned right of approval by the Class C member is deemed necessary to, and may be exercised only in accordance with, the Developer's objective of carrying out a harmonious plan of developing and marketing Lots within The Properties, and, so exercised, shall not be deemed an unreasonable restraint on alienation.

(c) Conditions for Property Use. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or Commercial or Office Space or Common Area or the improvements located thereon from its natural or improved state, existing on the date such property was first subjected to this Declaration, shall be made or done without the prior approval of the Property Use Review Board. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made or done on such property without the prior written approval of the Property Use Review Board.

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(d) Rules. From time to time the Board of Trustees shall adopt general rules, including but not limited to rules to regulate activities relating to the use of property and the well-being of Members, such as keeping of animals, storage and use of all vehicles, storage and use of machinery, antennas, signs, trash and trash containers, maintenance and removal of vegetation on The Properties. After conveyance of the first Lot to an Owner, such general rules may be adopted or amended by a two-thirds vote of the Board, following thirty days notice to the Members of intent to so act. All such general rules and any subsequent amendments thereto shall be placed in a Book of Resolutions and shall be binding on all Members, except where expressly provided otherwise in such rule.

(e) Exceptions. The Board of Trustees may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Developer or others are engaged in developing or improving any portion of the Properties, such persons shall be exempted from Rules affecting movement, disposition and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of the Properties.

Section 2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in a Supplementary Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free

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of debris including, but not limited to the seeding, watering, and moving of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management.

(b) Failure to Maintain. In the event an Owner of any Lot in The Properties shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after notice to the Owner as provided in the Bylaws and approval by two-thirds (2/3) vote of the Board of Trustees, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Restoration Assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided for herein for non-payment.

Section 3. Resale of Lots.

(a) Reference to Declaration. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration as well as any applicable Supplementary Declaration. However, failure to incorporate such reference in an instrument transferring title to any Lot shall not release the new Owner from the provisions of the Founding Documents.

(b) Notification. Further, the Contract Seller of a Lot shall notify the Board of Trustees as to the Contract Purchaser and scheduled date and place conveyance will be accomplished.



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(c) Estoppel Certificate. The Board thereupon shall prepare an estoppel certificate which shall set forth any assessments and charges due upon such Lot at time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Lot as of the date of preparation of such certificate. This certificate shall be delivered to the place of closing, and outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

Section 4. Leases. All leases of Commercial or Office Spaces, or portions thereof, shall be in writing and should be in writing and should provide that the lessee shall comply with the Governing Documents. The Lessor shall submit to the Property Use Review Board the proposed lease and such information about the proposed Lessee as the Board may reasonably require in order to determine whether the proposed use, type of business, and method of conducting business will enhance or be deleterious to property values, and will be compatible or a hindrance to the other members' rights of use and enjoyment of the Common Areas.

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ARTICLE VII

EASEMENTS

Section 1. Utility Easements. There is hereby created an easement upon, across over, through, and under The Properties for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on said property, to excavate for such purposes and to affix and maintain wires, circuits, and conduits on, in and under the roofs and exterior walls of said residence providing such company restores disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph: (1) no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by the Developer prior to the conveyance of the first Lot in a Parcel to an Owner or by the Association thereafter, and (2) it shall not be construed to apply to the relocation, installation or removal of utility lines within a unit which serve only that unit. This easement shall in no way affect any other recorded easements on said premises.

Section 2. Developer's Easement to Correct Drainage. For a period of two years from the date of conveyance of each Lot, the Developer reserves an easement and right on over and under the ground within that Lot to maintain and to correct

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drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer or others are engaged in developing or improving any portion of The Properties, such persons shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of The Properties.

Section 4. Easement to Inspect. There is hereby created an easement in favor of the Association for ingress and egress on any Lot to inspect such property for (a) alleged violations of the Governing Documents and (b) compliance with Property Use Standards and/or approved plans for alterations and improvements, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three days in advance thereof and such inspection is performed during reasonable hours.

Section 5. Easement. The Owner of each Lot is hereby granted an easement on and over Common Area which is adjacent to such Lot for all building and roof overhangs, projections, fireplace walls, and other portions of the Owner's buildings which extend or project into, onto, or over such adjacent Common Area.

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ARTICLE VIII

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of the thirty year term or of any ten-year extension period the covenants and restrictions are expressly terminated by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots. A termination must be recorded in order to become effective.

Section 2. Amendment. Any amendment shall be accompanied by a document signed by Owners of not less than seventy-five percent (75%) of the Lots. An amendment must be recorded in order to become effective.

Section 3. Enforcement. The Association, any Owner, or Occupant, as their interest may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Certain Rights of the Developer. For such time as the Developer shall own property subject to this Declaration, its rights and interests shall not be prejudiced by any of the following actions unless it shall, in writing, join in such actions:

There shall be no amendments to the Founding Documents which:

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- (a) Discriminate or tend to discriminate against its rights as an Owner.
- (b) Changes Article I, DEFINITIONS, in a manner which alters its rights or status.
- (c) Alters its rights under Article II as regards annexation of additional properties.
- (d) Alters the character and rights of membership or the rights of the Developer as set forth in Article III.
- (e) Alters previously recorded or written agreements with public or quasi-public agencies as regards easements and rights of way.
- (f) Denies the right to convey Common Areas to the Association so long as such Common Areas lie within the land area represented in the General Plan of Development.
- (g) Alters its rights as set forth in Article VI relating to Property Use controls.
- (h) Alters the basis for assessments.
- (i) Alters the provisions of the protective covenants as set forth in Article VI.
- (j) Alters the Developer's rights as they appear under this Article.

Section 5. Limitations. As long as the Developer has an interest in developing the Properties as defined in Article I, hereof, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intents of the General Plan of Development. Nothing in this Section shall be construed to limit the rights of the members to act as individuals or in affiliation with other members or groups.

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Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then Supplementary Declarations, then the Articles of Incorporation of the Association, then the Bylaws, then the Book of Resolutions; except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 8. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation". This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of The Properties by providing a common plan for the development thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

IN WITNESS WHEREOF, the Developer, DUNZWEILER DEVELOPER, INC., a corporation under the laws of Ohio, has caused these presents to be duly executed by DURBIN J. DUNZWEILER, President, and WILLIAM J. DUNZWEILER, Secretary, this

22<sup>nd</sup> day of December 1976.

Signed, sealed and delivered in the presence of:

Danny J. Wolfe  
Harry [unclear]  
[unclear]  
John [unclear]

DUNZWEILER DEVELOPERS, INC..

BY: [Signature]  
DURBIN J. DUNZWEILER, PRESIDENT

BY: [Signature]  
WILLIAM J. DUNZWEILER, SECRETARY  
SPACEMAKER, INC.

BY: [Signature]  
PRESIDENT  
[Signature]  
SECRETARY

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