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132/351C
134/107 & 135/85C

**CERTIFICATE OF AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, EASEMENTS AND LIENS**

The undersigned, being the duly elected and qualified Secretary of Markley Farm Subdivision Homeowners' Association, a nonprofit corporation organized under Chapter 1702 of the Ohio Revised Code, does hereby certify that the Amended and Restated Declaration of Covenants, Restrictions, Easements and Liens (the "Amended Declaration"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, was approved at a meeting duly called and held on May 4, 1992, and adjourned to May 18, 1992, by a vote of at least 75% of the property owners in Markley Farm Subdivision pursuant to Article IX, Section 9.3 I of the Markley Subdivision Declaration of Covenants, Conditions, Restrictions, Easements and Liens recorded in Mortgage Book 4541, Page 25 of the Hamilton County, Ohio, mortgage records.

The Amended Declaration pertains to the following real property:

Situate in Anderson Township, Hamilton County, Ohio and Military Surveys 608, 609 and 5581 and being more particularly described as follows:

132/351C All of Lots No. 5 - 16, inclusive, Lots 45 - 60, inclusive, Lots 62 - 79, inclusive and Lot 89 of Markley Subdivision, Block A as recorded in Plat Book 249, Page 9 of the Plat records of Hamilton County, Ohio. 132-351

134/107 All of Lots No. 1, 2, 3, 4, 61 and 90 of Markley Subdivision, Block B as recorded in Plat Book 254, Page 12 of the Plat Records of Hamilton County, Ohio. 134-107

All of Lots No. 17 - 44, inclusive, Lots No. 88, 91 and 92 of Markley Subdivision, Block C as recorded in Plat Book 257, Pages 71 through 74 of the Hamilton County, Ohio Plat Records. 135-84

IN WITNESS WHEREOF, I have hereunto set my hand this 5 day of September, 1992.

WITNESSES:

MARKLEY FARM SUBDIVISION
HOMEOWNERS' ASSOCIATION

Matthew J. Boyle
Robert M. Kelly

By *Albert M. Kelly*
Secretary

HAMILTON COUNTY RECORDER'S OFFICE
Doc 0:92 - 160208 Type: NT
Filed: 10/06/1992 3:21:56 PM \$ 34.00
Off. Rec.: 5972 2247 F XI 14 583

5972-2247

State of Ohio

County of Hamilton, ss:

The foregoing instrument was acknowledged before me
this 5th day of September, 1992, by Albert M. Krekan
known to me to be the Secretary of Markley Farm Subdivision
Homeowners' Association.


Notary Public

My Commission Expires:

JUDI CHAPMAN

Notary Public State of Ohio

My Commission Expires Dec. 15, 1993

EXHIBIT A

MARKLEY SUBDIVISION
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND LIENS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND LIENS (this "Amended Declaration") is made this 18th day of May 1992, by the Owners (hereinafter defined) of the Property (hereinafter defined);

W I T N E S S E T H:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The following terms, when used in this Amended Declaration, have the following meanings:

A. "Articles of Incorporation" means the Articles of Incorporation of Markley Subdivision Homeowners' Association, a nonprofit corporation organized under Chapter 1702 of the Ohio Revised Code, as such Articles of Incorporation may be amended from time to time.

B. "Association" means the Markley Subdivision Homeowners' Association, its successors and assigns.

C. "Assessments" means the assessments payable by the Owners in accordance with Article Four of this Amended Declaration.

D. "Board" means the Board of Trustees of the Association established in accordance with the Articles of Incorporation and the By-Laws of the Association.

E. "By-Laws" means the By-Laws and Regulations of Markley Subdivision Homeowners' Association, as amended from time to time, pursuant to Section 1702.10 of the Ohio Revised Code.

F. "Committee" means the Markley Subdivision Design Review Committee to be composed of two Owners appointed from time to time by the Board and one member of the Board designated from time to time by the Board.

G. "Common Area" means any real property or easements or other interests in any real property, including structures thereon, owned by the Association for the benefit, use and

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enjoyment of the Members, and includes the swimming pool, tennis courts and other designated open areas.

H. "Lot" means any plot of land shown upon any recorded subdivision plat of the Property, excluding the Common Areas; provided, however, that whenever two or more such plots of land are owned by the same person or persons and are used for the benefit of a single residence situated thereon, such commonly owned plots of land shall be treated as one Lot for purposes of this Amended Declaration.

I. "Member" means any Owner who is a member of the Association as provided in the Articles of Incorporation.

J. "Owner" means the record owner, whether one or more persons or entities, of an undivided fee simple interest in a Lot, excluding any persons or entities having such interest merely as security for the performance of an obligation.

K. "Property" means all of the following: (1) Lots 5-16, 45-60, 62-79, inclusive, and 89 of Markley Subdivision, Block A; (2) Lots 1-4, inclusive, 61 and 90 of Markley Subdivision, Block B; (3) Lots 17-44, inclusive, 88, 91 and 92 of Markley Subdivision, Block C; and (4) the Common Areas and any other part of Markley Subdivision, Blocks A, B and C, owned by the Association.

ARTICLE II

PROPERTY RIGHTS

Section 2.1. Owner's Right of Enjoyment. Every Owner and his or her family members, tenants, guests, invitees, licensees and employees shall have a right and easement to use the Common Areas in accordance with the purposes and uses for which the Common Areas are intended. Such right and easement is appurtenant to, may not be severed from and shall pass with the title to every Lot, subject to the right of the Association to do the following:

A. In accordance with the Articles of Incorporation and the By-Laws, to borrow money for the purpose of improving the Common Areas, and in aid thereof to grant a mortgage on the Common Areas. The Association shall not grant a mortgage on the Common Areas unless authorized by a resolution approved by not less than two-thirds (2/3) of the total number of votes entitled to be cast at a meeting of the Members.

B. Adopt rules and regulations governing the use and operation of the Common Areas, including reasonable limitations on the number of guests of Owners;

C. Suspend the voting rights of any Owner and the right of any Owner to use the Common Areas for any period during which any assessment remains unpaid and for any period, not to exceed thirty (30) days, for any infraction of published rules and regulations;

D. Grant easements over or dedicate or transfer all or any part of the Common Areas to any public agency, authority, utility or other persons or entities for such purposes and subject to such conditions as may be approved by not less than two-thirds (2/3) of the total number of votes entitled to be cast at a meeting of the Members; and

E. Make any improvements it deems proper upon the Common Areas.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Members. Every Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from the ownership of any Lot.

Section 3.2. Voting Rights. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as the Owners determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV

ASSESSMENTS

Section 4.1. Covenant for Assessments. Each Owner covenants and agrees to pay to the Association the following Assessments: (1) regular annual assessments; (2) special assessments for capital improvements or other services provided by the Association; and (3) such other assessments as may be fixed, established and collected from time to time as hereinafter provided. All Assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on and shall be a continuing lien upon the Lot against which such assessment is made and shall be due and payable notwithstanding the suspension pursuant to Section 2.1.C of this Amended Declaration of any Owner's right to use the Common Areas. Each such Assessment, together with interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the Owner of a Lot at the time such Assessment is made against the Lot.

Section 4.2. Regular Annual Assessments. A regular annual assessment shall be levied by the Association for the purpose of paying the expenses of operating, repairing, maintaining, replacing, enhancing, protecting, administering and insuring the Common Areas and for the maintenance of the walls, monuments, islands and plantings located within the rights-of-way of Markley Subdivision, Blocks A, B and C, and not maintained by the Township of Anderson. Such expenses include, without limitation, the following items: (a) maintenance of all grass, trees, shrubbery and other plantings; (b) repair and maintenance of private roads, driveways, parking areas and other improvements located on the Common Areas; (c) real estate taxes and assessments on the Common Areas; (d) management, supervision, legal and accounting expenses of the Association; (e) providing working capital and reasonable reserves for contingencies, replacements, maintenance, repairs and other costs incurred by the Association; and (f) other maintenance and repair of the Common Areas. The Association shall establish and maintain a reserve account containing such amounts as the Board of Trustees shall annually determine to be necessary to adequately meet the cost of all anticipated repairs, replacements and maintenance activities required of it under this Amended Declaration.

Section 4.3. Special Assessments. In addition to the regular annual assessment authorized by Section 4.2 of this Amended Declaration, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a capital improvement located upon the Common Areas, provided such special assessments shall be approved by not less than two-thirds (2/3) of the total number of votes entitled to be cast at a meeting of the Members.

Section 4.4. Basis and Apportionment of Assessments. Both regular annual and special assessments, as provided for in Sections 4.2 and 4.3 of this Amended Declaration, shall be apportioned equally upon all of the Lots.

The Board shall fix the amount of the regular annual assessments applicable to each Lot annually. The Board shall make reasonable efforts to fix such amounts, in advance, by the first day of December of each year for the ensuing year and shall, at that time, prepare a schedule of the Lots and the Assessments applicable thereto. Such schedule shall be maintained in the office of the Association and shall be open to inspection by each Owner upon reasonable notice to the Board. Written notice of each Assessment shall thereupon be sent to each Owner affected by such Assessment.

Regular annual and special assessments shall be fixed by the Board as provided in this Article Four and shall become a lien on

the Lots on the date that the Board mails written notice of any such Assessment to the Owner of any Lot subject thereto.

Any increase in the regular annual assessment which exceeds the regular annual assessment for the prior year by a percentage in excess of the sum of two percent (2%) plus the increase in the Consumer Price Index for all Urban Consumers (CPI-U), All Items Index (Base 1982-84 = 100), for the Selected Local Area Cincinnati, Hamilton, OH. - KY. - IND., as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the most recent available twelve month period, shall not take effect until such increase has been approved by a majority of the votes cast in person or by proxy at a meeting of the Members. Written notice of any meeting at which such an increase will be submitted to a vote of the Members shall be sent to all Members not less than fourteen days nor more than thirty days in advance of such meeting. At such meeting, the presence in person or by proxy of not less than two-thirds (2/3) of the votes entitled to be cast at such meeting shall constitute a quorum.

Section 4.5. Commencement of Assessments. All Assessments shall be payable, in advance, in either a single annual installment or in equal monthly installments, as determined by the Board.

Section 4.6. Assessments Certificates. The Association shall, upon demand, at any reasonable time, furnish to any Owner, or to his designee, a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the payment status of any Assessment. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge, not to exceed \$10, to be determined by the Board may be levied in advance by the Association for each certificate so delivered.

Section 4.7. Non-Payment of Assessments. Any Assessment which is not paid on the date when due shall be delinquent and, together with interest thereon and costs of collection thereof as hereinafter provided, shall be both a personal obligation of the Owner and a continuing lien upon such Lot. The personal obligation of an Owner to pay such assessment shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by such successor. No Owner may waive or otherwise escape liability for any Assessment by non-use of the Common Areas or abandonment of his Lot.

If any Assessment is not paid within thirty (30) days after the due date, such Assessment shall bear interest from the due date at a rate equal to the lesser of (a) eighteen percent (18%) per annum, or (b) the highest rate permitted under applicable laws, and the Association may bring an action at law or equity to collect the amount due from the Owner and to foreclose the lien.

In either of such events, interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment. To the extent any Assessment is not paid out of the proceeds of a foreclosure sale and the lien securing the assessment is discharged, the unpaid portion of such Assessment, to the extent not collected from the Owner, shall be deemed to be common expenses and shall be assessed against all of the Lots subject to such type of Assessment. Such amount shall not be subject to the limitations of Section 4.4 of this Amended Declaration.

Section 4.8. Subordination of Lien to First Mortgage.

When the holder of a first mortgage of record or other person acquires title to a Lot as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquiror, his or its heirs, successors and assigns, shall not be liable for the share of the Assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquiror and any lien against such Lot shall thereupon be void and unenforceable. The unpaid portion of such an assessment shall be deemed to be common expenses and shall be assessed against all of the Lots, including that of such acquiror, his or its heirs, successors or assigns. Such amount shall not be subject to the limitations of Section 4.4 of this Amended Declaration.

ARTICLE V

INSURANCE

Section 5.1. Fire, Extended Coverage and Standard "All Risk" Insurance. The Association shall maintain insurance for all buildings, structures and improvements on the Common Areas against any loss or damage by fire, lightning and such other hazards as are ordinarily insured by comprehensive fire, extended coverage, and "all risk" policies issued in such amounts at all times sufficient to prevent the Association from becoming co-insurer under the terms of any applicable co-insurance clause or provision and in no event less than the actual replacement costs of such buildings and structures.

The insurance required hereby shall be obtained from a fire and casualty insurance company authorized to write such insurance in the State of Ohio which has a general policy holder rating of no less than "A," as determined by the then latest edition of the Best's Insurance Reports or its successor guide, and shall be written in the name of the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. The Board or its authorized representatives shall have the exclusive right to negotiate and adjust all losses for damage to the Common Areas. Unless the Board determines otherwise, all such insurance shall contain a waiver of subrogation of rights by

the carrier as to the Board, the Association, its officers, trustees, agents and employees, and all Owners and occupants.

Section 5.2. Use of Insurance Proceeds. The Association shall not be entitled to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of such Common Areas without the approval of not less than two-thirds (2/3) of the votes entitled to be cast at a meeting of the members.

Section 5.3. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas, insuring the Association, the Board and the Owners in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injury and/or property damage. Such liability insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board, and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner, tenant or occupant because of negligent acts of the Association, the Board, the Owner or the Owners' tenants, occupants or family members.

Section 5.4. Other Insurance. The Association may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may deem desirable from time to time.

Section 5.5. Insufficient Insurance. In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a special assessment against all of the Lots, and such assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for non-payment of assessments. Notwithstanding the provisions of Section 4.3 of this Amended Declaration, the action required to be taken by the Association under this Section 5.5 shall not require any vote of the members of the Association.

Section 5.6. Fidelity Bond. The Board shall obtain fidelity bond coverage with respect to any person handling Association funds in an amount no less than one hundred and fifty percent (150%) of the amount reasonably estimated to be handled annually by such person on behalf of the Association.

ARTICLE VI

DESIGN AND ARCHITECTURAL CONTROL

Section 7.1. Design and Architectural Control. No alteration, change, construction, addition, excavation or other work or action which in any way alters the exterior appearance of any structures or improvements on any Lot from its theretofore natural or improved state (and no change, alteration or other modification of any of the foregoing previously approved hereunder), and no addition to or modification of any improvement which is part of a Lot (whether or not theretofore approved hereunder), including but not limited to the items enumerated in Section 7.2 of this Amended Declaration, shall be commenced until the same has first been approved in writing by the Committee. Approval shall be requested by submission to the Committee of plans and specifications, in duplicate, showing the following:

- (a) Existing and proposed land contours and grades;
- (b) All proposed buildings, structures, patios, decks, balconies and other improvements, and the proposed locations thereof;
- (c) Plans for all floors, cross sections and elevations, including projections and wing-walls;
- (d) Samples of materials to be used, if requested by the Committee; and
- (e) Such other information, data and drawings as may be reasonably requested by the Committee.

The specifications shall describe types of construction and exterior materials to be used, including without limitation the color of such materials and the manufacturer thereof, and shall include such other items as may be requested by the Committee. Notwithstanding the foregoing, an Owner may repaint the exterior of any structures or improvements on a Lot without obtaining Committee approval if the intended color is substantially similar to the existing color of such structures or improvements.

If the Committee fails either to approve or disapprove such plans and specifications within thirty (30) days after they have been delivered to the Committee, such plans and specifications shall be deemed to have been approved.

Neither the Association, the Board, the Committee nor any of their respective successors or assigns, shall be liable to anyone submitting plans for approval by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans. Every owner who submits plans to the Committee agrees, by

submission of such plans, that he or it will not bring any action or suit against the Committee, the Board or the Association to compel any action or recover any damages.

If an Owner who has sought approval of the Committee pursuant to this Section 6.1 objects to a decision of the Committee, the Owner may appeal such decision to the Board or to the Owners within thirty (30) days of receipt of written notice from the Committee of the Committee's decision.

A decision of the Committee may be overturned by (a) a majority of the members serving on the Board at the time such matter is voted upon, excluding for such purpose any vacancies on the Board, or (b) two thirds of the Owners pursuant to a written action or a resolution approved at a properly convened meeting of the Owners. The expenses reasonably incurred by the Association in connection with any special meeting of the Owners to be convened with respect to such an appeal shall be at the expense of the Owner pursuing the appeal.

An Owner who elects to appeal a decision of the Committee to the Board may subsequently appeal the decision of the Board to the Owners within sixty (60) days of receipt of written notice from the Board of the Board's decision. The terms and conditions set forth above with respect to action by the Owners shall apply.

ARTICLE VII

USE RESTRICTIONS

Section 8.1. Prohibited Uses.

A. No Lot shall be used for any purpose other than residential purposes. No Lot shall contain not more than one (1) single family dwelling, which may include an attached garage and attached living quarters for servants. No detached garages shall be constructed upon any Lot.

B. No wall or fence shall extend into the front yard beyond the setback line of the residence on any Lot, except for retaining walls or similar structures required by the nature of the contour of the Lot. Permitted fences shall not exceed four feet in height, except fences surrounding swimming pools which may be higher when required by law. No permitted fences shall be constructed of chain link or other design which utilizes metal as the visible structural framework.

C. No hogs, goats, poultry or other livestock shall be kept on any Lot. Each residence shall be permitted ordinary household pets of not more than two (2) dogs and two (2) cats. No commercial breeding of any animals shall be permitted on any Lot.

D. No structure or structures of a temporary character, trailer or barn shall be used on any Lot after the permanent residence on such Lot has been completed.

E. No trucks of any kind shall be permitted to be parked within the Subdivision for a period of more than eight hours, unless such vehicle is actually being used for construction of improvements on or repair of any improvements on a Lot. In no event shall any truck be parked on the Property overnight, unless in an enclosed garage. Passenger-type station wagons and passenger-type vans (not exceeding twenty (20) feet in length and having no bath or cooking facilities) shall not be considered trucks for purposes of this restriction.

F. No boats, trailers, mobile homes, campers or house vehicles shall be permitted to be parked on any Lot unless in an enclosed garage except for a period of time not to exceed twelve (12) hours during which such vehicles are being loaded or cleaned. No buses shall be parked on any Lot or street on the Property. No vehicle which constitutes an unsightly nuisance, as determined by the Board, or any unlicensed vehicle shall be permitted on the Property.

Section 7.2. Restricted Uses. Without the approval of the Committee, no owner shall erect any of the following on any Lot:

A. Solar panels, exterior satellite dishes, exterior television or radio antennae, window or wall unit air conditioners;

B. Above-ground swimming pools except for wading pools not exceeding one foot in height, provided any such wading pool is situated on the Lot to the rear of the residence;

C. Any swing sets, jungle gyms and backyard play equipment located on any Lot, unless such equipment is situated on the Lot to the rear of the residence and is constructed of unpainted wood;

D. Any basketball pole, backstop or hoop, unless such apparatus is mounted on a pole which is placed not closer than thirty (30) feet from the front curb line of the Lot; or

E. Any tool or garden shed, or other type of storage structure.

ARTICLE VIII

MISCELLANEOUS

Section 9.1. Duration. Except where permanent or perpetual easements or other permanent rights or interests are herein created, the terms and provisions of this Amended Declaration shall run with and bind the land and shall inure to the benefit of, and be enforceable by, the Association or by any of the Owners, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Amended Declaration, after which the Amended Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless sooner terminated by a recorded instrument approved by two-thirds (2/3) of the votes entitled to be cast at a meeting of the Members.

Section 8.2. Amendment. This Amended Declaration may be amended, from time to time, by an instrument approved by not less than two-thirds (2/3) of the votes entitled to be cast at a meeting of the Members. Any amendment shall be signed by an officer of the Association and must be recorded. Such amendment shall take effect only upon recording.

Section 8.3. Personal Liability. Each person who is or becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an officer, trustee, employee or agent of the Association 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 officer, trustee, employer or agent unless such person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.

Section 8.4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Amended Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage prepaid, 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 8.5. Enforcement. The provisions of this Amended Declaration may be enforced by the Association or by any Owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision of the Amended Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Amended Declaration. 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.

Section 8.6. Severability. Invalidation of any provision of this Amended Declaration by judgment, decree or otherwise shall not effect the validity or any of the other provisions hereof, each of which shall remain in full force and effect.

Section 8.7. Conflicts. In the case of any conflict between this Amended Declaration and either the Articles of Incorporation or the By-Laws of the Association, this Amended Declaration shall control.

Section 8.8. Condemnation. In the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association.