

This partnership has complied with section

1777.02 O.R.O.

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Beth Deckard, Recorder
Warren County, Ohio

67380

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BROOKSIDE II

The undersigned BROOKSIDE JOINT VENTURE, an Ohio general partnership (hereinafter referred to as "Developer"), as owner and developer of real property located in the City of Springboro, Warren County, Ohio described in Exhibit A attached hereto and known as Brookside, Section Seven (including lots 209 to 245 inclusive and referred to herein as the "Subdivision"), imposes the following plat restrictions and covenants on the Subdivision for the benefit of all present and future owners of any lot in the Subdivision.

DECLARATIONS

All lots within the Subdivision shall be subject to the following development standards, restrictions, covenants, conditions and assessments, which are for the benefit of all lot owners and occupants within the Subdivision and which shall run with the property and shall be binding on all owners and all persons claiming under them until December 31, 2004, at which time said covenants, conditions, restrictions and assessments shall be automatically extended for successive periods of ten (10) years, unless by a majority vote of the then owners of the lots in the Subdivision it is agreed to change said covenants, conditions, restrictions and assessments in whole or in part:

Article 1. Use Restrictions

1.01 Each lot within the Subdivision except lot 245 which is a reserve area (said lots hereinafter being referred to collectively as "Building Lots" or separately as a "Building Lot") shall be used for single-family residential purposes only. However, the Developer, its agents or assigns, may use the Building Lots for construction and sales purposes during any building and sales period.

1.02 No residence, building, shed, fence, flagpole, mailbox, light pole or fixture, swimming pool, tennis court, pavement, driveway, awning, wall or structure of any kind shall be erected, placed or altered on any Building Lot without first obtaining the written consent of the Architectural Control Committee subsequently described herein. All requests for written approvals from the Architectural Control Committee shall be accompanied by detailed plans and specifications for the proposed improvements showing, where applicable, the size, location, type, architectural design, spacing, quality, use, construction materials, color scheme, grading plan and finish grade elevation for said improvements.

1.03 Each two (2) story single-family dwelling constructed on any Building Lot shall have a minimum of 1,600 square feet of living area and each single story single-family dwelling shall have a minimum living area of 1,400 square feet, exclusive

of basements, open porches, garages and other unheated areas. Each dwelling shall have an attached garage with space for not less than two (2) automobiles.

1.04 All structures or improvements commenced by an owner of any Building Lot within the Subdivision must be completed within six (6) months from the date of commencement unless otherwise approved by the Architectural Control Committee.

1.05 A front walk pole light operated by a photo optic cell (or other darkness sensing technology) that illuminates automatically at darkness shall be installed in the front yard of each Building Lot at the time of construction of a dwelling thereon. The Building Lot owner shall maintain the light in operating condition at all times.

1.06 No antenna, radio, television or microwave tower or satellite dish shall be erected or maintained on any Building Lot or attached to any structure in the Subdivision without the approval of the Architectural Control Committee. The Architectural Control Committee may deny any such request in its sole and absolute discretion or may attach such conditions as it deems necessary or appropriate.

1.07 No residence shall have a sump pump which discharges directly into the street through a curb.

1.08 No building shall be located nearer to any street than the building setback line shown on the recorded plat of the Subdivision. The setback areas designated on the recorded plat shall be for lawn purposes only. This covenant shall not be construed to prevent the use of the setback areas for walks, drives, trees, shrubbery, flowers, or ornamental plants used for the purpose of beautification.

1.09 No structures or materials shall be placed or permitted within the utility or drainage easement areas as designated on the recorded plat of the Subdivision. Plantings within said utility or drainage easement areas are at the Building Lot owner's sole risk of loss if such plantings, as determined solely by the applicable utility company or the Architectural Control Committee, would damage or interfere with the installation or maintenance of utilities or would change or retard the flow of surface water from its proper course. Each Building Lot owner shall maintain such portion of any utility or drainage easement area as is located upon such Building Lot owner's lot.

1.10 No business activities of any kind shall be conducted on any Building Lot or open space in the Subdivision without the approval of the Homeowners' Association; provided, however, that the foregoing shall not apply to the business activities of Developer or the construction, sale or maintenance of Building Lots and residences by authorized builders or by Developer, its agents or assigns, during the construction and sales period.

1.11 No outside drying or airing of clothes shall be permitted on any Building Lot except in an enclosed area, not visible to the public.

1.12 No buses, campers, motor homes, trailers, boats, or other similar recreational vehicles shall be stored on any Building Lot. All automobiles, trucks, motorcycles, vans, jet skis, snowmobiles or other such vehicles shall be housed within a garage building. No inoperable vehicles shall be stored on any Building Lot.

1.13 No exterior portion of any Building Lot shall be used as a dumping ground or storage area for rubbish, machinery, scrap, paper, glass or other such materials. Garbage or other waste shall be kept in trash containers. All containers used for the storage or disposal of trash or recyclable materials shall be kept in a clean and sanitary condition and screened from public view. Building materials to be used in the construction of approved structures may be stored on a Building Lot, provided such building materials are incorporated into the approved improvement within ninety (90) days after their delivery to such Building Lot.

1.14 No sod, dirt or gravel, other than incidental to the construction of an approved structure or the normal maintenance of lawn areas, shall be removed from any Building Lot without the written approval of the Architectural Control Committee.

1.15 No weeds, underbrush or unsightly growths or objects of any kind shall be permitted to remain on any Building Lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner and shall be mowed on a regular basis. The Homeowners' Association may regulate and control the maintenance of lawn areas by publishing rules and regulations as it deems necessary from time to time.

1.16 No geothermal or solar heating system shall be installed on any Building Lot or on any dwelling thereon without the prior approval of all applicable agencies and the Architectural Control Committee.

1.17 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Building Lot, except that dogs, cats or other usual household pets may be kept on a Building Lot, so long as such pets are not kept, bred or maintained for any commercial purpose. No animal shall be permitted to run loose or become a nuisance to any owner of any Building Lot in the Subdivision. The Homeowners' Association may regulate and control the maintenance of such household pets by publishing such rules and regulations as it deems necessary from time to time.

1.18 No sign or billboard shall be erected or displayed on any Building Lot except (a) one (1) sign of no more than five (5) square feet advertising the property for sale; (b) signs used by Developer, its successors and/or assigns, to advertise lots or residences for sale during the construction and sales period; and (c) signs approved by the Architectural Control Committee.

1.19 All tanks for the storage of propane gas, fuel or oil shall be located beneath ground level, except that propane tanks for service to the entire Subdivision, for

portable gas grills or, on a temporary basis, for construction of an approved structure may be located above ground.

1.20 No well for the production of gas, water or oil, whether intended for temporary or permanent purposes, shall be drilled or maintained on any Building Lot without the written consent of the Architectural Control Committee.

1.21 No chain link fence will be permitted on any Building Lot in the Subdivision.

1.22 No above ground swimming pools in place for more than forty-eight (48) consecutive hours will be permitted on any Building Lot in the Subdivision.

1.23 No private water supply systems or private sewage disposal systems shall be permitted on any Building Lot in the Subdivision.

1.24 Nothing shall be done, placed or stored on any Building Lot which may endanger the health or unreasonably disturb the occupants of the dwellings on neighboring Building Lots.

1.25 The owner of each Building Lot within the Subdivision, upon acquisition of title to such lot, shall automatically become a member of the Homeowners' Association created in accordance with Article 3.01 hereof. Such membership shall be an appurtenance to and shall not be separated from ownership of the Building Lot and such membership shall terminate upon the sale or other disposition by such member of such lot ownership.

1.26 Invalidation of any of these covenants and restrictions by judgment or court order shall in no way affect any other provision hereof, all of which shall remain in full force and effect.

It shall be lawful for Developer, the City of Springboro, the Homeowners' Association or any person or persons owning a Building Lot to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any covenant or restriction contained herein. The proceeding may seek to prevent such person or persons from violating or continuing to violate the restrictions or to recover damages for such violation together with the costs incurred in enforcement of the restrictions.

Article 2. Additional Reserve Area and Drainage Easement Restrictions

Reserve areas and drainage easements shown on the recorded plat of the Subdivision may include storm water detention or retention areas designed to direct, detain or retain water. The following covenants and restrictions are for the benefit of all Building Lot owners in the Subdivision and are to run with the land and shall be

binding on all parties, on all owners, and all persons claiming under them forever, as follows:

2.01 No owner of any Building Lot in the Subdivision shall do or permit to be done any action or activity which would result in (a) the pollution of any retained water, (b) the diversion of water, (c) a change in the elevation of the water level, (d) silting or (e) an adverse effect on water quality, drainage or proper water management, or which would otherwise impair or interfere with the use of such areas for drainage and related purposes for the benefit of all Building Lot owners.

2.02 No boating, fishing, swimming, ice skating or other recreational activity shall be conducted in, on or above said reserve areas or drainage easement areas.

2.03 The Homeowners' Association shall have the right to establish rules regarding the use of the reserve areas and drainage easement areas, provided such rules are not in conflict with any other provision contained herein, and are reasonably established to protect the safety and welfare of the residents of the Subdivision and their guests, or are established to assure the continued service of the areas for the purposes for which they were designed.

2.04 Developer, the City of Springboro, the Homeowners' Association or any person or persons owning a Building Lot may prosecute proceedings at law or in equity against any person or persons violating or attempting to violate any of the above covenants and restrictions or seek restraining orders or other mandatory relief for the correction of any interference with or damage to the drainage and detention or retention system, and to recover compensation for any damages incurred by the complaining party together with the costs incurred in enforcement of the restrictions.

Article 3. Homeowners' Association

3.01 After the recording of this Declaration, Developer shall form and incorporate a homeowners' association to be known as the Brookside II Homeowners' Association (the "Association") to promote the common interest of all Building Lot owners, to handle the maintenance and repair of certain equipment and the maintenance of certain areas within the Subdivision as set forth below and to promote compliance with the covenants, conditions and use restrictions set forth in this Declaration. The Association shall be comprised of the owners of all the Building Lots in the Subdivision. Developer reserves the right to expand the membership and duties of the Association to include other lot owners in sections of Brookside to be developed in the future. Attached hereto as Exhibit B is a description of real property which may be developed by Developer (the "Expansion Property"), the lot owners of which may, at the option of Developer, be required to become members of the Association. If the Developer elects to develop all or a portion of the Expansion Property and elects to include the owners of lots in such portion of the Expansion Property as members in the Association and to expand the Association's responsibilities to include similar duties for such portion of the Expansion

Property, Developer may do so by filing an amendment to this Declaration to include such portion of the Expansion Property within ten (10) years from the date hereof, explicitly setting forth that the lot owners within such portion of the Expansion Property shall become members of the Association and detailing the additional rights and obligations of the Association.

3.02 The management and control of the affairs of the Association shall be vested in its board of directors. The board of directors shall be composed of three (3) members. The three (3) initial members of the board of directors shall be selected by Developer. The three (3) initial members of the board of directors shall serve until (a) that date which is ninety (90) days after 100% of all Building Lots within the Subdivision and 100% of all lots within the Expansion Property which have been developed and whose owners have been made a part of the Association as set forth above in Article 3.01 have been sold, or (b) Developer elects to turn over control of the Association to the Building Lot owners, whichever shall first occur. Upon the incapacity, resignation or death of any initial director, a successor, who shall serve the remaining term of the departed director, shall be appointed by the remaining members of the board of directors within three (3) months after the incapacity, resignation or death of the departed director. Subsequent board members shall be elected by a majority of the Building Lot owners as more fully set forth in the Articles of Incorporation and By-Laws for the Association.

3.03 Reserve areas shown on the recorded plat of the Subdivision shall be conveyed to and maintained by the Association. However, in the event the City of Springboro agrees to maintain such reserve areas, the Association may convey the reserve areas to the City of Springboro in exchange for its agreement to properly maintain said areas. In such event, the Association shall be empowered to make such arrangements as reasonably required by the City of Springboro to cover the cost of maintenance of the reserve areas, including, but not limited to, assigning its right to collect up to 85% of the General Assessment as defined in Article 3.08 to the City of Springboro.

3.04 The Association may elect, pursuant to a vote of a majority of its board of directors, to undertake the maintenance of the reserve areas or a portion of the reserve areas at any time after the City of Springboro has agreed to maintain the reserve areas. If such an election is made, then the Association shall notify the City of Springboro and shall enter into an agreement with the City of Springboro regarding the transfer of the maintenance obligations and assessments with respect to the reserve areas or portion thereof to be maintained by the Association. If a transfer of maintenance obligations is made, then the City of Springboro shall reconvey the reserve areas, or applicable portion thereof, to the Association and be released from the maintenance obligations transferred back to the Association.

3.05 If at any time the City of Springboro ceases to undertake the maintenance of the reserve areas for any reason, the Association shall assume the responsibility for maintaining the reserve areas.

3.06 The Association shall be responsible for the maintenance, repair and replacement of any sewage pump equipment serving Building Lots. Such maintenance shall be in accordance with guidelines set forth by the City of Springboro Engineer. The costs of said maintenance, repair and replacement shall be charged proportionately to those Building Lot owners that are served by the sewage pump equipment. The proportionate share for each Building Lot owner served by the sewage pump equipment shall be determined by dividing the projected annual cost of maintenance, repair and replacement for the sewage pump equipment by the number of lots served by the sewage pump equipment (whether said lots are within or outside of the Subdivision). The projected annual cost may include a reserve to provide for the replacement of components of the sewage pump equipment. In the event that the City of Springboro agrees to maintain any sewage pump equipment, the Association shall be empowered to make such arrangements as reasonably required by the City of Springboro to cover the cost of maintenance, including, but not limited to assigning its right to collect the Sewage Pump Assessment as defined in Article 3.08 from the Building Lot owners.

3.07 The Association, its agents or assigns, or the City of Springboro with respect to any reserve areas it is maintaining, shall have the right to enter onto any reserve area, open space, public right-of-way, landscape easement area shown on the recorded plat of the Subdivision or other easement area as it from time to time deems necessary for the purpose of maintaining the same. Such maintenance may include, but shall not be limited to:

- (a) regular mowing, trimming and fertilizing of grassy areas;
- (b) periodic mulching of flower beds within the Subdivision;
- (c) regular weeding of flower beds;
- (d) flower planting within the Subdivision;
- (e) maintenance of street lighting, if any, and associated electric service billings;
- (f) construction or repair of any permanent signs;
- (g) construction or repair of any stone wall, wing wall or fencing;
- (h) treatment of water in any detention or retention areas to limit algae and grassy growth;
- (i) planting, trimming, pruning, removal and replacement of trees and bushes, as necessary; and

(j) maintenance, repair or replacement of any sanitary pump station or equipment.

3.08 For the purpose of providing funds to carry out the responsibilities of the Association hereunder, the Association shall be empowered to levy, assess and collect from the owner of each and every Building Lot in the Subdivision, excepting those Building Lots owned by the Developer, an amount up to Two Hundred Dollars (\$200.00) per year, irrespective of whether the Subdivision has been completed (the "General Assessment"). Provided, however, that such limit of Two Hundred Dollars (\$200.00) per Building Lot per year may be increased in proportion to any increase in the Consumer Price Index of the U.S. Bureau of Labor Statistics from the base period of September, 1995. Any fees assessed by the Association in excess of the General Assessment, or its adjusted equivalent, must be approved by a majority of the Building Lot owners in the Subdivision. Notwithstanding the above, in addition to the General Assessment, any owner of a Building Lot served by sewage pump equipment may be assessed and levied a proportionate share of the cost of maintenance, repair or replacement of said equipment as defined in Article 3.06 not to exceed One Hundred Fifty Dollars (\$150.00) per Building Lot per year without any requirement for approval of the owners of Building Lots in the Subdivision (the "Sewage Pump Assessment"). Such limit of One Hundred Fifty Dollars (\$150.00) per Building Lot per year may be increased in proportion to any increase in the Consumer Price Index of the U. S. Bureau of Labor Statistics from the base period of September, 1995.

3.09 Any amount assessed or levied hereunder by the Association or City of Springboro against a Building Lot owner shall become a lien on each Building Lot until paid and shall bear interest at the rate of ten percent (10%) per annum until paid, beginning thirty (30) days after the date of assessment. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the Association may file with the Warren County Recorder a Notice of Lien. The Notice of Lien shall contain a description of the Building Lot against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessment or assessments. The lien provided for herein shall remain valid for a period of five (5) years from the date a Notice of Lien is duly filed, unless sooner released or satisfied in the same manner provided for by law in the State of Ohio for the release and satisfaction of mortgages on real property or until discharged by the final judgment or order of the Court in an action brought to discharge the lien. The lien shall secure not only the amount of the unpaid assessments, but also the costs incurred in collection, including, but not limited to, interest, attorney's fees and court costs. The lien of the assessment provided for herein shall be subject and subordinate to the lien of any duly executed mortgage on any Building Lot recorded prior to the recording of the Notice of Lien. The holder of any such mortgage which comes into possession of a Building Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure shall take the Building Lot free of claims for unpaid installments of assessments or charges against the

Building Lot which become due and payable prior to the time such holder or purchaser takes title to the Building Lot.

3.10 Any and all of the rights, powers, duties and obligations assumed by, reserved to, created in or given to the Association may be exercised by Developer until such time as the Association is formed and control thereof transferred to the Building Lot owners. At such time as control of the Association is transferred to the Building Lot owners, Developer may reserve the exclusive right to approve the plot plan, construction plans, color scheme and landscape plan associated with any structure on any Building Lot on which a dwelling unit has not yet been completed and occupied, so long as Developer clearly identifies the Building Lots for which it is retaining such right at the time of the turnover. Developer shall maintain said right of approval for each Building Lot until such time as a dwelling unit has been completed on that Building Lot and occupied by the homebuyer.

Article 4. Architectural Control Committee

An Architectural Control Committee (the "Committee") is hereby established as a standing committee of the Association to carry out the functions set forth for it in this Declaration. The Architectural Control Committee's procedures and duties shall be as follows:

4.01 The Committee shall be composed of three (3) members. The Developer shall appoint each of the three (3) initial members of the Committee.

4.02 The three (3) initial members of the Committee shall serve until such time as the Developer turns over control of the Association to the Building Lot owners as set forth in Article 3.02 hereof. Any subsequent members shall be appointed by the Association and shall serve for terms of three (3) years, except that the first appointed members of the Committee shall serve for staggered terms of one (1), two (2) and three (3) years as directed by the board of directors of the Association. All members of said Committee shall serve until the expiration of their terms or until their incapacity, resignation or death. Upon the incapacity, resignation or death of a member of the Committee, a successor, who shall serve the remaining term of the departed Committee member, shall be appointed by the board of directors of the Association within three (3) months after the incapacity, death or resignation of the departed member.

4.03 The use restrictions require the submission of detailed plans and specifications to the Committee prior to the erection of, placement on, or alteration of any structure or improvement on any Building Lot. The intent is to achieve an architecturally harmonious, artistic and desirable residential subdivision. Therefore, while considering the approval or disapproval of any plans and specifications submitted, the Committee is directed to consider the appropriateness of the improvement contemplated in relation to the improvements on contiguous or adjacent lots, the artistic and architectural merits of the proposed improvement, the adaptability of the proposed

improvement to the Building Lot on which it is proposed to be made, and such other matters as may be deemed by the Committee members to be in the interest and benefit of the owners of the Building Lots in the Subdivision as a whole.

4.04 To assist it in making its determinations, the Committee may require that any plans and specifications submitted to the Committee be prepared by a registered architect or civil engineer. The Committee shall also have the right to require any other reasonable data including, but not limited to, grading or elevation plans, material lists, landscape plans and color scheme designations.

4.05 The Committee's decisions shall be in writing and shall be binding upon all parties in interest. The Committee shall approve, disapprove or request additional information with respect to any request for approval within thirty (30) days after the request shall have been submitted to the Committee for approval. The failure of the Committee to approve, disapprove or request additional information within said time period shall be deemed an approval of any request.

4.06 If, in the opinion of the Committee, the enforcement of these restrictions would constitute a hardship due to the shape, dimension or topography of a particular Building Lot in the Subdivision, the Committee may permit a variation which will, in its judgment, be in keeping with the maintenance of the standards of the Subdivision.

Article 5. Other Conditions

5.01 All transfers and conveyances of each and every Building Lot in the Subdivision shall be made subject to these covenants and restrictions.

5.02 Any failure to enforce these restrictions shall not be deemed a waiver thereof or an acquiescence in, or consent to, any continuing, further or succeeding violation hereof.

5.03 If any covenant, condition or restriction hereinabove contained, or any portion thereof, is invalid, such invalidity shall in no way affect any other covenant, condition or restriction.

5.04 All costs of litigation and attorney's fees resulting from violation of this Declaration shall be the financial responsibility of the Building Lot owner or owners found to be in violation.

5.05 So long as Developer maintains control of the Association as set forth in Article 3 hereof, Developer reserves the right to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including, but not limited to, the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or

similar entity) or to the extent necessary to enable the Developer to meet any other reasonable need or requirement in order to complete the Subdivision, all without the approval of the Building Lot owners, and each Building Lot owner, by the acceptance of a deed to a Building Lot within the Subdivision, consents to this reserved right.

5.06 Only the Building Lots contained in the Subdivision shall be subject to and bound by the restrictions, covenants and conditions set out in this Declaration and none of said provisions shall in any manner affect or be operative in respect to any other land of the owner or its successors or assigns.

IN WITNESS WHEREOF, said Brookside Joint Venture has caused this instrument to be executed by its duly authorized representative this 26th day of May, 1995.

Signed and acknowledged
in the presence of:

BROOKSIDE JOINT VENTURE, an Ohio
general partnership
BY: **REPUBLIC DEVELOPMENT CORPORATION**,
an Ohio corporation, managing
general partner

John E. Buckley
Cheryl L. Miller

By: Richard L. Arnos
Richard L. Arnos
Vice President

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

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The foregoing instrument was acknowledged before me this 26th day of May, 1995, by Richard L. Arnos, Vice President of **REPUBLIC DEVELOPMENT CORPORATION**, an Ohio corporation, managing general partner of **BROOKSIDE JOINT VENTURE**, an Ohio general partnership, on behalf of the partnership.

Cheryl L. Miller
Notary Public



CHERYL L. MILLER
Notary Public, State of Ohio
Commission Expires 3-13-99

This document prepared by:
Republic Development Corporation

RETURN TO: **HEDRICK & KENNEDY CO.**
Attorney's -at-Law
124 E. Third St., Suite 300
Warren, Ohio 45402

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WARREN CO. RECORDER
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TRANSFER NOT NECESSARY
NICK NELSON, AUDITOR
WARREN COUNTY, OHIO

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