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Date: 6/24/04

Number of Pages: 12
(Including cover page)

RE: *Declaration*

Note:

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS IMPOSED UPON THE LANDS WITHIN MacINTOSH FARMS, BROADVIEW HEIGHTS, OHIO, THAT ARE BEING DEVELOPED AS RESIDENTIAL SUBDIVISIONS

THIS DECLARATION made this 9th day of May, 1995, by MacINTOSH LAND COMPANY LIMITED PARTNERSHIP, an Ohio limited partnership ("Declarant"), having its principal place of business at 868 Corporate Way, Westlake, Ohio 44145.

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property ("Property") situated within the MacIntosh Farms Planned Residential Community in the City of Broadview Heights, County of Cuyahoga, State of Ohio as more fully described in Exhibit "A" attached hereto and made a part hereof;

WHEREAS, it is intended that the Property (the "Property") will be subdivided by Declarant and/or others into residential subdivisions ("Subdivisions") and that single-family homes ("Living Units") and other improvements will be constructed on the sublots ("Sublots") created within the Subdivisions;

WHEREAS, the Property and the balance of MacIntosh Farms has been submitted to a document entitled Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, a Planned Residential Community ("Master Declaration") recorded on August 6, 1986, in Volume 86-4890, Page 60 of Cuyahoga County Records (as supplemented and amended) and to the Bylaws of MacIntosh Farms Community Association, Inc., an Ohio non-profit corporation ("Master Association");

WHEREAS, Declarant desires to implement the Master Declaration pursuant to the terms of the same by imposing certain covenants, conditions and restrictions on the Property and the Subdivisions and Sublots to be created within the Property that shall be binding upon the purchaser of each Sublot, the owner of each Sublot, mortgagees or persons holding or entitled to any interest therein, and the respective heirs, executors, administrators, successors and assigns of any of them.

NOW, THEREFORE, Declarant, for the benefit of itself and its successors and assigns, and in consideration of the premises and for the purpose of implementing the provisions of the Master Declaration, does hereby make known, publish, declare, covenant and agree that the Property shall, in addition to any easements, rights-of-way, building and use restrictions, laws, ordinances and lawful requirements of the proper public authorities, be subject to the following covenants, conditions and restrictions, which shall hereafter be taken to be covenants running with the land and binding on all purchasers and/or owners of the Sublots, mortgagees or persons holding or entitled to hold any interest therein, and the respective heirs, executors, administrators, successors and assigns, and successors in title of any of them.

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Section I - Minimum Building Standards

- (A) Each Sublot shall be used only for private, single family residential purposes and only one single family residence with one attached car garage (two [2] car minimum, three [3] car maximum), shall be construed or permitted to remain on any one Sublot. Other buildings or structures may not be built, permitted to remain, maintained or altered on any Sublot without the prior written approval of the Design Review Committee ("Design Review Committee") established by the Master Declaration. In the area of a Sublot between the residence building located thereon and the street lines of such Sublot, only walks, driveways, grass, shrubs, ornamental plantings and post lights shall be permitted. No tent, trailer, shack, barn or other out-building, nor any form of living quarters of a temporary nature shall be placed or permitted to remain on any Sublot, except as specifically provided herein. No more than one Living Unit may be erected on any Sublot.
- (B) No building or other structure shall be erected until the plans, working drawings with all elevations reflected thereon, and specifications, including a plot plan showing the location of the buildings or other structure, terraces, patios, walls, fences, driveways, property lines and setbacks, is submitted to and approved by the Design Review Committee. No alteration in the exterior appearance of any building or structures shall be made without like approval. The exterior appearance of the main building and other buildings on a Sublot shall be the same. The issuance of a building permit by Cuyahoga County or the City of Broadview Heights shall not preclude or limit the enforcement of these provisions.
- (C) While it is anticipated that most Living Units will be larger, no Living Unit shall contain less than the following square footages, exclusive of unfinished basements, open porches and attached garages:
- (i) One (1) story without basement 2,100 square feet.
 - (ii) One (1) story with basement, 2,000 square feet.
 - (iii) Two (2) story without basement 2,500 square feet.
 - (iv) Two (2) story with basement 2,400 square feet.
- The area of any Living Unit shall be computed on the outside foundation of the first floor and the exterior dimensions of the second floor, and shall exclude garages, crawl spaces and basements. In case of open ceilings to the second floor, the upper open space may be computed as second floor footage. In no event shall washers and/or dryers be allowed in any garage or other area except in a basement or a utility room for such purpose. All basements shall have a floor area of at least fifty percent (50%) of the floor area of the first floor.
- (D) Each garage shall be attached to the Living Unit. All garages shall be equipped with electric door operators.

- (E) No fence or other device installed for the purpose of separating Sublots (other than natural shrubbery) shall be maintained on any Sublot, unless the same has been approved in writing by the Design Review Committee.
- (F) Each Owner shall, at his expense, furnish and install at least two (2) living shade trees with a minimum caliper of 2 1/4" upon each Sublot at such locations as are approved by the Design Review Committee, unless the Committee determines that the subplot has sufficient existing shade trees. Such trees shall be selected from the following varieties: Littleleaf Linden, Crimson King Maple, Summer Shade Maple, Sugar Maple, October Glory Maple, Red Sunset Maple, London Planetree, Red Oak, Shumardi Oak and Sweetgum.
- (G) Each Owner shall have his or her Sublot fully landscaped within three (3) months after taking possession of his Living Unit, including the lawn, two (2) shade trees and foundation shrubbery, or as soon as weather will permit.
- (H) All driveways shall be asphaltic type (blacktop) or concrete and shall be installed within six (6) months after the Owner takes possession of his Living Unit. No gravel driveways shall be allowed.
- (I) All materials for construction are subject to the approval of the Design Review Committee and shall be appropriate to the style of architecture.
- (J) Glass block, concrete block or similar materials shall not be permitted as an exterior material.
- (K) Exposed portions of foundation walls shall be brick or stone.
- (L) Roofs shall be of slate, wood shingles or shakes, fiberglass shingles, or asphalt shingles. Flat port roofs may have composition built-up roofing.
- (M) All buildings shall have a gable roof with a minimum pitch of 8 to 12 and a maximum of 15 to 12. The highest point of the roof shall be considered at the ridge pole, which shall be located near the center line of the building, and the roof shall fall toward the outside of the exterior perimeter of the building, the low line of the roof shall parallel the exterior perimeter. Cornices on roof overhangs shall not extend beyond the wall less than twelve (12) inches and more than eighteen (18) inches except in special cases where the extension serves the purpose of shelter over a doorway, or where the extension is made pursuant to an authentic replication of a historic dwelling and such extension is approved by the Design Review Committee.
- (N) All structures shall be provided with gutters and downspouts.

- (O) The architectural style of all homes shall be that of the traditional American homes such as Williamsburg, Western Reserve Victorian, or Georgetown styles. All necessary buildings shall be the same architectural style as the main Living Unit and shall be the same material.
- (P) No television or radio antenna, transmitter, receiver or other communications device shall be erected upon any building, structure or Sublot unless its design and location have been previously approved by the Design Review Committee.
- (Q) All exterior air-conditioning units shall be placed at the rear of a Living Unit and no air-conditioner shall protrude from the sides or the front of a Living Unit.
- (R) Dormers and other architectural features shall face the street.

Section 2 - Minimum Use Standards

- (A) No sign or other advertising device of any nature shall be placed upon any portion of the Property except for signs and advertising devices installed by or at the direction of the Design Review Committee, or which the Design Review Committee approves as to color, location, nature, size and similar characteristics.
- (B) No animals, livestock or poultry of any kind shall be raised, bred or kept for commercial purposes, nor shall any Sublot be used for any other commercial purposes whatsoever, nor shall the same be used in any way or for any purpose which may endanger the health, or unreasonably disturb the quiet, of any Owner of any other Sublot.
- (C) Temporary structures or trailers of any kind are prohibited provided, however, that this restriction shall not prohibit construction trailers or temporary construction structures used in connection with the building of an Owner's home. Recreational vehicles, truck campers, commercially placed vehicles, motor homes, trailers, boat trailers, and the like shall not be kept or stored on any Sublot unless fully contained within an enclosed garage.
- (D) All garbage and trash receptacles, oil or bottled gas tanks, and similar containers shall be inside of a structure, placed underground or screened so that they shall not be visible by any person not physically present on the Sublot.
- (E) No outdoor clothes drying shall be permitted where it is visible by any person not physically present on the Sublot.
- (F) No unsightly growth such as weeds, underbrush or the like shall be permitted to grow or remain upon any Sublot and no refuse piles or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. The natural wooded and ground cover conditions on portions of the Sublot may remain; provided that

they are aesthetically pleasing to the appearance of a Subdivision as a whole. If any Owner shall fail or refuse to keep his Sublot free from weeds, underbrush or refuse piles, or other unsightly growths of objects, the Declarant or the Master Association shall have the right upon fourteen (14) days written notice to the offending Sublot Owner, to remove the same at the expense of the Owner and to add such expense to the assessment charged to the Sublot.

- (G) Maintenance, Repair and Nuisance. All structures and Sublots shall be maintained neatly and in good repair. No activity shall be carried on which constitutes an annoyance or nuisance.
- (H) Parking of Trucks and Temporary Repairs of Vehicles. No trucks (other than two [2] axle trucks with no more than four [4] tires) shall be parked in front of or on any Sublot except in an enclosed structure. No Owner shall make repairs to a vehicle of any kind in front of or on any Sublot except in an enclosed structure.
- (I) Trash and Garbage. No Owner shall allow trash or garbage to accumulate on any Sublot except in containers that are emptied periodically.
- (J) Mail Boxes. Mail boxes and newspaper containers shall be permitted provided that their style and location has been approved in advance by the Design Review Committee.
- (K) Trade or Business. No Owner shall carry on or permit to be carried on, any trade, business or profession which can be perceived in any manner by any person, not physically present on the Sublot upon which such trade, business or profession is being carried on or which violates any governmental ordinance.
- (L) Motorized Recreational Equipment and Vehicles. No Owner shall operate, or permit to be operated, any motorized recreational equipment or vehicle, including but not limited to, any motorcycle, motorbike, snowmobile or all-terrain vehicle, over or upon a Sublot or an Open Space or other Common Area. This provision, however, shall not be deemed to prohibit the use of tools, lawncare or landscaping equipment in the normal course of maintaining a Sublot or the improvements situated thereon.

Section 3 - Design Control Procedures

The following outline has been prepared by Declarant, to assist in the approval process of architectural designs and sitings of each house to be built in the Subdivision:

- (A) Prior to submitting plans to the City of Broadview Heights for approval, the applicant shall submit to the Design Review Committee at least two (2) complete sets of plans prepared by a qualified architect, said plans to include the following:

- (i) a siting plan showing the home type; set back, building heights; lot elevations; driveway location; and location of services and utilities;
 - (ii) floor plans;
 - (iii) elevations of front, rear and sides, indicating materials and colors to be used (samples of exterior materials and colors to be submitted with plans);
 - (iv) grading plan and drainage plans; and
 - (v) landscape plan.
- (B) The Design Review Committee shall review the plans to determine their compliance with the provisions of the Minimum Building Standards and may request such additional information as the Design Review Committee reasonably requires for its determination.
- (C) The Design Review Committee shall consider such variations, omissions and exceptions from the provisions of the Minimum Building Standards as may be requested in writing by the applicant and may, by the affirmative vote of a majority of its members, authorize such variations, omissions and exceptions as the Design Review Committee, in its discretion, finds to be necessary due to the size, shape, vegetation, or topography of the Sublot; or the existence of other buildings or structures.
- (D) At the conclusion of its review, the Design Review Committee shall either approve or disapprove such plans and specifications by majority vote of its members and shall promptly notify the applicant in writing of its action.
- (E) Approval by the Design Review Committee shall be independent of any approvals required by State statute or municipal ordinance and it shall be the sole responsibility of the application to obtain all necessary permits as required by law.
- (F) If the Design Review Committee fails to conditionally or unconditionally approve or disapprove of the plans and specifications within a period of thirty (30) days after the plans and specifications have been submitted to it, approval hereunder shall not be required and this Section shall be deemed to have been fully complied with.

Section 4 - Declarant Reservation.

- (A) Declarant further reserves for itself, its successors and assigns, the right to grant a variance from, or to change, waive, amend or modify any and all of the covenants, conditions and restrictions contained in this Declaration, if in its sole judgment, the development or lack of development or topography of the land involved in Declarant's judgment makes such course of action necessary or advisable, with the understanding that the Declarant herein may assign or relinquish the power herein reserved in the event it decides to do so.

- (B) The Declarant further reserves for itself, its successors and assigns, the right at any time and from time to time to amend these Covenants and Restrictions for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (2) including any of such agencies' or entities' right to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting obvious factual errors, or correcting clerical or typographical errors in these Covenants and Restrictions. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to any such amendment on behalf of the owner of a Sublot as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Sublot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of the power of the Declarant to vote in favor of, make and record of any such amendment. To effect such amendment, Declarant shall file a supplement to these Covenants and Restrictions setting forth the amendment(s) which shall be signed by Declarant and shall be effective upon the filing of said supplement with the Cuyahoga County Recorder.

Section 5 - Assignability of Declarant.

The Declarant, and its successors, shall have the right from time to time to assign all or any part of its rights as the Declarant under this Declaration, provided that a deed or other writing as shall be selected by Declarant, in Declarant's sole discretion, shall expressly state that the rights of the Declarant are being so assigned. Any such assignment may provide that such assignee shall have the rights of the Declarant set forth in this Declaration.

Section 6 - Arbitration.

Unless otherwise provided in this Declaration, and except for any claim for injunctive or other equitable relief, any controversy, dispute or claim arising out of or relating to this Declaration or the breach thereof shall be settled by arbitration in Cleveland, Ohio in accordance with the Commercial Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction hereof.

Section 7 - Duration.

The herein enumerated covenants, conditions and restrictions shall be deemed to run with the land and not as conditions hereof and shall remain effective until January 1, 2025, on which date and at ten (10) year intervals thereafter, they shall be automatically extended, unless the owners of two-thirds (2/3) of the Sublots of the Subdivision by appropriate instrument recorded in the Cuyahoga County Recorder's Office have agreed to the amendment or termination thereof.

Section 8 - Enforcement

The violation of any restriction, covenant or provision contained in this Declaration shall give the Declarant and/or the Master Association the right, in addition to all other rights herein set forth and those provided by law, (a) to enter upon the Living Unit or portion thereof upon which, or as to which, such violation or breach exists and summarily abate and remove, at the expense of the owner of the Sublot where the violation exists, any structure, thing, or condition that may exist thereon, contrary to the intent and meaning of this Declaration, without being deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; and/or (c) to commence and prosecute an action to recover any damages which may have been sustained to the remedies set forth above, an owner of a Sublot violating this Declaration shall be responsible for costs of suit, legal interest on damages and reasonably attorneys' fees.

Section 9 - Severability: Conflict

The invalidation of any part of the covenants, conditions and restrictions contained in this instrument shall in no way affect the remainder thereof and the same shall continue in full force and effect. Furthermore, in the event of a conflict between the provisions of this Declaration and the provisions of the Master Declaration, the more restrictive provisions shall govern.

DECLARANT:

In the presence of:

MacINTOSH LAND COMPANY LIMITED
PARTNERSHIP, an Ohio limited partnership

Print Name Douglas L. ...

Print Name ...

BY: MacIntosh Land Investment Corporation,
an Ohio corporation, its General Partner

By:
... its Vice President

STATE OF OHIO)

COUNTY OF CUYAHOGA)

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SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named MacINTOSH LAND COMPANY LIMITED PARTNERSHIP, an Ohio limited partnership, by MacIntosh Land Investment Corporation, an Ohio corporation, its General Partner, by NATHAN ZAKHAROV, its Vice President, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said partnership and corporation and his free act and deed personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 9 day of MAY, 1995.


NOTARY PUBLIC

DOUGLAS F. CURRIE, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.

This Instrument Prepared By:

Richard A. Rosner, Attorney at Law
Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A.
Suite 2600, Tower at Erieview
1301 East Ninth Street
Cleveland, Ohio 44114
(216) 696-3311

The Reserve at
MacIntosh Farms
Phase 2

EXHIBIT "A"

LEGAL DESCRIPTION

Situated in the City of Broadview Hights, County of Cuyahoga, and State of Ohio, and known as being part of Original Royalton Township Lots 24 and 25, and bounded and described as follows:

Beginning at a point in the centerline of Orchard Lane, 60 feet wide, at its intersection with the northeasterly prolongation of the northwesterly line of Sublot 12 in The Reserve at MacIntosh Farms Phase 1, as shown by the recorded plat in Volume 271, Page 7 of Cuyahoga County Map Records, and from which point an iron monument found in the centerline of Orchard Lane bears South 53 degrees 33 minutes 41 seconds East, 379.87 feet;

Thence South 36 degrees 26 minutes 19 seconds West, 230.00 feet to a point;

Thence North 55 degrees 09 minutes 00 seconds West, 726.09 feet to a point;

Thence North 37 degrees 48 minutes 57 seconds West, 200.00 feet to a point;

Thence southwesterly along the arc of a curve deflecting to the right, 41.65 feet to a point, said arc having a radius of 1430.00 feet and a chord which bears South 53 degrees 01 minutes 06 seconds West, 41.65 feet;

Thence North 36 degrees 08 minutes 50 seconds West, 260.00 feet to a point;

Thence North 34 degrees 23 minutes 24 seconds West, 175.71 feet to a point;

Thence southwesterly along the arc of a curve deflecting to the right, 2.99 feet to a point, said arc having a radius of 810.00 feet and a chord which bears South 66 degrees 19 minutes 53 seconds West, 2.99 feet;

Thence North 23 degrees 33 minutes 46 seconds West, 233.04 feet to a point;

Thence North 31 degrees 11 minutes 49 seconds East, 177.31 feet to a point;

Thence North 69 degrees 44 minutes 52 seconds East, 60.00 feet to a point;

The Reserve at
MacIntosh Farms
Phase 2

EXHIBIT "A" CONTINUED

Thence southeasterly along the arc of a curve deflecting to the left, 36.14 feet to a point, said arc having a radius of 40.00 feet and a chord which bears South 22 degrees 28 minutes 44 seconds East, 36.13 feet;

Thence North 65 degrees 17 minutes 40 seconds East, 222.18 feet to a point;

Thence South 37 degrees 50 minutes 45 seconds East, 418.89 feet to a point;

Thence South 46 degrees 59 minutes 17 seconds East, 128.43 feet to a point;

Thence South 62 degrees 30 minutes 45 seconds East, 402.08 feet to a point;

Thence South 41 degrees 37 minutes 34 seconds East, 102.70 feet to a point;

Thence southwesterly along the arc of a curve deflecting to the left, 98.89 feet to a point, said arc having a radius of 135.00 feet and a chord which bears South 44 degrees 53 minutes 41 seconds West, 98.53 feet;

Thence South 36 degrees 26 minutes 19 seconds West, 85.00 feet to a point;

Thence southwesterly along the arc of a curve deflecting to the right, 39.27 feet to a point, said arc having a radius of 25.00 feet and a chord which bears South 81 degrees 26 minutes 19 seconds West, 35.36 feet;

Thence South 53 degrees 33 minutes 41 seconds East, 66.90 feet to a point in the northwesterly line of Orchard Lane;

Thence South 36 degrees 26 minutes 19 seconds West along the northwesterly line of Orchard Lane, 10.00 feet to the place of beginning, and containing 15.8127 acres of land as described by Donald C. Bohning & Associates, Inc. in May, 1995, and further known as being The Reserve at MacIntosh Farms Phase 2 (proposed).