

HAWTHORN OF AURORA PLANNED UNIT DEVELOPMENT

DECLARATION OF COVENANTS AND RESTRICTIONS

APPLICABLE TO ALL

SINGLE FAMILY LOTS AND CLUSTER SITES

FILED JUNE 14, 1990  
AT 8:45 AM  
INSTRUMENT NO. 87709

DECLARATION OF COVENANTS AND RESTRICTIONS

HAWTHORN OF AURORA

THIS DECLARATION, made this 7<sup>th</sup> day of June, 1990, by and between HAWTHORN OF AURORA LIMITED PARTNERSHIP, hereinafter referred to as "Developer", and HAWTHORN OF AURORA HOMEOWNERS ASSOCIATION, INC., hereinafter sometimes referred to as "Association",

WITNESSETH:

WHEREAS, Developer is the owner of the real property referred to in Article II, Section 1 of this Declaration and desires to create thereon a Residential Community with permanent open spaces, recreational facilities and other common facilities; and to this end, desires to subject all single family lots, cluster sites and condominium living units situated on said real property 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, Developer deems it desirable for the efficient preservation of the values and amenities in said Community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Common Properties and facilities and administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and

WHEREAS, there has been incorporated under the laws of the State of Ohio, as a non-profit corporation, HAWTHORN OF AURORA HOMEOWNERS ASSOCIATION, INC. (the "Association"), for the purpose of exercising the functions aforesaid; and

WHEREAS, the Association joins in this Declaration for the purpose of accepting the duties and responsibilities imposed upon it by the protective covenants and restrictions herein contained;

NOW, THEREFORE, Developer declares that the real property referred to in Article II, Section 1 (the "Properties") shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, and further specifies that this Declaration shall constitute covenants to run with the land and shall be binding upon Developer, and its successors and assigns and all other Owners of any part of said real property, together with their grantees, successors, heirs, executors, administrators or assigns.

ARTICLE I

DEFINITIONS

SECTION 1. 1. The following words when used in this Declaration shall have the following meanings (unless the context shall prohibit):

(a) "Association" shall mean and refer to HAWTHORN OF AURORA HOMEOWNERS ASSOCIATION, INC.

(b) "Builder" shall mean any person or entity purchasing a Lot for the purpose of constructing a living unit thereon for sale to others.

(c) "City" shall mean and refer to the City of Aurora, Ohio, a municipal corporation organized and existing under the laws of the State of Ohio.

(d) "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions and any supplements or amendments thereto.

(e) "Developer" shall mean and refer to HAWTHORN OF AURORA LIMITED PARTNERSHIP, its successors and assigns.

(f) "Family" shall mean those persons related by blood or marriage living together in one household.

(g) "Lake Association" shall mean and refer to AURORA LAKE ASSOCIATION, INC.

(h) "Living Unit" shall mean and refer to any detached single family dwelling and any single family dwelling unit located in a condominium building.

(i) "Improved Lot" shall mean and refer to (i) any Lot having sanitary sewer, storm sewer, water lines or paving abutting thereon, and for which a building permit is available, or (ii) any Lot upon which a Living Unit has been or is being constructed.

(j) "Lot" shall mean and refer to any subdivision of land of the Properties intended for single family use with the exception of Common Properties.

(k) "Member" shall mean and refer to all who are Members of the Association as provided in Article III, Section 1 hereunder.

(l) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot and/or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(m) "Resident" shall mean and refer to one or more persons or entities having a leasehold interest in any Living Unit under a written lease from an Owner.

(n) "Subdeveloper" shall mean any person or entity to whom Developer conveys any part of the properties described in Article II, Section 1.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1. The Properties. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Aurora, Ohio, and is described in Exhibit "A" attached hereto and made a part hereof and, at the option of the Developer, any additional real property subsequently acquired by the Developer which either abuts the real property described on Exhibit A or abuts Aurora Lake (whether or not such real property is located in the City of Aurora) which the Developer desires to make subject to this Declaration.

SECTION 2. Common Properties and Facilities. The Common Properties shall consist of the Recreation Site and improvements thereto as shown on the Master Plan for Hawthorn of Aurora Planned Unit Development as approved by the City of Aurora and the greenbelt areas which will be shown on the final recorded plat of Phase II and the recorded plats for subsequent phases of single family Lots and cluster sites.

SECTION 3. Mergers. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of laws, be transferred to another surviving or consolidated association. Alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligation 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 Properties except as hereinafter provided.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Provided, however, that no record owner of a lot or living unit shall be entitled to notice of any meeting or to a vote until said owner furnishes the Secretary of the Association a photocopy of the recorded deed through which record ownership was acquired.

SECTION 2. Voting Rights. The membership of the Association shall be divided into two (2) classes entitled to the rights hereinafter set forth with respect to such classifications.

The Association shall have two (2) classes of voting membership, namely Class A and Class B.

Class A. Class A Members shall be all those Owners as defined in Article I with the exception of the Developer, a Sub-developer, or a Builder. Class A Members shall be entitled to one vote (1) for each Lot or Living Unit in which they hold the fee simple interest or interests. When more than one person holds such interest or interests in any Lot or Living Unit, all

such persons shall be Members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot or Living Unit.

Class B. The Class B Member shall be the Developer and any Subdeveloper who shall be entitled to three (3) votes for each Lot or Living Unit owned in the Properties, defined in Article II, Section 1, provided that the Class B membership shall cease and become converted to Class A membership when the total votes outstanding in the Class B membership equal the total votes outstanding in the Class A membership. Thereafter, the Class B Member shall be deemed to be a Class A member entitled to one (1) vote for each Lot or Living Unit in the Properties owned by it as defined in Article II.

For the purpose of determining votes allowed under this Section as to unallotted land, the number of Lots shall be based on the Preliminary Development Plan dated April 1988 and approved by the Aurora Planning Commission on May 4, 1989, subject to any future revisions thereof.

For the purposes of determining the votes allowed under this Section, when Living Units and Lots are counted, the Lot or Lots upon which a Living Unit is situated shall not be counted.

SECTION 3. Articles and Code of Regulations of the Association. The Articles of Incorporation and Code of Regulations of the Association and of the AURORA LAKE ASSOCIATION, INC. may contain any provisions not in conflict with this Declaration or any Supplemental Declaration as are permitted to be set forth in such Articles and Code of Regulations by the non-profit corporation law of the State of Ohio as it may be in effect from time to time.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

SECTION 1. Members' Easement of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member, or instead of said Member, his tenant or lessee who is in residence upon said Member's Lot or Living Unit shall have for himself, his immediate household and guests a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

SECTION 2. Title to Common Properties; Duty to Maintain. The Developer may retain the legal title to the Common Properties until such time as it has completed any improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any other provision herein, the Developer hereby covenants for itself and its successors and assigns that it shall convey the Common Properties to the Association not later than the date on which the Class B Membership is converted to Class A Membership pursuant to Article III, Section 2.

The Developer shall have the duty to maintain all Common Properties and facilities located thereon until they are transferred to the Association as provided in the preceding paragraph; provided that, in order to help defray Developer's maintenance costs, the Association shall pay to the Developer at least eighty per cent (80%) of the Annual Assessments not expended by the Association in maintaining Aurora Lake or common properties and

facilities owned by the Association. Thereafter, it shall be the duty of the Association to maintain all Common Properties. Maintenance shall include, but not be limited to, painting, repairing, replacing and maintaining all appurtenances, exterior and interior building surfaces, trees, shrubs, grass areas, driveways, walls, retention basins, and all other improvements located in and/or on the Common Properties.

SECTION 3. Extent of Members' Easements. The rights and easements of enjoyment created by this Article IV shall be subject to the following:

(a) The right of the Developer, and the Association in accordance with its Articles of Incorporation and Code of Regulations, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lender shall have a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(c) The right of the Association, in accordance with its Articles of Incorporation and Code of Regulations, to adopt uniform rules and regulations governing the use of the Common Properties, and to suspend the enjoyment rights of any Member or tenant or lessee thereof and his household and guests for non-payment of an assessment, during any period which such assessments remains in default, or for any infraction of such rules and regulations;

(d) The right of the Association to charge reasonable admission fees and other fees for the use of the Common Properties;

(e) The right of the Developer to use and to permit Non-Members to use the clubhouse and recreational facilities constructed by the Developer until such time as these facilities are conveyed to the Association. Any fees charged to others for such use may be retained by the Developer;

(f) The right of the Association to issue annual permits to Non-Members for the use of all or a part of the Common Properties, at such time and upon such terms as may be determined from time to time at a meeting of the Members by the affirmative vote of Members entitled to exercise two-thirds (2/3) of the total voting power of the Association;

(g) The right of the Association to limit the use of the Common Properties to only the person or Family in residence in a Member's Living Unit or in the case of a Lot without a Living Unit thereon to only one Family to be designated by the Lot Owner;

(h) The right of the Association to limit the number of guests of Members in or upon any of the Common Properties or any buildings or facilities located thereon; and

(i) The right of the Association to dedicate or transfer all or any part of the Common Properties to any municipality or any public agency, authority or utility, for such purposes and subject to such conditions as may be determined at a meeting of the Members by the affirmative vote of Members entitled to exercise two-thirds (2/3) of the total voting power of the Association.

SECTION 4. Extension of Privileges. A Member's right of enjoyment in the Common Properties and the facilities located thereon shall extend automatically to all Members of his immediate family residing on any portion of the Properties. No guests shall be entitled to such right of enjoyment except as provided in rules and regulations by the Association.

Subject to the rights set forth in Section 3 of this Article IV, the Developer, each Owner and the Association shall have the non-exclusive right and easement in common to utilize the waterways, courses, storm sewers, drainage pipes and retention basins in, over and upon the Common Properties for the purposes of the drainage of surface waters on the Properties, said rights-of-way and easements being hereby established for said purposes. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage system existing on the Common Properties.

The Developer and (after transfer of title to the Common Properties) the Association shall have the right to grant and assign easements for the maintenance, repair, operation and control of such drainage system in, over and upon the Common Properties to a properly constituted public authority or public utility. No Owner shall in any way hinder or obstruct the operation and flow of the drainage system. No structures (including but not limited to sidewalks and driveways), plantings or other materials shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard, or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City of Aurora and which the City of Aurora has formally undertaken to maintain.

## ARTICLE V

### RIGHT TO USE THAT PORTION OF AURORA LAKE NOW OWNED BY DEVELOPER

SECTION 1. Joint Right To Use Aurora Lake. The Developer, within five (5) years from the date hereof, shall convey to the AURORA LAKE ASSOCIATION, INC., (an Ohio non-profit corporation to be formed by Developer within said five [5] year period), all of its right, title and interest in and to a majority of the lands now owned by Developer underlying that portion of Aurora Lake situated on the Exhibit A property, together with at least one thirty foot (30') wide easement of access thereto. Said conveyance shall be conditioned upon the AURORA LAKE ASSOCIATION, INC., maintaining Aurora Lake for the use and enjoyment of the paid-up Members of the HAWTHORN OF AURORA HOMEOWNERS ASSOCIATION, INC., and the AURORA SHORES HOMEOWNERS ASSOCIATION.

SECTION 2. Extent of Members' Easement. The rights and easements of enjoyment of the Members created by this Article V shall be subject to the following:

(a) The right of the Lake Association, in accordance with its Articles of Incorporation and Code of Regulations, to levy such annual assessments against the HAWTHORN OF AURORA HOMEOWNERS ASSOCIATION, INC. and the AURORA SHORES; HOMEOWNERS ASSOCIATION, as may be necessary for the supervision of and the preservation, improvement and maintenance of Aurora Lake, including its shorelines and the dam, spillways and liftgates, etc., now owned by AURORA SHORES HOMEOWNERS ASSOCIATION including, but not limited to, the payment of taxes and insurance thereon and for the repair, replacement and additions thereto, including the cost of labor, materials, equipment, management and supervision thereof. The annual assessments may include amounts to be set aside in a reserve to cover the anticipated future costs of major repairs and replacements;

(b) The right of the Lake Association, in accordance with its Articles of Incorporation and Code of Regulations, to suspend the use and enjoyment rights of all Members or tenants or Lessees thereof, and their household and guests of either the HAWTHORN OF AURORA HOMEOWNERS ASSOCIATION, INC., or AURORA SHORES HOMEOWNERS ASSOCIATION, for nonpayment of any assessment during any period during which such assessment remains in default;

(c) The right of the AURORA LAKE ASSOCIATION, INC., in accordance with its Articles of Incorporation and Code of Regulations, to adopt uniform rules and regulations governing the use of Aurora Lake, and to suspend the enjoyment rights of any Member or tenant or lessee thereof and his household and guests for any infraction of such rules and regulations;

(d) The right of the Developer and the Lake Association, in accordance with its Articles of Incorporation and Code of Regulations, to borrow money for the purpose of improving Aurora Lake and its shoreline, including the part thereof now owned by AURORA SHORES HOMEOWNERS ASSOCIATION, which includes the dam, spillways, liftgates, etc., and part of the water, and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the Lender shall have a right, after taking possession of such property, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon, the possession of such properties shall be returned to the respective Associations, and all rights of the Members hereunder shall be fully restored;

(e) The right of the Lake Association to take such steps as are necessary to protect the Common Properties against foreclosure;

(f) The right of the Lake Association to limit the use of Aurora Lake to only the person or Family in residence in a Member's Living Unit or in the case of a Lot without a Living Unit thereon to only one Family to be designated by the Lot Owner; and

(g) The right of the Lake Association to limit the

number of guests of Members having the right to use Aurora Lake.

ARTICLE VI  
COVENANT FOR MAINTENANCE ASSESSMENT

SECTION 1. Creation of the Lien and Personal Obligation of Assessment. Each Owner of an Improved Lot or Living Unit, with the exception of the Developer, a Subdeveloper, or a Builder, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with the 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 such interest and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and in particular, for the preservation, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of Aurora Lake, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, materials, equipment, management and supervision thereof. The portion of the annual assessment and any special assessments levied for the preservation, maintenance and improvement of Aurora Lake may be paid over to the AURORA LAKE ASSOCIATION, INC., to be disbursed by it solely for said purposes.

SECTION 3. Basis and Maximum of Annual Assessments. The annual assessment shall commence and be due on the first day of the month following the month during which title to a Lot or Living Unit is first acquired by an Owner other than the Developer, a Subdeveloper or a Builder, and shall be payable at the annual assessment amount then in effect. The first assessment payable on each Lot or living unit shall be that portion of the annual assessment which the remaining full months in the assessment period bear to twelve (12) months, and shall be paid to the Association by the Escrow Agent handling the Lot or Living Unit transfer. The first annual assessment shall be Three Hundred Dollars (\$300.00). The Trustees of the Association may, without a vote of the Members, increase the amount of any annual assessment by not more than ten per cent (10%) of the amount of the previous year's assessment. Any increase in excess of ten per cent (10%) shall require a vote of the Members as hereinafter required. No assessments or fees shall be levied against Lots or Improved Lots on land held by the Developer, a Subdeveloper or a Builder.

After the Common Properties have been conveyed to the Association, the Board of Trustees of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

SECTION 4. Special Assessments for Capital Improvements.  
In addition to the annual assessments authorized by Section 3

hereof, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties or Aurora Lake, including the necessary fixtures and personal property related thereto, provided that any such special assessment shall have the assent of two-thirds (2/3) of the vote of each class of Members who are voting at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

The assessments set out above are enforceable under Article VI, Section 9, of these Covenants and Restrictions.

SECTION 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 of this Article, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by said Section 3 prospectively for any such period, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

SECTION 6. Quorum for any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence of Members either in person or by proxy entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 7. Due Date and Period Covered by Annual Assessment. Unless changed by the Board of Trustees and subject to the provisions of Section 3 of this Article VI, the annual assessments provided for herein shall be prepaid in full, shall be due and payable on March first of each year, and shall cover the period from the first day of March of the current year, through the last day of February of the following year.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessments.

SECTION 8. Duties of the Board of Trustees. The Board of Trustees of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner thereto.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether

said assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

SECTION 9. Effect of Non-Payment of Assessment; Personal Obligation of the Owner; The Lien, Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent, together with such interest thereon and cost of collection thereof as hereinafter provided.

If an annual or special assessment, or installment of a special assessment, is not paid within thirty (30) days after the due date, such delinquent assessment or installment shall be increased by ten per cent (10%) and such increased assessment shall bear interest from the due date at the rate of twelve per cent (12%) per annum, and the Association may after such thirty (30) day period bring an action at law against the Owner responsible for the payment of such increased assessment, and (additionally or alternatively) may foreclose the lien against the property, and in the event a judgment is obtained, such judgment shall include interest on the increased assessment or installment amount as above provided, together with the costs of the action and reasonable attorney's fees in an amount to be determined by the court.

The Association may file in the office of the County Recorder a Notice of Lien to evidence any delinquent assessment or installment, but the Association shall not be under any duty to file such Notice of Lien and its failure or omission to do so shall not in any way impair or affect the Association's lien and other rights in and against the property and against the Owner of such property.

SECTION 10. Subordination of the Lien to Primary Mortgagee. The Lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

SECTION 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) 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; (b) all Common Properties; (c) all properties exempted from taxation by the laws of the State of Ohio upon the terms and to the extent of such legal exemption.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens, except that owned by the Developer as provided in Article VI, Section 3.

## ARTICLE VII

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be erected, placed, or altered within the properties, until the plans and specifications showing the nature, kind, shape,

heights, materials, colors and location of the same shall have been submitted to and approved in writing by the Developer or the architect designated by the Developer, to assure harmony of external design and location in relation to surrounding structures and topography landscape plans, signage types, project and street names, lighting, mail drop locations and structures, etc., shall also be submitted to and approved in writing by the Developer or the Developer's architect. Landscape plans shall include entrance ways and areas adjacent to existing or proposed development. Written approval by the Developer must be obtained prior to submittal of plans to the City. Responsibility for Architectural Control as described above will transfer from the Developer to the Association upon completion of construction of all Living Units within the Properties, whereupon the Board of Trustees is to establish an Architectural Review Committee comprising three (3) Members, of which one shall be a practicing architect with a degree in architecture from an accredited university. If a Member does not have such credentials, then a person possessing said credentials shall be retained by the Committee for advisement. The Board of Directors shall then establish rules and regulations by which the Architectural Review Committee shall conduct its meetings.

## ARTICLE VIII

### GENERAL RESTRICTIONS

SECTION 1. No external or outside antenna of any kind shall be maintained except that an antenna for normal television reception may be used not in excess of 35 feet in height above ground level, provided, however, that in the event a cable transmission system is available to Owners, said Owners must within ninety (90) days after the availability of such cable system, discontinue the use of the external television antenna and remove the same from the exterior of any Living Unit or Lot.

SECTION 2. No sign or other advertising device of any nature shall be placed upon any Lot except for signs placed by the Developer or by Builders and Subdevelopers and approved by the Developer promoting the development and providing information to Owners and prospective purchasers.

SECTION 3. No Lot or Living Unit shall be used for other than residential purposes except where provided for on the Preliminary Development Plan prepared by the Developer as referred to in ARTICLE III, SECTION 2.

SECTION 4. No clothing or any household fabric shall be hung outside of any Living Unit.

SECTION 5. No machinery shall be placed or operated upon any Lot except such machinery as is used in maintenance of a private residence.

SECTION 6. Fences or walls of any kind may not be erected or permitted to remain on the Property unless approved by the Architectural Control Committee or unless originally constructed by the Developer or with his written approval.

SECTION 7. No dumping is permitted on any part of the Properties unless necessary for construction of improvements and authorized by the Developer or the Board of Trustees of the Association.

SECTION 8. Businesses of any kind may not be conducted on any part of the Property except as permitted in this document. An Occupant may use a portion of his residence for an office or studio, provided it does not become a nuisance to neighbors, become principally an office, school or studio as distinct from a Residence. The Board may adopt Rules which further limit such use.

SECTION 9. No automobile, truck, boat, recreational vehicle, airplane or vehicle of any kind, licensed or unlicensed, may be stored on any street or driveway in or upon the Properties except in the confine of garages or parking areas, if any, approved by the Board. Only machinery customarily required for the maintenance of Residences and conventional home and hobby machinery may be placed or operated on a Lot. This permitted machinery must be stored out of sight of adjoining residences, unless such machinery is necessary for use in construction, reconstruction or repair of any building or structure.

SECTION 10. Unless written approval of the Board is given, there will be no discharge of guns, ammunition or explosives. No hunting, trapping, or poisoning of wildlife is permitted, except for rodent control, or except upon prior written approval of the Board.

SECTION 11. No motorized vehicles (mini-bikes, motor-cycles, mopeds, snowmobiles, etc.) shall be permitted on the all-purpose trails, jogging trails, walkways, or sidewalks.

SECTION 12. Dumping of refuse or any other form of pollution into the lake(s) or surrounding areas is prohibited.

SECTION 13. Construction trailers utilized by Builders and/or Subdevelopers shall be placed as far off public and private rights-of-way and concealed from view as much as possible. Disturbed areas adjacent to public or private rights-of-way or the Common Properties shall be graded and seeded as soon as possible by the Builder or Subdeveloper. Every reasonable effort shall be made by the Builder or Subdeveloper to keep the sites clear of all debris.

SECTION 14. One-story ranch style dwellings shall contain no less than 1,700 square feet of living area. Two-story dwellings shall contain no less than 2,400 square feet of living area, at least one-half of which must be on the first floor. Living area is exclusive of any basements, garages, attics, decks, porches or breezeways.

SECTION 15. No satellite dishes used for the transmission or reception of television or radio signals shall be permitted on any subplot.

SECTION 16. No above-ground swimming pools are permitted on any subplot.

SECTION 17. No Owner or Builder shall alter or change the natural grade of any Lot without the written consent of the Developer or after all Lots are sold, the written consent of the Board.

13

SECTION 18. All portions of a Lot not left in its natural state shall be landscaped as soon after substantial completion of construction of the living unit as the weather will permit. Each Lot shall at all times be maintained by the Owner so as to present a pleasing appearance from the street and adjoining Lots. If any Owner fails to so do, the Developer or the Association may serve written notice upon the Owner to eliminate any unsightly condition within ten (10) days and if the Owner fails to so do, then the Developer or the Association may enter upon the Lot and eliminate the unsightly condition, at the Owner's expense. If the Owner fails to pay the cost thereof within thirty (30) days, then the amount thereof shall be assessed against the Lot and the Owner, constitute a lien on the Lot and be collectible with the addition, interest and attorney fees as provided in Article VI, Section 9 for the collection of annual and special assessments.

## ARTICLE IX

### GENERAL PROVISIONS

SECTION 1. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from date of recording of this Declaration as recorded, after which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots and Living Units has been recorded, agreeing to terminate said Covenants and Restrictions.

For purposes of meeting the two-thirds (2/3) requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. Provided, however, that no such agreement to terminate shall be effective unless made and recorded three (3) years in advance of the effective date of such termination, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

SECTION 2. Notices. Any Notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, 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 3. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure 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 4. Binding Effect. Each Grantee accepting a deed, lease or other instrument conveying any interest in a Lot or Living Unit, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration.

**SECTION 5. Assignability.** The Developer, its successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all of its rights, title and interest under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all obligations also contained herein.

**SECTION 6. Modification.** The Covenants and Restrictions of this Declaration may be modified, effective on the sixtieth (60th) day following a meeting of the Members held for such purposes, by the affirmative vote of Members entitled to exercise two-thirds (2/3) of the voting power of the Association, provided that written notice shall be given to every Member at least thirty (30) days in advance of the date of the meeting stating that such modification will be considered at such meeting. Promptly following the meeting at which such modification is enacted, the President and Secretary of the Association shall execute and record an instrument reciting such modification.

**SECTION 7. Special Amendment.** Developer and/or the Association shall have the right and power to record a special amendment ("Special Amendment") to this Declaration at any time, and from time to time, which amends this Declaration to correct clerical or typographical errors in this Declaration or to add to Exhibit A any real property subsequently acquired by the Developer which the Developer desires to make subject to this Declaration as permitted by Article II, Section 1. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Developer and/or to the Board to vote in favor of, make or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting the Properties and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer and/or to the Board to vote in favor or make and record Special Amendments.

**SECTION 8. 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.

IN WITNESS WHEREOF, the Developer and Association have hereunto set their hands the day and year first above written.

"Developer"

HAWTHORN OF AURORA LIMITED  
PARTNERSHIP

By Constan Development Co.  
(an Ohio Corporation)  
General Partner

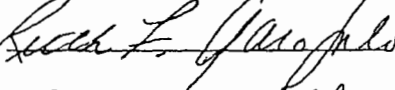
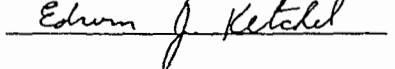
By   
Binardo Constantino, President

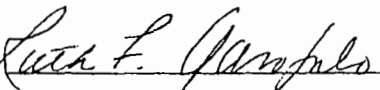
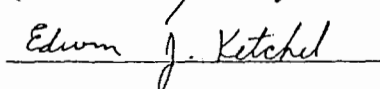
"Association"

HAWTHORN OF AURORA HOMEOWNERS  
ASSOCIATION, INC.

By   
Binardo Constantino, President

Signed and Acknowledged  
in the Presence of:

STATE OF OHIO )  
SS: )  
COUNTY OF GEauga )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Hawthorn of Aurora Limited Partnership, an Ohio limited partnership, by Constan Development Company, an Ohio corporation, its General Partner, by Rinardo Constantino, its President, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said limited partnership and his free act and deed as the authorized officer of said corporation as the General Partner of Hawthorn of Aurora Limited Partnership, and individually.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Bainbridge Township, Ohio, 7<sup>th</sup> day of June, 1990.

Edwin J. Ketchel  
NOTARY PUBLIC

EDWIN J. KETCHEL, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 J.C.

STATE OF OHIO )  
SS: )  
COUNTY OF GEauga )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Hawthorn of Aurora Homeowners Association, Inc. (an Ohio not for profit corporation ), by Rinardo Constantino, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, and the free act and deed of said not for profit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Bainbridge Township, Ohio, 7<sup>th</sup> day of June, 1990.

Edwin J. Ketchel  
NOTARY PUBLIC

EDWIN J. KETCHEL, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 J.C.