

990001544
Filed for Record in
DELAWARE COUNTY, OHIO
RAY F. CUNELIN
On 01-21-1998 at 08:00 PM
DECLARATION 22.00
Vol. 636 Pgs. 477

DECLARATION OF COVENANTS, EASEMENTS,
RESTRICTIONS AND ASSESSMENT LIENS

FOR

HIGHLAND LAKES NORTH SECTION 5, PART 1

Ohio Title

This is a declaration of covenants, easements and restrictions made this 5th day of January, 1998 by Planned Communities, Inc. an Ohio corporation (hereinafter referred to as "Declarant").

Background

A. Declarant is the owner in fee simple of certain real estate, situated in the Township of Genoa, County of Delaware and State of Ohio and

Belonging Lots 4084 through 4106 both inclusive, of Highland Lakes North Section 5, Part 1, as the same are numbered and delineated upon the recorded plat thereof, of record in Cabinet 2, Slides 53 & 53A Recorder's Office, Delaware County, Ohio.

B. Declarant intends during the course of development of the land owned by Declarant, which will be described as Highland Lakes North Section 5, Part 1, to construct and develop certain common improvements, including landscaped areas, street islands, private streets, entrance walls, bicycle and walking paths, sewers, preservation areas and similar features for the benefit of Declarant as well as owners of all of the lots in all parts of Highland Lakes Sections 1, 2, 3 and 4, Highland Lakes East Section 1, 3, 4, 5, 7, and 10, Highland Lakes North Sections 1, 2, 3, 4, and 5, and Pine Valley, Oakmont, Oakmont Section 2, Oak Hill, (Highland Lakes Estates Section 1 and all other real estate which may be added to the Subdivision (as defined in Article I, Section 8 hereof).

C. Declarant desires to create a plan of restrictions, easements and covenants concerning the lots in Highland Lakes North Section 5, Part 1 and to retain in Declarant plan approval of the dwelling units to be constructed on said lots in Highland Lakes North Section 5, Part 1 and said easements and covenants shall also relate to overall development for the benefit of and to protect the

THE 0626 PAGE 417

interest of the public, Declarant, each lot owner, and their respective heirs, successors and assigns.

**COVENANTS, EASEMENTS, RESTRICTIONS
AND ASSESSMENT LIENS**

NOW, THEREFORE, Declarant hereby declares that the Lots (as defined in Article I Section 5 hereof) shall be held, sold, conveyed and occupied subject to the following covenants, easements, and restrictions which are for the purpose of protecting the values and desirability of, and which shall run with the title to, the land and each part thereof, and be binding on all parties having any right, title or interest in the land and each part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of and be enforceable by either Declarant, its successors and assigns, the Trustees of Orange and Genoa Townships, The Lakes Golf and Country Club, Inc. its successors and assigns, each Lot Owner in the Subdivision (as defined in Article I, Section 8 hereof), the respective heirs, successors and assigns of each Lot Owner, and the HIGHLAND LAKES ASSOCIATION, an Ohio not-for-profit corporation, whose members are all Lot Owners, formed to maintain and administer the common improvements which have been, and will be, transferred to it by Declarant, its successors and assigns, and to administer and enforce the covenants created hereunder.

ARTICLE I

DEFINITIONS

As used herein, the following terms shall have the following definitions:

Section 1. "Association" shall mean Highland Lakes Association, an Ohio not-for-profit corporation, its successors and assigns.

Section 2. "Common Improvements" shall mean those areas owned by the Association or designated by the Developer, which the Association and Lot Owners in the Subdivision are required to maintain and administer, including landscaped areas, street islands, private streets, sewers, entrance

walls, bicycle and walking paths, preservation areas and other improvements owned, maintained and administered by the Association or which are designated by the Developer or government authorities as the responsibility of the Association or Lot Owners.

Section 3. "Developer:" shall mean Planned Communities Development Company, Inc., its successors and assigns.

Section 4. "Improvement:" shall mean any change of any kind in any Lot and anything located thereon.

Section 5. "Lot:" shall mean any Lot described in Background paragraph A, any Lots in Highland Lakes Section 1, of record in Plat Book 23, pages 37 and 38, Highland Lakes Section 2, of record in Plat Book 24, page 67, Highland Lakes Section 3, Part 1 of record in Cabinet 1, Slides 167 through 169, Highland Lakes Section 3, Part 2 of record in Cabinet 1, Slides 175 through 177, Highland Lakes Section 4, Part 1 of record in Cabinet 1, Slides 50 through 52, Highland Lakes Section 4, Part 2 of record in Cabinet 1, Slides 139 through 141, Pine Valley, of record in Plat Book 24, Page 1 through 3, Oakmont, of record in Cabinet 1, Slides 186 through 188; Oakmont Section 2 of record in Cabinet 1, Slides 345, 345A, and 345B; Oak Hill of record in Cabinet 1, Slides 406 and 400A; Highland Lakes North Section 1 of record in Cabinet 1, Slides 318, 318A and 318B; Highland Lakes North Section 2 of record in Cabinet 1, Slides 319 and 319A; Highland Lakes North Section 3 of record in Cabinet 1, Slides 457, 457A, 457B, and 457C; Highland Lakes North Section 4 of record in Cabinet 1, Slides 763, 763A, and 763B; Highland Lakes East Section 1 of record in Cabinet 1, Slides 212 through 216 Highland Lakes East Section 3, Part 1 of record in Cabinet 1, Slides 305, 305A, 305B and 305C; Highland Lakes East Section 3, Part 2 of record in Cabinet 1, Slides 420, 420A; Highland Lakes East Section 3, Part 3 of record in Cabinet 1, Slides 420, 420A, 420B; Highland Lakes East Section 4, Part 1 of record in Cabinet 1, Slides 346, 346A and 346B; Highland Lakes East Section 4, Part 2 of record in Cabinet 1, Slides 515 and 516A; Highland Lakes East Section 4, Part 4 of record in Cabinet 2, Slides 212A; 213; Highland Lakes East Section 5, Part 1 of record in Cabinet 1, Slides 444, 444A, and 444B; Highland Lakes East Section 5, Part 2 of record in Cabinet

1, Slides 631 and 631A; Highland Lakes East Section 6, Part 1 of record in Cabinet 3, Slides ^{30, 50A} ~~30B, 40A~~; Highland Lakes East Section 7 of record in Cabinet 1, Slides 406 and 406A; Highland Lakes East Section 10, Part 1 of record in Slides 777, 777A, and 777B; and Highland Lakes Estates, Section 1, Phase 1 of record in Cabinet 1, Slides 325 and 325A; Highland Lakes Estates Section 1, Phase 2 of record in Cabinet 1, Slides 260 and 260 A, and Highland Lakes Estates of record in Cabinet 1, Slides 461 and 461A; all in the Recorder's Office, Delaware County, Ohio and any Lots added in accordance with Article V, Section 6 hereof.

Section 6. "Owner" or "Lot Owner" shall mean the holder of record title to the fee interest in any Lot whether or not such title holder actually resides on or in any part of the subdivision, his or her heirs, successors and assigns.

Section 7. "Restrictions" shall mean these covenants, restrictions, conditions and assessments together with all of the provisions contained herein as they now appear or as they may hereafter be amended.

Section 8. "Subdivision" shall mean Highland Lakes Sections 1; and 4, Part 1; and 4, Part 2; Highland Lakes North Sections 1, 2, 3 and 4; Highland Lakes East Sections 1; 3, Parts 1, 2, and 3; 4, Parts 1, 2, and 4; 5 Parts 1 and 2; 6; 7; 10, Part 1; and Oakmont, Oakmont Section 2; Oak Hill, and Highland Lakes Estates Section 1, Phases 1, 2, and 3; in Genoa Township; and Highland Lakes Sections 2 and 3, Part 1 and 3, Part 2; and Pine Valley in Orange Township, Delaware County, Ohio and such additional areas as may be added in accordance with Article V, Section 6 hereof.

ARTICLE II

ARCHITECTURAL CONTROL

Section 1. Approval Required. No improvements or change of any kind, including without limitation any

- (a) building, construction, placement of or addition to or alteration of any structure (whether temporary or permanent);

- (b) changes in color, material finish, or appearance of any improvement;
- (c) excavation, alteration of grade;
- (d) landscaping, tree or shrubbery removal or plantings;
- (e) construction, placement of or addition to or alteration of any:
 - i. fencing, walls, screening;
 - ii. walkways, driveways, parking areas;
 - iii. patio, deck, porch;
 - iv. swimming pool, hot tub, spa;
 - v. children's recreational equipment or structures (including treehouses, playhouses, basketball hoops, and playground equipment);
 - vi. tennis court or other athletic facility; or
 - vii. flag pole, exterior lighting, ornamentation, or sign; or
- (f) any other change which in any way alters the exterior appearance of the Lot from its theretofore natural or improved state, including a change, alteration or other modification of any of the foregoing previously approved hereunder;

shall be commenced or permitted to remain on any Lot unless such Improvement or change has the prior written approval of the Developer. No excavation shall be made, no construction begun and no materials shall be stored on the Lot until receipt of written approval from the Developer.

Section 2. Method to Request Approval. All approvals shall be requested by submission to the Developer of plans and specifications in duplicate, showing the following:

- (a) The arrangement of the interior and exterior of the residential structure including:
 - (i) color and texture of building materials;
 - (ii) type and character of all windows, doors and exterior lighting fixtures;
 - (iii) type and character of chimneys;

- (iv) location of the structure and orientation of the structure to the topography;
- (b) Existing and proposed lot contours and grades;
- (c) All buildings and other improvements including walkways, access drives and parking areas, and other improved areas, and the locations thereof on the site, existing or proposed;
- (d) All landscaping, including existing and proposed tree locations and planting areas (and specie thereof), mail box locations, and exterior ornamentation;
- (e) Plans for all floors, cross sections and elevations, including projections and wing walls;
- (f) Exterior lighting plans;
- (g) Plans and specifications for all outdoor recreational and play areas, including swimming pool, children's recreational equipment or structures, spa, tennis court or other athletic facility;
- (h) Plans and specifications for walls, fencing, and screening;
- (i) Plans and specifications for patios, decks, and porches or any other exterior changes or improvements; and
- (j) Such other information, data, and drawings as may be reasonably requested by the Developer.

Specifications shall describe types of construction and exterior materials to be used, including, without limitation, the colors and manufacturers thereof, and shall otherwise be prepared according to standards established from time to time by the Developer.

Section 3. **Basis of Approval.** Approval shall be based, among other things, upon conformity and harmony of the proposed plans with the design and quality of the Subdivision as to external design, appearance and type of construction, materials, colors, setting, height, grade, finished grade elevation, landscaping and tree removal, and other structures in the Subdivision; the effect of the location and improvements on neighboring property; and conformity of the plans and specifications to the purpose and general intent of this Declaration.

Section 4. Building Actions. If Developer disapproves the plans and specifications the Owner may revise and resubmit the plans and specifications until approval is received. The actions of the Developer through its approval or disapproval of plans and other information submitted pursuant hereto, shall be conclusive and binding.

Section 5. No Liability. Neither the Developer nor any agent or employee, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, nonfeasance or misfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom or any other effect on other Lots and Owners in the Subdivision. Every person and entity who submits plans to the Developer agrees, by submission of such plans, that he or it will not bring any action or suit against the Developer to recover any damages or to require the Developer to take, or refrain from taking, any action whatsoever in regard to such plans or in regard to any building or structure erected in accordance with these restrictions.

Section 6. No Reliance. No Lot Owner may rely upon the submission and/or approval of any such plans or the buildings or structures described therein, or upon the Developer, to maintain the quality of, or a design plan for, the Subdivision.

Section 7. Requirement of Completion; Notice of Completion;
Non-completion or Non-compliance

An Owner shall cause any improvement to be diligently pursued to completion within eighteen (18) months after the date construction is commenced. Any improvement which has been partially or totally destroyed by fire or otherwise shall be repaired or removed within three (3) months after the time of such destruction. Upon the completion of any improvement, the Owner may file with the Developer a notice of completion and compliance which shall give rise to a conclusive presumption

in favor of the Owner that the Improvement is completed and in compliance with all provisions of this Article II, unless within thirty (30) days of the filing the Developer gives actual notice of non-compliance or non-completion. Notice of non-compliance or non-completion will be considered to be delivered when it is posted on or about the Improvements in question or delivered by certified mail or in person to the Owner.

ARTICLE III
GENERAL PROVISIONS

Section 1. **Residential Purposes**. No Lot shall be used except for single-family residential purposes, except that Lot 4102 shall be used for common open space only.

Section 2. **Trade or Commercial Activity Barred**. No trade or commercial activity shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to any Owner of any Lot in the Subdivision.

Section 3. **Maintenance of Lots and Improvements**. Each Lot shall be landscaped according to plans approved in writing by the Developer. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping approved by the Developer shall be installed no later than one hundred eighty (180) days following occupancy of, or completion of, any building, whichever occurs first. The Lot shall be regularly mowed and no Lot shall be allowed to become overgrown or unsightly. All Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Developer. All trees placed on the Lot by the Developer shall be maintained and, if necessary, replaced by the Owner.

Section 4. **Site Placement**. All buildings and other Improvements shall be placed so that the existing topography and landscape shall be disturbed as little as possible, and so that the maximum number of desirable trees and other natural features will be preserved, unless the Developer

approves in writing some other placement.

Section 5. Exterior Materials and Colors. Finish building materials shall be applied to all sides of the exterior of buildings. Colors shall be harmonious and compatible with colors of the natural surrounding and adjacent buildings and improvements. The Developer shall have the sole right to approve or disapprove materials and colors so controlled.

Section 6. Garage. No dwelling may be constructed on any Lot unless an enclosed garage for at least two automobiles is also constructed thereon.

Section 7. Service Screening, Storage Areas. All garbage, trash and other waste shall be placed in containers which shall be concealed and contained within buildings, or shall be concealed by means of a screening wall of material similar to and compatible with that of the building on the Lot, or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. These elements shall be integrated with the building plan, designed so as not to attract attention, and shall be located in as reasonably inconspicuous a manner as possible. Unless specifically approved by the Developer, no materials, supplies or equipment shall be stored on the Lot except inside a closed building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets or properties.

Section 8. Drives, Curbs and Walks: Drives, curbs, parking areas and walks shall be constructed or altered only in accordance with plans and specifications submitted to and approved in writing by the Developer.

Section 9. Storage Tanks. No storage tanks, including, but not limited to, those used for storage of water, gasoline, oil, other liquid or any gas, shall be permitted on a Lot outside a building except as approved in writing by the Developer.

Section 10. Building Exterior. All windows, porches, balconies and the exterior of

buildings shall at all times be maintained in a neat and orderly manner. No clothing or any other household fabrics shall be hung in the open on any Lot and no clotheslines or other outside drying or airing facilities shall be permitted.

Section 11. Removal of Trees. In order that the natural beauty of the Subdivision may be preserved, no living tree having a caliper measurement or diameter of six (6) inches or more shall be destroyed or removed from a Lot unless specifically approved by the Developer. In the event of a violation of this paragraph, Developer may, at its option, cause any tree so removed or destroyed to be replaced with another tree and the Owner of the Lot on which the tree was located shall reimburse Developer for all expenses incurred by it; provided, however, that with respect to the replacement of a tree, there shall be no obligation of reimbursement in any amount in excess of the expenses which would be incurred if the destroyed or removed tree were replaced with a tree similar in type and size. Vegetation in the Preservation Zone is covered by Section 32.

Section 12. Pools and Hot Tubs. No above ground pool which requires a filtration system or is more than six (6) feet in diameter and 18 inches deep shall be placed or maintained on any Lot. No other swimming pool, hot tub or spa may be placed or maintained on any Lot without the prior written approval of the Developer.

Section 13. Fencing. The only fencing permitted shall be a privacy fence of not more than six (6) feet in height immediately around a patio, pool or similar improvement or such other fencing as is approved in writing by the Developer. No fencing shall be permitted except immediately around a pool, patio or similar improvement on any Lot abutting the golf course of the Lakes Golf and Country Club.

Section 14. Mailboxes. All mailboxes in the Subdivision shall be selected by the Developer, who shall also prescribe the location and installation of the boxes. Owners shall purchase and maintain the required boxes.

Section 15. **Exterior Lighting.** Only exterior lighting which has the prior written approval of the Developer may be installed on a Lot.

Section 16. **Hobbies:** Hobbies or activities that tend to detract from the aesthetic character of the Lot, and improvements used in connection with such hobbies or activities, shall not be permitted unless carried out or conducted within a building and not visible from either the street or adjoining property. This section includes, but is not limited to, such activities as automotive and boat repair, and sports activities.

Section 17. **Temporary Residences.** No structure of a temporary character, trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all terrain vehicle (ATV), camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be used as a residence on any Lot either temporarily or permanently.

Section 18. **Mineral Exploration.** The Lot shall not be used in any manner to explore for, use, or commercially exploit any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other substance located in or under the ground. In particular, no wells may be located on the Lot and no water may be removed from any pond, lake, or other body of water located on, adjacent or near to the Lot.

Section 19. **Machinery and Equipment.** No commercial machinery or equipment of any kind shall be placed, operated or maintained upon the Lot except such machinery or equipment reasonably necessary for use in connection with maintenance or construction of improvements as approved by the Developer.

Section 20. **Signs.** No signs of any kind shall be displayed on any Lot, except one temporary sign of not more than two feet by two feet (2' x 2') advertising the property for sale or rent, or used by the builder to advertise the property during the construction sales period, or signs the restriction of which is prohibited by law.

Section 21. Antennas and Satellite Dishes. No television or radio antennas or satellite dishes may be installed on the exterior of any house or Lot except that dishes that do not exceed one meter in diameter and (television antennas are permitted if they are located in a place not visible from the street, are of a color that blends with the background, and are screened by landscaping or other means so that it is difficult to see them from other lots. Such locations and appearance must be approved by Developer; provided, however, that the location must be such that it does not interfere with reception. No towers of any kind, including, but not limited to, television, radio and/or microwave towers, shall be erected, placed, or maintained anywhere in the Subdivision.

Section 22. Solar Panels. No solar panels, attached or detached, shall be permitted on any Lot.

Section 23. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighboring property. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of another Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices which can be heard off the Lot, shall be located, used or placed on a Lot, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

Section 24. Temporary Improvements. No temporary building or structures shall be permitted on any Lot; provided, however, trailers, temporary buildings, barricades and the like shall be permitted during construction of Initial Improvements on a Lot, if the design, appearance, and location has the prior written approval of the Developer. Such Improvements shall be removed not later than fourteen (14) days after the date of completion of the Improvements for which the temporary structure was used, and shall be permitted to remain for no longer than one (1) year, unless a greater period is approved in writing by the Developer.

Section 25. **Animals.** No animals, birds, insects, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats, or other household pets which are kept for domestic purposes only, and are not kept, bred or maintained for any commercial purpose. No more than two dogs or two cats or two other pets which are permitted outdoor cats may be kept on any Lot, except when animals in excess of such numbers are less than three months old.

Section 26. **Vehicle Parking and Storage.** No automobile, trailer, boat, camper, recreational vehicle, commercial vehicle, or other motor driven vehicle shall be parked or stored on any Lot unless it is in a garage, except that:

- (a) such vehicles, if operable, may be parked outside the garage for an occasional, nonrecurring temporary period not to exceed 72 hours in any thirty (30) days; and
- (b) automobiles in good condition may be parked outside the garage on a regular basis if there is insufficient space in the garage and the automobiles are driven regularly by a person residing on the Lot.

Section 27. **Lot Split.** No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, so as to create a new building lot.

Section 28. **Contiguous Lots.** An Owner may use more than one Lot as a site for a single dwelling unit only if the Owner obtains the prior written permission of the Developer.

Section 29. **Utility and Drainage Easements:** Locations of easements for the installation of utilities and for surface drainage, including storm drainage swales, are reserved as shown on the recorded plat. No lines, wires or other devices for communication purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy, shall be constructed, placed or maintained anywhere in or upon the Subdivision unless they are placed and maintained underground or concealed in, under or on buildings or other improvements; provided that above-ground electrical transformers and other equipment may be permitted if properly screened with the prior written approval of the Developer. All gas, water, sewer, oil and other pipes for gas or liquid transmission

shall be placed underground or within or under buildings or other improvements. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone service incident to the construction of improvements. All Lot Owners shall grant utility easements to Developer for the purpose of constructing utility lines over or through the Owner's Lot. Developer shall present to Owner a survey of any proposed easement which shall be subject to approval by the Owner, which approval will not be unreasonably withheld. Subject to the recorded approval, Owner agrees to execute all appropriate documents to accomplish the foregoing.

Section 30. Use of Public Easements. In addition to the utility easements herein designated, easements in the streets, as shown on the plat, are hereby reserved and granted to the Developer, and any utility company or governmental unit engaged in supplying one or more utility services to the Subdivision to install, lay, erect, construct, renew, operate, repair, replace, clean, care for, maintain or remove all and every type of gas, water, sanitary or storm sewer or drainage swale or other utility facilities.

Section 31. Drainage and Grading. No drainage ditches, cuts, swales, streams, impoundments, ponds, or lakes; no mounds, knobs, dunes or hills; and no other physical improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be destroyed, altered or modified without the prior written approval of the Developer. Except if created by the Developer, no above grade structures, dunes or other obstructions to the flow of storm water runoff are permitted in any Drainage Easements, as shown on the Plat. Roof drains, foundation drains and other down water connections to the sanitary sewer system are prohibited. No Improvements to a Lot shall be made in any manner whatsoever if they are inconsistent with the master grading plans established by the Developer for the Lot or on file with the Building Department of Delaware County, as the plans now exist or may hereafter be modified from time to time, without the prior written approval of the Developer and, where applicable, the County. After completing any improvements, a Lot Owner shall obtain certification from a licensed engineer that the master grading plans have been observed. Whenever, because of construction of Improvements on a Lot, or for some other reason, silt runs off of the Lot onto any adjacent property, the Owner of the Lot shall be obligated to provide a means of siltation control to prevent such run off. An easement is reserved to the

Developer and the County for maintaining major stone drainage swales and underground utilities including the right to clear, repair, and care for the swales and utilities together with a right of access therein.

Section 32. Preservation Zone. No building, structure, fence, walkway, path, recreational or athletic facility, or any other improvements of any kind may be placed temporarily or permanently upon, in or under the area designated on the plat of Lots 4085 through 4091 as the Preservation Zone, nor shall any work be performed thereon which would alter the natural state of the zone or damage any of the trees or vegetation therein; provided, however, that the zone may be disturbed to the extent necessary for installation and maintenance of utilities and drainage facilities. Any part of the zone disturbed by maintenance shall be restored as nearly as practicable to the original condition. Otherwise, no trees or other vegetation may be removed from the zone except for the removal of dead, diseased, decayed, or noxious trees and other vegetation or as may be required for conservation or aesthetic purposes or in keeping with good forest management practices.

Nothing may be planted in the zone except vegetation and trees native to the area.

No earth, rock, sand, gravel or other natural materials may be removed from or placed in the zone nor may any trash or debris, whether natural or man-made, be placed in the zone.

Prior approval of the Developer is required for planting or restoration or the removal of trees or vegetation for conservation, aesthetic or forest management purposes. Any area where trees or vegetation are removed without Developer's prior approval shall be restored as nearly as practicable to its original condition at the Owner's cost.

Section 33. Entrance Walls, Fencing, Subdivision Identification Signs, Earthmounds and Landscaping.

The walls, fencing, subdivision identification signs, earthmounds, trees, electrical facilities, irrigation systems and landscaping placed on any of the Lots in the Subdivision by Developer shall not be removed or changed except by the Developer who shall have the right to enter the Lots

to close. They shall be maintained in good condition by the Association, or, if not, by the Owners of Lots on which such features are located.

Section 34. Private Streets. Part of Lufes Club Drive west from Worthington-Galeur Road to the intersection of Pine Valley Lane will not be dedicated. The responsibility for maintenance and repair of that street shall be that of, and equally allocated to, all Lot Owners of the Subdivision. The maintenance and repair of the street shall be administered through the Association. The street shall be maintained in a clean, safe and aesthetically attractive condition at all times so that at a minimum the condition would comply with the standards imposed by the Townships in which it is located.

Section 35. Maintain Common Improvements. The responsibility for maintaining the Common Improvements in a well-maintained, attractive and aesthetically appealing condition shall be the responsibility of the Association. That responsibility shall include but not be limited to, caring for and maintaining the Common Improvements, including seeding, paving and mowing when needed, and maintaining and paying the cost for landscaping entrance walls and the electrical and lighting service constructed by Developer to service the Common Improvements, as well as maintaining sewers as required by the Developer or governmental authorities. The Association shall use its best efforts to maintain comprehensive general liability insurance, in an amount of not less than \$1,000,000 per person and \$3,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage, and such other insurance as shall be reasonably required by Developer.

**ARTICLE IV
ASSESSMENTS**

Section 1. Establishment of Assessment: For the purpose of providing funds for maintenance and improvement of the Common Improvements and parklands, and other expenses and costs incurred by the Association, the Association shall, on a date selected by the Developer and prior to January 1 of each calendar year thereafter, determine an estimated budget for the following calendar year, or in the case of the first year, if only a part of a calendar year, for the remainder of

that calendar year, and establish an equal annual assessment as to each Lot. The total assessment collected for the Lots in the Subdivision must be an amount sufficient to meet the obligations of the Association under this Declaration. These assessments shall be payable in advance in such periodic installments and on such due dates, as the Association from time to time determines, provided, that if any installment of any assessment is not paid within thirty (30) days after it has become due, the Association may, at its option, without notice or demand (i) declare the entire balance of the assessment immediately due and payable; (ii) assess interest on the unpaid balance at the highest rate of interest then permitted by law, or at such lower rate as the Association may from time to time determine; and (iii) assess reasonable, uniform, late fees.

Section 2. **Establishment of Lien:** If any Lot Owner shall fail to pay any installment within thirty (30) days after it is due, the Association shall be entitled to a valid lien for that installment or the unpaid portion of last year's assessment, if the Association so elects, together with interest, late fees and costs, which lien shall be effective from the date that the Association certifies the lien to the Delaware County Recorder. The right to file such lien is subordinate to any liens actually filed.

ARTICLE V

ENFORCEMENT AND MISCELLANEOUS

Section 1. **Enforcement:** Except as hereinafter provided, Developer, the governmental units in which the Subdivision is located, the Lakes Golf and Country Club, each Lot Owner, and the Association, jointly and severally, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. Notwithstanding the foregoing, in the event of any dispute between Lot Owners or between the Association and any Lot Owner or Owners not including the Developer, as to any matter provided for herein, other than with regard to the obligation for, levy, collection or enforcement, of assessments (including, without limiting the generality of the foregoing, the creation, filing and enforcement of liens), the matter shall be submitted to a single independent arbitrator selected by the Association who shall decide the dispute in accordance with and pursuant to the arbitration laws of Ohio and the arbitrator's decision shall be final and enforceable as provided

Vol. 0626 Pgs. 434

above.

Section 2. Special Assessment Lien: Each Lot Owner shall comply, or cause compliance, with all covenants, requirements, and obligations contained herein, and with all rules and regulations promulgated by the Association. Upon the failure of a Lot Owner to comply with such covenants, requirements, and obligations, the Association or Developer, in addition to any other enforcement rights they may have hereunder, may take whatever action either deems appropriate to cause compliance, including, but without limitation, entering upon the Lot for repair, maintenance, reconstruction and removal of any improvements thereon or any other action required to cause compliance with the covenants, requirements and obligations contained herein. All costs incurred by the Association or Developer in causing such compliance, together with the interest at such lawful rate as the Association or Developer may from time to time establish, shall be immediately due and payable from the Lot Owner to the Association or Developer, and the Association or Developer shall be entitled to a valid lien as security for the payment of such costs incurred, and interest, which lien shall be effective from the date that the Association or Developer certified the lien to the Delaware County Recorder.

Section 3. Joint and Several Obligations: Each and every obligation with respect to a Lot hereunder shall be the joint and several personal obligation of each Owner of a fee simple interest in the Lot at the time the obligation arose or thereafter until paid, and any demand or notice hereunder or pursuant hereto to one of such joint Owners shall be deemed given, taken or received by all such joint Owners.

Section 4. Severability and Waiver: Invalidation of any one of these covenants or restrictions by judgment of court order shall in no way affect any other provision which shall remain in full force and effect. Failure by a benefited party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Amendment: The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five years from the date this Declaration is recorded, after

which time they shall be automatically extended for successive periods of ten (10) years, unless by agreement of the Owners of two-thirds (2/3) or more of the Lots, these covenants and restrictions are sooner terminated. This Declaration, as it relates to the Subdivision, may be amended by a duly executed and recorded instrument signed by the Owners of no less than two-thirds (2/3) of the Lots in the Subdivision, provided that any such amendment during the first ten (10) years after the date hereof must also be approved by the Developer. Notwithstanding the foregoing, and in addition thereto, the consent of all Lot Owners present, in person or by proxy, who are entitled to vote at a duly called and noticed meeting of the Association, and the written consent of Developer, if it then owns a Lot or Lots, shall be required for any amendment hereto which effects a change in (i) the method of dividing the assessments, (ii) the method of voting on Association matters, or (iii) the fundamental purposes for which the Association is organized. A holder or issuer of a first mortgage on any Lot, upon written request shall be entitled to timely written notice of any proposed amendment hereto.

Section 6. Additions to the Subdivision. Upon the execution and delivery by Developer of a Deed or Declaration of Covenants, Easements, Restrictions and Assessment Liens, and the filing of the same with the Recorder of Delaware County, submitting real property to the lien for assessments established by Article IV hereof, the real property described therein shall become a part of the Subdivision as defined in Article I hereof. Such additions may be made and perpetuated without the consent of the Owners.

Section 7. Transfer to Association. The foregoing to the contrary notwithstanding, at any time Developer no longer wishes to retain the rights granted to it in this Declaration, it may transfer those rights to the Association, and by such transfer this Declaration will be deemed to be amended, so that every reference to "Developer" herein shall be changed to "Association". The Association must accept such transfer if tendered by the Developer.

Section 8. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or estate in any portion of the Subdivision is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein whether or not a reference to this Declaration is contained in the instrument by which such person

which time they shall be automatically extended for successive periods of ten (10) years, unless by agreement of the Owners of two-thirds (2/3) or more of the Lots, these covenants and restrictions are sooner terminated. This Declaration, as it relates to the Subdivision, may be amended by a duly executed and recorded instrument signed by the Owners of no less than two-thirds (2/3) of the Lots in the Subdivision, provided that any such amendment during the first ten (10) years after the date hereof must also be approved by the Developer. Notwithstanding the foregoing, and in addition thereto, the consent of all Lot Owners present, in person or by proxy, who are entitled to vote at a duly called and noticed meeting of the Association, and the written consent of Developer, if it then owns a Lot or Lots, shall be required for any amendment here to which effects a change in (i) the method of dividing the assessments, (ii) the method of voting on Association matters, or (iii) the fundamental purposes for which the Association is organized. A holder or owner of a first mortgage on any Lot, upon written request shall be entitled to timely written notice of any proposed amendment herein.

Section 6. Additions to the Subdivision. Upon the execution and delivery by Developer of a Deed or Declaration of Covenants, Restrictions and Assessment Liens, and the filing of the same with the Recorder of Delaware County, submitting real property to the lien for assessments established by Article IV hereof, the real property described therein shall become a part of the Subdivision as defined in Article I hereof. Such additions may be made and perpetuated without the consent of the Owners.

Section 7. Transfer to Association. The foregoing to the contrary notwithstanding, at any time Developer no longer wishes to retain the rights granted to it in this Declaration, it may transfer those rights to the Association, and by such transfer this Declaration will be deemed to be amended, so that every reference to "Developer" herein shall be changed to "Association". The Association must accept such transfer if tendered by the Developer.

Section 8. Constitutive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or estate in any portion of the Subdivision is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein whether or not a reference to this Declaration is contained in the instrument by which such person acquired an interest in a portion of the Subdivision.

ARTICLE VI

ACCEPTANCE

Section 1. Acceptance. By accepting a deed to any of the above described real estate or Lots, an Owner accepts the same subject to the foregoing covenants and agrees for him or herself, his or her heirs, successors and assigns to be bound by each of the covenants.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf on or as of the 5th day of February, 1998.

Signed and acknowledged in the presence of:

Debbie A. Wade

Planned Communities, Inc.

Debbie A. Wade

J.S. O'Neil

Sharon L. Field

Sharon L. Field

STATE OF OHIO
County of Franklin ss:

Before me, the subscriber, a Notary Public in and for said County and State, personally appeared Jay S. O'Neil, the President of Planned Communities, Inc., who acknowledged the signing of the foregoing instrument to be his free act and deed on behalf of said Corporation for the uses and purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 5th day of February, 1998.

Debbie A. Wade
Notary Public
My Commission Expires _____

Debbie A. Wade
Notary Public - State of OH.
My Commission Expires 5-18-00

EX-10505(12-9)