

52584

**DECLARATION OF EASEMENTS  
AND AMENDED AND RESTATED PROTECTIVE COVENANTS  
FOR THE POPLAR HILL SUBDIVISION SECTION I**

(amending and restating protective covenants  
appearing on the subdivision plat recorded at  
Plat Book 30, Pages 1+2, Warren County Plat Records).

THIS DECLARATION OF EASEMENTS AND AMENDED AND RESTATED PROTECTIVE COVENANTS ("Declaration") is made this 1 day of November, 1994 by HEATHWOOD DEVELOPMENT CORP., an Ohio corporation (the "Developer"), under the following circumstances:

A. Developer has subdivided certain land in the City of Lebanon, in Warren County, Ohio and is currently the owner of lots of the Poplar Hill Subdivision Section I, more particularly described in Exhibit A attached hereto and made a part hereof, and also as shown on the "Recorded Plat for Poplar Hill Subdivision Section I" (the "Recorded Plat") recorded in Plat Book 30 Pages 1+2 of the Plat Records of Warren County, Ohio (collectively the "Property"). Developer may, in the future, acquire other land in or adjacent to the Poplar Hill Subdivision Section I and subject such other land to this Declaration, as provided herein, and the adjacent land shall also become part of the Property as defined herein.

B. The Recorded Plat recited certain protective covenants governing the future use and ownership of the lots on the Property for the benefit of current and future owners and users of said lots, but Developer desires to amend and restate said protective covenants to improve the beneficial effect on the Property and to integrate the protective covenants with the provision for common areas and the rights and obligations related to such common areas and set forth in this Declaration.

C. Developer desires that the Property be held, sold, used and conveyed subject to the covenants, conditions and restrictions, as amended and restated herein, and otherwise as contained in this Declaration.

NOW, THEREFORE, in consideration of the premises and for the purpose of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer hereby declares that the Property shall be held, sold, used and conveyed subject to this Declaration and the covenants, restrictions and liens provided herein, which shall run with the land and be binding upon all owners of the Property and their successors and assigns.

1. Use of Lots. The lots that have been platted on the Property, and any other lots in any subsequent plat on additional land adjacent to the Property (collectively, the "Lots") to be

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subjected to this Declaration, shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than a dwelling, not to exceed two and one-half stories in height, and a private garage for no less than one nor more than three cars, attached or unattached to the dwelling unit.

2. Common Facilities. The Common Facilities in the Poplar Hill Subdivision Section I are (i) entrance way monuments located on Lot Number 4952 and Lot 4982 adjacent to but outside of the right of way of proposed Poplar Drive at the margins of its intersection with Cook Road; (ii) landscaping within a fifteen (15) foot radius of the monuments but not in any right of ways; (iii) "Kentucky style" board fence south of and adjacent to the southerly right of way line of Cook Road as shown on the Recorded Plat, across the northerly portions of Lot Numbers 4956, 4957, 4958, 4952 and 4982; (iv) a water detention basin and appurtenances on and comprising Lot 5002; and (v) storm and surface water drainage easements, all as located on the Recorded Plat. Easements for said entrance way monuments, water detention basins and utility, storm and surface water drainage easements (collectively, the "Easements") are hereby reserved and declared by Developer over, across and burdening the Lots specifically as shown on the Recorded Plat. The Easements are for the benefit and enjoyment of all Lot Owners. Upon "Turnover" as defined in Section 3 below, the Association (hereinafter defined) shall be deemed to be the successor of Developer and, as such, shall be deemed to be the grantee of said Easements, and shall hold such Easements for the benefit and enjoyment of all Lot Owners.

3. Turnover. On or before thirty days after Developer has sold one hundred percent (100%) of the currently platted Lots plus any additional Lots that may be platted and added to the current subdivision, if any, the Developer shall turn over management and control of the Common Facilities and the Association to the then current owners of Lots on the Property. The date on which such transfer of control occurs shall be deemed to be "Turnover" as such term is used in this Declaration.

4. Additional Lots. The Developer shall be entitled to amend this Declaration for the purpose of adding additional platted Lots and adjacent land to the subdivision and subjecting such additional Lots and adjacent land acquired by Developer to this Declaration. An amendment that expands the Property by adding Lots or land may be executed and filed by Developer at any time prior to Turnover without consent of other persons who are Lot Owners at that time.

5. Homeowners' Association. Immediately before Turnover the Developer shall form the Poplar Hill Section I Homeowners' Association, Inc., an Ohio not-for-profit corporation (the

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"Association") to operate as the Association that will provide maintenance and control of the Common Facilities on the Property. The initial directors and officers of the Association shall be the Developer, through its President and other officers. After Turnover, the then current Lot Owners shall be entitled to select the officers and directors of the Association in accordance with its Articles of Incorporation and Code of Regulations, provided, however, that until the Developer has sold all Lots on the Property and on any additional real property that is subjected to this Declaration, the Developer, through its officers, shall be empowered to appoint a majority of the members of the board of directors of the Association. In the event of a conflict between the Articles of Incorporation or Code of Regulations and this Declaration, this Declaration shall control. This Declaration shall be attached as an exhibit to the Code of Regulations of the Association. After the Developer has sold all Lots of the Property and any additional real property later subjected to this Declaration, the Developer shall no longer be eligible to serve as a director or officer of the Association. The Association, after Turnover, shall have not less than three nor more than five directors.

6. Assessment. There is hereby established for the benefit of the Association and all Lot Owners on the Property, as a charge on each Lot, an annual Assessment (the "Assessment"). The Assessment shall be payable in one installment, in arrears on the first day of March of each calendar year. The obligation to pay the Assessment to Developer on behalf of the Association prior to Turnover shall arise upon certified mail notice from Developer to each Lot Owner that the Developer is imposing the Assessment in accordance with paragraph 8 of this Declaration. The obligation to pay the Assessment to the Association shall commence on the first day of the first calendar month after Turnover of control to the Association. The obligation to pay the Assessment shall not in any manner be dependent on or be discharged or otherwise affected by the use or non-use of the Common Facilities or the actual occupancy of any Lot of the Property.

7. Lien for Assessment. The Assessment shall be a lien on each Lot with priority over all other liens and encumbrances on any Lot or any part thereof, or interest arising after this Declaration is recorded. Each owner of a Lot, by acceptance of a deed or other instrument of conveyance for the Lot, or by the execution of this Declaration or an amendment to this Declaration, shall be deemed to covenant to pay or secure the payment of the Assessment to the Developer prior to Turnover or to the Association after Turnover. The purpose of the Assessment is for the benefit and use by Developer or the Association exclusively for the benefit of the Lot Owners and shall be used to cover the cost of maintenance, repair landscaping and upkeep of the Common Facilities and for the Association's operation and insurance.

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8. Maintenance Obligation. Until Turnover as provided herein, Developer shall perform the landscaping and maintenance of the Common Facilities.

Notwithstanding paragraph 6 above or anything else to the contrary in this Declaration, Developer may charge the Assessment provided herein to Lot Owners for the provision by Developer of Common Facilities Maintenance prior to Turnover. After Turnover, the landscaping and maintenance of the Common Facilities shall be performed by the Association.

9. Association Budget, Amount of Assessment. The Association shall budget for the current year's projected costs for its share of landscaping, watering, maintenance, upkeep, repair, painting, cleaning, insurance, taxes, organizational costs, legal costs for the enforcement of liens and covenants in this Declaration and any other costs reasonably foreseeable and established by the board of the Association. In addition, the Association shall build up and maintain a reasonable reserve for contingencies and for its share of the periodic maintenance, repair and replacement of the Common Facilities. The amount of the Assessment shall be determined from year to year in accordance with the following:

a. The annual Assessment shall be determined by the board of directors of the Association in an amount which the board estimates will be adequate to pay all costs described herein for the current year and any unpaid deficits for prior years, plus an adequate capital reserve account for the capital replacement as needed.

b. The board shall determine the Association's budget and the amount of the Assessment for the immediately following year on or before January 15 of each year, and shall give written notice to all Lot Owners of the Assessment applicable to their Lot not later than February 1.

c. The Assessment chargeable to each Lot owner shall be the proportion of one to the total number of Lots then subject to this Declaration and each Lot owner shall be charged with the payment of that portion of the total Assessment. The Lot shall be assessed on an equal basis regardless of any variations in the sizes or values of the Lots.

d. The failure of the board to meet the time deadlines imposed herein shall have no effect on the obligation of owners to pay their proportionate share of the Assessment when determined. If, during the course of the year, the board determines that the amount of the Assessment is or will be inadequate to cover any and all such costs described below, the board may adjust the amount of the Assessment by giving

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written notice to members not less than twenty (20) days before the effective date of the adjustment.

e. All Assessments shall be charged as a lien on each Lot to the extent and for the period provided in this Declaration, and shall also be the personal obligation of the owner of each Lot against which the Assessment is made.

10. Enforcement of the Lien for Assessments. If any installment of the Assessment on any Lot is not paid within the period established by the Association pursuant to this Declaration, the amount thereof together with any interest, costs, penalties and reasonable attorneys' fees shall constitute a lien on such Lot in favor of the Association prior to all other liens and encumbrances whatsoever, excepting real estate taxes and assessments, and liens of record in favor of the United States of America, the State of Ohio, and all other political subdivisions or governmental instrumentalities of the State of Ohio, to the extent made superior by applicable law, any bona fide first mortgage, and the rights of any first mortgagee who comes into possession of a Lot due to a mortgage foreclosure on a Lot or by a deed in lieu of foreclosure thereof. The Association may record a notice of lien with the Recorder of Warren County, Ohio in any legally recordable form, including by affidavit as provided in Section 5301.252 of the Ohio Revised Code, or by any similar section hereinafter enacted. Nonpayment of any installment of the Assessment on any Lot shall be deemed, and is hereby declared to be, the happening of a condition or event that creates an interest in real estate. Any lien established under this Declaration may be enforced by the Association in the same manner to the same extent and subject to the same procedures as in the case of a foreclosure of real property of a real property mortgage under the laws of the State of Ohio. In case of any such enforcement proceeding, the amount of which may be recovered by the Association shall include all costs of such proceeding, including reasonable attorneys' fees. In any such foreclosure sale, the Association may become the purchaser of the Lot.

11. Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners.

12. Meetings of the Association. The initial Association meeting shall be held by the Developer as soon as practicable after

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the incorporation of the Association. An annual meeting date shall be established in the Articles of Incorporation of the Association. After Turnover of the Common Facilities as provided herein, an annual meeting will be held pursuant to the Articles of Incorporation of the Association, and other meetings shall be held as determined to be necessary by the board of the Association. In addition, the majority of Lot Owners of the Association can request a special meeting of the Association.

13. Protective Covenants For The Lots. In order to promote the health, safety and welfare of all Lot Owners and residents on the Lots, and to preserve, beautify and maintain the Property and all structures thereon as a community of high quality and to preserve and promote environmental quality, the following covenants, restrictions and limitations as to use and occupancy of the Lots are hereby adopted, declared and established, which amend and supercede the protective covenants, restrictions and limitations set forth on the Recorded Plat, and shall hereinafter burden and benefit all Lots on the Property, shall run with the land and be binding on current and successor Lot Owners for the benefit of all Lot Owners and all Lots on the Property:

a. Land Use. Except for Common Facilities or as otherwise set forth in this Declaration, no part of the Property or any Lot shall be used for other than single family housing, and any dwelling unit constructed on a Lot shall be used only as a residence for a single family. To the extent permitted by law, a Lot Owner may use a portion of a dwelling unit for an office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Lot Owner or resident, and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Property or that particular Lot. Single family dwelling houses may include an attached garage or separate garage of similar design which may include living quarters for household employees. This provision shall not prohibit Developer, its affiliates, and/or assigns from using a Lot or Lots to market new houses constructed in the subdivision.

b. Exterior Structure Approval. No building shall be erected, placed or altered on any Lot until the Developer has approved in writing the building plans, specifications, exterior colors and plot plan showing the location of the building and its finished appearance. The approval shall consider whether the Lot will be in conformity and harmony of exterior design and location with respect to topography and its finished appearance and finish ground elevation to and with other Lots. If Developer fails to approve or disapprove such design and location within (30) days after said plans and specifications have been submitted to Developer, such approval

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will not be required and this covenant will be deemed to have been fully complied with.

c. Floor Area. The total floor area of the dwelling structure on any single Lot, exclusive of open porches, garages and approved outbuildings, shall be not less than 960 square feet.

d. Other Structures. No structure of a temporary nature, trailer, or other temporary outbuilding shall be erected or used on any Lot after the permanent residence on each Lot has been completed. No tool shed, barn or storage facility may be placed on any Lot without Developer's prior written approval. Vegetable gardens may be no larger than 300 square feet and must be maintained so as not to be unsightly. No more than two cords of firewood may be stored on any Lot, and firewood must be neatly stacked and free of unsightly debris.

e. Nuisances. No offensive odors or unsightly nuisances are permitted on any Lot which may be construed to be detrimental to the neighborhood. No vehicular maintenance or repair of any type shall be performed on the public streets or on private driveways. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except, dogs, cats and other household pets, provided that they are not kept, bred or maintained for any commercial purpose. No Lot Owner shall permit anything to be done or kept in a dwelling unit or other approved structure on any Lot that would be in violation of any law. No waste shall be committed in or to any of the Common Facilities.

f. Oil and Mining Operations. No oil drilling, quarrying, or mining operations shall be permitted on any Lot.

g. Garbage and Refuse Disposal. Trash, garbage and refuse shall not be kept upon a Lot except in sanitary containers. Yard waste may be composted in approved containers. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste.

h. Parking. No parking spaces, streets or driveways shall be used for parking any trailer, truck, boat, or anything other than operative automobiles, motorcycles or scooters. Any of such vehicles may, however, be stored or parked in an enclosed garage. The word "trailer" shall include trailer coach, "RV", recreational vehicle, house trailer, van, mobile home, automobile trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage,

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or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pick-up truck which is used as one of the automobile vehicles by a Lot Owner and his family. Notwithstanding the restrictions in this paragraph, vehicles being used for the purpose of construction, delivery or repair work upon or to any Lot may be permitted to park on the Property. No vehicle which constitutes an unsightly nuisance shall be allowed to be parked on any Lot or street in the subdivision.

i. Signs. No permanent sign shall be permitted on any Lot or building in the subdivision. However, a Lot Owner or Owner's agent shall be permitted to place signs advertising the Lot or the dwelling thereon for sale or rent. This sign restriction shall not apply to signs used by Developer while it is selling Lots in the subdivision, or to traffic, street name or subdivision identification signs.

j. Swimming Pools. No aboveground swimming pools shall be permitted on any Lot in the subdivision. In ground pools are permitted.

k. Antennas. No radio or television antennas of any kind, including satellite receiving dishes, shall be permitted to be mounted on the exterior of the building or located anywhere on any Lot without Developer's prior written approval.

l. Mailboxes. Mailboxes shall be black galvanized steel, rural mailbox, medium model 1 - 1 1/2, mounted on a 4x4 rough sawn cedar post or such other uniform design as may be approved by owners of a majority of all Lots within the subdivision or by Developer.

m. Fencing. Without Developer's prior written approval, no fence may be installed on any Lot other than the split rail type or the white painted post and board type similar to that used in the entrance way. Without Developer's prior written approval, no fence, wall or hedge shall be permitted to extend nearer to any street than the minimum building set-back line.

n. Swingsets and Play Areas. Swingsets and play areas may be erected on a Lot only after the location and materials of those facilities are approved in writing by Developer.

o. Restrictions on Private Drainage Easement/Detention Facilities. The City of Lebanon and Warren County assume no legal obligation to maintain or repair any detention



facilities or any open drainage ditches or channels designated as drainage easements in this Declaration or on the Recorded Plat. The easement area of each Lot and all improvements within it shall be maintained continuously by the Lot Owner within the easement, or as designated herein, the Developer or the Association. No structure, planting, fencing, culvert, grading, topsoil or other material shall be placed or permitted to remain which may obstruct, retard or divert the flow through the watercourse.

p. Obligation to Keep Premises in Good Condition. Each Lot Owner or tenant of a Lot Owner shall keep each Lot and all structures thereon in such maintenance, repair, appearance and condition as shall comply with the provisions of this Declaration and applicable laws and ordinances.

14. Private Driveways. Ingress, egress and utility easements shown on the Recorded Plat, if any, include the right to enter upon Lots to construct, maintain and reconstruct private drives and to install, operate and permanently maintain thereon the usual fixtures and equipment for residential utility service. The use and maintenance of these easements shall be subject to the following restrictions and obligations:

a. No parking will be permitted on any part of an easement which serves another Lot.

b. The vegetation within the easement area shall be maintained by each Lot Owner for that area owned.

c. Common driveways, if any, shall be maintained by the owners of record of the Lots served by the common driveway pro rata, based on the ratio of (i) the driveway distance measured from the street line to the driveway curb cut into each Lot, to (ii) the sum of the driveway distances measured from the street line to the driveway curbcuts into all Lots served by that particular common driveway.

d. Maintenance work on the driveway surface will be agreed upon by the owners of those Lots actually accessed by the common driveway. Disagreements on matters addressed in this Paragraph shall be arbitrated.

e. Maintenance of the utilities within the easement areas will be the responsibility of the Lot Owners benefited by such utilities.

15. Enforcement of Declaration. Developer's approval rights as to the covenants, conditions and restrictions set forth immediately above shall survive until all Lots have been deeded to Lot Owners, not including their home builders, and Developer no

longer owns any Lots at which time such rights shall vest in the Association. Developer, or after Turnover, the Association, shall have the right and power to enforce the covenants, liens and restrictions contained in this Declaration. Violations of the covenants shall be deemed to lack an adequate remedy at law and may be specifically enjoined by courts of competent jurisdiction. Developer or the Association may recover their attorney's fees from a Lot owner in any action brought by either of them to enforce this Declaration.

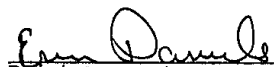
16. Term. The Assessment and other rights, covenants, restrictions and obligations contained herein are perpetual and run with the land, except the restrictions in Paragraph 13 shall remain in full force and effect only until January 1, 2013. Notwithstanding the immediately preceding sentence, the term of the covenants and restrictions herein can be modified if the owners of seventy percent (70%) of the Lots, together with the consent and approval of Developer or its assigns if Developer still owns any Lots, vote to make any extensions of time of duration, amendments, additions, or cancellations of any or all of these covenants and restrictions.

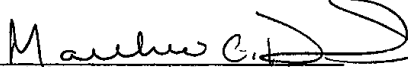
17. Severability. Invalidation of any of the covenants or provisions contained in this Declaration by judgment, court order, or subsequent statute shall in no way affect any other provision of this Declaration, which shall remain in full force and effect.

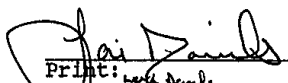
IN WITNESS WHEREOF, Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

Signed and Acknowledged  
in the Presence of:

HEATHWOOD DEVELOPMENT  
CORP., an Ohio corporation

  
Print: Kevin Daniels

By:   
Matthew C. Daniels, President

  
Print: Kevin Daniels

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STATE OF OHIO                    )  
                                  : SS:  
COUNTY OF WARREN                )

The foregoing instrument was acknowledged before me this 1 day of November, 1994, by MATTHEW C. DANIELS, the President of HEATHWOOD DEVELOPMENT CORP., an Ohio corporation, which is the Developer of the Property referenced herein, on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal this 1 day of November, 1994.

  
Notary Public

This Instrument Prepared By:

Kenneth P. Kreider  
Keating, Muething & Klekamp  
1800 Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-6579

ERIN DANIELS  
Notary Public, State of Ohio  
My Commission Expires April 15, 1995

2080152



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Situate in Section 34, Town 5E, Range 3N, in the City of Lebanon,  
Warren County, Ohio and more particularly described as follows:

Lot Numbers 4952 through 5002, inclusive, of the Recorded  
Plat for Poplar Hill Subdivision Section I, recorded at  
Plat Book 30, Pages 142 of the Warren County,  
Ohio Plat Records.

52584

13-34-126-005 LOT 4952  
006 - " 4953  
007 - LOT 4954  
008 - LOT 4955  
009 - LOT 4956  
010 - LOT 4957

13-34-143-001 LOT 4985  
002 LOT 4986  
003 LOT 4987  
004 LOT 4988  
005 LOT 4989  
006 LOT 4990  
007 LOT 4991  
008 LOT 4992  
009 LOT 4993  
010 LOT 4994  
011 LOT 4995

13-34-126-011 - LOT 4958  
13-34-128-001 - LOT 4959  
13-34-128-002 - LOT 4960  
003 - LOT 4961  
004 - LOT 4962  
005 - LOT 4963  
006 - LOT 4964  
007 - LOT 4965  
008 - LOT 4966  
009 - LOT 4967  
010 - LOT 4968

13-34-145-006 LOT 4996  
005 " 4997  
004 " 4998  
003 " 4999  
002 " 5000  
001 " 5001

RECEIVED & RECORDED  
BETH DECKARD  
WARREN CO. RECORDER

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13-34-126-011-6  
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PAGE 28 FEB 54 100

TRANSFER NOT NECESSARY  
NICK NELSON, AUDITOR  
WARREN COUNTY, OHIO

13-34-128-001 - LOT 4969  
002 LOT 4970  
003 LOT 4971  
004 LOT 4972  
005 LOT 4973  
006 LOT 4974  
007 LOT 4975  
008 LOT 4976  
009 LOT 4977

13-34-138-008 LOT 5002

13-34-141-001 LOT 4978  
- 002 LOT 4979  
- 003 LOT 4980  
- 004 LOT 4981

13-34-130-001 - LOT 4982  
13-34-132-001 LOT 4983  
002 LOT 4984

for all  
(Signature)

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5424 M C Daniels Development Co