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Instr: 200610170063714 10/17/2006
P: 1 of 57 F: \$468.00
Rick Campbell 2:08PM MISC
Stark County Recorder T20060048602

**DECLARATION OF
THE VILLAS OF ST. JAMES PLACE No. 3**

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APPENDIX


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APPENDIX A
APPENDIX B
APPENDIX C

DESCRIPTION OF VILLAS No. 3 PROPERTY
BYLAWS OF VILLAS ASSOCIATION
VILLAS No. 3 PLAT (PROPOSED)

**DECLARATION OF
THE VILLAS OF ST. JAMES PLACE No. 3**

This Declaration is made as of the ____ day of October, 2006, by **MCKINLEY DEVELOPMENT COMPANY**, an Ohio general partnership (sometimes hereinafter called the "Developer" or "McKinley"), for the purpose of creating certain rights and obligations on and in favor of the Villa Residents (as defined below) within The Villas at Saint James Place No. 3 as more fully described hereinafter.

WHEREAS, McKinley is the developer of a parcel of real property located in Lake Township, Stark County, Ohio, and situated north of Mount Pleasant and south of Brumbaugh in said township which McKinley is developing into a residential community known as Saint James Place, (hereinafter referred to as "Saint James Place"); and

WHEREAS, as part of Saint James Place, McKinley has developed and plans to further develop a Villas section of Saint James Place (the "Villas"); and

WHEREAS, McKinley has developed the first phase of the Villas (the "Villas No. 1") comprising 10.324 acres more fully described in that certain Declaration of The Villas of St. James Place recorded on September 16, 2002 as Official Records Imaging Number 200209160073516 of the Stark County, Ohio Records (the "Phase One Declaration"); and

WHEREAS, McKinley has developed the second phase of the Villas (the "Villas No. 2") comprising 6.1420 acres more fully described in that certain Declaration of The Villas of St. James Place No. 2 recorded on December 21, 2004 as Official Records Imaging Number 200412210089673 of the Stark County, Ohio Records (the "Phase Two Declaration"); and

WHEREAS, as part of Saint James Place, McKinley intends to develop a third phase of the Villas (the "Villas No. 3") comprising 6.9864 acres and sixteen (16) single family residential lots as more fully described in "Exhibit A" attached hereto and made a part hereof, and platted on that certain plat for The Villas of St. James Place No. 3 to be recorded in the Stark County, Ohio, Records; and

WHEREAS, as a part of Saint James Place, McKinley has and may further dedicate certain open space within Saint James Place which shall be common area for Saint James Place, including the Villas (the "Saint James Place Common Area");

WHEREAS, McKinley has recorded Reservations, Covenants, Restrictions and Conditions for previously platted portions of Saint James Place and will record additional Reservations, Covenants, Restrictions and Conditions for remaining portions of Saint James Place (hereinafter collectively referred to as "Saint James Place Covenants"); and

WHEREAS, McKinley has recorded the within Declaration of The Villas of St. James Place No. 3 ("Declaration") for the purpose of defining and dedicating a certain portion of Saint James Place as the third phase of the Villas and for the purpose of establishing reservations, covenants, restrictions, easements and conditions for the Villas No. 3; and

WHEREAS, McKinley has formed the Saint James Place Homeowner's Association, Inc., hereinafter referred to as the "Master Association," a corporation not-for-profit, established pursuant to the laws of the State of Ohio, for the limited initial purpose of owning, operating,

maintaining, and administering certain portions of Saint James Place, including the Saint James Place Common Areas and such improvements as may be constructed and developed thereon, with the costs incurred by the Association in connection with said ownership, operation, construction and development, and any maintenance, repair, replacement and administration of such portions of Saint James Place, including the Common Areas, to be an encumbrance upon Saint James Place, as further described herein.

WHEREAS, McKinley has formed The Villas of St. James Place Homeowner's Association, Inc., hereinafter referred to as the "Villas Association," a corporation not-for-profit, established pursuant to the laws of the State of Ohio, for the limited initial purpose of operating, maintaining, and administering certain portions of the Villas, including the Villas Common Areas and such improvements as may be constructed and developed thereon and maintaining the lots within the Villas as set forth hereinafter and in the Phase One and Phase Two Declarations, with the costs incurred by the Villas Association in connection with said ownership, operation, construction and development, and any maintenance, repair, replacement and administration of such portions of the Villas, including the Villas Common Areas, to be an encumbrance upon the Villas, as further described herein.

NOW, THEREFORE, the following Declaration is imposed upon the Villas No. 3 by McKinley, which Declaration shall run with the land and be binding upon and inure to the benefit of McKinley, the Villas Association and the respective Grantees in deeds for lots within the Villas, their respective successors, purchasers, heirs, executors, administrators and assigns (the "Villa Residents") as set forth herein:

1. **DEDICATION OF COMMON AREA.** McKinley has and may further dedicate and/or convey to the Master Association certain open space or property to be used by the residents of Saint James Place as Saint James Place Common Area. Such Saint James Place Common Area shall be utilized in full compliance with any and all obligations imposed thereon as provided herein or in the Saint James Place Covenants and/or by the Master Association. Where such property is actually conveyed, the Master Association shall hold title to the Saint James Place Common Area subject to the provisions of the Saint James Place Covenants, this Declaration, the Phase One Declaration, the Phase Two Declaration and any and all rules, regulations and limitations imposed by the Master Association hereafter.
2. **USE OF COMMON AREAS.** Any Villa Resident may use, in accordance with the Code of Regulations of the Master Association and subject to rules, regulations, and limitations as may be adopted in accordance therewith, the Saint James Place Common Area for its intended use and may delegate, in accordance with the foregoing, his or her right of enjoyment to use of the Saint James Place Common Area to members of his or her immediate family and social invitees and shall be deemed to have made a delegation of all such rights to these individuals.
3. **MAINTENANCE OF SAINT JAMES PLACE COMMON AREAS.** The Master Association shall maintain the Saint James Place Common Area in a clean, safe, neat, healthy and workable condition, and in good repair and shall promptly make all necessary repairs and replacements, structural and nonstructural, ordinary as well as extraordinary.
4. **ASSESSMENTS FOR SAINT JAMES PLACE RESIDENTS.** Any and all assessments for the operation and administration of the Master Association and for operation, administration, development, maintenance and upkeep of the Saint James Place Common Area, and the subdivision entrance walls, signs and fences, constructed by McKinley along the exterior of the Saint James Place, shall be fixed and assessed by the Master Association annually against

each resident of Saint James Place, including the Villa Residents, as set forth in the Saint James Place Covenants, the Phase One Declaration, the Phase Two Declaration and herein.

All lot owners in the Villas and in other phases at Saint James Place shall be members of the Master Association and shall be bound by all the rules and regulations that may be established by its governing body. All lot owners in the Villas shall be members of the Villas Association and shall be bound by all the rules and regulations that may be established by its governing body. A transfer of a lot shall automatically transfer to the transferee membership in the respective Associations, whether or not such membership is specifically mentioned therein.

For the purposes of providing funds for the operation, administration, development, maintenance and upkeep of the Saint James Place Common Area, the subdivision entrance walls, signs, and fences, constructed by the Developer, along the exterior of Saint James Place, the Master Association shall fix and assess a yearly assessment against each lot owner in Saint James Place. In making each assessment, the Master Association shall allocate a fair pro-rated share to each of the subdivisions within Saint James Place. Notwithstanding the foregoing, the Master Association may fix the assessment equally among all of the subdivisions within Saint James Place. The annual assessment for each of the subdivisions of Saint James Place shall be divided equally among and be assessed equally against each lot or proposed lot within the particular subdivision.

As soon as practicable in each year, the Master Association shall send a written statement to each lot owner which sets forth the amount of the annual assessment and stating the terms of the total sum due and owing. The annual assessment may be billed, however, in annual, semi-annual, quarterly or monthly installments, as the Master Association shall in its sole discretion determine, and shall be due within ten (10) days of receipt.

5. **FORMATION OF VILLAS HOMEOWNER'S ASSOCIATION.** McKinley will form the Villas Association. The Villas Association shall be operated and controlled in accordance with the By-Laws attached hereto as "Exhibit B" and as previously attached as "Exhibit B" to the Phase One and Phase Two Declarations (the "By-Laws"). The Villas Association will serve as the Homeowners' Association of the Villas. The Villas Association shall manage the Villas and the affairs of the Villas with the right, however, to delegate its obligations as hereinafter provided or provided in the By-Laws. The By-Laws shall serve as the Code of Regulations for the Villas Association.

6. **DUTIES AND MAINTENANCE OPTIONS OF VILLA RESIDENTS.** The Villas Association and the Villa Residents shall share the maintenance and repair of the property within the Villas, lots within the Villas and the improvements constructed on the lots within the Villas as follows:

(a). Maintenance and Repair of Villa Common Area.

(i). The Villas Association shall be fully responsible for the maintenance, landscape and repair of the easement areas on Lots 1 and 26 in Villas No.1, at the entrance of the Villas, as such easement areas are established in Section 1 of the Phase One Declaration.

(ii). The Villas Association shall be fully responsible for snow removal on all driveways and sidewalks within the Villas (no salt or ice melting material shall be used); landscaping and lawn care, including mowing, edging, trimming, weeding, mulching

(once per year), exterior window cleaning (once per year), trash removal and lawn fertilization (twice per year).

(iii). Each Villa Resident shall have the option of having the Villas Association be responsible for said Villa Resident's additional exterior window cleaning, lawn fertilization, general maintenance, flower and plant care, winterizing and spring opening of the sprinkler system servicing each lot within the Villas, and other services as may be provided from time to time. The cost of these optional services will be billed to the Villa Resident at cost plus a reasonable management fee.

(iv). Except as set forth herein, each Villa Resident shall be fully responsible for the maintenance and repair of their lot within the Villas and all improvements thereon. Notwithstanding anything to the contrary herein, at no time shall a Villa Resident make any material modification or addition to the home, other improvements on the lot or to the landscaping on the lot from the original construction and installation without the prior written approval of McKinley or the Architectural Review Board, as the case may be.

7. **ASSESSMENTS AND LIEN OF ASSOCIATION.**

(a). General. Assessments for the expenses incurred by the Villas Association including, without limitation those expenses related to: (i) operation of the Villas Association for the purposes of Ohio law and as otherwise set forth in this Declaration and the Phase One and Phase Two Declarations; (ii) upkeep, landscaping, maintenance, repair and replacement of common areas, lots and other property within the Villas (as set forth herein); (iii) the costs of insurance and costs associated with management expenses; (iv) legal, accounting and other professional fees; (v) reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies; and, (vi) all other fees, costs, charges, liabilities and expenses incurred by the Villas Association (the "Common Expenses") shall be made by the Villas Association in the manner provided herein and in the Bylaws. Villas Residents shall pay directly to the Master Association all assessments, fees or charges due and owing to the Master Association pursuant to this Declaration, the Phase One Declaration, the Phase Two Declaration or the Saint James Place Covenants

(b). Division of Common Expenses. The Common Expenses shall be assessed against the Villa Residents by the Villas Association in an equal amount for each Villa Resident. Each Villa Resident shall pay his or her proportionate share of assessments for Common Expenses and any special or additional assessments levied against him or her in such manner and at such times as provided herein and in the Bylaws. Expenses for the electric and water for the Villas entrance easement areas which are metered through Lots 1 and 26 of the Villas No. 1 shall be Common Expenses.

(c). Non-Use of Facilities. No Villa Resident may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his or her lot.

(d). Lien of Association. The Villas Association shall have a lien upon each Villa Resident's lot and interest therein for the payment of all Assessments which remain unpaid for ten (10) days after the same have become due and payable, from the time a certificate therefor, subscribed by the President or Secretary of the Villas Association, is filed with the Recorder of Stark County, Ohio, pursuant to authorization given by the Board of Managers of the Villas Association (the "Board"). Such certificate shall contain a description of the lot, the name or

names of the record Owner or Owners thereof and the amount of such unpaid portion of the Assessments. Such lien shall remain valid for a period of five (5) years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a Court in an action brought to discharge such lien as hereinafter provided. In addition, the Owner of the lot and any occupant thereof shall be personally liable for such expenses chargeable for the period of his or her ownership or occupancy.

(e). Priority of Association's Lien. The lien provided for in subsection (d) of this section shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and the lien of a bona fide first mortgage which has been theretofore filed for record, and such lien may be foreclosed in the same manner as a mortgage on real property in an action brought by the Villas Association after authority shall have been obtained from the Board. In any such foreclosure action, the Villa Resident affected shall be required to pay a reasonable rental for such lot during the pendency of such action, and the Villas Association shall be entitled to the appointment of a receiver to collect the same. In any such foreclosure action, McKinley or the Villas Association shall be entitled to become a purchaser at the foreclosure sale.

(f). Dispute as to Assessments for Common Expenses. Any Villa Resident who believes that the Assessments or fines levied against him/her or his/her lot, for which a certificate of lien has been filed have been improperly determined may bring an action in the Common Pleas Court of Stark County, Ohio, for discharge of all or any portion of said lien.

(g). Non-Liability of Foreclosure Sale Purchaser for Past Due Assessments. Where the mortgagee of a first mortgage of record acquires a lot within the Villas, or an interest therein, as a result of foreclosure of the first mortgage or by the acceptance of a deed in lieu of foreclosure, such mortgagee, its successors and assigns, shall not be liable for the Assessments levied against or imposed upon such lot which were levied prior to the acquisition of such lot by such mortgagee, its successors and assigns. Any funds received on the judicial sale of the lot in excess of the first mortgage lien, the court costs, and the real estate taxes and assessments, shall, however, be paid over to the Villas Association, to the extent of the unpaid Assessments due to the Villas Association. The Owner or Owners of a lot prior to the judicial sale thereof shall be and remain personally and primarily liable, jointly and severally, for the Assessments against the judicially sold lot up to the date of the judicial sale; but any unpaid part of the Assessments shall be deemed to be Common Expenses and shall be assessed and levied against all of the Villa Residents including the owner of the lot foreclosed, his heirs, successors or assigns, at the time of the first Assessment next following the acquisition of title by such mortgagee, its successors or assigns.

(h). Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a lot, the grantee of the lot shall be jointly and severally liable with the grantor for all unpaid Assessments accruing up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. The grantee shall be liable for all Assessments accruing after said conveyance. However, upon written request to the Board, any such grantee shall be entitled to a written statement from the Board setting forth the amount of all unpaid Assessments against the lot and/or grantor due the Villas Association, and such grantee shall not be liable for nor shall the lot conveyed be subject to a lien for, any unpaid Assessments made by the Villas Association against the grantor in excess of the amount set forth in such written statement for the period reflected in such written

statement. As used in this section, "grantor" shall include a decedent and "grantee" shall include a legatee or intestate heir of said decedent.

8. **REMEDIES FOR BREACH OF COVENANTS AND VILLAS RULES.** The violation of any rule or regulation promulgated by the Villas Association (a "Villas Rule") or the breach of any covenant or provision contained in this Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants or in the Bylaws shall give the Board, in addition to any other rights or remedies in law or in equity, the right:

(a). to enter upon the land or lot or portion thereof upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Villa Resident, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions of a Villa Rule, this Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants and/or the By-Laws, and the Board, or its agents, shall not be thereby deemed guilty in any manner of trespass; or

(b). to enjoin, abate, or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any breach.

9. **WAIVER.** The failure of McKinley, the Villas Association or the Board to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions, or restrictions of a Villa Rule, this Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants and/or of the By-Laws, or to exercise any right herein or therein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition, restriction, or right, but such term, covenant, condition, restriction, or right shall remain in full force and effect. The receipt by McKinley, the Villas Association or the Board of any payment of Assessments from an Owner with knowledge of the breach of a Villa Rule or any provision of this Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants and/or the By-Laws shall not be deemed a waiver of such breach, and no waiver by McKinley, the Villas Association or the Board of any provision hereof or thereof shall be deemed to have been made unless expressed in writing and signed by McKinley or the Board, as the case may be.

10. **NON-LIABILITY OF THE MCKINLEY.** McKinley and any member, officer, agent, or employee of McKinley, shall not be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to this Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants or in McKinley's (or its representative's) capacity as developer, contractor, owner, manager, or seller of Saint James Place or the Villas whether or not such claims (a) shall be asserted by any Villa Resident, occupant, the Villas Association, the Master Association, or by any person claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall arise from a contract (except in the case of gross negligence) or from a tort, crime, fault, or malfeasance. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, Saint James Place and/or Villas property, or any part thereof, being or becoming out of repair or containing any patent or latent defects or by reason of any neglect of any Villa Resident, occupant, the Master Association or the Villas Association, or their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about Saint James Place or the Villas, or by reason of the failure or malfunction or disrepair of any utility services.

11. **ENFORCEMENT.** Each Villa Resident shall comply strictly with the provisions of this Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants, the By-Laws and the Villas Rules as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration, the Phase One Declaration, the Phase Two Declaration, the Saint James Place Covenants, the By-Laws, and Villas Rules, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Villa Residents, or in a proper case, by an aggrieved Villa Resident. In the case of any inconsistency between this Declaration and (a) the Saint James Place Covenants, (b) the By-Laws; and/or (c) the Villas Rules, the provisions of this Declaration shall control.

12. **DESIGNATION OF VILLAS BUILDER.** McKinley may from time to time designate one or more builders to be the exclusive builder within the Villas. The builder shall be obligated to fully comply with the reservations, covenants, conditions and restrictions set forth herein and shall be required to obtain all necessary approvals as may be imposed by McKinley and as are set forth herein.

13. **USE AND SIZE RESTRICTIONS FOR THE VILLAS.** All lots located in the Villas shall be used exclusively for single-family residential purposes, and only one such residence shall be permitted on each lot. McKinley shall have the right to divide lots for the purpose of adding parts thereof to other lots to be used for one single family residence on the enlarged tracts.

(a). Single-Family dwellings shall meet the following requirements:

(i). **Type:** Single family dwelling may be a one story, a two-story, a split level, or cape cod design.

(1) One story dwelling is a structure, the living area being the first floor, constructed with or without a basement and a space between the first floor ceiling and the roof of inadequate height to permit its use as a dwelling place.

(2) A two story dwelling is a structure, the living area of which is on two levels connected by a stairway, constructed with or without a basement.

(3) A split level dwelling is a structure, the living area of which is one, two or more levels connected by stairways constructed with or without a basement.

(4) A cape cod dwelling is a structure, the living area of which is on two levels connected by stairway and constructed with or without a basement. The upper level is constructed within the gable portion of the roof, with window penetrations made by the use of dormers.

(ii). **Living Area:** The living area of any dwelling shall be not less than the square footage hereinafter set forth. "Living Area" shall not include garages, attics, basements, breezeways, patios, or any enclosed area not heated for year-round living. That portion of a basement which is exposed at ground level due to a sloping lot completed to a living area with full

windows and doors and finished similar to the first floor may count as 50% of the first floor area.

- (1) The area of any dwelling shall be computed on the outside foundation of the first floor and the exterior dimensions of the second floor. In the case of a Cape Cod design, a second floor area shall be computed from the outside dimensions of the knee walls. In the case of open ceilings to the second floor, the upper open space may be computed as second floor footage.
 - (2) The minimum square footage for each of the aforementioned designs, computed as above described shall be:
 - (a). One Story 1900 square feet;
 - (b). Two Story 2400 square feet above ground;
 - (c). Split Level 2000 square feet above ground;
 - (d). Cape Cod 2400 square feet with not less than 1600 square feet in the first floor area;
- (iii). Garage: No garage shall be erected which is separated from the main building and all garages must be at least double car garages. The minimum square footage for all garages shall be 400 square feet, with a minimum wall length of 20 feet on each wall (front, sides and rear) of any such garage.

14. VILLA LOT RESTRICTIONS.

(a). Location of Buildings on Lots: All buildings shall be located on each lot in full compliance with applicable set back restrictions and other requirements imposed by the Lake Township Zoning Ordinance and as approved by McKinley (or the Architectural Review Board) as provided for and required hereinafter.

(b). Driveways: Concrete driveways are required. Other material will be considered and must be approved by McKinley or the Architectural Review Board (as defined below). All driveways shall be paved within 6 months after completion of the residence. Driveways shall not be wider than 16 feet from the front property line to the street unless approved in writing by McKinley or the Architectural Review Board.

(c). Curb Cuts: Drain lines connected directly to the storm sewer are provided behind the concrete curb. Downspout drains are to be connected to this drain line. Curb cuts for drain lines are not permitted.

(d). Corner Lots: McKinley or the Architectural Review Board shall have sole discretion as to which street a residence will front on.

(e). Sediment Control: In the construction of improvements on any lot in Saint James Place, no activities or any action will be taken by a grantee of a lot in Saint James Place to be in violation of the NPDES permit for the allotment or a violation of the erosion and sediment control

plans and any other relevant plans. A grantee of a lot in Saint James Place or said grantee's employees, contractors, agents, successors, or assigns, shall not permit sediment to be discharged on adjoining property, on paved surfaces, or into public storm sewer systems. A copy of all applicable plans are on file in the office of McKinley Development, at 821 South Main Street, North Canton, Ohio 44720. The builder agrees to submit an individual lot Notice of Intent (NOI) to the Ohio Environmental Protection Agency, General Permit Program, P.O. Box 1049, Columbus, Ohio 43266-1049.

15. **PROHIBITED USES AND ACTIVITIES WITHIN THE VILLAS**. The following uses and activities shall be prohibited in the Villas as a whole unless specific written approval is given by McKinley (or by the Association, but only by the Association after McKinley has conveyed its last lot within the Villas and after the last lot within the Villas has either: been conveyed by a builder to a Villa Resident or the residence thereon has been occupied for residential purposes):

- (a). Industrial or manufacturing uses of any kind;
- (b). Commercial agricultural uses;
- (c). Mining or extraction of any minerals, including the removal of sand or gravel; provided, however, this restriction should not limit or prohibit the extraction of minerals pursuant to leases or rights granted prior to the date of recording of this Declaration. This restriction shall not prohibit the removal of any material in connection with development of the property for a permitted use.
- (d). The keeping, raising, and harboring of cattle, swine, fowl, livestock other farm animals, or any other animals not normally kept as household pets; provided, however, that nothing in this restriction shall prohibit the keeping of household pets, not to exceed two (2) in total, provided they are not kept, bred or maintained for commercial purposes, or kept in a manner as to constitute a nuisance or activity prohibited by law. Notwithstanding anything to the contrary hereinabove, only dogs that are of a "non-vicious" breed shall be permitted to be kept on any said premises, and said permitted pets shall not be housed or allowed to remain outside a residence.
- (e). There shall be no outbuildings constructed on any lot.
- (f). No swimming pools (in ground or above ground, except small above ground portable pools for children not to exceed 48 inches in diameter) shall be permitted.
- (g). Any containers used in connection with trash or garbage, if placed outside the residence, must be concealed from view and protected from animals.
- (h). Temporary structures including but not limited to trailers, basements or incomplete houses, tents, shacks, garages or other buildings of any kind; provided, however, that this restriction shall not prohibit trailers and temporary structures used in connection with the development of the property.
- (i). Erection or maintenance of any signs, billboards or advertising devices of any kind except (a) signs not larger than ten (10) square feet for offering premises for sale shall be permitted on the premises to be sold (one per lot) (b) Home Builders and General Contractor signs, not larger than ten (10) square feet (one per lot) and only until sold. The configuration of Home Builder and General Contracting signs shall be at the sole discretion of McKinley. Nothing

herein contained shall limit McKinley's right to place entry signs to the Villas or signs designating the existence and location of model homes. The size and design of said sign shall be within the sole discretion of McKinley. Directional signs, political signs, and garage or yard sale signs are strictly prohibited from being placed in the right of way.

(j). Nuisances and noxious or offensive activities of any kind.

(k). Storage of motor homes, campers, travel trailers, trailers (of any type), recreational vehicles, commercial trucks and trailers, machinery, equipment, boats and unworking vehicles, unless such is not in view from any street or other residence. Nothing herein contained shall limit use of trucks, trailers, or equipment during construction. Recreational vehicles owned by the homeowner or guests of the homeowner may be parked in the homeowners driveway for a period of time not to exceed seven calendar days on two separate occasions but shall not exceed fourteen calendar days within any one calendar year.

(l). Hanging of laundry outdoors.

(m). No fences may be erected or placed or permitted on any lot.

(n). Site lighting which interferes with the comfort, privacy or general welfare of adjacent or other lot owners is prohibited.

(o). No unsightly growth shall be permitted to grow or remain upon any lot and no refuse, pipe or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

(p). No satellite dishes shall be permitted, except those less than twenty inches (20") in diameter and not visible from the street. In the event that it is determined that the Federal Communication Commission, pursuant to its rule-making power as set forth at Section 207 of the Telecommunications Act of 1996 has the right to pre-empt this covenant, the maximum sized dish which will be permitted shall be the minimum size dish as provided for by the relevant rule. Also, in such event, McKinley or the Villas Association shall have the right to regulate the location and manner of installation of said dishes. Furthermore, antennas, aerials, or other such devices for television or radio reception are not permitted on the outside of any dwelling or outbuilding or otherwise on any lots in the Villas.

(q). No lot in the Villas shall be subdivided or divided, unless or until the plat showing such proposed subdivision or division shall have been submitted to McKinley or the Architectural Review Board and the written consent of same has been obtained.

16. **SUBMITTALS AND APPROVALS FOR VILLA CONSTRUCTION.**

(a). At such time as all of the lots in the Villas have been sold to individuals or entities other than McKinley (or an entity controlled by McKinley or a builder selected by McKinley), or at such earlier time as McKinley may elect, the right to approve all further construction or other items contained therein, may be transferred from McKinley to an Architectural Review Board for the Villas (the "Architectural Review Board") established by the Villas Association, comprised of three (3) Villa Residents nominated and elected by the majority of the Villa Residents. The Villa Resident receiving the most votes will have a three (3) year term. The Villa Resident receiving the second most votes will have a two (2) year term and the Villa Resident receiving the third most votes will have a one (1) year term. Thereafter, said Architectural Review Board shall be

comprised of said three (3) members or their successors. Nothing herein contained shall be construed as a diminution in McKinley's authority to appoint an initial Architectural Review Board to make all reviews and approvals as contemplated herein until the Association's elected Architectural Review Board assumes said duties pursuant to the terms hereof or until McKinley relinquishes authority as provided hereinabove or hereinafter.

(b). All matters herein requiring the approval of McKinley or the Architectural Review Board by the terms of this instrument, shall be submitted to McKinley or the Architectural Review Board in writing, accompanied by such specifications, details and other documents as are reasonably required by it to make a proper decision. In order to insure that the homes and other buildings will have a uniform high standard of construction, and that the Villas will be comprised of high quality custom homes, McKinley and the Architectural Review Board reserve the right to reject all such plans and specifications as aforesaid for any reasonable grounds, including, but not limited to aesthetic reasons. McKinley and the Architectural Review Board shall approve or disapprove such written submission or application for approval, in writing within fourteen (14) days after its receipt of the same, and a failure by McKinley or the Architectural Review Board to so act within said fourteen (14) day period shall constitute denial of the submitted plans.

17. MCKINLEY / ARCHITECTURAL REVIEW BOARD

(a). McKinley may establish and appoint an initial Architectural Review Board for the Villas to serve until a successor board is elected by the Villas Association members after McKinley relinquishes authority as provided in Section 16 above. The Architectural Review Board, whether appointed by McKinley or thereafter elected by the Villa Residents, shall serve for the following purposes:

- (i). To provide a staff of persons for reviewing, evaluating, approving and disapproving proposed plans for the Villas.
- (ii). To establish, maintain and preserve specific guidelines and standards to carry out the intent of the within Declaration and the restrictions set forth in the Phase One Declaration, the Phase Two Declaration and the Saint James Place Covenants, which guidelines and standards are from time to time in effect, with respect to all or any portion of Saint James Place, shall hereinafter be referred to as the "Architectural Guidelines."

(b). The Architectural Review Board shall exercise its best judgment to see that all improvements in the Villas conform with the Saint James Place development as to external design, quality and types of construction, materials, colors, setting, height, grade, finished ground elevation, landscape, and tree removal. The actions of the Architectural Review Board, through its approval or disapproval of plans and other information submitted pursuant hereto, shall be conclusive and binding on all interested parties.

(c). All owners and builders within the Villas shall strictly comply with the requirements of McKinley or the Architectural Review Board and shall obtain plan approval from McKinley or the Architectural Review Board as required herein. No improvement, change, construction, addition, excavation, landscaping, tree removal, or other work or action which in any way alters the exterior appearance of the Villas from its theretofore natural or improved state (and no change, alteration or other modification of any of the foregoing previously approved hereunder), shall be commenced or continued until the same shall have first been

approved in writing by McKinley or the Architectural Review Board, as the case may be. Approval shall be required by submission to McKinley or the Architectural Review Board, as the case may be, of plans and specifications, which shall describe types of construction and exterior materials to be used, in duplicate, showing the following:

- (i). Existing and proposed land contours and grades: McKinley reserves the right to establish grades and slopes on the premises in the Villas and to fix the grade at which any building or structure shall be hereafter erected or placed, so that the same may conform to a general plan wherein the established grade and slope of each lot shall blend with the grade of the lots on either side having due regard for natural contours and drainage of the land.
- (ii). All buildings, and other improvements, access drives, and other improved areas and the locations thereof on the site;
- (iii). All landscaping, including existing and proposed tree locations and planting areas (and specie thereof), and ornamentation.
- (iv). Plans for all floors, cross sections and elevations, including projections and wing walls.
- (v). Exterior lighting plans;
- (vi). Walls and screening;
- (vii). Patios, decks, and porches;
- (viii). Complete exterior color scheme & color samples.
- (ix). Samples of all major materials to be used.
- (x). Such other information, data, drawings as may be reasonably requested by McKinley or the Architectural Review Board.

(d). Approval shall be based, among other things, upon conformity and harmony of the proposed plans with the other homes in the Villas and Saint James Place; the effect of the location and use of improvements on neighboring property; and conformity of the plans and specifications to the purpose and general intent of this Declaration.

(e). Neither McKinley, the Architectural Review Board, nor any member, agent, representative or employee thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone submitting plans for approval by reason of mistakes in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans. Every person and entity who submits plans to McKinley and/or the Architectural Review Board agrees, by submission of such plans, that he, she or it will not bring any action or suit against the Architectural Review Board or McKinley in law or equity or to recover any damages.

(f). The builder or lot owner shall submit (simultaneously with building drawings) for approval, a completed copy of the checklist which can be obtained from McKinley or the

Architectural Review Board indicating compliance or non-compliance with the building restrictions imposed and shall furnish reasons for non-compliance on a separate page. This is intended to reduce delays and expedite approval.

18. **CONSTRUCTION WITHIN THE VILLAS.** Any and all construction on a lot in the Villas shall be completed no later than twelve (12) months after construction was commenced. Landscaping shall be complete no later than one hundred eighty (180) days after completion of construction. Residential lots purchased within the Villas, but on which construction has not commenced, must be mowed not less than once every thirty (30) days during the growing season.

19. **VILLAS DESIGN STANDARDS AND BUILDING RESTRICTIONS**

(a). Houses should fit into sloped lots as much as possible. Stepped plan arrangements are encouraged to minimize cut and fill in these areas.

(b). Retaining walls are permitted and shall be constructed per the Architectural Guidelines.

(c). The rear yard on wooded lots must remain as much as possible in its natural state. Decks and patios are permitted.

(d). Patios shall not be permitted in the front yard unless approved by McKinley or the Architectural Review Board.

(e). Garage location shall be determined by McKinley or the Architectural Review Board and garage doors shall be of one color.

(f). Yard and security lights shall be of a design approved by McKinley or the Architectural Review Board. Yard lights and flood lights for security are permitted provided they are located so as to not disturb adjacent owners.

(g). No vents shall be placed on the "front" half (50%) of the roof area, regardless of roof slope or shape. Flashing and vents shall be painted the same color as the roof.

(h). No exposed concrete block or split face concrete block foundation shall be permitted. Brick, stone or cultured stone bands are required on all elevations.

(i). Original mailboxes and newspaper boxes will be provided and installed by McKinley. Mailbox location will be determined by the United States Postal Service.

(j). Roofs shall have a minimum pitch of 7/12 with asphalt dimensional shingles or other approved high quality roofing products.

(k). Each residence is to be pre-wired for cable TV. Cable TV will be provided underground adjoining each lot.

(l). No more than three main wall colors and three main materials on any building unless approved in writing by McKinley or the Architectural Review Board.

(m). A minimum of three trees, at least 1½" trunk diameter, per unit are required on non-wooded lots, in addition to trees provided by Developer along streets. All trees must be shown on the site plan submitted to McKinley or the Architectural Review Board, as the case may be.

(n). All lots must have in-ground sprinkler systems in the front lawn area.

(o). Repainting of any existing residence with a color other than previously approved shall require approval of McKinley or the Architectural Review Board.

(p). All builders are required to keep on record with the Developer a 24 hour emergency phone number.

(q). All building materials used (roofs, walls, etc.) should be compatible with each other and blend together with a common tone. Accent colors are acceptable if used carefully to add detail and highlight architectural features. The following materials are acceptable for use in the Villas:

- (i). Wood Siding: Four and eight inch clapboard, rough or smooth finish; channel rustic boards; v-joint tongue and groove boards; vertical board and batten; wood shingles; all with semi transparent stains are recommended. Paint is allowed, but does require more maintenance than stain and is not considered as desirable as stain.
- (ii). Vinyl or Aluminum Siding: Permitted.
- (iii). Brick: Natural sand molded brick is preferred. "Manufactured" sand mold and textured brick may also be used. Color ranges should be subtle with no dark brown, speckled or glazed brick permitted. Brick detail in chimneys, sills, entry steps and foundations are encouraged. Exposed single depth of brick or stone at building corners is not allowed.
- (iv). Stone: Natural or cultured stone laid in a natural horizontal bed is preferred. Rubble and roughly squared stone is felt to be aesthetically more pleasing because of its natural quality than square cut dimensional or ashlar stone. Native Ohio limestone in gray or buff is recommended.
- (v). Stucco: Natural, hand finished, or sand textured are the preferred finishes; scratches, splashes and artificial textures are discouraged. Stucco colors must blend with other colors. White stucco is discouraged.
- (vi). Other Materials: Use of other man made materials is permitted if they are painted to blend with other natural materials. The use of wrought iron and other decorative ornamentation must be approved by McKinley or the Architectural Review Board.

(r). All facades of the residence should be finished with the same materials, or with compatible materials that blend with one another. Termination of masonry front facade materials shall be at inside building corners and at second floor roof overhangs. Where front facade masonry turns an outside corner to the side of the house, masonry must continue to the next break in the building facade; rear corner of side wall; or terminate in a carefully designed

detailed architectural element (i.e. quoined corner, faux column, window bay, etc.) as approved by McKinley or the Architectural Review Board.

(s). Windows should be carefully selected and proportioned to enhance walls in which they are placed. Windows are required on all major walls including walls facing side yards. All windows to be wood or vinyl clad wood. The same window type must be used on all sides of the home. Muntins should only be used in traditional homes.

(t). Brick or stone masonry exterior construction of all chimneys is required. A through the wall vent for zero clearance gas fireplaces is permitted on the rear wall only in lieu of a brick or stone chimney.

(u). The builder, owners or their assigns shall, within three (3) months of occupancy of their residences, construct on said lot a sidewalk which shall be four feet (4') wide, four inches (4") deep, constructed of concrete (six sack limestone mix) and meet the specifications of Stark County and shall span the width of the lot and connect with the sidewalk constructed on adjoining lots on each side of the premises.

20. **STREETLIGHTS IN THE VILLAS**. McKinley shall provide street lights which may be included within a street lighting district and paid through a street lighting assessments on the real estate tax bills paid by the Villa Residents or, if not included on the tax bills, shall be shared equally by the Villa Residents and paid pursuant to Section 4 or 7 above (as applicable).

21. **RESERVATIONS, EASEMENTS AND COMMON AREA**.

(a). McKinley reserves to itself and its successors and assigns, the right to petition for or grant future easement or rights of way for the construction, maintenance, extension and operation of all public or private utility facilities in or upon all highways and streets, now existing or hereafter established, upon which any portion of the Villas may now or hereafter front or abut. The owners of any and all lots of the Villas agree to and do hereby consent to and affirm all such agreements that may be entered into between McKinley and public or private utility companies, entities or authorities.

(b). McKinley and the Villas Association reserve to themselves the right to relocate utility easements in accordance with the requirement of the Stark County Engineer, the Township of Lake, or as necessary for the orderly progress of the development of Saint James Place.

(c). McKinley reserves the right for itself its agents, employees, successors and assigns to enter upon any lot for the purpose of carrying out and completing the development of the property, including but not limited to the completion of any dredging, filling, grading or installation of drainage facilities. Entry onto said property for such purposes shall not be deemed a trespass.

(d). McKinley has conveyed (or intends to convey) to the Master Association, an area around the entrance signs, and boulevard entrances to the subdivisions. Upon designation by McKinley of any part of the Saint James Place owned by it as common area, McKinley shall cause a plat, deed or easement, showing those areas so designated, or a declaration stating that such land has been so designated, or both, to be recorded among the records of the Recorder of Stark County. No part of Saint James Place shall be deemed common area subject to the rights and easements of enjoyment and privileges hereinafter granted unless and until the

same shall have been so designated and the above described plat, deed easement or declaration filed in accordance with the foregoing procedures or the same is conveyed to the Master Association for said purpose. Common area shall remain such in perpetuity, subject only to the provisions of the Saint James Place Covenants, this Declaration, and/or the Phase One and Phase Two Declarations, or any amendments hereto or thereto.

(e). Notwithstanding the rights, easements and privileges granted hereunder, the Master Association shall nevertheless have the power and authority to convey or dedicate any property or easement or right of way over the Saint James Place Common Area free and clear of all such rights, easements and privileges if such conveyance or dedication is for use as a public roadway or pedestrian walkway, or to a public or private utility for the installation, operation and maintenance of utility services. Any other conveyance or dedication of Saint James Place Common Area shall be made only for a public purpose and, if made for a purpose other than those specified in the immediately preceding sentence of this Paragraph, only by an affirmative vote of at least two-thirds of the voting members of the Master Association represented in person or by proxy entitled to vote at a meeting (annual or special) called for such purpose.

(f). The Master Association shall have the power and authority to borrow money for the purpose of improving the Saint James Place Common Area and in aid thereof, to mortgage the same, and the rights of any such mortgages shall be superior to the easements and privileges herein granted and assured.

22. MODIFICATIONS AND ENFORCEABILITY.

(a). If by reason of the shape, dimension, or topography of any lot or for any other reason satisfactory to McKinley or the Architectural Review Board (as the case may be), the enforcement of the provision of this Declaration would work a hardship, McKinley or the Architectural Review Board may modify or grant a variance from such provisions. Such variance or modification shall be granted by McKinley or the Architectural Review Board if such variance or modification will not do material damage to any adjacent lot or property. Requests for variances or modifications must be submitted to McKinley or the Architectural Review Board in writing with the sufficient plans, specifications, and evidence required or requested by McKinley or the Architectural Review Board to render a decision on such requested variance or modification. Construction or improvement shall not commence until written approval is granted by McKinley or the Architectural Review Board.

(b). The provisions herein shall run in favor of and shall be enforceable by any person or entity, and the heirs, assigns and successors for such person or entity, who is or becomes an owner of any lot in the Villas, as well as McKinley and the Villas Association, and their successors or assigns. It is understood and agreed that all of the foregoing are part of a common and general plan for the development of the Villas and the protection of all present and future owners of any part of the Villas. Failure of McKinley or the Villas Association to enforce any of the restrictions contained herein, shall in no event be construed to be in any manner a waiver of, acquiescence in, or consent to a further or succeeding violation of these restrictions. Further, the failure, refusal or neglect of McKinley or the Villas Association, and their successors or assigns, to enforce said restrictions or to prevent violations thereof shall in no event make McKinley or the Villas Association, or their successors or assigns liable for such failure, refusal or neglect.

23. **INTERPRETATION AND SEVERABILITY.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Villas. In case of uncertainty as to the meaning of any article, paragraph, sentence, section, clause, phrase or word in this Declaration, the interpretation by McKinley shall be final and conclusive upon all interested parties. In instances not involving McKinley or after McKinley had relinquished control of the Villas Association, the interpretation by the Villas Association shall be final and conclusive upon all interested parties as to any uncertainty as to the meaning of any article, paragraph, sentence, section, clause, phrase or word in this Declaration. Further, determination by any appropriate authority or court that any paragraph, section, portion or provision of this Declaration is invalid or unenforceable shall in no way limit or restrict the validity and enforceability of any other paragraph or provision.

24. **PERIOD OF DURATION.** This Declaration and the charges and liens provided for herein, shall be deemed to run with the land, shall continue in full force and effect for a period of Twenty-five (25) years from the recording hereof and shall be automatically reinstated for a like periods after the initial term until such time, after expiration of the initial term, as members of the Villas Association entitled to exercise seventy-five percent (75%) of the voting power of the Villas Association consent to the termination of this Declaration and file such termination with the Recorder of Stark County, Ohio.

25. **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every person who now or hereafter owns or acquires any rights, title or estate in any portion of the Villas 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 the Villas.

26. **RIGHTS OF MORTGAGEE.** All provisions of the within Declaration, including the provisions hereof respecting liens and charges against the Villas, shall be deemed subject and subordinate to the lien of all recorded first mortgages and mortgage deeds on or for the Villas securing a debt, now or hereafter executed, and none of these restrictions shall supersede or in any way reduce the security or affect the validity of such lien or mortgage or deed to secure such debt; provided, however, that if any portion of the Villas is sold or conveyed under a foreclosure or other enforcement of any mortgage or under the provisions of any deed to secure debt, any grantee or purchaser at such sale, and his heirs, personal representatives, successors and assigns, shall hold any and all property so conveyed or purchased, subject to all the covenants, conditions, restrictions and liens, and other provisions of this Declaration.

27. **MUTUALITY - ENFORCEMENT.** All restrictions, conditions and covenants contained herein are made for, the direct mutual and reciprocal benefit of McKinley, the Villas Association and the grantees of lots in the Villas and their successors and assigns; this Declaration shall create mutual equitable servitude's upon the Villas in favor of other real property in Saint James Place. This Declaration shall create reciprocal rights and obligations between the respective owners of all such property and privity of contract and estate between all Grantees thereof; and this Declaration shall, as to the owner of any such property, his heirs, personal representatives, successors and assigns operate as covenants running with the land for the benefit of all such property and the owners thereof.

In the event McKinley and/or the Villas Association takes any action, legally or otherwise, to enforce any provision of this Declaration, the lot owner(s) against whom the action is taken shall be assessed for and be responsible to pay to McKinley and/or the Villas Association any and all

costs and expenses (including, but not limited to, discovery, court costs and/or reasonable attorney fees) incurred by McKinley and/or the Villas Association related to the action

28. **MCKINLEY ACTING AS ASSOCIATION OR BOARD.** Consistent with the provisions hereinabove, until such time as all of the lots in the Villas have been sold to individuals or entities other than McKinley (or an entity controlled by McKinley or a builder selected by McKinley), or at such earlier time as McKinley may elect, McKinley may, in its discretion, exercise all rights granted herein to the Villas Association and/or the Architectural Review Board.

29. **THE VILLAS ASSOCIATION.** McKinley, or the Board, following the formation of the Villas Association shall have the right to incorporate the Villas Association as an Ohio non-profit corporation by filing Articles of Incorporation which shall not conflict with this Declaration and the By-Laws.

30. **PERSONAL PROPERTY.** The Board may acquire and hold, for the benefit of the Villa Residents, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Villas Association.

31. **AMENDMENT OF DECLARATION AND BYLAWS.**

(a). **Amendment by McKinley.** Anything herein to the contrary notwithstanding, McKinley reserves the right to amend the within Declaration, By-Laws and Articles of Incorporation of the Villas Association until McKinley transfers control of the Villas Association to the Villa Residents.

(b) **Amendment by Others.** This Declaration and the By-Laws may be amended upon the filing for record with the Recorder of Stark County, Ohio, of an instrument in writing setting forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by the Villa Residents entitled to exercise at least seventy-five percent (75%) of the voting power of the Villas Association. Provided, until such time as all of the lots in the Villas have been sold to individuals or entities other than McKinley (or an entity controlled by McKinley or a builder selected by McKinley), such amendment must also be approved by McKinley. Such amendment must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and its attached exhibits are recorded.

McKinley, prior to the turnover of control of the Villas Association to the Villa Residents, and the Board thereafter, each reserve the right to amend the Declaration and/or the By-Laws without having to observe the foregoing formalities (other than the legal formalities for the recording of such amendment) so long as the substance of such amendment is to correct minor errors of omission or commission or by changed circumstances which are not foreseen herein or throughout this Declaration or the By-Laws, or such amendment does not substantially impair or materially alter any of the provisions of the Declaration or the By-Laws, as the case may be, or any rights or obligations of any of the Villa Residents, or first mortgagees thereunder. The Villas Association and each Villa Resident does for himself, herself or itself and their heirs, executors, administrators, successors, and assigns, irrevocably appoint McKinley, or the then President of the Association, as the case may be, as attorney-in-fact which shall be deemed to be effective concurrently with the transfer of title to any lot to the Villa Resident. Further, and for like consideration, the foregoing do authorize and approve any amendment to this Declaration,

its exhibits, appendixes, or the By-Laws as may be necessitated by the errors or by changed circumstances as aforesaid and each of the foregoing does authorize such amendment. The Villas Association and/or each Villa Resident shall, if requested, take such further action and execute such further documents as may be required, desirable or necessary to affect any such amendment or modification. The Villas Association and each Villa Resident shall approve, cause to be voted, or vote in favor of and adopt such amendment if so requested by McKinley or the Board, as the case may be. The special power of attorney aforesaid, if requested, shall be by separate instrument executed by each Villa Resident prior or subsequent to transfer of title.

32. **RIGHTS OF MCKINLEY.** So long as McKinley owns one or more lots within the Villas, McKinley may sell, lease, convey, license, use and otherwise contract in respect to lots owned by McKinley without approval of the Board and McKinley may exercise any rights expressly set forth as being exercisable by the McKinley in this Declaration, including the By-Laws.

33. **NOTICES.**

(a). **Notices to Villas Association.** Except where otherwise herein expressly provided to the contrary, notices required to be given to the Board or the Villas Association shall be in writing and shall be delivered to any two (2) members of the Board or to the President or Secretary of the Villas Association, either personally or by certified or registered mail, return receipt requested, with postage prepaid, delivered or addressed to such members or officers at his or her residence.

(b). **Notice to Villa Residents.** Unless otherwise expressly provided herein to the contrary, any notices required or desired to be given to Villa Residents or to any one or more of them shall be in writing and shall be deemed to have been effectively given if it shall have been (i) delivered personally to the Villa Resident or Villa Residents (if there be more than one person owning a single lot, a notice given to any one of such several persons shall be deemed to have been given personally to all of the persons owning an interest in such lot), (ii) placed on or beneath the front door of the home on the lot (it shall then be deemed to have been given to all persons owning an interest in such lot), or (iii) sent by certified or registered mail, return receipt requested, with postage prepaid, addressed to the Villa Resident (or anyone of them) at the mailing address of his or her lot.

(c). **Services of Notices on McKinley.** Unless otherwise expressly provided for herein, notices to McKinley shall be sent by registered or certified mail to: McKinley Development Company, ATTN: Robert J. DeHoff, Member, 821 North Main St., North Canton, Ohio 44720, or to such other address as McKinley may designate from time to time.

34. **PERPETUITIES.** If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful or void for violation of any rule against perpetuities or any analogous provision or any rule or restraints on alienation or any other statutory or common law rules composing time limitations and such provision shall continue in effect for only twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush, President of the United States of America.

35. **SEVERABILITY.** The invalidity of any covenant, restriction, condition, term, litigation, or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration. The cy pres rule shall be applied in all cases where any covenant, restriction, condition, limitation, term, or other

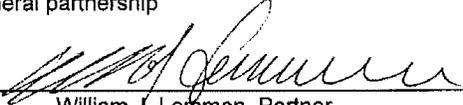
provision of this Declaration or of any part thereof is found to be illegal or impossible of being given literal effect.

36. **COVENANTS TO RUN WITH THE LAND.** All rights, benefits and privileges of every character hereby granted, created, reserved, or declared in all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Villas, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed, lease, and contract for a portion of the Villas property.

37. **HEADINGS.** The headings to each section and each subsection hereof are inserted only as a matter of convenience for reference and in no way define, limit, or describe the scope or intent of this Declaration or in any way affect this Declaration.

This Declaration has been duly signed, acknowledged and delivered by McKinley Development Company, an Ohio general partnership, on the date and year set forth above.

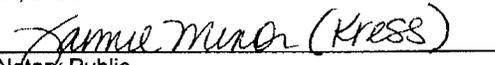
MCKINLEY DEVELOPMENT COMPANY, an Ohio general partnership

By: 
William J. Lemmon, Partner

STATE OF OHIO, STARK COUNTY, SS:

Before me, a Notary Public in and for said County and State, personally appeared the above-named **MCKINLEY DEVELOPMENT COMPANY**, an Ohio general partnership, by William J. Lemmon, Partner, who acknowledged that he did sign the foregoing instrument, and that the same is the free act and deed of said partnership, and the free act and deed of him personally and as such partner.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at North Canton, Ohio, this 13th day of October, 2006.


Notary Public



JAMIE KRESS
Notary Public, State Of Ohio
My Commission Expires April 29, 2007