

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SYDNEY'S BEND SUBDIVISION
AS AMENDED**

The undersigned SYDNEY'S BEND DEVELOPEMENT HOLDINGS, LLC, an Ohio Limited Liability Company (hereinafter referred to as "Developer"), as owner and developer of real property located at 3940 & 3950 Medlar Road, in the City of Miamisburg, Montgomery County, Ohio, Lots 6984, 6985, 6986, 6987 and described on the recorded Plat and in Exhibit "A" attached hereto and known as Sydney's Bend Subdivision (including building lots 1 to 87 inclusive and referred to herein as the "Subdivision"), impose the following plat restrictions and covenants and conditions on the Subdivision for the benefit of all present and future owners of any Building Lot in the Subdivision.

DECLARATIONS

All Building Lots within the Subdivision shall be subject to the following development standards, restrictions, covenants, conditions and assessments, which are for the benefit of all Building Lot owners and occupants within the Subdivision and which shall run with the property and shall be binding on all owners and all persons claiming under them until December 31, 2015, at which time said covenants, conditions, restrictions and assessments shall be automatically extended for successive periods of ten (10) years, unless by a majority vote of the then owners of the lots in the Subdivision it is agreed to change said covenants, conditions, restrictions and assessments in whole or in part:

Article 1. Use Restrictions

- 1.01 Each lot within the Subdivision (said lots hereinafter being referred to collectively as "Building Lots" or separately as a "Building Lot") shall be used for single-family residential purposes only. However, the Developer, it's agents or assigns, and any approved homebuilder building in the Subdivision ("Builder") may use the Building Lots for construction and sales purposes during any building and sales period. No residence, building, porch, deck, fence, flagpole, mailbox, light pole or fixture, swimming pool, pavement, driveway, awning, wall or structure of any kind shall be erected, placed or altered on any Building Lot without first obtaining the written consent of the Architectural Control Committee subsequently described herein. All requests for written approvals from the Architectural Control Committee shall be accompanied by detailed plans and specifications for the proposed improvements showing, where applicable, the size, location, type, architectural design, spacing, quality, use, construction materials, color scheme, grading plan and finish grade elevation for said improvements.
- 1.02 No residence shall be erected, altered, placed or permitted to remain on any Building Lot other than one (1) single-family dwelling ("Dwelling Unit"). Each Dwelling Unit constructed on any Building Lot shall have a minimum size, exclusive of basements open porches, garages and other heated or unheated areas, as follows:

1.03

Lots Numbers	Minimum House Size	Minimum Garage Size
33-44	2300 S.F.	3 Car
1-6, 15-16, 25-26, 30-32, 52-53, 59, 61- 62, 69-70, 76-78	2000 S.F	2 Car Oversize
7-14, 17-24, 27-29, 45-87	1600 S.F.	2 Car

- 1.04 All structures or improvements commenced by an owner of any Building Lot within the Subdivision must be completed within six (6) months from date of commencement unless otherwise approved by the Architectural Control Committee.
- 1.05 A front yard pole light operated by a photo cell or other darkness sensing device that illuminates automatically at darkness shall be installed in the front yard of each Building Lot at the time of construction of a dwelling unit thereon. All pole lights must be of uniform design, style and color as determined by the Developer. The Building Lot owner shall maintain the light in operating condition at all time. The pole light shall only be switched at the circuit panel and not by a wall switch inside the house.
- 1.06 A mailbox shall be installed at the time of the construction of the Dwelling Unit on each Building Lot. All mailboxes must be of uniform design, style and color as determined by the Developer.
- 1.07 All yards shall be sod and or seed in accordance with guidelines established by the Architectural Control Committee prior to Builder closing, weather permitting, on any Building Lot with a homebuyer unless otherwise approved by the Architectural Control Committee.
- 1.08 All Building Lots shall have a front yard irrigation system installed by the Builder, or other contractor approved by the Architectural Control Committee. The irrigation system must be in working order and utilized for the maintenance and preservation of landscaping as determined by the Homeowners Association.
- 1.09 No antenna, radio, television or microwave tower or satellite dish shall be erected or maintained on any Building Lot or attached to any structure in the Subdivision without approval of the Architectural Control Committee. The Architectural Control Committee may deny any such request in it's sole and absolute discretion or may attach such conditions as it deems necessary or appropriate.
- 1.10 Air conditioning or heating equipment shall be located on the rear of the house or on the rear 50% of the side yard and shall be screened to provide minimal impact from public spaces and other Building Lots as determined by the Architectural Control Committee.
- 1.11 Sump pumps and downspouts must discharge into the storm sewer.
- 1.12 No Dwelling Unit or other structure on a Building Lot shall be located nearer to any street than the building setback line shown on the recorded plat of the Subdivision. The setback areas designed on the recorded plat shall be for lawn purposes only. This covenant shall not be construed to prevent use of the setback areas for walks, drives, trees, shrubbery, flowers, or ornamental plants used for the purpose of beautification.
- 1.13 No structures or materials shall be placed or permitted within the utility Easement, drainage Easement, conservation Easement (Number EASE-04-088287 0006) or any other Easement areas designated on the recorded plat, or as described in Exhibit A, of the Subdivision unless otherwise approved in writing by the Homeowners Association and/or the Architectural Control Committee. Plantings or other accoutrements within said utility Easement, drainage Easement or any other Easement areas as described on the recorded plat or as described in Exhibit A are at the Building Lot owners sole risk of loss if such Plantings or other accoutrements, as determined solely by the applicable utility company, Homeowners Association or the Architectural Control Committee, would damage or interfere with the installation or maintenance of utilities or would change or retard the flow of surface water from its proper course or damage conservation areas. Each Building Lot owner shall be required to maintain such portion of any utility Easement, drainage Easement or other designated Easement area as is located upon such owner's Building Lot, as described in the recorded plat or as described in Exhibit A, including, but not limited to, the responsibility for maintaining the

grade of the Easement in accordance with the improvement plans prepared by Developer and approved by the City of Miamisburg and Montgomery County as described.

- 1.14 No trade or business activities of any kind shall be conducted on any Building Lot or open space in the Subdivision except that an owner (or member of owner's family) of a Dwelling Unit may conduct a business activity within the Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Dwelling Unit, (b) the business activity conforms to all zoning requirements for the Subdivision and is not prohibited by the laws of any entity having jurisdiction over the Subdivision, (c) the business activity does not involve persons coming on to the Building Lot who do not reside in the Dwelling Unit and (d) the business activity is consistent with the residential character of the Subdivision. The foregoing restriction shall not apply to the business activities of Developer or the construction, sale or maintenance of Building Lots and residences by the Builders or by Developer, its agents or assigns, during the construction and sales period.
- 1.15 No outside drying or airing of clothes shall be permitted (a) within any open space in the Subdivision or (b) on any Building Lot except in an enclosed area not visible to the public. Fences may not be used for air drying of clothes or other materials.
- 1.16 Except in connection with Developer's or a Builder's construction activities, no commercial vehicles, buses, motorcycles, trucks, trailers, boats, jet skis, snowmobiles, campers, motor homes or other recreational vehicles shall be parked on any Building Lot or elsewhere in the Subdivision unless housed within a garage. No junk, inoperable or derelict vehicle or other vehicle on which current registration plates are not displayed shall be parked within the Subdivision. Vehicle repairs and storage of vehicles are permitted within the Subdivision only if in garages. Recreational vehicles and boats may be parked in the driveway for a period not to exceed seventy two (72) hours for the purpose of cleaning, loading and unloading.
- 1.17 No exterior portion of any Building Lot shall be used as a dumping ground or storage area for rubbish, equipment, machinery, bulk materials, scrap, paper, glass or other such materials. Garbage or other waste shall be kept in trash containers. All containers used for storage or disposal of trash or recyclable materials shall be kept in a clean and sanitary condition and screened from public view. Building materials to be used in the construction of approved structures may be stored on a building lot, provided such building materials are incorporated into the approved improvement within ninety (90) days after their delivery to such Building Lot.
- 1.18 No sod, dirt or gravel, other than incidental to the construction of an approved structure or the normal maintenance of lawn areas, shall be removed from any Building lot without the written approval of the Architectural Control Committee.
- 1.19 No underbrush or unsightly growth of weeds or other objects of any kind shall be permitted to remain on any Building Lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner free of debris and clutter and shall be mowed on regular basis. The Homeowner's Association may regulate and control the maintenance of lawn areas by publishing rules and regulations as it deems necessary from time to time.
- 1.20 No geothermal or solar heating system shall be installed on any Building Lot or Dwelling Unit without the prior approval of all applicable agencies and the Architectural Control Committee.
- 1.21 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Building Lot, except that guide animals, dogs, cats or other household pets may be kept on a Building Lot, so long as such pets are not kept, bred or maintained for any commercial purpose. No external cages or kennels shall be permitted except where permitted in section 1.27. No animal shall be permitted to run loose, become a nuisance to any owner of any Building Lot in the Subdivision or cause unreasonable disturbance or noise. Pets shall not be permitted in any of the open spaces of the Subdivision unless leashed and accompanied by someone who can control the pet. Any Building Lot owner who keeps or maintains any pet within the Subdivision shall be deemed to have indemnified and agreed to hold Developer and the Association harmless from any loss, claim or liability of any kind or character whatsoever arising by reason of keeping or maintaining such pet within the Subdivision. The Homeowner's Association may regulate and control the maintenance of such household pets by publishing such rules and regulations as it deems necessary from time to time.

- 1.22 No sign or billboard shall be erected or displayed on any Building Lot except (a) one (1) temporary sign of no more than six (6) square feet advertising the property for sale;(b) signs used by the developer, its successors and/or assigns, or a Builder to advertise Building Lots or Dwelling Units for sale during the construction and sales period and (c) street identification signs installed by Developer or the Association.
- 1.23 All tanks for the storage of propane gas, fuel or oil shall be located beneath ground level, except that propane tanks for service to the entire Subdivision, for Portable gas grills or, on a temporary basis, for construction of an approved structure may be located above ground.
- 1.24 No well for production of gas, water or oil, whether intended for temporary or permanent purposes, shall be drilled or maintained on any Building Lot without the written consent of the Architectural Control Committee.
- 1.25 There shall be no production, storage or discharge of hazardous wastes in the Subdivision, or discharges or emissions of liquids, solid wastes, gases or other harmful matter into the ground, atmosphere or any body or course of water, if such discharge or emission may adversely effect the use or intended use of any portion of the Subdivision or may adversely effect the health safety or comfort of any person.
- 1.26 No barns, storage sheds or other outbuildings shall be permitted on Building Lots one (1) thru fifteen (15), twenty five (25), twenty six (26), twenty nine – sixty-four (29-64), eighty-seven (87). Storage sheds are permitted on remaining Building Lots provided they are constructed on a concrete pad, have and utilize the same natural materials, colors and shingles as the Dwelling Unit. The location, design and construction of sheds must be approved by the Architectural Control Committee prior to installation.
- 1.27 No chain link fence shall be permitted on any Building Lot. No privacy fence or fence taller than 42" shall be permitted on any Building Lot. No fences, of any kind, except for that outlined in section 1.28 may be installed on Building Lots one (1) thru seventeen (17), twenty five (25), twenty six (26), twenty nine (29) thru sixty-four (64), and eighty-seven (87). No fences shall be installed in any Easement area or in any way which would alter the flow or level of any drainage. All fences require prior approval of the Architectural Control Committee. Fences for in ground pools and hot tubs may be installed in accordance with regulatory requirements, may not be located on the Building Lot perimeter, and require at it's sole determination, the approval of the Architectural Control Committee.
- 1.28 One pet run of no greater than four hundred (400) square feet may be installed on Building Lots one (1) thru seventeen (17), twenty five (25), twenty six (26), twenty nine (29) thru sixty (60), seventy eight (78) with the following specifications. The pet run must be constructed of natural materials, may not be chain link, must be located directly behind and attached to the Dwelling Unit, may not extend rearward beyond the Dwelling Unit more than twenty (20) feet, and must be approved prior to installation by the Architectural Control Committee.
- 1.29 No above ground swimming pools shall be permitted on any Building Lot. In ground pools require special fencing requirements, must adhere to paragraph 1.26 and require approval of the Architectural Control Committee.
- 1.30 No tennis or basketball court shall be permitted on any Building Lot, except that a basketball hoop or goal may be placed on a building Lot with the prior written consent of the Architectural Control Committee.
- 1.31 No private water supply systems or private sewage disposal systems shall be permitted on any Building Lot in the Subdivision
- 1.32 No unlawful use shall be made of any portion of the Subdivision. All laws, orders, rules regulations or requirements of any governmental agency having jurisdiction over any portion of the Subdivision shall be observed and complied with by, and at the expense of , Building Lot owner.
- 1.33 Invalidation of any of these covenants and restrictions by judgment or court order shall in no way affect any other provision hereof, all of which shall remain in full force and effect.
- 1.34 Upon the violation of any covenant or restriction contained herein or violation of any rule or regulation duly adopted by the Homeowners' Association, the Homeowners' Association shall have the power to levy a fine against the owner of the Building Lot in violation, which fine shall also be

an Individual Assessment under article 3.08 herefor. The Homeowners' Association may also upon reasonable notice to the Owner, enter upon Building Lot as to which a violation exists and summarily abate at the expense of the owner the condition that may exist thereon in violation of the covenants and restrictions contained herein and the Homeowners' Association, its Board or Agents, shall not be thereby deemed guilty in any manner of trespass or wrongful act. Developer, the Homeowners' Association or any person or persons owning a Building Lot may prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any covenant or restriction contained herein. The proceeding may seek to prevent such person or persons from violating or continuing to violate the restrictions or to recover damages for such violation together with the costs incurred in enforcement of the restrictions.

Article 2. Easement Restrictions

Easements, whether on Building Lots or Easement areas, including but not limited to those listed and described on the recorded Platt, attached hereto Exhibit A, Easement Areas and defined as Utility Easements, Drainage Easements, Drainage Pipe Easements, Drainage Ditch Easements, Conservation Easements (wetlands & streams), Detention Area Easements and Landscape Easements are designated for water management, wetlands and streams habitat conservation and Easement area landscaping as required by government bodies having jurisdiction, including but not limited to, the City of Miamisburg, OEPA and Army Corps of Engineers. The following covenants and restrictions are for the benefit of all Building Lot owners in the Subdivision and are to run with the Land and shall be binding on all parties, on all Building Lot owners, and all persons claiming under them forever as follows:

- 2.01 No owner of any Building Lot in the Subdivision shall do or permit to be done any action or activity which would result in (a) the pollution of any retained water, (b) elimination, destruction of, or damage to any wetlands or stream habitat, (c) the diversion of water or change in the elevation of the water level, (d) silting, (e) an adverse effect on water quality, drainage or proper water management, which would impair or interfere with the use of such areas for conservation, drainage and related purposes for the benefit of all Building Lot owners.
- 2.02 Examples of prohibited activities or uses which may impair, interfere or damage Easement Areas, including but not limited to the; use of off road vehicles and recreational vehicles; dumping of debris of any kind (grass clippings, pet waste, hazardous materials, etc.); use of chemicals (herbicides and pesticides); removal of vegetation; alteration of land surfaces or changing of the grade; construction of manmade objects.
- 2.03 It is the responsibility of the Homeowners Association to; (a) perpetually preserve, monitor, maintain and enhance the natural and ecological condition of the Conservation Easement Area (streams and wetlands), pursuant to the Mitigation Project in those areas illustrated on the recorded plat and Exhibit A; as required by the OEPA and the Army Corps of Engineers; (b) complete the remainder, after turnover of the Homeowners Association to the Homeowners by the Developer, of the five (5) year monitoring and reporting program issuing submittals to the OEPA and Army Corps of Engineers; (c) communicate the regulations restricting the use and maintenance of the Conservation Easement areas to the Building Lot owners. The Homeowners Association is responsible to maintain signage marking conservation areas as required in the Mitigation plan.
- 2.04 No boating, fishing, swimming, ice skating or any other recreational activity shall be conducted in, on or above said Conservation Easement Area and or Detention Area Easement.
- 2.05 The Homeowners' Association shall have the right to establish rules regarding the use of the Detention Area Easement, Conservation Easement, Drainage Easement and all other Easement areas located on the recorded Platt of the subdivision, provided such rules are not in conflict with any other provision contained herein, and are reasonably established to protect the safety and welfare of the residents of the Subdivision and their guests, or are established to assure the continued service of the areas for the purposes for which they were designed.
- 2.06 Developer, the Homeowners' Association or any person or persons owning a Building Lot may prosecute proceedings at law or in equity against any person or persons violating or attempting to violate any of the above covenants and restrictions or seek restraining orders or other mandatory

relief for the correction of any interference with or damage to the drainage and detention or retention system, and to recover compensation for any damages incurred by the complaining party together with the costs incurred in enforcement of the restrictions.

- 2.07 It is the responsibility of the Homeowner's Association to make functional repairs to the Detention Areas, if required. It is the responsibility of the Homeowner to maintain the grass, mowing, trimming and landscaping in the Detention Area. Building Lots which have Detention Areas include Lot 43, 44,45,and 57. and 75.

Article 3. Homeowners' Association

- 3.01 After the recording of this Declaration, Developer shall form and incorporate a homeowners' association to be known as Sydney's Bend Homeowners' Association, Inc. (the "Association") to promote the common interest of all Building Lot owners, to handle maintenance of certain Easement areas and designated Conservation Easements within the Subdivision as set forth below and to promote compliance with the covenants, conditions and use restrictions set forth in this Declaration. The Association shall be comprised of the owners of all the Building Lots in the Subdivision.
- 3.02 The membership of the Association shall at all times consist exclusively of owners of the Building Lots. All owners of Building Lots within the Subdivision, upon acquisition of title to a Building Lot, shall automatically become a member of the Association. Membership shall be appurtenant to and may not be separated from such ownership. Such membership shall terminate upon the sale or other disposition by a member of his ownership of a building Lot.
- 3.03 The management and control of the affairs of the Association shall be vested in its board of directors ("Board"). The Board shall be composed of three (3) members. The three (3) initial members of the Board shall be selected by the Developer. The three (3) initial members of the Board shall serve until (a) that date which is ninety (90) days after 100% of all Building Lots within the Subdivision have been developed and whose owners have been made a part of the Association as set forth above in Article 3.01 have been sold, or (b) Developer elects to turn over control of the Association to the Building Lot owners, whichever shall first occur. Upon the incapacity, resignation or death of any initial Board member, a successor, who shall serve the remaining term of the departed Board member, shall be appointed by the remaining members of the Board within three (3) months after the incapacity, resignation or death of the departed Board member. Subsequent Board members shall be elected by a majority of the Building Lot owners as more fully set forth in the Articles of Incorporation and By-Laws of the Association.
- 3.04 Areas shown on the recorded plat of the Subdivision and Exhibit A defined as Easement Areas may be maintained by the Association, as described in Exhibit A. The Association shall have the authority to adopt rules and regulations for Easement areas and to enforce said regulations. The Association shall be responsible for maintenance of Conservation Easement areas thru the year 2012 or when released by the Army Corps of Engineers and OEPA.
- 3.05 The Association, its agents or assigns, shall have the right to enter onto any, public right-of-way or Easement area shown on the recorded plat of the Subdivision or other Easement area as it is time to time deems necessary for the purpose of maintaining the same. Such maintenance may include, but shall not be limited to: landscaping, mowing, fertilizing, mulching, weeding, planting, lighting repair, irrigation repair, fence repair, and sign repair.
- 3.06 There is hereby established for the benefit of the Association and as a charge on each Building Lot an annual "General Assessment" whereby the Association shall be empowered to levy, asses and collect from the owner of each and every Building Lot in the Subdivision, excepting those Building Lots owned by Developer and Builder, an amount to be determined as set forth below for the purpose of providing funds to carry out the responsibilities and duties of the Association including, but not limited to, (a) the cost of management and operation of the association; (b) the cost of ownership, operation, maintenance and repair of the open space Parcels, landscape easement areas, riparian corridor and any other property owned by the Association; (c) the cost of any insurance required by this Declaration or determined to be in the best interest of the Association; (d) reasonable reserves for contingencies and replacement; (e) administrative, accounting and legal fees

incurred on behalf of the Association; and (f) all other costs and liabilities incurred by Association in the exercise of its power and duties pursuant hereto.

- 3.07 The annual General Assessment shall be established by a budget adopted by the Board each year in accordance with the By-Laws of the Association. The annual General Assessment shall be allocated equally to each Building Lot. The annual General Assessment as to each Building lot shall be effective on the first day of the Association's fiscal year. The initial General Assessment as to each Building Lot shall commence on the first day of the month following the earlier of (a) its conveyance to an owner other than a Builder or (b) occupation of the Dwelling Unit thereon. The initial General Assessment as to each Building Lot shall be prorated on a monthly basis to the end of the Association's fiscal year, shall be collected at closing of the conveyance of the Building Lot from Builder. The General Assessment shall be payable on the fifteenth (15th) day of the first (1st) month of each fiscal year. The Association may adopt such billing, collection and payment procedures from time to time as it deems appropriate. Beginning with the recording of this Declaration and until December 31, 2004, the maximum annual General Assessment as to each Building Lot shall be Two Hundred Eighty Dollars (\$280.00). Beginning with the annual General Assessment levied and effective as of January 1, 2005, and annually thereafter, the Board may increase or decrease the General Assessment as to each Building Lot in accordance with the budget adopted without a vote of the owners of the Building Lots, provided that, if the annual General Assessment is increased by no more than ten (10) percent per year.
- 3.08 The Association, upon the affirmative vote of two-thirds (2/3) of all members of the Board, may also assess an individual Building Lot owner ("Individual Assessment") for (a) any charges or fines imposed or levied in accordance with Article 1.32, (b) any costs incurred for maintenance or repair caused through the willful or negligent act of the owner of a Building Lot or other occupant of, or guest or invitee in, the Dwelling Unit on said Building Lot, including attorney fees, court costs and other expenses incurred or (c) any costs associated with the enforcement of this Declaration or the rules and regulations of the Association with respect to any owner of a Building Lot or other occupant of, or guest or invitee in, the Dwelling Unit on said Building Lot. Any Individual Assessment shall be in addition to the General Assessment as to such Building Lot.
- 3.09 Any amount assessed or levied hereunder by the Association against a Building Lot owner shall become a lien on each Building Lot until paid and shall bear interest at the rate of ten percent (10%) per annum until paid, beginning thirty (30) days after the date of assessment. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the Association may file with the Montgomery County Recorder a Notice of Lien. The Notice of Lien shall contain a description of the Building Lot against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessment or assessments. The lien provided for herein shall remain valid for a period of five (5) years from the date a Notice of Lien is duly filed, unless sooner released or satisfied in the same manner provided for by law in the state of Ohio for the release and satisfaction of mortgages on real property or until discharged by the final judgment or order of the Court in an action brought to discharge the lien. The lien shall secure not only the amount of the unpaid assessments, but also the costs incurred in collection, including, but not limited to, interest, attorney's fees and court costs. The lien of the assessment provided for herein shall be subject and subordinate to the lien of any duly executed mortgage on any Building Lot recorded prior to the recording of the Notice of Lien. The holder of any such mortgage which comes into possession of a Building lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in Lieu of foreclosure shall take the Building Lot free of claims for unpaid installments of assessments or charges against the Building Lot which become due and payable prior to the time such holder or purchaser takes title to the Building Lot.
- 3.10 The Association, through the Board, shall have the authority to and shall obtain such insurance as it may deem necessary to protect the Association, the members of the Association, and the Board and officers of the Association.
- 3.11 At such time as control of the Association is transferred to the Building Lot owners, Developer may reserve the exclusive right to approve the plot plan, construction plans, color scheme and landscape

plans associated with any structure on any building lot on which a Dwelling Unit has not yet been completed and occupied, so long as Developer clearly identifies the Building Lots for which it is retaining such right at the time of the turnover. Developer shall maintain said right of approval for each Building Lot until such time as a Dwelling Unit has been completed on that Building Lot and occupied by the homeowner.

- 3.12 Upon the creation of any of the homes planned for lots 45 -87, the Association shall provide or contract for *optional* property maintenance services on all lots in the Sydney's Bend Subdivision. Cost of said services shall be strictly on a 'fee for services rendered' basis and Lot owners not participating in the program shall, in no way, be responsible for the cost of said maintenance services.

Article 4. Architectural Control Committee

An Architectural Control Committee (the "Committee") is hereby established as a standing committee of the Association to carry out the functions set forth for it in this Declaration. The Committee's procedures and duties shall be as follows:

- 4.01 The Committee shall be composed of three (3) members. The Developer shall appoint each of the three (3) initial members of the Committee.
- 4.02 The three (3) initial members of the Committee shall serve until such time as the Developer turns over control of the Association to the Building Lot owners as set forth in Article 3.03 hereof. Any subsequent members shall be appointed by the Association and shall serve for terms of three (3) years, except that the first appointed members of the Committee shall serve for staggered terms of one (1), two (2) and Three (3) years as directed by the Board. All members of said Committee shall serve until the expiration of their terms or until their incapacity, resignation or death. Upon the incapacity, resignation or death of a member of the Committee, a successor, who shall serve the remaining term of the departed Committee member, shall be appointed by the Board within three (3) months after the incapacity, death or resignation of the departed member.
- 4.03 The use restrictions require the submission of detailed plans and specifications to the Committee prior to the erection of, placement on, or alteration of any structure or improvement on any Building Lot. The intent is to achieve an architecturally harmonious, artistic and desirable residential subdivision. Therefore, while considering the approval or disapproval of any plans and specifications submitted, the Committee is directed to consider the appropriateness of the improvement contemplated in relation to the improvements on contiguous or adjacent lots, the artistic and architectural merits of the proposed improvement, the adaptability of the proposed improvement to the Building Lot on which it is proposed to be made, and such other matters as may be deemed by the committee members to be in the interest and benefit of the owners of the Building Lots in the Subdivision as a whole.
- 4.04 To assist it in making its determinations, the Committee may require that any plans and specifications submitted to the Committee be prepared by a registered architect or civil engineer. The Committee shall also have the right to require any other reasonable data including, but not limited to grading or elevation plans, material lists, landscape plans and color scheme designations.
- 4.05 The Committee's decisions shall be in writing and shall be binding upon all parties in interest. The Committee shall approve, disapprove or request additional information with respect to any request for approval within thirty (30) days after the request shall have been submitted to the Committee for approval. The failure of the Committee to approve, disapprove or request additional information within said time period shall be deemed an approval of any request.
- 4.06 If, in the opinion of the Committee, the enforcement of these restrictions would constitute a hard ship due to the shape, dimension or topography of a particular Building Lot in the

Subdivision, the Committee may permit a variation which will, in its judgment, be in keeping with the maintenance of the standards of the Subdivision.

Article 5. Other Conditions

- 5.01 All transfers and conveyances of each and every Building Lot in the Subdivision shall be made subject to these covenants and restrictions.
- 5.02 Any failure to enforce these restrictions shall not be deemed a waiver thereof or an acquiescence in, or consent to, any continuing, further or succeeding violation hereof.
- 5.03 If any covenant, condition or restriction hereinabove contained, or any portion thereof, is invalid, such invalidity shall in no way affect any other covenant, condition or restriction.
- 5.04 All costs of litigation and attorney's fees resulting from violation of this Declaration shall be the financial responsibility of the Building Lot owner or owners found to be in violation.
- 5.05 So long as Developer maintains control of the Association as set forth in Article 3 hereof, Developer reserves the right to amend this Declaration to the extent necessary (a) to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including, but not limited to, the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar entity); (b) for the purpose of eliminating or correcting any typographical or other inadvertent error herein; (c) eliminating or resolving any ambiguity herein; or (d) clarifying Developer's original intent, all without the approval of the building Lot owners. Each Building Lot owner, by the acceptance of a deed to a Building Lot within the Subdivision, consents to this reserved right.
- 5.06 Except as provided in Article 5.05 hereof, this Declaration may be amended only by a recorded instrument executed by proper officers of the Association and approved by the owners of seventy-five percent (75%) of the Building Lots in the Subdivision.
- 5.07 Only the Building Lots contained in the Subdivision shall be subject to and bound by the restrictions, covenants and conditions set out in this Declaration and none of said provisions shall in any manner affect or be operative in respect to any other land of the owner or its successors or assigns.
- 5.08 The Association may not sponsor, support, participate or otherwise engage in any social activities, events or parties.
- 5.09 The Association may not directly or indirectly compensate its' Officers, Board members or Volunteers in any way.
- 5.10 The Association is not authorized to gift, donate or support any charitable causes, scholarships or community activities.

IN WITNESS WHEREOF, Developer (SYDNEY'S BEND DEVELOPEMENT HOLDINGS, LLC) has caused this instrument to be executed as of the date first written above.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

Developer

By: _____

By: _____

M.S. Woelfel, Managing Member
SYDNEY'S BEND DEVELOPEMENT HOLDINGS, LLC

STATE OF Ohio)
) SS:
COUNTY OF Montgomery)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by:

This Instrument Prepared By: M.S. Woelfel, Managing Member
Sydney's Bend Development Holdings, LLC.
2360 Sydney's Bend Drive
Miamisburg, Ohio 45342

I / We the Homeowner (s) _____, residing at

_____ have received, read and agree to abide by this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the SYDNEY'S BEND subdivision.

_____ Date: _____

_____ Date: _____

Witness:

_____ Date: _____

EXHIBIT A

Easement Description