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VOL 7 3 2 PAGE 0 9 4

**DECLARATION
TO PROVIDE FOR COMMON AREA OF
WHITE FENCE FARM SUBDIVISION**

1993 JUL 28 AM 11:29
 LARRY B. ROBERTS
 38
 GREENE CO. RECORDER
 X(MH:AD)

The stamp or signature of the Auditor of Greene County, Ohio is evidence of the fact that a copy of this Declaration has been filed in the office of the County Auditor.

Plat Book "28" Pages 127 & 128
 Recorder's Records of
 Greene County, Ohio

7-28-93

TRANSFER NOT NECESSARY

Fee _____ Exempt

LJWANNA A. DELANEY, GREENE COUNTY AUDITOR

This instrument prepared by:
 Charles F. Allbery, III
 Attorney at Law
 137 N. Main Street, Suite 900
 P.O. Box 1283 Mid City Station
 Dayton, Ohio 45402

**DECLARATION TO PROVIDE FOR COMMON AREA
TO
WHITE FENCE FARM SUBDIVISION**

1. This Declaration is made by **TOM PEBBLES BUILDERS, INC.**, an Ohio corporation, hereinafter referred to as the "Declarant".

2. The Declarant is the Owner of some 26 acres of land that it intends to plat into residential lots as White Fence Farm Subdivision; said land is located in Sugarcreek Township, Greene County, Ohio and is more particularly described in Exhibit "A" attached hereto and made a part hereof. The Declarant will dedicate as part of its subdivision of land three areas for storm water retention which will be owned and maintained by the corporation herein provided ("Association"), with the owners of the lots platted from the 26 acres, contributing to the cost of maintaining the retention areas created by the platting process. The Declarant will also plat or create a signage easement ("Entrance Monument") located at the intersection of Sugar Tree Drive and Napa Drive that will be the obligation of the Association to maintain.

3. The purpose of this Declaration is to provide for the storm water retention areas for proposed White Fence Farm Subdivision that will be platted from the acreage referenced above and to create maintenance and control over the Entrance Monument for the development. The Declarant will provide for storm water retention as part of the development with the permanent location for the storm water retention areas being platted as separate lots, as identified on the record plan.

4. The Declarant, at its cost, will provide the land and improvements for the retention areas and signage as part of its development of White Fence Farm Subdivision. The Declarant will convey to the Association any areas that are established or platted as storm water retention areas and convey or assign to the Association the signage easements ("Common Area").

5. The Declarant will cause to be formed **WHITE FENCE FARM OWNERS ASSOCIATION**, a non-profit corporation organized under the laws of Ohio, ("Association") for the purpose of owning and managing the Common Area and to provide the maintenance and upkeep of the property, and to provide other possible services to its members as permitted by its Articles of Incorporation.

6. Every Owner of a lot in White Fence Farm Subdivision shall be a member of the Association. The record plan of White Fence Farm Subdivision, Section One, will consist of

Lots One (1) through Seventy-seven (77), with proposed Lots One (1), and Twenty-six (26) to be the retention areas (Common Area). If the Declarant elects to bring additional land under the provisions of this Declaration, it shall do so by appropriate provisions on the record plan and the owners of those lots will also become members of the Association.

- a. Owner. The term "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to a lot, including contract sellers, but excluding those having an interest as security for the performance of an obligation. Notwithstanding any applicable theory of mortgages, the term shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or other proceedings in lieu of foreclosure.
- b. Qualification. Ownership of a lot shall be the sole qualification for membership; upon the sale or other disposition of a lot that vests title in a new Owner, the new Owner shall automatically become a member of the Association and the previous Owner will cease to be a member of the Association, unless he owns other lots.

7. The Declarant will make such improvements to the Common Area as are provided or required in the subdivision process and the rules and regulations that are applicable thereto prior to the transfer of title to the Association. The Association shall be responsible for the care, custody, maintenance, regulation, and control of the Common Area on and after the date of such transfer. The Common Area may be subjected to such uses as will not be inconsistent with its use for water retention or signage for the subdivision.

8. The Declarant will construct on easements, created for that purpose, the Entrance Monuments for the subdivision that will be of a permanent nature. If the Entrance Monuments are lighted, the Declarant will provide separate meters for such lighting. The Association, after the transfer of title to it of the Common Area, will be obligated to maintain and keep in good repair the Entrance Monuments and to pay any utility charges for the lighting of the signs.

9. The Declarant may erect signage for street traffic control, such as street identification, speed, and stop signs, of a decorative nature which are intended to be an attractive complement to the development. In the event such signs and sign posts are erected by Declarant and are not accepted for maintenance, repair or replacement by the public authorities, the Association shall have the responsibility to maintain, repair and replace such street signs and posts in

an attractive condition at all times, and the cost of same shall be a Common Expense of the Association.

10. The Association, as a Common Expense, shall insure itself, the Board of Trustees, all Owners and members, and all persons lawfully in possession or control of any part of the Common Area, against liability for bodily injury or death and for injury to or destruction of property, occupancy upon, or about, or arising from the Common Area. Such insurance shall afford protection to a limit of not less than \$100,000 in respect to bodily injury or death suffered by any one person, and to the limit of not less than \$300,000 in respect to any one occurrence and to the limit of not less than \$25,000 in respect to damages to or destruction of property arising out of one accident.

11. The Association, by its Trustees, may delegate all or any portion of its authority to discharge its maintenance responsibilities to one or more independent contractors or to a managing agent. Such delegation shall be evidenced by a management contract for a term not to exceed three (3) years in duration, which shall provide for termination without cause and without payment of a termination fee on ninety (90) days notice.

12. The Association shall be responsible for the payment of all taxes and assessments, if any, that are from time to time levied against the Common Area from the time the Common Area is transferred to the Association.

13. The Association shall also be responsible for collection from the Owners and payment to Spears Property Owners Association of assessments established and payable from time to time in accordance with the provisions of the Declaration of Covenants, Conditions and Restrictions recorded in Official Record Volume 696, page 266, Records of Greene County, Ohio.

14. Each Owner, by the acceptance of a deed to a lot subject to the provisions of this Declaration, for himself, his heirs, administrators, executors, personal representatives, successors and assigns, whether or not it shall be expressed in such deed, covenants, and agrees to pay the assessments that are levied from time to time to pay his allocated share of the Common Expenses provided herein and levied by the Association.

- a. Payment. The Declarant shall pay such initial development costs and such incidental costs for maintenance of the Common Area until it shall transfer or assign the Common Area to the Association. Thereafter each Lot Owner, subject to the provisions of this Declaration, shall pay to

the Association the alequot assessments for the Common Area as payment is called for, but which will be not more often than on a quarterly basis, in advance, and not less often than annually, in advance.

- b. Budget. The Association, on or before December 1st of each year, shall prepare an estimate of the total amounts that will be necessary to pay the Common Expenses for each ensuing calendar year and shall forthwith supply each Owner a copy thereof. The Budget will be modified from time to time in order to conform to the actual costs.
- c. Pro-Rata Share. Each Owner of a Lot will pay an equal amount of the Common Expense. Each Owner's share will be computed by dividing the total expense for any period by the number of lots then a part of the plan and subject to the Declaration.
- d. Lien. The Association shall have a lien upon the estate and interest of any Owner in a lot for the payment of the portion of the Common Expenses which remains unpaid for thirty (30) days after the same have become due and payable, and when a certificate therefor or an affidavit thereabout has been filed with the Recorder of Greene County, pursuant to authorization given by the Trustees of the Association.
- (i) Such certificate or affidavit shall contain a description of the lot, the name of the record owner thereof, and the amount of such unpaid portion of the Common Expenses and shall be subscribed by the President or other principal officer of the Association. Such lien may include late payment penalties and shall bear interest at 10% per annum until paid.
- (ii) Such lien shall remain valid for a period of five (5) years from the time of filing thereof. The lien may be enforced by a foreclosure action and therein the Association will be entitled to collect such Common Expenses that have accrued and not been paid after recording the lien, as well as reasonable attorney fees and court costs.
- (iii) The lien provided shall take priority over any lien or encumbrance subsequently arising or created, except for the lien for real

estate taxes and assessments and liens of first mortgages which have been filed of record. It is agreed that where the mortgagee of a first mortgage of record or other purchaser at a foreclosure sale acquires title to the lot, said acquirer of title shall not be liable for the assessments of the Owner or lot that accrued prior to the transfer of title. Such unpaid expense, if not collected from the previous Owner, will be deemed a Common Expense against all lots, including the lot of the acquirer.

(iv) Upon request, the Association shall supply a certification of any amounts that are due, and the party receiving such certification may rely on its accuracy.

15. By acceptance of a deed to a lot, the Grantee, for himself, his heirs, administrators, executors, personal representatives, successors and assigns, whether or not it shall be so expressed in such deed, covenants and agrees to be bound by the terms and conditions hereof.

IN WITNESS WHEREOF, the said Declarant, TOM PEBBLES BUILDERS, INC., has hereunto subscribed its name this 20th day of July, 1993.

In witness whereof:

TOM PEBBLES BUILDERS, INC.

Charles F. Allbery, III

[Signature]

Thomas H. Peebles, President

[Signature]

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledge before this this 20th day of July, 1993, by Thomas H. Peebles, President of Tom Peebles Builders, Inc., an Ohio corporation, on behalf of said corporation.

Charles F. Allbery, III

Notary Public

CHARLES F. ALLBERY III, Attorney at Law

Notary Public, State of Ohio

My Commission has no expiration date.

Section 147.03 O. R. C.

This instrument prepared by:
Charles F. Allbery, III
Attorney at Law
Suite 900, 137 N. Main Street
P.O. Box 1283 Mid City Station
Dayton, Ohio 45402-9783



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MCDUGALL ASSOCIATES

Professional Land Surveyors
 956 Senate Drive
 Dayton, Ohio 45459
 513-438-9787

DESCRIPTION OF 26.804 ACRE
 PREPARED FOR TOM PEEBLES, BUILDERS INC.
 JUNE 14, 1993

Situate in the southwest Quarter of Section 8, Town 2, Range 6, Between the Miamis, Sugarcreek Township, Greene County, Ohio, being part of the 160.592 acre tract conveyed to Wendell E. Spears by deed recorded in Official Record 323, Page 217 of the deed records of Greene County, Ohio, and being a tract of land more particularly described as follows: Beginning at the northwest corner of Lot 15 of Carriage-By-The-Lake, Section One, as recorded in Plat Book 17, Pages 90 through 93 of the plat records of said County;

thence from said point of beginning S 06°45'26" W with the west line of said Lot 15 a distance of 115.74 feet to the northeast corner of Lot 30 of said plat;

thence N 67°48'57" W with the north line of said Lots 30 and 31 a distance of 208.83 feet to the northwest corner of said Lot 31;

thence with the northwest line of said plat along a curve to the right having a radius of 530.00 feet, an arc distance of 368.64 feet, a central angle of 39°51'07" the chord of which bears S 42°06'36" W a distance of 361.25 feet to an iron pin set;

thence S 62°02'10" W continuing with said northwest line and new division line through said Spears tract a distance of 565.50 feet (passing the northwest corner of said plat at 232.00 feet) to an iron pin set;

thence with new division line through said Spears tract the following four (4) courses:

- (1) along a curve to the right having a radius of 530.00 feet, an arc distance of 298.32 feet, a central angle of 32°15'00" the chord of which bears S 78°09'40" W a distance of 294.40 feet to an iron pin set,
- (2) N 85°42'50" W a distance of 23.42 feet to an iron pin set,
- (3) N 23°30'26" W a distance of 126.99 feet to an iron pin set,
- (4) N 01°01'36" E a distance of 1041.13 feet to an iron pin set in the south line of the 175.070 acre tract conveyed to Wendell E. Spears by deed recorded in O.R. 323, Pg. 217;

thence S 89°57'04" E with said south line a distance of 1264.74 feet to the northwest corner of the 8.9139 acre tract conveyed to the Board of Trustees of the Bellbrook - Sugarcreek Park District by deed recorded in O.R. 375, Pg. 636;

thence with lines of said Park District tract the following six (6) courses:

- (1) S 00°02'56" W a distance of 420.00 feet,
- (2) N 89°57'04" W a distance of 142.86 feet,
- (3) along a curve to the right having a radius of 530.00 feet,

NO PLAT REQUIRED
 Greene County Regional Planning
 and Coordinating Commission

Date 6-16-93 By: [Signature]

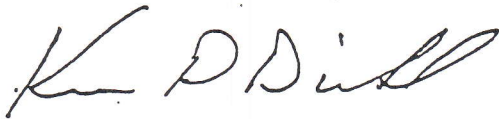
an arc distance of 21.13 feet, a central angle of 2°17'03"
the chord of which bears S 07°09'47" W a distance of 21.13
feet,

(4) S 84°19'00" E a distance of 147.12 feet,

(5) S 05°41'01" W a distance of 70.00 feet,

(6) S 84°19'00" E a distance of 34.00 feet to the point of
beginning, containing 26.804 acres of land, subject to all
legal conditions, easements and rights-of-way of record.

This description prepared by McDougall Associates based on a
survey made by same. Bearings are based on Carriage-By-The-
Lake, Section One, P.B. 17, Pgs. 90-93. All iron pins set
are 30" x 5/8" capped "McDougall Associates".



Kirk P. Diehl, P.S. #7032



Handwritten notes:
see
McDougall Associates
P.B. 17, Pgs. 90-93
688.1 0.99
1/28/84

JAN 6 1994

August 3, 1993

Thomas Peebles
Tom Peebles Builders, Inc.
3066 Kettering Boulevard
Dayton, Ohio 45439

Dear Tom:

White Fence Farm Owners Association Plat was filed in Plat Book "28" Pages 127 and 128 of the Recorder's Records of Greene County, Ohio. The Declaration to Provide Common Area of White Fence Farm Subdivision was recorded in Official Record 732 page 094 of the Greene County Recorder's records.

Very truly yours,

ALLBERY, CROSS, FOGARTY & TUSS

Charles F. Allbery, III

CFAlIII/mah