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**DECLARATION
 OF
 COVENANTS AND RESTRICTIONS**

FOR

**THE NEWARK/GRANVILLE COMMUNITY AUTHORITY
 LICKING COUNTY, OHIO**

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**DECLARATION OF THE NEWARK/GRANVILLE
COMMUNITY AUTHORITY COVENANTS AND RESTRICTIONS**

This DECLARATION OF THE NEWARK/GRANVILLE COMMUNITY AUTHORITY COVENANTS AND RESTRICTIONS is made on this 6th day of January, 2000, by 131 River Road, LLC, an Ohio Limited Liability Company (the "Private Developer").

Private Developer is the owner or in control of the Initial Property (as herein defined) and may from time to time subject the Additional Property (as herein defined) to this Declaration. Private Developer makes this Declaration for the purposes hereinafter set forth (the Initial Property being all of the Property (as herein defined) until any such other real estate is so added).

Private Developer hereby declares that the Property shall be improved, held, sold, conveyed, encumbered, leased, occupied or otherwise transferred subject to the Restrictions which shall constitute covenants running with the Property and shall be binding upon all parties now or hereafter having any right, title or interest in the Property or any part thereof and all such persons, including their respective heirs, personal and legal representatives and successors and assigns, acquiring any right, title or interest therein, and as a part of the consideration therefore, agree that their right, title and interest in the Property or any part therein shall be improved, held, sold, conveyed, encumbered, leased, occupied or otherwise transferred subject to the Restrictions.

**ARTICLE I
PURPOSE AND INTENT**

Private Developer intends that the Property shall become a New Community District which shall be formed in accordance with Chapter 349 of the Ohio Revised Code solely for the benefit of the Granville Exempted Village School District and that Private Developer will initiate proceedings for the organization of a New Community Authority in accordance with Chapter 349 of the Ohio Revised Code solely for the benefit of the Granville Exempted Village School District. Private Developer desires the creation of the New Community District and the organization of the New Community Authority for the purpose of encouraging the orderly development of a well-planned, diversified and economically sound New Community in central Licking County, Ohio through the implementation of a New Community Development Program. Private Developer anticipates that the costs of carrying out the New Community Development Program, including debt service on New Community bonds, notes or loans authorized by the Community Authority under Chapter 349 of the Ohio Revised Code and any other cost incurred by the Community Authority in the exercise of its powers under Chapter 349 of the Ohio Revised Code, will be covered in whole or in part by the payment of the Community Development Charge by each Owner of a Chargeable Parcel.

In order to provide for the District, the implementation of the Community Authority's

New Community Development Program, and the establishment and payment of the Community Development Charge, this Declaration is for the purpose of creating covenants running with the land pursuant to which all persons now or hereafter having any right, title or interest in the Property or any part thereof, including their respective heirs, personal and legal representatives and their successors and assigns, shall acquire and hold such right, title or interest subject to the Restrictions, including, but not limited to, the obligation of an Owner of each Chargeable Parcel to pay the Community Development Charge applicable thereto. The Restrictions and this Declaration are imposed for the benefit of the New Community District and the Community Authority.

ARTICLE II DEFINITIONS

In addition to the terms defined elsewhere in this Declaration, as used in this Declaration including the preambles, unless the context otherwise requires, the following words shall mean respectively:

2.01. Additional Property. "Additional Property" means such other real estate in the vicinity of the Initial Property as may be subjected to this Declaration pursuant to Article III hereof.

2.02. Assessed Valuation.

- (a) "Assessed Valuation" means, as to any Chargeable Parcel with respect to any year's budget for which the Community Development Charge is being collected, an amount equal to the assessed valuation thereof (including the buildings, structures and improvements thereon) listed on the tax duplicate of the Auditor of Licking County, Ohio, for the preceding year and disregarding any reductions pursuant to any applicable law for the purpose of reducing real estate taxes for certain persons in the State of Ohio (including but not limited to reductions for persons 65 years of age or older pursuant to Section 2 of Article XII, Ohio Constitution, as the same may be amended from time to time) except the reductions described in Section 5.05. If by reason of any change of law, rate, or common level of assessment the assessed valuation for purposes of the tax duplicate is to be determined as an amount which is less or more than thirty-five percent of true value of the real property assessed, then "Assessed Valuation" shall mean the assessed valuation shown on the duplicate adjusted to equal thirty-five percent of fair market value. If the assessed valuation listed on the tax duplicate of the Auditor of Licking County, Ohio, for the preceding year does not reflect the completed value of a single family residence on a Parcel and a building permit for a single family residence has been issued by an governmental authority for that Parcel, then, solely at the Board's

discretion, "Assessed Valuation" shall mean the cost of the single family residence or condominium unit stated on the building permit.

- (b) If the Auditor of Licking County, Ohio, and any other official authorized by Ohio law to assess real estate in Licking County shall ever cease to assess real estate or if an assessed valuation has not yet been listed on the tax duplicate of the Auditor of Licking County, Ohio, for the preceding year for a Parcel, "Assessed Valuation" shall mean, as to any Chargeable Parcel for each year thereafter, the Assessed Valuation determined by the Board in its sole and absolute discretion by such criteria as the Board may establish from time to time subject to any applicable adjustments to be made under subsection (a) of this Section.
- (c) If any Chargeable Parcel is not separately listed on the Auditor's tax duplicate with respect to any year, "Assessed Valuation" shall be determined by the Board equitably apportioning to such Chargeable Parcel a portion of the Assessed Valuation of the Parcel or Parcels from which such Chargeable Parcel was subdivided or created.

2.03. **Board.** "Board" means the Board of Trustees of the Community Authority.

2.04. **Chapter 349.** "Chapter 349" means Chapter 349 of the Ohio Revised Code.

2.05. **Chargeable Parcel.** "Chargeable Parcel" means any Parcel of Chargeable Property, including all buildings, structures and improvements thereon.

2.06. **Chargeable Property.** "Chargeable Property" means the Property together with all buildings, structures and improvements thereon, with the exception of the following:

- (a) All lands, buildings, structures and improvements of the United States of America, the State of Ohio, the Community Authority and all other political subdivisions or governmental instrumentalities of the State of Ohio; and
- (b) All lands, buildings, structures and improvements exempt from real estate taxation under Ohio law provided that such exemption from the Community Development Charge has been determined by the Board to be consistent with the purposes and needs of the Community Authority and not inconsistent with any commitments made with respect to any obligations of the Community Authority.
- (c) All parcels on which no residential structure (including condominiums) has been constructed and for which a certificate of occupancy has not been

issued.

2.07. Community Authority. "Community Authority" means The Newark/Granville Community Authority, a body corporate and politic established or to be established for the District pursuant to Chapter 349.

2.08. Community Development Charge. "Community Development Charge" means the charge established in Articles IV and V, including all applicable penalties and interest pertaining to any unpaid amount.

2.09. Community Facilities. "Community Facilities" means the acquisition, construction, improvement, equipping and operation of educational facilities, which shall include but not be limited to, schools, classrooms, other educational structures and facilities, and educational materials and equipment, parks, all related appurtenances, and land and operation and maintenance expenses, all related to or necessary for any of the foregoing purposes and all of which shall be for and as determined by the Granville Exempted Village School District Board of Education.

2.10. Declaration. "Declaration" means this Declaration of The Newark/Granville Community Authority Covenants and Restrictions made January 6, 2000, as the same may from time to time be amended or supplemented in the manner prescribed in Articles III or IX.

2.11. Development Period. "Development Period" means the period commencing on the date on which this Declaration is Recorded and ending on the date all members of the Board are scheduled to be elected citizen members pursuant to Section 349.04 of the Ohio Revised Code as it exists on the date hereof.

2.12. District. "District" or "New Community District" means The Newark/Granville Community District created pursuant to Chapter 349.

2.13. Fiscal Meeting. "Fiscal Meeting" means the annual meeting of the Board described in Article VI.

2.14. Initial Property. "Initial Property" means the real estate located in Licking County, Ohio as more particularly described in Exhibit A attached hereto and incorporated herein by reference.

2.15. Late Payment Rate. "Late Payment Rate" means the federal short term "rate" determined pursuant to Section 5703.47(A) of the Ohio Revised Code, rounded to the nearest whole number percent, plus three percent.

2.16. Owner. "Owner" means, with respect to any Parcel, the owner of record from time to time, whether one or more persons or entities, of an interest in: (i) fee simple; (ii) reversion;

(iii) remainder; or (iv) leasehold estate of 75 years or more, but shall not include the Community Authority.

2.17. Parcel. "Parcel" means any part of the Property.

2.18. Place of Business. "Place of Business" means any location on the Property on or in which an Owner or Tenant (including any subsidiary or other entity controlled directly or indirectly by such Owner or Tenant) is conducting a professional, commercial or industrial activity or any other activity permitted by law and conducted for profit or by a nonprofit organization. A contractor who is an Owner or Tenant shall have a Place of Business at each of his construction or work sites on the Property. Each landlord of any Parcel or any part thereof or interest therein, including each sublandlord and each assignee of such landlord or sublandlord, shall have a Place of Business at the Parcel.

2.19. Place of Residence. "Place of Residence" means the place on the Property in which a person's habitation is fixed, and to which, whenever he is absent, he has the intention of returning. A person shall not be considered to have lost his Place of Residence by leaving it temporarily with the intention of returning.

2.20. Private Developer. "Private Developer" means 131 River Road, LLC, an Ohio Limited Liability Company, and its successors in interest. A person or entity shall be deemed a successor in interest of the Private Developer only if specifically so designated in a duly recorded written instrument as a successor or assign of the Private Developer under this Declaration and/or under a supplemental Declaration and shall be deemed a successor in interest of the Private Developer only as to the particular rights or interests of the Private Developer under this Declaration or under such supplemental Declaration which are specifically designated in the recorded written instrument.

2.21. Property. "Property" means collectively, the Initial Property and any Additional Property.

2.22. Recorded. "Recorded" means filed for record in the office of the Recorder of Licking County, Ohio, or in such other office as may be provided by law for the recordation of instruments conveying lands in Licking County, Ohio.

2.23. Resident. "Resident" means any person who has a Place of Residence or any person or entity who has a Place of Business, including a partnership or an S corporation as defined in Section 1361 of the Internal Revenue Code of 1986, as amended.

2.24. Restrictions. "Restrictions" means all covenants, conditions, restrictions, charges, liens and other obligations provided for in this Declaration.

2.25. Secretary. "Secretary" means the person serving as the secretary of the Board, or

any other person designated by the Board in his or her place to receive service of process.

2.26. Tenant. "Tenant" means any person or entity occupying any Parcel (including any part thereof and any structure or any part of any structure thereon) pursuant to a written or oral lease, rental or license agreement with the Owner, or by permission of the Owner, or by permission of or with any other person or entity claiming under the Owner, or under a tenancy at will or sufferance.

2.27. Terms Defined in Chapter 349. The terms "New Community", "New Community Authority", "New Community Development Program", and "New Community District" have the meanings given in Section 349.01 of the Ohio Revised Code.

ARTICLE III **EXPANSION**

Additional Property may from time to time be subjected to this Declaration and the Restrictions by the Private Developer recording a supplemental Declaration describing the Additional Property and subjecting it to the Restrictions and this Declaration. Such supplemental Declaration shall not require the consent of the Owners or compliance with the provisions of Article IX but shall require the consent of the Granville Exempted Village School District Board of Education. Any such expansion shall be effective upon such supplemental Declaration being Recorded, unless otherwise provided therein. Any expansion may be accomplished in stages by successive supplemental Declarations or in one supplemental Declaration. All owners, successors and assigns to any of the Property shall take such Property subject to this Declaration for so long as such Declaration is in effect.

ARTICLE IV **COVENANT FOR COMMUNITY DEVELOPMENT CHARGE**

4.01. Community Development Charge Covenant. The Private Developer as the original Owner of each Parcel hereby covenants, and each Owner of any Parcel, by acceptance of a deed or other instrument or conveyance therefore, shall covenant and be deemed to covenant, to pay or secure the payment of the Community Development Charge applicable to the Owner's Chargeable Parcel to the Community Authority as provided in Articles IV and V. The Private Developer and each Owner agree that every purchase agreement for a Parcel entered into after this Declaration is Recorded shall, in compliance with Section 349.07 of the Ohio Revised Code, specifically refer to the Community Development Charge and identify the volume and number of the deed records in which this Declaration is Recorded.

4.02. Purpose of Community Development Charge. The Community Development Charge is established for the benefit and use of the Community Authority to cover all or part of the cost of the acquisition, development, construction, operation and maintenance of Community Facilities solely for the benefit of the Granville Exempted Village School District.

4.03. Creation of Lien and Personal Obligation of Community Development Charge. The Community Development Charge shall be a charge and lien on each Chargeable Parcel and shall also be the personal obligation of the Owner of each Chargeable Parcel, both to the extent and for the period provided in Article V.

4.04. Enforcement of Lien and Collection of Charge. Any lien established under this Declaration may be enforced by the Community Authority in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and, where appropriate, deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of Ohio. In any such enforcement proceeding, the amount that may be recovered by the Community Authority shall include all costs of such proceeding, including reasonable attorney's fees. In any such foreclosure sale, the Community Authority may become the purchaser.

The Community Authority may also cause the collection of any Community Development Charge by certifying that Community Development Charge to the Auditor of Licking County, Ohio for collection on the tax duplicate.

No remedy conferred upon or reserved to the Community Authority by this Declaration is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Community Authority or now or hereafter existing.

ARTICLE V

COMMUNITY DEVELOPMENT CHARGE

5.01. Establishment of Community Development Charge; Effective Date. There is hereby established for the benefit of the Community Authority, as a charge on each Chargeable Parcel, an annual Community Development Charge in an amount determined in accordance with Section 5.02. Such Community Development Charge shall be paid to the Community Authority by the Owner of each such Chargeable Parcel in the manner provided in this Article. Such charge shall be paid on each Chargeable Parcel for twenty years from its first imposition on that Chargeable Parcel.

The Community Development Charge shall not be assessed against a chargeable parcel until such time as a certificate of occupancy has been issued for a home or condominium constructed on that Chargeable Parcel.

5.02. Amount of Community Development Charge. Subject to waiver, reduction, increase or termination of the Community Development Charge as provided in Sections 6.03 and 6.04, the amount of the annual Community Development Charge for each Chargeable Parcel shall be the greater of (i) \$455 or (ii) the product of (a) the Assessed Valuation for such Chargeable Parcel, multiplied by (b) \$0.0052.

5.03. Payment. One-half of the annual Community Development Charge for each Chargeable Parcel shall be due and payable semiannually on due dates determined by the Board, unless otherwise permitted by law and approved by the Board. Each installment shall be paid within the time prescribed by the Board. No Owner shall be required to prepay any installment to the Community Authority, but nothing herein shall preclude Owner from agreeing with the Community Authority to prepay all or any part of the semiannual installments on a monthly or other basis. If Chapter 349 shall hereafter be amended to allow the payment of the Community Development Charge at more frequent intervals, the Board shall have the power to increase the frequency of such installments accordingly.

Notwithstanding the foregoing, (a) the Community Authority may enter into an agreement with any mortgage lender for the escrowing of Community Development Charge installments with such lender with respect to any Chargeable Parcel and for the periodic payment of the escrowed installments to the Community Authority, and (b) so long as such agreement continues, the Owner of any Chargeable Parcel on which such lender holds a mortgage shall, if such Owner so consents, pay the Community Development Charge installments with respect thereto directly to the lender, provided, however, that the obligation to pay the Community Development Charge shall remain that of the Owner and is not satisfied until and unless full payment of the Community Development Charge is received by the Community Authority.

5.04. Penalty and Interest. For each Chargeable Parcel for which any installment of the Community Development Charge is not paid within the period required, there shall be added to the installment (A) a penalty of ten percent thereof and (B) interest at the greater of (i) the Late Payment Rate or (ii) ten percent per year on the sum of the amount of such installment, plus the interest that has accrued thereon for more than six months, plus the penalty until paid. Any payments of less than the full amount shall be credited first against the penalty and second against the interest accrued to the date of payment. The applicable penalties and interest are part of the Community Development Charge.

5.05. Refund and Reduced Assessed Valuation. If the official assessed valuation of any Chargeable Parcel (by which the Assessed Valuation thereof is determined pursuant to Section 2.01) is reduced for any year pursuant to Sections 5715.11 through 5715.16 of the Revised Code, upon application of the Owner to the Board the Assessed Valuation shall be reduced in the same amount, and the Community Development Charge for such year shall be proportionately reduced. If any installment of such Community Development Charge has been paid before the date of such reduction, the sole procedure for refund is that the Board shall credit the same against any other amounts due or to become due to the Community Authority with respect to the Chargeable Parcel.

5.06. Personal Obligation. Each Owner shall be and remain personally obligated for the payment of the Community Development Charge with respect to his or her Chargeable

Parcel, including any penalties and interest thereon, which is attributable to that Owner's period of ownership.

5.07. Community Development Charge Lien. The Community Development Charge with respect to each Chargeable Parcel, including any penalty and interest thereon, shall constitute a continuing lien in favor of the Community Authority on such Chargeable Parcel. If an installment or any part of an installment of the Community Development Charge on any Parcel is not paid within the period provided in Section 5.03, the lien with respect to such delinquent installment or part thereof shall be enforceable in any manner provided in Section 4.04. Such lien shall be prior to all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments and liens of the United States of America, the State of Ohio, and all other political subdivisions or governmental instrumentalities of the State of Ohio to the extent made superior by applicable laws enacted by the Ohio General Assembly.

5.08. Evidence of Payment. Upon the request of the Owner or any mortgagee or lessee of any Chargeable Parcel or any prospective purchaser, mortgagee or lessee thereof, the Board shall furnish written evidence of the amount of the Community Development Charge with respect thereto for the current year and the amount of any unpaid Community Development Charge, including any penalty and interest for the current or any previous year. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Chargeable Parcel.

ARTICLE VI

PROCEDURE FOR WAIVER, REDUCTION, INCREASE OR TERMINATION OF THE COMMUNITY DEVELOPMENT CHARGE

6.01. Fiscal Meeting. Annually, the Board shall hold a Fiscal Meeting to determine whether any of the Community Development Charge should be waived, reduced, increased (but only as hereafter provided) or terminated. Any Fiscal Meeting shall be held on such date as the Board shall determine. Each Fiscal Meeting shall be open to the public, and the Board shall take no action to waive, reduce, increase or terminate the Community Development Charge except at a Fiscal Meeting.

6.02. Notice of Fiscal Meeting. Notice of the Fiscal Meeting shall be given by the Board in compliance with Section 121.22 of the Ohio Revised Code and shall also be provided to the Superintendent of the Granville Exempted Village School District at least five (5) days prior to such meeting. Such notice shall specify the place, date and hour of the Fiscal Meeting and state that it is the Fiscal Meeting required by this Article VI.

6.03. Waiver, Reduction, Increase or Termination. At any Fiscal Meeting the Board may waive, reduce or terminate all or a portion of the Community Development Charge for one or more years or to a stated date. The reduction or waiver of a portion of the Community Development Charge authorized by this Section 6.03 may include but is not limited to an additional reduction or waiver, separate and distinct from any other reduction or waiver, for the

early payment of the Community Development Charge by an Owner. Notwithstanding any other provision of this Declaration, no waiver, reduction or termination of the Community Development Charge shall be effective if it is inconsistent with the express obligations of the Community Authority under the terms of any outstanding Community Authority bonds, notes or loans authorized by the Community Authority under Chapter 349 of the Ohio Revised Code.

The Board shall have no right to increase the Community Development Charge millage rate established under Section 5.02 or extend the time period for the imposition of the Community Development Charge under Section 5.01 without the affirmative vote of at least six of the seven Board members.

Except as otherwise provided in this Declaration: (a) every action taken by the Board pursuant to this Article shall be governed by, and taken with reference to, the fiscal requirements of the Community Authority for the year for which the Community Development Charge is to be collected as reflected in the budget for that year adopted by the Board, which budget may provide for reasonable reserves and the development of funds for future uses and contingencies; and (b) any action by the Board relating to the waiver, reduction or termination of any of the Community Development Charge shall be taken only after (i) the Board has determined that the Community Development Charge to be waived, reduced or terminated is not needed for any of the purposes for which the Community Development Charge has been established as set forth in Section 4.02, and (ii) the Granville Exempted Village School District Board of Education has provided its written consent for such waiver, reduction or termination. Notwithstanding any other provision of the Declaration if a Chargeable Parcel is removed from the Granville Exempted Village School District, the Community Development Charge shall permanently terminate as to the Chargeable Parcel immediately on the date that such Chargeable Parcel has been removed from the Granville Exempted Village School District.

6.04. Discretion of the Board. Subject to the provisions of this Declaration and all applicable provisions of valid agreements of the Community Authority, the decision to waive, reduce, increase or terminate the Community Development Charge as provided herein shall be solely within the discretion of the Board.

ARTICLE VII

DURATION, AMENDMENT AND TERMINATION

7.01. Effective Date. The Restrictions shall be effective and shall be and be deemed covenants running with the land when this Declaration is recorded; provided, however, that no Community Development Charge shall be collected, and the Community Authority shall have no rights or obligations hereunder until the Community Authority executes and there is recorded an instrument by which the Community Authority joins in this Declaration for the purposes of accepting the duties, responsibilities and benefits imposed and conferred on it by the Restrictions.

7.02. Duration and Effect. The Restrictions (A) shall be and shall be construed as covenants running with the land; (B) shall be binding upon the Private Developer, the Community Authority and each Owner and Residents; and (C) shall inure to the benefit of and be enforceable by (i) the Private Developer or the Community Authority (regardless of whether or not any such beneficiary owns an interest in any Parcel), (ii) each Owner and (iii) all Residents. Unless amended or terminated as provided in this Article, the Restrictions shall continue in full force and effect until December 31, 2041, and thereafter the Restrictions shall be automatically renewed for successive ten year periods unless terminated pursuant to Section 7.03.

7.03. Termination of Restrictions. The Restrictions shall terminate and shall be null and void automatically, if and on the date when there occurs a dissolution of the Community Authority pursuant to Chapter 349. Notwithstanding any other provision of this Declaration, no termination of the Restrictions shall be effective to the extent it is inconsistent with the express obligations of the Community Authority under the terms of any outstanding Community Authority bonds, notes or loans authorized by the Community Authority under Chapter 349 of the Ohio Revised Code. Further, except as hereafter provided, no termination shall be effective unless approved in writing by The Granville Exempted Village School District Board of Education. Notwithstanding any other provision of this Declaration the Restrictions shall terminate and shall be null and void automatically as to any Chargeable Parcel if and on the date that such Chargeable Parcel is removed from the Granville Exempted Village School District.

If a final judicial adjudication is rendered or lawful executive or legislative action is taken by the government of the State of Ohio which effectively enjoins or prevents the Community Authority from (i) implementing or collecting the Community Development Charge or (ii) carrying out any other substantial or important duty or responsibility imposed on it under this Declaration or receiving or accepting any other substantial or important benefit granted to it by this Declaration, the Community Authority and the Private Developer shall, within thirty days after the rendition of such adjudication or the taking of such action (or such longer period that they may agree upon), attempt to agree upon a course of action that will remedy any defect identified in such adjudication or created by such action, and if within such thirty-day (or extended) period no course of action is agreed upon by the Community Authority and the Private Developer, subject to any applicable restrictions pertaining to outstanding bonds, notes or loans authorized by the Community Authority under Chapter 349 of the Ohio Revised Code, the Restrictions may be terminated on such date as shall be designated in a written declaration of termination by the Private Developer if within the Development Period or by the Community Authority if after the Development Period.

If the Restrictions are required or permitted to be terminated pursuant to this Section, such termination shall become effective when a certificate or other document stating the authority for such termination and signed by the person or entity or entities empowered to effect such termination is Recorded. If the Restrictions terminate automatically, the Private Developer shall promptly cause a certificate or other document to be Recorded which shall state the authority for such termination and the effective date thereof.

All rights and obligations which had accrued under the Restrictions prior to the date of termination shall survive such termination, including without limitation, all personal obligations and liens under the Declaration.

ARTICLE VIII **AMENDMENTS AND SUPPLEMENTS**

8.01. Amendments or Supplements Not Requiring Consent of Owners. Without the consent of or notice to any of the Owners, the Private Developer, until the Community Authority is formed and, thereafter, the Community Authority, may amend or supplement this Declaration (i) to cure any ambiguity, inconsistency or formal defect or omission or eliminate any typographical or other inadvertent error; (ii) to make or accommodate adjustments in the manner or method for billing and collecting the Community Development Charge; (iii) as provided in Article III; (iv) to conform this Declaration to any amendment permitted by Section 349.13 of the Ohio Revised Code to the petition filed by the Private Developer with the Board of County Commissioners of Licking County, Ohio pursuant to that Section to organize the Community Authority; or (v) to make any other amendment which, in the judgment of the Private Developer until the Community Authority is formed and, thereafter, the Community Authority, is not to the prejudice of the Owners.

8.02. Amendments or Supplements Requiring Consent of Owners. Except as provided in Sections 6.03, 7.03 or 8.01, no provision of this Declaration may be amended or supplemented in whole or in part or terminated without the written consent of not less than 66% of the number of Owners of all Parcels and of the Granville Exempted Village School District Board of Education.

For the purposes of this Section, "Parcel" shall mean such Chargeable Parcel which has a separate listing on the tax duplicate of the Auditor of Licking County, Ohio, or on the records of any other official authorized by Ohio law to assess real estate in Licking County, and all Owners of a Parcel shall be deemed to constitute one Owner and together shall only have one consent for the Parcel.

In connection with any bonds, notes or loans authorized by the Community Authority under Chapter 349 of the Ohio Revised Code, the Community Authority may agree that no amendment may be made to this Declaration and no waiver, reduction or termination of the Community Development Charge may be made without the consent of or on behalf of the holders of such securities or without the consent of any provider of a "Credit facility" as defined in Section 9.98(G) of the Ohio Revised Code. Further, notwithstanding any other provision herein to the contrary, no such actions may be taken without the written consent of the Granville Exempted Village School District Board of Education.

The Secretary shall determine (a) whether the Owners have consented to any

amendment or supplement of this Declaration, and (b) whether, if their consent is necessary, the Private Developer or the holders of any outstanding Community Authority bonds, notes or loans issued under Chapter 349 of the Ohio Revised Code or provider of a "Credit facility" as defined in Section 9.98(G) of the Ohio Revised Code have consented to any such amendment or supplement of this Declaration. Such determinations of the Secretary shall be conclusive against all Owners.

8.03. Consent of Private Developer Required During Development Period.

Notwithstanding any other provision of this Declaration, no amendments or supplements to this Declaration made during the Development Period shall be permitted without the written consent of the Private Developer.

8.04 Consent of Granville Exempted Village School District. Notwithstanding any other provision of this Declaration, no amendments or supplements to this Declaration shall be permitted without the written consent of the Granville Exempted Village School District Board of Education.

8.05. Recording of Amendments. Promptly after any amendment or supplement of this Declaration, the Secretary shall cause to be Recorded a written instrument certified by the Secretary setting forth such amendment or supplement and stating that any required written consents were obtained.

**ARTICLE IX
MISCELLANEOUS**

9.01. Priority. The Restrictions contained in this Declaration shall take priority over all other covenants, conditions, restrictions or easements applicable to any Parcel whatsoever, to the extent permitted by law and except as otherwise provided herein.

9.02. Reservation. Subject to the Declaration being recorded, but prior to the District being created pursuant to Chapter 349, Private Developer may sell to purchasers (the "Purchasers") lots which may comprise a part of the Property and be included as part of the District (the "Lots"). Purchaser, and Purchaser's successors and assigns, shall be deemed an Owner and shall take title to the Lots subject to the Declaration. In order to more fully provide for the inclusion of the Lots as part of the District, Private Developer hereby reserves to itself and its successors and assigns a reservation in the Lots and a beneficial interest and control therein solely for the purpose of including the Lots as part of the District. In consideration of the transfer of a Lot to a Purchaser, a Purchaser shall take title to a Lot subject to such reservation, and in recognition, of such reservation, and in order to more fully evidence Private Developer's reservation. Purchaser irrevocably constitutes and appoints Private Developer as such Purchaser's true and lawful attorney-in-fact, coupled with an interest, in such Purchaser's name, place and stead for the limited purpose of taking, and delegates to the Private Developer the authority to take, all such action that is necessary and appropriate, in accordance with Chapter 349, to include

a Purchaser's Lot within the District. Acceptance by a Purchaser of a deed or other instrument of conveyance from Private Developer or from any other Owner shall constitute appointment of the attorney-in-fact as provided herein. The durable power of attorney is coupled with an interest and shall not be affected by the death or disability of the Purchaser.

9.03. No Reverter. No covenant, condition, restriction or reservation contained in this Declaration is intended to create or shall be construed as creating a possibility of reverter or, except as provided in Sections 5.01 and 8.01, a condition subsequent.

9.04. Severability. In case any section or provision of this Declaration or any Restriction, agreement, obligation, act or action or part thereof, made, assumed, entered into, done or taken under this Declaration or a Restriction or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder of this Declaration or any other section or provision of this Declaration or any other Restriction, agreement, obligation, act or action, or part thereof, made, assumed, entered into, done or taken under this Declaration, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein. Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, restriction, agreement, obligation, act, action, part, or application, all of which shall be deemed to be effective, operative, made, assumed, entered into, done or taken in the manner and to the full extent permitted by law from time to time.

9.05. Construction. The Board, where specifically authorized herein to act, shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

9.06. Headings. The headings of the Articles and Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

9.07. Interpretation and References. Any reference in this Declaration to a section or provision of the Ohio Revised Code or to the laws of Ohio shall include that section or provision and those laws as from time to time amended, modified, revised, supplemented or superseded. However, no such amendment, modification, revision, supplementation or supersession, or further action by the General Assembly, shall alter the obligation to pay the Community Development charge in the amount and manner and at the times provided in this Declaration, or otherwise impair the application of the Restrictions, except to the extent that the Restrictions cannot be sustained by reason of such amendment, modification, revision, ample orientation or supersession.

Unless the context otherwise indicates, the masculine gender shall be deemed to include the feminine and neuter, and the singular shall be deemed to include the plural, and vice

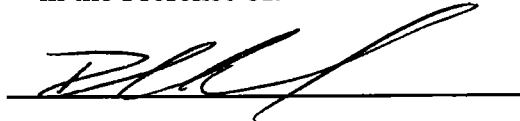
versa.

References in this Declaration to sections and articles, unless otherwise stated, are to sections and articles of this Declaration. The terms "hereof", "herein", "hereby", "hereto", and "hereunder", and similar terms, mean and refer to this Declaration.

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

Signed and acknowledged
in the Presence of:

131 River Road, LLC, an Ohio
Limited Liability Company



By: 

Print Name: Paul S. Coppel

M/I Schottenstein Homes, Inc.
Managing Member
By Robert H. Schottenstein
Vice-Chairman




Print Name: HARRISON W. SMITH JR

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

Before me, a Notary Public in and for said County personally came Robert H. Schottenstein of 131 RIVER ROAD, LLC, who executed the foregoing Declaration and acknowledged that he signed such Declaration as such managing member of 131 RIVER ROAD, LLC on behalf of 131 RIVER ROAD, LLC, and that such Declaration is his or her free act and deed as such officer and the free act and deed of 131 RIVER ROAD, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this 6th day of January, ~~2000~~.


Notary Public

This document prepared by: **Smith and Hale**
37 West Broad Street
Columbus, Ohio 43215

schotnew.res
11/1/99



Nicholas C. Cavalaris, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My Commission has no expiration date
Section 147.03-R.C.

EXHIBIT "A" page 1 of 6
ANNEXATION OF 281.052 ACRES
TO THE CITY OF NEWARK

Situated in the State of Ohio, County of Licking, Township of Granville, being a part of Lots 2 through 5, located in the 4th Quarter, Township-2, Range-13, United States Military Lands, and being all of those tracts as conveyed to Gebhard W. Keny by deeds of record in Official Record Volume 4, Page 759, Deed Book Volume 656, Page 638, and Deed Book Volume 819, Page 877, all references being to those of record in the Recorder's Office, Licking County, Ohio, and being bounded and more particularly described as follows:

Beginning at a point marking the intersection of the centerline of Township Road 131, also known as River Road, and the westerly line of said Lot 2, said point being about 1240 feet westerly of the intersection of said centerline of Township Road 131 and the City of Newark Corporation Line;

thence the following courses and distances along said centerline of Township Road 131:

North 83°37'12" West, a distance of 1846.76 feet to a point;

North 81°36'12" West, a distance of 85.97 feet to a point;

North 66°52'12" West, a distance of 108.51 feet to a point;

North 53°22'12" West, a distance of 112.91 feet to a point; AND

North 52°24'12" West, a distance of 96.02 feet to a point on the easterly line of Lot 5;

thence leaving said centerline of Township Road 131, North 06°57'48" East, along said easterly line of Lot 5, a distance of 23.00 feet to a point;

thence the following courses and distances along the southerly, easterly, and northerly lines of that 0.478 acre tract as conveyed to Ralph L. and Evelyn L. Butt by deed of record in Deed Book Volume 684, Page 61:

South 64°00'12" East, a distance of 92.03 feet to a point;

North 06°57'48" East, a distance of 243.00 feet to a point; AND

North 83°02'12" West, a distance of 87.00 feet to a point on said easterly line of Lot 5;

thence North 06°57'48" East, along said easterly line of Lot 5 and the easterly line of those tracts as conveyed to David S. and Bunni L. Smith by deed of record in Official Record Volume 384, Page 166, and to Michael J. and Ann M. Showman by deed of record in Official Record Volume 50, Page 434, and Official Record Volume 211, Page 652, a distance of

EXHIBIT "A" pg. 2 of 6
ANNEXATION OF 281.052 ACRES
TO THE CITY OF NEWARK
PAGE 2

1942.43 feet to a point;

thence leaving said easterly line of Lot 5, North $81^{\circ}32'37''$ West, along the northerly line of said Showman tracts, a distance of 1122.40 feet to a point on the westerly line of said Lot 5;

thence North $07^{\circ}05'45''$ East, along said westerly line of Lot 5 and the easterly line of that tract as conveyed to Donald R. and Donna L. Wood by deed of record in Official Record Volume 343, Page 256, a distance of 1153.10 to a point on the south bank of Raccoon Creek;

thence leaving said westerly line of Lot 5, the following courses and distances along the southerly line of that 7.564 acre tract as conveyed to The Granville Land Conservancy by deed of record in Official Record Volume 400, Page 916:

North $83^{\circ}29'22''$ East, a distance of 370.92 feet to a point;

North $59^{\circ}42'42''$ East, a distance of 167.48 feet to a point; AND

North $56^{\circ}05'38''$ East, a distance of 686.05 feet to a point in the former railroad southwesterly right-of-way line, now a bike path, as conveyed to the Thomas J. Evans Foundation by deed of record in Deed Book Volume 809, Page 1018;

thence the following courses and distances along the aforementioned southwesterly right-of-way line:

South $47^{\circ}34'36''$ East, a distance of 130.80 feet to a point of curvature;

thence three consecutive curves to the left having chord bearings and distances of:

South $59^{\circ}23'12''$ East, a distance of 96.04 feet to a point;

South $60^{\circ}33'12''$ East, a distance of 326.02 feet to a point; AND

South $69^{\circ}54'12''$ East, a distance of 255.37 feet to a point of tangency;

South $72^{\circ}43'12''$ East, a distance of 273.22 feet to a point of curvature;

thence two consecutive curves to the right having chord bearings and distances of:

South $69^{\circ}21'12''$ East, a distance of 297.88 feet to a point; AND

South $58^{\circ}57'12''$ East, a distance of 393.58 feet to a point of tangency.

EXHIBIT "A" pg. 3 of 6
ANNEXATION OF 281.052 ACRES
TO THE CITY OF NEWARK
PAGE 3.

South 54°24'42" East, a distance of 741.64 feet to a point marking a point of curvature, said point also being on the easterly line of Lot 3 and the westerly line of Lot 2; AND

continuing along said southwesterly bike path right-of-way line and along a curve to the right having a chord bearing and distance of South 42°53'09" East, 2072.89 feet to a point in the easterly line of Lot 2;

thence leaving said southwesterly bike path right-of-way line, South 07°03'24" West, along the easterly line of Lot 2, the westerly line of Lot 1, and the Corporation Line of the City of Newark, a distance of 1169.14 feet to a point;

thence leaving said lot line and Corporation Lines, North 81°57'44" West, along the northerly line of that 4.66 acre tract as conveyed to Richard E. and Lilia M. Freeman by deed of record in Deed Book Volume 731, Page 81, a distance of 394.67 feet to a point;

thence South 06°16'48" West, along the westerly line of said 4.66 acre Freeman tract, a distance of 686.66 feet to a point on the centerline of Township Road 131;

thence North 82°50'12" West, along said centerline of Township Road 131, a distance of 200.00 feet to a point;

thence leaving said centerline, the following courses and distances along the easterly, northerly, and westerly lines of that 30.5 acre tract as conveyed to Ronald R. and Carol A. Harris by deed of record in Deed Book Volume 741, Page 603:

North 06°16'48" East, a distance of 1354.25 feet to a point;

North 82°50'12" West, a distance of 973.58 feet to a point; AND

South 06°45'48" West, a distance of 1356.74 feet to the Point of Beginning and containing 281.052 acres, more or less.

Bearing are based on the westerly line of that 37.196 acre Gebhard W. Keny tract as being North 07°05'45" East, as recorded in Deed Book Volume 819, Page 877.

The above description was prepared from existing deed records and is to be used for annexation purposes only.

Subject to all valid and existing easements, restrictions and conditions of record.

October 27, 1994
L106/P01-01




Lawrence E. Ball, P.S.
Reg. Surveyor No. 6878

THE FOREGOING REAL PROPERTY IS FURTHER DESCRIBED AS FOLLOWS:

EXHIBIT A
Pg. 4 of 6

Situated in the State of Ohio, County of Licking, City of Newark, located in Farm Lots 2, 3, 4 and 5, Quarter Township 4, Township 2, Range 13, United States Military Lands, being all out of those tracts of land conveyed to Gebhard W. Keny by deeds of record in Deed Book 656, Page 638, Deed Book 819, Page 877 and Official Record 4, Page 759, all references being to the records of the Recorder's Office, Licking County, Ohio, and more particularly bounded and described as follows:

Beginning at a P.K. Nail set at the intersection of the common line between Farm Lots 2 and 3 and the centerline of River Road (Township Road 131), said P.K. Nail also being the southwesterly corner of that tract conveyed to Ronald R. & Carol A. Harris by deed of record in Deed Book 741, Page 603;

thence with said centerline of River Road, the following courses and distances:

North 86° 43' 03" West, a distance of 1926.31 feet to a P.K. Nail set;

North 69° 33' 36" West, a distance of 108.39 feet to a P.K. Nail set;

North 56° 28' 22" West, a distance of 112.91 feet to a P.K. Nail set; and

North 55° 30' 22" West, a distance of 96.02 feet to an iron pin found at the southeasterly corner of that tract conveyed to David S. & Bunni L. Smith by deed of record in Official Record 384, Page 166;

thence North 3° 51' 38" East, with the easterly line of said Smith tract, a distance of 23.00 feet to an iron pin set at the southwesterly corner of that tract conveyed to Ralph L. and Evelyn L. Butt by deed of record in Deed Book 684, Page 61;

thence with the boundary of said Butt tract, the following courses and distances:

South 67° 06' 22" East, a distance of 92.03 feet to an iron pin set;

North 3° 51' 38" East, a distance of 243.00 feet to an iron pin set; and

North 86° 08' 22" West, a distance of 87.00 feet to an iron pin set in the easterly line of said Smith tract;

thence North 3° 51' 59" East, with the easterly lines of said Smith tract, those tracts conveyed to Michael J. and Ann M. Showman by deeds of record in Official Record 50, Page 434, and Official Record 211, Page 652 and the common line of Farm Lots 4 and 5, a distance of 1942.51 feet to a post;

thence North 84° 38' 47" West, with the north line of said Showman tract (Official Record 211, Page 652), a distance of 1121.90 feet to an iron pin set in the easterly line of that tract conveyed to Donald R. & Donna L. Wood by deed of record in Official Record 343, Page 256;

thence North 3° 59' 35" East, with said easterly line and the common line of Farm Lots 5 and 6, a distance of 1151.42 feet to an iron pin set at the southwesterly corner of that tract conveyed to The Granville Land Conservancy by deed of record in Official Record 400, Page 916;

thence with said Conservancy boundary, the following courses and distances:

North 80° 24' 31" East, a distance of 370.92 feet to an iron pin found;

North 56° 37' 51" East, a distance of 167.37 feet to an iron pin found; and

North 53° 01' 07" East, a distance of 685.99 feet to an iron pin set in the southerly line of that tract conveyed to Thomas J. Evans Foundation by deed of record in Deed Book 809, Page 1018;

Thence with said Foundation boundary, the following courses and distances:

South 50° 31' 13" East, a distance of 130.02 feet to an iron pin set on the arc of a curve to the left;

With the arc of said curve (Delta = 2° 20' 00", Radius = 2358.46 feet), a chord bearing and distance of South 62° 29' 22" East, 96.04 feet to an iron pin set on the arc of a curve to the left;

With the arc of said curve (Delta = 18° 42' 00", Radius = 1003.35 feet), a chord bearing and distance of South 63° 39' 23" East, 326.02 feet to an iron pin set on the arc of a curve to the left;

With the arc of said curve (Delta = 5° 38' 00", Radius = 2598.38 feet), a chord bearing and distance of South 73° 00' 23" East, 255.37 feet to an iron pin set;

South 75° 49' 23" East, a distance of 273.22 feet to an iron pin set at a point of curvature to the right;

With the arc of said curve (Delta = 6° 44' 00", Radius = 2536.20 feet), a chord bearing and distance of South 72° 27' 73" East, 297.88 feet to an iron pin set on the arc of a curve to the right;

With the arc of said curve (Delta = 9° 07' 04", Radius = 2475.85 feet), a chord bearing and distance of South 62° 02' 23" East, 393.58 feet to an iron pin set;

South 57° 29' 50" East, a distance of 740.47 feet to an iron pin set at a point of curvature to the right; and

With the arc of said curve (Delta = 23° 05' 38", Radius = 5177.80 feet), a chord bearing and distance of South 45° 57' 02" East, 2072.89 feet to an iron pin found at the northwesterly corner of that tract conveyed to Sara T. Lindsey by deeds of record in Deed Book 638, Page 325 and Deed Book 717, Page 828;

thence South 3° 59' 31" West, with the westerly line of said Lindsey tract and the common line of Farm Lots 1 and 2, a distance of 1169.03 feet to an iron pin found at a northeasterly corner of that tract conveyed to Lelia M. Freeman by deed of record in Official Record 737, Page 81;

thence North 85° 01' 37" West, with the northerly line of said Freeman tract, a distance of 394.67 feet to an iron pin set;

thence South 3° 10' 32" West, with the westerly line of said Freeman tract, a distance of 682.73 feet to a P.K. Nail found in the centerline of said River Road;

thence North 86° 06' 02" West, with said centerline, a distance of 200.19 feet to a P.K. Nail set at the southeasterly corner of said Harris tract;

thence with the boundary of said Harris tract, the following courses and distances:

North 3° 04' 10" East, a distance of 1354.18 feet to an iron pin found;

North 86° 03' 16" West, a distance of 972.66 feet to an iron pin found; and

South 3° 44' 54" West, a distance of 1353.67 feet to the point of beginning, containing 280.184 acres of land, more or less.

Subject, however, to all legal rights-of-ways and/or easements, if any, of previous record.

The bearings for this description are based on the Ohio State Plane Coordinate System as per NAD 83 using NGS Benchmarks KZ2143 and KZ2146, using Global Positioning System procedures and equipment.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Matthew A. Kirk 16 FEB 99

Matthew A. Kirk
Registered Surveyor No. 7865

MAK/mf

DESCRIPTION APPROVED TIM LOLLO LICKING COUNTY ENGINEER	
TAX MAP DRAWING NO	APPROVED BY