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Filed _____
PARTNERSHIP NO. _____
Date 1-7-81 At _____
HELEN M. FREDERICK
Portage County Recorder
Per _____

RECEIVED FOR RECORD
Jan 7 1981
At 10:15 o'clock AM
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In Portage County Records
Of _____
Vol. 987 p. 218-215
HELEN M. FREDERICK
PORTAGE COUNTY RECORDER
Per 2650

MASTER WARRANTY DEED AND DECLARATION
OF COVENANTS AND RESTRICTIONS

INDEXED

That, PORTAGE HOMES, INC. and its successor THE WALDEN COMPANY, LTD., an Ohio Limited Partnership, the Grantor, who claims title by or through instrument recorded in Volume _____, Page _____, Portage County Recorder's Office for the consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable considerations, received to its full satisfaction of Manuel Barenholtz, the Grantee, whose tax mailing address will be 700 Bissell Road, Aurora, Ohio 44202, does give, grant, bargain, sell and convey unto the said Grantee, his heirs and assigns, the following described premises:

Situated in the City of Aurora, County of Portage and State of Ohio, and further described in Exhibit A, attached hereto and incorporated by reference herein.

Grantor and Grantee declare in consideration of this conveyance and in accordance with the General Plan for the development of the West Aurora proposed subdivision, of which the above described property is a part, and which is sometimes referred to and known as Walden, and further in accordance with the General Plan of the Grantor for the development of the property described in Exhibit A which plan was submitted to the Aurora Village Planning Commission and approved and zoned by Village Ordinance Nos. 1968-560C (hereinafter Plan), the following:

WITNESSETH:

WHEREAS, Grantor, is the owner of the real property described in Plan and desires to continue the development thereon of a planned residential community providing for residential homes and dwelling units in single and multi-family arrangements; for condominium units; for commercial facilities and for parks, waterways, ponds, open spaces and other common facilities; and,

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NO TRANSFER
REQUIRED
1/9/81
VICTOR BIASELLA
AUDITOR *fmcc*

RECEIVED FOR RECORD
TAX MAP DEPT.
BY *[Signature]* DATE 1-9-81

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WHEREAS, a portion of said community has been partially completed through the establishment of Condominiums, Subdivisions and improvements and amenities upon common properties which portions of said communities have been subjected to covenants, restrictions, easements, charges and liens similar to those hereinafter set forth as evidenced by instruments recorded in Volume 844, Pages 16-40, Volume 868, Pages 426-450, Volume 877, Pages 141-165, Volume 899, Pages 587 et seq., Volume 906, Pages 534-565, Volume 921, Pages 293-325, Volume 924, Pages 655-684, and Volume 943, Pages 151-181, Volume 969, Pages 9-37, Volume 953, Pages 125-150, and Volume 973, Pages 61-87, Portage County Recorders Office; and,

WHEREAS, Grantor has incorporated under the laws of the State of Ohio, as a non-profit corporation, THE WALDEN ASSOCIATION, for the purpose of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and correcting and disbursing the assessments and charges heretofore and hereinafter created; and,

WHEREAS, Grantor has created an Architectural Committee for the purpose of supervising the physical and architectural development of the community; and,

WHEREAS, said completed portion of said community is presently being supervised and administered by said Architectural Committee and Association; and,

WHEREAS, it is the intention of Grantor to in the future finalize the development of said community through the establishment of additional Condominiums, Subdivisions and improvements and amenities upon common properties which will also be supervised and administered by said Architectural Committee and Association; and

WHEREAS, Grantor, desirous of continuing to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, waterways, ponds, open spaces and other common facilities, to that end desires to subject the real property described herein together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each

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owner thereof; and each and all of which are similar to and a continuation of the overall scheme of development of said community as proposed in Plan; and

WHEREAS, Grantor desires to consolidate the covenants, restrictions, easements, charges and liens set forth in the various above-mentioned instruments for the purpose of providing a convenient means by which the aforesaid covenants and restrictions can be set forth without regard as to the specific instrument which submitted a specific portion of the West Aurora Subdivisions to the Plan; and

WHEREAS, all of the aforementioned separate instruments are substantially identical in wording and effect with each other and with this instrument;

NOW, THEREFORE, Grantor declares that the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth constitute those Covenants and Restrictions to which the various properties described in the various Deeds and Declarations aforementioned are subjected and that the language used in this instrument shall control over any inconsistent language used in any of the aforementioned Deeds and Declarations; and,

NOW, THEREFORE, Grantor declares that the real property described herein, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Deed and Declaration or any Supplemental Deed and Declaration (unless the context shall prohibit) shall have the following meanings:

- a. "Association" shall mean and refer to The Walden Association.
- b. "The Existing Properties" shall mean and refer to the property described herein, and additions thereto, as are subject to this Deed and Declaration or any Supplemental Deed and Declaration under the provisions of Article II, hereof.
- c. "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Existing Properties and intended to be devoted to the common use and enjoyment of the owners and/or residents of The Existing Properties. This, however, does not include common areas

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within any parcel subject to a Condominium Declaration of Ownership.

- d. "Development Period" shall be the period from August 25, 1969, to January 10, 1981.
- e. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Existing Properties; whether heretofore or hereafter recorded, with the exception of Common Properties as heretofore defined.
- f. "Other Parcel of Land" shall mean and refer to any other aggregate of land which is not a Lot.
- g. "Living Unit" shall mean and refer to any portion of a building situated upon The Existing Properties designed and intended for use and occupancy as a residence by a single family.
- h. "Multi-family Structure" shall mean and refer to any building containing more than one Living Unit under one roof except when each such Living Unit is situated upon its own individual lot.
- i. "Owners" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot, Living Unit, or other Parcel of Land situated upon The Existing Properties, but notwithstanding any applicable theory of the Mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- j. "Member" shall mean and refer to all those Owners, who are members of the Association as provided in Article IV, Section 1, hereof.

ARTICLE II

ADDITIONS TO PROPERTY SUBJECT TO DEED AND DECLARATION

Section 1. Additional lands may become subject to this Deed and Declaration in the following manner: The Grantor, its successors and assigns, shall have the right without consent of owners or Association to bring within the scheme and operation of this Deed and Declaration additional properties. Said additional properties shall not be limited to lands included in the Plan and properties not part of the Plan may be added in accordance with this Article.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Deed and Supplementary Declaration of Covenants and Restrictions with respect to the additional property which will extend the scheme of the covenants and restrictions of this Deed and Declaration to such property.

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Such Deed and Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Deed and Declaration as may be necessary to reflect the different character, if any, of the added properties. In no event, however, shall such Deed and Supplementary Declaration revoke, modify or add to the covenants established by this Deed and Declaration as they affect The Existing Properties.

In no event shall additions contemplated herein be made after January 10, 1981.

Section 2. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations, may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Deed and Declaration within The Existing Properties together with the covenants and restrictions established upon any other properties as one scheme. No merger or consolidations, however, shall effect any revocation, change or addition to the covenants established by this Deed and Declaration within The Existing Properties.

ARTICLE III

GENERAL PLAN OF DEVELOPMENT (PLAN)

The Grantor, its successors and assigns, is not bound to adhere to the Plan in any subsequent development of the land shown thereon, and representations of salesmen, agents, employees of Grantor or of Grantor's successors in interest shall not in any way bind Grantor, or its successors in interest to adhere to the Plan in any subsequent development. It also shall be understood that the Grantor shall be free to develop such portions or sections of the lands depicted in the Plan, as, in the reasonable exercise of its discretion, it deems in the best interest of the entire development, without regard to the relative location of such portions

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or sections within the overall Plan; that it shall not be required to follow any predetermined sequence or order of improvement and development; and that it may bring within the scheme of this Deed and Declaration, additional lands, and develop the same before completing the development of The Existing Properties.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject to these Covenants and Restrictions shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. Each member shall have such voting rights as are provided in the Code of Regulations of the Association.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section (3), every Member shall have a right and easement of enjoyment in and to the Common Properties regardless of whether title to said Common Properties has been conveyed to Association as provided in Section (2), and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Title to Common Properties. The Grantor may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Grantor, the Association is able to maintain the same but notwithstanding any provisions herein, the Grantor hereby covenants, for itself and its successors and assigns, that it shall convey the Common Properties to the Association no later than January 10, 1981.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association, as provided in its Code of Regulations, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, or for any period during which any infraction of its published rules and regulations continues, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment; and,
- b. The right of the Association to dedicate or transfer all or any part of the Common Properties to any municipal, county, state, Federal or other public agency, authority or utility, for such purposes and subject to such conditions as may be agreed upon by the members, provided that no such dedication, transfer, or determination as to the purposes of or as to the conditions of such dedication or transfer shall become effective unless, after written notice of the proposed resolution authorizing such action is sent to every member at least ninety (.90) days in advance of the scheduled meeting at which such action is to be taken, such dedication, transfer and determination as to purpose and conditions thereof shall be authorized by the vote in person or by proxy of two-thirds of all of the votes eligible to be cast by all of the Members of the Association; and,
- c. The right of the Association in accordance with its Articles and Code of Regulations, to borrow money for the purpose of improving the Common Properties and to mortgage said properties. In the event of a default upon any such mortgage, the lender shall have a right, after taking possession of such properties, to charge fees as a condition to continued enjoyment by the Members until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and,
- d. The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and,
- e. The right granted for utility and sewer easements benefiting existing property and easements for maintenance of lands along the roadways and highways serving The Existing Properties.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Grantor for each Lot, Living Unit, or Other Parcel of Land owned by it within The Existing Properties hereby covenants and each "Owner" by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for captial improvements, such assessments to be fixed,

NO. 0984-00221

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Address.

established, and collected from time to time as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien perpetually upon the property against which each such assessment is charged. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. In the case of co-ownership of any Lot, Living Unit, or Other Parcel of Land, all of such co-owners shall be jointly and severally liable.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the general welfare, security and health of the residents of The Existing Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, adjacent lands and of the homes situated upon The Existing Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and maintenance thereof, and for the cost of labor, equipment, materials, services, management, and supervision thereof.

Section 3. Amount and Basis of Annual Assessments. The basic annual assessment per Lot or Living Unit shall be One Hundred Twenty Dollars (\$120.00) until the occurrence of any of the following conditions or events:

- a. From and after January 10, 1981 the basic annual assessment may be increased by a two-thirds vote of the Members of the Association entitled to vote on such issues.
- b. In the event Grantor delivers and conveys to Association title to all of the Common Properties, at any time after such conveyance the basic annual assessment may be increased by a two-thirds vote of the Members of the Association entitled to vote on such issue.
- c. Commencing in 1971 the basic annual assessment for each year shall be increased or decreased by the same percentage that the National Consumer Price Index (published by the Bureau of Labor Statistics of the U.S. Department

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of Labor) as of January 1, of that year has increased over the same Index as of January 1, 1970. Such additional amounts resulting from said increase in said consumer price index shall be added to the basic annual assessment and shall be due and payable by Owners as provided in this Deed and Declaration and the Code of Regulations of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section (3) hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting. In the event that any such special assessment exceeds two hundred per cent (200%) of the annual assessment, the Board of Trustees of the Association may provide for the payment of said assessment by those obligated to pay the same over a period not to exceed five (5) years with interest at a rate set by the Board of Trustees but not to exceed the maximum permissible by law. There shall be no special assessments until after the expiration of Development Period unless Grantor conveys title to the Common Properties to Association prior to the expiration of Development Period.

Section 5. Quorum for any Action Authorized Under Section (4). The Quorum required for any action authorized by Section (4) hereof shall be as follows:

At the first meeting called, as provided in Section (4) hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section

(4) and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessment shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the 10th day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year shall be an amount which bears the same relationship to the annual assessment provided for in Section (3) hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section (4) hereof shall be fixed in the resolution authorizing such assessment.

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot, Living Unit, or Other Parcel of Land for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of Association.

- a. The Association shall have a lien upon the estate or interest in the property of the Owner thereof for the payment of any assessments attributable to such property which remain unpaid for ten (10) days after the same have become due and payable (being the dates specified in Section 6 hereof) from the time a certificate therefor, subscribed by the Association, is filed with the Recorder of Portage County, Ohio, pursuant to authorization given by the Board of Directors of the Association. Such certificate shall contain a description of the property, the name or names of the record owner or owners thereof, and the amount of such unpaid assessments. Such lien shall remain valid for a period of five (5) years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the Court in an action brought to discharge such lien as hereinafter provided. In addition, the unit owner and occupant thereof shall be personally liable for such expenses chargeable for the period of his ownership or occupancy.
- b. In addition to other remedies of the Association provided for herein, if the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum rate allowable by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, and there shall be added to the amount of such assessment the cost of filing suit, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any

other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from assessments, annual and special, charges, liens, created herein:

- a. All properties in the name of the Grantor until conveyed to another Owner as defined herein. Any transfer to a person, firm, corporation or other entity merely for the purpose of changing the form of Grantor's ownership or for the purpose of holding said properties for sale or the construction of improvements thereon shall be deemed not to be a transfer to another Owner.
- b. All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use.
- c. All Common Properties as defined in Article I, Section 1 hereof.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessment, charges, or liens.

ARTICLE VII

COVENANT FOR MAINTENANCE

Each owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, including the mowing of lawns, and other appropriate care of all external improvements situated on said Lot, in a manner and with such frequency as is consistent with good property management. If in the opinion of the Architectural Committee as hereinafter defined, any Owner fails to perform the duties imposed by this Section the Association after approval by a majority decision of its Board of Directors or the Grantor, and, after thirty (30) days written notice to Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Lot and/or Other Parcel of Land in question and to repair, maintain, and restore the Lot or Other Parcel of Land or such improvements and the cost thereof shall be a binding, personal obligation of such Owner as well as a charge and a lien enforceable in the same manner as provided in Article VI, Section (8) herein.

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ARTICLE VIII

ARCHITECTURAL COMMITTEE: ARCHITECTURAL CONTROL

Section 1. The Architectural Committee shall be composed of those three or more individuals so designated from time to time (1) by Grantor and (2) by the Association after the Development Period, Association being entitled at all time after the Development Period to appoint a majority thereof. Except as hereinafter provided, the affirmative vote of a majority of the membership of the Architectural Committee shall be required in order to adopt or promulgate any rule or regulation or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorization contained herein with respect to The Existing Properties. With regard to review of plans and specifications as set forth in this Article VIII, however, and with regard to all other specific matters (other than the promulgation of rules and regulations) as may be specified by resolution of the entire Architectural Committee, each individual member of the Architectural Committee shall be authorized to exercise the full authority granted herein to the Architectural Committee. Any approval by one such member of any plans and specifications submitted under this Article VIII, or the granting of any approval permit or authorization by one such member in accordance with the terms hereof, shall be final and binding. Any disapproval, or approval based upon modification or specified conditions by one such member shall also be final and binding, provided, however, that in any such case, any applicant for such approval permit or authorization may, within ten (10) days after receipt of notice of any such adverse decision, file a written request to have the matter in question reviewed by the entire Architectural Committee. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to and reviewed as soon as possible by the entire Architectural Committee. Thereafter, the decision of a majority of the members of the Architectural Committee with respect to such matter will be final and binding.

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Section 2. No structure shall be commenced, erected, placed, moved on to or permitted to remain on any Lot, or Other Parcel of Land, and the word "Lot" as used in this Article VIII shall hereafter mean and include any parcel of land to which this Deed and Declaration applies, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor, shall have been submitted to and approved by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee.

Section 3. The Architectural Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- a. The failure of such plans or specifications to comply with any of the Covenants and Restrictions;
- b. Failure to include information in such plans and specifications as may have been reasonably requested;
- c. Objection to the exterior design, appearance or materials of any proposed Structure;
- d. Incompatibility of any proposed Structure or use with existing Structures or uses upon other Lots in the vicinity;
- e. Objection to the location of any proposed Structure upon any Lot or with reference to other Lots in the vicinity;
- f. Objection to the grading plan for any Lot;
- g. Objection to the finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Structure;
- h. Objection to parking areas proposed for any Lot on the grounds of
 - i. incompatibility to proposed uses and Structures on such Lot; or
 - ii. the insufficiency of the size of parking areas in relation to the proposed use of the Lot; or
 - iii. Any other matter which, in the judgment of the Architectural Committee, would render the proposed Structures or uses inharmonious with the general plan of improvement of The Existing Properties or with Structures or uses located upon other Lots or other Living Units in the vicinity.

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In any case where the Architectural Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval, and the Architectural Committee shall encourage the use of professional assistance in arriving at an acceptable proposal.

Section 4. Upon approval by the Architectural Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications may be required to be deposited for permanent record with the Architectural Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 5. The Architectural Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, and may from time to time amend and modify such rules and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. The Architectural Committee may issue certificates of compliance upon completion of approved improvements and may promulgate rules governing their issuance.

In the event that the Architectural Committee fails to approve or disapprove any plans and specifications as herein provided within sixty (60) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

Section 6. If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Architectural Committee pursuant to the provisions of this Article VIII, such alterations, erections, maintenance or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Architectural Committee, any such Structure

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so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

If thirty (30) days after the notice of such violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, the Association shall have the right, through its agents and employees to enter upon such lot and to take such steps as may be necessary to extinguish such violations and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien enforceable in the same manner as provided in Article VI, Section (8) herein.

Section 7. Any agent of the Association or the Architectural Committee may upon notice to the Owner at reasonable times enter upon and inspect any Lot and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon, are in compliance with the provisions hereof; and neither the Association nor the Architectural Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE IX

GENERAL COVENANTS AND RESTRICTIONS

Section 1. Without the prior written approval of the Architectural Committee:

- a. No previously approved Structure shall be used for any purpose other than that for which it was originally designed;
- b. No Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise;
- c. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained except that one antenna for normal television reception may be used not in excess of thirty-five (35) feet in height above ground level, provided, however, that in the event a cable television transmission system is available

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to Owner, said Owners must within ninety (90) days after the availability of such cable system discontinue the use of the external television antennas and remove the same from the exterior of any Dwelling, Lot, or Living Unit.

- d. No boat, boat trailer, house trailer, camping trailer, trailer or mobile home, motor home, truck or any similar items shall be stored in the open on any Lot or parked on any Lot except for loading and unloading.

Section 2. No birds, animals or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or business enterprise be conducted on The Existing Properties. The Architectural Committee may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals, birds, or insects that may be kept on any Lot.

Section 3. No sign or other advertising device of any nature shall be placed upon any Lot, except:

- a. A sign advertising a dwelling for sale not in excess of eight (8) square feet.
- b. Signs placed by Grantor or successor developer promoting the development and providing information to Owners and prospective purchasers.

Section 4. No temporary building, trailer, garage or building in the course of construction or other Structure shall be used, temporarily or permanently, as a residence on any Lot.

Section 5. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction of any approved Structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on the day that a pick-up is to be made at such place on the Lot which will afford access to persons making such pick-up. At all other times such containers shall be stored in such manner so that they cannot be seen from adjacent and surrounding Lots or Living Units. The Architectural Committee, in its discretion may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on The Existing Properties.

Section 6. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation purposes. No Lot or Other

Parcel of Land shall be used for the purposes of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

ARTICLE X

EASEMENTS

Section 1. Easements and rights-of-way are hereby expressly reserved to Grantor, its successors and assigns, in, on, over and under the "easement area", as hereinafter defined, of each Lot, for the following purposes:

- a. For the erection, installation, construction and maintenance of
 - i. poles, wires, lines and conduits, and the necessary or proper attachments in connection with the transmission of electricity, telephone, community antenna television cables and other utilities and other similar facilities, and
 - ii. storm-water drains, land drains, public and private sewers, pipe lines for supplying gas, water and heat, and for any other public or quasi-public utility facility, service or function whether above ground or underground; and
- b. For slope control purposes, including the right to grade and plan slopes and prevent the doing of any activity which might interfere with slope ratios approved by Grantor, its successors and assigns, or which might create erosion or sliding problems, or change, obstruct or retard drainage flow.

Grantor and its respective agents, assigns and successors, shall have the right to enter upon all parts of the easement area of each lot for any of the purposes for which said easements and rights-of-way are reserved.

Grantor shall also have the right at the time of, or after, grading any street, or any part thereof, to enter upon any abutting Lot or Other Parcel of Land and grade the portion of such Lot or Other Parcel of Land adjacent to such street to a slope of 2 to 1, but there shall be no obligation on either of them to do such grading or to maintain the slope.

Section 2. The term "easement area", as used herein, shall mean and refer

- a. To those areas on each Lot or Other Parcel of Land with respect to which easements are shown on the recorded subdivision plat relating thereto; or
- b. If no easements are shown on any such plat, to a strip of land within the Lot lines of each Lot or Other Parcel of Land ten (10) feet in width in the front and rear of the Lot and Other Parcel of Land and five (5) feet in width on each side, each said distance being measured in each case from the Lot line toward the center of the Lot or Other Parcel of Land.

ARTICLE XI

RESIDENTIAL PROTECTIVE COVENANTS AND RESTRICTIONS

Section 1. No Lot or Living Unit shall be used for other than residential purposes. No dwelling designed and intended for single family purposes may be rented to students, boarders, or others and shall be used only for single family purposes.

Section 2. No profession or home industry shall be conducted on any part of a Lot or Other Parcel of Land or in any improvement thereon on The Existing Properties.

Section 3. No clothing or any other household fabrics shall be hung in the open on any Lot or Other Parcel of Land unless the same are hung from an umbrella or retractable clothes hanging device which is removed from view when not in use or unless the same are enclosed by a fence or other enclosure at least six inches (6") higher than such hanging articles, provided such fence or other enclosure is approved by the Architectural Committee. No machinery shall be placed or operated upon any Lot or Other Parcel of Land except such machinery as is usual in maintenance of a private residence.

ARTICLE XII

WATERFRONT AREAS AND WATERWAYS

Section 1. Any Lot or Other Parcel of Land which shall abut any pond, lake, stream, canal or other waterway (hereinafter collectively referred to as "Waterways") shall be subject to the following additional restrictions:

- a. No wharf, pier, bulkhead, or other structure or obstruction shall be built or maintained upon any waterfront site or into or upon any waterway on the Property or adjacent thereto except with the specific written approval of the Association. In no event shall any such structure or obstruction be permitted if it is deemed to offer any threat whatsoever to safe navigation upon such Waterway or to the safe and convenient use of such Waterway as a recreation facility.
- b. No boat canal shall be constructed upon any Lot or Other Parcel of Land nor shall any facility or device be constructed or installed upon any Lot or Other parcel of Land which shall in any way alter the course of or natural boundaries of any waterway or which shall involve or result in the removal of water from any Waterway.

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- c. No boats, boat railways, hoist, launching facilities or any similar type of structures or equipment shall be installed, constructed or maintained upon any Lot or Other Parcel of Land nor shall any boat or boat trailer be stored on any Lot or Other Parcel of Land in such manner as to be visible from surrounding properties or from the abutting Waterway.

Section 2. No boat, ship, canoe, vessel, or other craft of any kind shall be operated upon any Waterway without the prior written approval of the Association, and even if such approval is granted, such operation shall conform to all rules and regulations promulgated by the Association concerning the use of boats.

Section 3. No pesticides, toxic chemicals, poisons, garbage, trash or other refuse or any polluting effluent shall be dumped into any Waterway.

ARTICLE XIII

DURATION AND AMENDMENT

Section 1. The Covenants and Restrictions contained in this Deed and Declaration shall run with and bind The Existing Properties; shall inure to the benefit of and shall be enforceable by Grantor, the Association and the Owner of any Lot, Living Unit or Other Parcel of Land included in The Existing Properties, their respective legal representatives, heirs, successors, and assigns, until the 31st day of December in the year 2010, after which time said Covenants and Restrictions shall automatically be extended for successive periods of ten (10) years. This Deed and Declaration may not be amended in any respect except with regard to the annexation of additional properties as set forth herein. After December 31, 2010, any person, firm, association, or corporation entitled to enforce any of the provisions of this Deed and Declaration may keep the restrictions, covenants and terms of this Deed and Declaration in effect by filing pursuant to Section 5301.51 of the Ohio Revised Code or any later law replacing said Section notice as provided in the Records of the County Recorder of Portage County, Ohio.

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ARTICLE XIV

GOLF EASEMENT

It is contemplated by Grantor that a golf course shall be constructed on part of The Existing Properties for use by the members of a Country Club. Said golf course shall run with and be adjacent to various Owners' Lots, Living Units or Other Parcels of Land.

Each such Lot, Living Unit or Other Parcel of Land of Owners which is adjacent to said golf course is hereby subject to an easement and right of entry by golfers from time to time giving said golfers the right to enter upon the rear of said various adjacent Lots, Living Units, or Other Parcels of Land for the purpose of removing golf balls, provided that said golfer can easily remove said ball without entry into any private area of said Lot, Living Unit, or Other Parcel of Land and without damage thereto.

Further, each said Owner of a Lot, Living Unit or Other Parcel of Land adjacent to any golf course located on The Existing Properties or any properties added in accordance with the provisions of this Deed and Declaration, shall not have any right in law or in equity to seek or obtain an injunction preventing the playing of golf on golf course.

Said Owners of said various adjacent Lots, Living Units or Other Parcels of Land shall have the right to otherwise use same in any manner consistent with this Deed and Declaration.

ARTICLE XV

RIGHT TO USE ASSESSMENT FUNDS

The general purposes of the assessments are set forth in Section (2), Article VI, however, said assessments and the funds derived therefrom may be specifically used for, but not necessarily limited to, the following additional purposes:

- a. Payment for labor, services and materials needed to keep up, landscape and plant trees, and otherwise maintain areas of land lying within roadway limits, dedicated streets and rights-of-way owned by the Village of Aurora, Ohio.
- b. A community television cable transmission system.
- c. A community transit system or community transit services.

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- d. A community police or security department including salaries of policemen and security officers and clerical help and equipment necessary to efficiently operate said department.
- e. A community utility company or agency which would be responsible for the supply and distribution of energy of any form to the various Living Units within Walden.

Nothing in this Deed and Declaration or in this Article XV shall be deemed to obligate the Grantor or Association to expend funds for or provide any of the services or items set forth herein.

ARTICLE XVI

GENERAL

Section 1. It is the intent of Grantor through this conveyance to continue the scheme of development set forth in Plan. Any modification of or addition to the language of these covenants and restrictions as compared to covenants and restrictions set forth in earlier Deeds and Declarations also a part of the overall scheme of Plan are intended solely to clarify the provisions of said earlier Deed and Declaration.

Section 2. Grantor has constructed or intends to construct facilities upon The Existing Properties, for example, but not necessarily limited to nor necessarily including, a golf course, and related facilities, dining clubs and marina (hereinafter Club Facilities). The Club Facilities are not intended to be a part of the Common Properties, but will be operated as a private club and be available to members of the Association upon payment of use or initiation fees.

Section 3. Violation or breach of any Covenants and Restrictions herein contained, shall not be deemed to affect or limit the rights of the owners of the Lots, Living Units, or Other Parcels of Land, within The Existing Properties to enforce the Covenants and Restrictions by appropriate judicial proceedings.

Section 4. The failure of Grantor, the Association or the Owner of any Lot, Living Unit, or Other Parcel of Land included in The Existing Properties, their respective legal representatives, heirs, successors, and assigns, to

enforce any Covenants and Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

Section 5. No Covenant and/or Restriction herein is intended to be, nor shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 6. The determination by a court that any provision herein is invalid for any reason shall not affect the validity of any other provision hereof.

Section 7. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, any person or entity entitled to enforce any provisions hereof shall be entitled to relief by way of injunction as well as any other available relief at law or in equity.

Section 8. Association and the Architectural Committee where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Deed and Declaration and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of the Association and that of any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association or the Architectural Committee when acting as set forth above.

Association, and the Architectural Committee to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of

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permits, authorizations, approvals, rules and regulations the Association and the Architectural Committee shall take into consideration the best interests of the Owners and Residents and of The Existing Properties to the end that The Existing Properties shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association and the Architectural Committee may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 9. The headings of the Articles herein are for convenience only and shall not affect the meaning or interpretation of the contents hereof.

Section 10. Words in the singular number shall include the plural. Words in the masculine gender shall include the feminine and vice-versa when the context in which such words are used indicates that such is the intent. Words in the singular followed by a plural suffix are to be read as singular or plural depending on the situation under the agreement at the time of reading.

Section 11. No violation of any of these Covenants and Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of The Existing Properties; provided however, that any mortgagee in actual possession, or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to these Covenants and Restrictions as fully as any other Owner of any portion of the property.

Section 12. Each Grantee accepting a deed, lease or other instrument conveying any interest in any Lot or Living Unit, whether or not the same incorporates or refers to these Covenants and Restrictions, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by these Covenants and Restrictions and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

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TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, his heirs and assigns and successors in interest forever.

And THE WALDEN COMPANY, LTD., the said Grantor, does for its assigns and successors in interest, covenant with the said Grantee, his heirs and assigns, that at and until the unsealing of these presents, THE WALDEN COMPANY, LTD., is well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and has good right to bargain and sell the same manner and form as above written, and that the same are FREE FROM ALL ENCUMBRANCES WHATSOEVER, except easements, restrictions, conditions of record, the declaration of covenants and restrictions contained in this conveyance and zoning regulations, and that it will WARRANT AND DEFEND said premises with the appurtenances thereunto belonging to the said Grantee, his heirs and assigns, against all lawful claims and demands whatsoever.

IN WITNESS WHEREOF, this Deed and Declaration is made this 8th day of January, 1981.

PORTAGE HOMES, INC.,
an Ohio Corporation

By Manuel Barenholtz
Manuel Barenholtz
President

And Paul A. Tiber
Paul A. Tiber
Secretary

THE WALDEN COMPANY, LTD.,
An Ohio Limited Partnership,
successor to Portage Homes, Inc.

By Manuel Barenholtz
Manuel Barenholtz
General Partner

Patricia Artman

David A. Eli

Patricia Artman

David A. Eli

STATE OF OHIO)
) SS
COUNTY OF PORTAGE)

I, David A. Eli, a Notary Public in and for said County and State, do hereby certify that PORTAGE HOMES, INC., by Manuel Barenholtz, its President and Paul A. Tiber, its Secretary, and THE WALDEN COMPANY, LTD., by Manuel Barenholtz, its General Partner, whose names respectively are signed to the foregoing instrument, have this day acknowledged the signing and execution of said instrument, for themselves respectively and for and on behalf of said companies to said instrument and otherwise executed the same, by direction of a resolution of Directors of said companies, have acknowledged that the same, in all respects, is their free act and deed as such officers respectively, and the free act and deed of said companies.

And I further certify that said Manuel Barenholtz and Paul A. Tiber are known to me to be the individuals and officers described herein and who executed said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Aurora, Ohio, this 8th day of January, 1981.

David A. Eli
Notary Public

DAVID A. ELI, Attorney at Law
Notary Public for State of Ohio
my commission has no expiration date,
Sec. 147.03 R.C.



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EXHIBIT A

Situated in the City of Aurora, County of Portage, and State of Ohio, and known as being situated in Lots 11 and 12 of said City, and being bounded and described as follows:

Beginning at the southeast corner of Lot No. 11 in the centerline of Bissell Road;

thence, Due South in said centerline of Bissell Road a distance of 698.94 feet to a point the same being the northeast corner of the Meadows of Walden Condominium;

thence, following along the north lines of said Meadows by the following courses:

Due West, 150.00 feet;
North 85° 45' 49" West, 135.37 feet;
North 4° 34' 26" West, 250.60 feet;
North 56° 18' 36" East, 126.19 feet;
North 11° 43' 40" West, 102.63 feet;
South 82° 32' 30" West, 287.10 feet;
South 3° 47' 20" West, 70.00 feet;
North 84° 00' 04" West, 445.73 feet;
South 82° 12' 34" West, 241.99 feet;
South 48° 46' 00" West, 355.20 feet to a point in the southeast

line of Walden Drive, a dedicated 80' Road;

thence, following along the southeast line of Walden Drive being generally curvilinear by the following courses or representative Chord Bearings and Chord Lengths;

North 3° 12' 23" West, 256.76 feet chord length;
North 5° 41' 43" West, 6.31 feet;
North 34° 07' 54" East, 748.89 feet chord length;
North 73° 57' 30" East, 475.61 feet;
North 66° 05' 30" East, 272.62 feet chord length;
North 58° 14' 35" East, 80.85 feet;
North 72° 48' 03" East, 233.77 feet chord length;
South 45° 51' 50" East, 43.72 feet chord length;

thence, Due East a distance of 30.00 feet to the centerline of Bissell Road;

thence, South 0° 54' 48" West along the centerline of Bissell Road to an angle point therein;

thence, Due South a distance of 679.78 feet to the place of beginning and containing within said bounds 27.068 acres of land there being 12.981 acres in Lot 11 and 14.087 acres in Lot 12. Described from previous surveys by James A. Morrison, Registered Surveyor No. 4760, in January of 1981.

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James A. Morrison

Situated in the City of Aurora, County of Portage, and State of Ohio, and known as being a part of Lot No. 12 in said City and being bounded and described as follows:

Commencing at the northeast corner of Lot 12; thence, Due west along the north line of said Lot 12 a distance of 3380.00 feet to a point; thence, Due South a distance of 608.94 feet to the place of beginning of the parcel bounded hereby;

thence, South 65° 05' 43" East a distance of 308.71 feet to a stake in the west shoreline of a lake, and following said lake by the following courses:

North 81° 15' 14" East, 131.53 feet;
South 54° 27' 44" East, 172.05 feet;
South 27° 38' 46" East, 237.07 feet;
South 11° 53' 19" West, 194.16 feet;
South 64° 35' 32" East, 221.41 feet;
South 3° 13' 28" East 355.56 feet to an iron pin in the north line

of the Walden golf course;

thence, South 57° 50' 52" West a distance of 826.80 to an iron pin, "R";

thence, North 19° 58' 59" West a distance of 117.05 feet to a point;

thence, South 72° 33' 10" West, a distance of 366.88 feet to a point;

thence, following the east line of the golf course northerly by the following courses:

North 5° 31' 39" West, 311.45 feet;
North 16° 55' 39" East, 480.83 feet;
North 22° 59' 19" West; 358.47 feet;
North 2° 51' 45" West, 400.50 feet;

thence, Due East a distance of 300.00 feet to the place of beginning and containing within said bounds 28.218 acres of land. Surveyed in Sept. of 1972 by James A. Morrison, Registered Surveyor No. 4760. Description prepared this 8th day of January 1981.

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