

26847 DELAWARE COUNTY, OHIO  
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 VOL. 615 PAGE 589 FEE \$ 44.60  
 COUNTY RECORDER

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**KENSINGTON PLACE PHASE I**  
**DECLARATION OF COVENANTS, EASEMENTS, RESTRICTIONS,**  
**ASSESSMENT LIENS**

This is a Declaration of Covenants, Easements, Restrictions and Assessment Liens made on this 12th day of December, 1996 by Crossmann Communities of Ohio, Inc., an Ohio Corporation, with offices at 929 Eastwind Drive Suite 201, Westerville, Ohio 43081 ("Declarant").

Background

A. Declarant is the owner in fee simple of the following REAL PROPERTY:

Situated in the State of Ohio, in the County of Delaware, and in the City of Delaware, being located in Lots 6553 - 6616, in Kensington Place, Section I, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Cabinet 1, Slide 644 and 644 A and B, Recorder's Office, Delaware County, Ohio.

Last Transfer: Deed Book 587, page 199; Recorder's Office, Delaware County, Ohio.

Each of these lots is referred to herein as a "Lot", and collectively they are referred to herein as the "Lots". A "Lot Owner" is each owner of a fee simple interest in a Lot. The Kensington Place Section 1 Subdivision is referred to as the "Subdivision".

B. Declarant intends, during the course of development of the Subdivision, to construct a certain entranceway to the Subdivision on Reserve A, as noted and described in the recorded Subdivision plat and to install fencing, signage, and landscaping at said entranceway to provide for the servicing and maintenance of the improvements, landscaping, and grass at the entranceway for the benefit of Declarant as well as the Lot Owners in the Subdivision.

In addition, Declarant will designate on the subdivision plat certain Reserves to be utilized as a storm water retention pond(s) for the benefit of the Subdivision and the adjacent land. Such area will be shown as Reserve A on the subdivision plat and is hereinafter referred to as the "Drainage Reserve". While the Drainage Reserve is designed to provide an area to retain storm waters, Declarant may install fencing, signage, grass and/or landscaping on the Drainage Reserve and Declarant wishes to provide for the continued servicing and maintenance of any improvements made to the Drainage Reserve.

C. Simultaneously with its execution hereof, Declarant has caused an Ohio

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CROSSMANN COMMUNITIES OF OHIO, INC.

Carpenter

unincorporated association of Lot Owners to be formed, named KENSINGTON PLACE ASSOCIATION(the "Association"), to administer the maintenance of the Entranceway, Landscape Easement, and if permitted by law, to own the Drainage Reserves. The members of the Association are and shall be Lot Owners, and the Association's purposes are and will be to maintain the Entranceway, Landscape Easement, and Drainage Reserves, and to enforce restrictions and conditions under which the maintenance will be carried out, all as set forth herein. The Association may, by a majority vote, adopt a set of by-laws and promulgate rules and regulations concerning maintenance of the Entranceway, Landscape Easement, and Drainage Reserves, and the majority vote, elect to incorporate, under statutes set forth in the Ohio Revised Code, as an Ohio Corporation, not-for-profit. Further, land adjacent to the Subdivision may be added to the plan created by this Declaration to take advantage of economies of scale and reduce per lot association costs and accomplish similar objectives.

D. Declarant desires to create a plan of restrictions, easements and covenants concerning the Lots and Reserves in the Subdivision and said easements and covenants shall also relate to the Entranceway for the benefit of and to protect the interests of the public, Declarant, each Lot Owner, and their respective personal representatives. heirs, successors and assigns.

Covenants, Restrictions, Easements, Assessments and Liens

Now, therefore, Declarant hereby declares that the Lots and Drainage Reserves shall be held, sold, conveyed and occupied subject to the following covenants, easements and restrictions which are for the purpose of protecting the values and desirability of, and which shall run with the Lots and Drainage Reserves, and each part thereof, and be binding on all parties having any right, title or interest in the same, and each part thereof, and their respective personal representatives, heirs successors and assigns and shall insure to the benefit of and be enforceable by Declarant and each Lot Owner, and their respective personal representatives, heirs, successors and assigns, and the Association.

**ARTICLE I**

1. Land Use. No part of the Property shall be used except for single family residential purposes. No building or improvement shall be erected, altered, placed or permitted to remain on any part of the Property other than one single-family dwelling, not to exceed two and one-half (2 1/2) stories and not to exceed thirty-five (35) feet in height, together with an attached garage for not less than two (2) automobiles, except as provided for herein.

2. Lot Split. Except as Declarant may find necessary, no lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise so as to create a new lot within the sub-division.

3. Minimum Building Size. No building shall be constructed unless the finished living space (exclusive of porches, patios, garages and basements) shall have no less than one thousand (1,000) square feet for one (1) stories, twelve hundred (1,200) square feet for two (2) stories, and one and one half (1 1/2)stories, one thousand fifty (1,050) square feet for Bi-levels or Split Levels.

Within the easement area and no build areas, if any, designated on the recorded plat of the subdivision no structure, improvement, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or the direction of the flow of the drainage channels or water over said areas. The easement areas of each lot and all surface improvements thereon shall be maintained continuously by the owner of said lot, except those improvements for which a public authority or public utility company is responsible.

4. Temporary Structure. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on the Property at any time as a residence, either temporarily or permanently; provided, however, for the purpose of a sales office for the sale of lots and new homes, Declarant may permit temporary structures during the construction and sales period.

5. Miscellaneous Structures. No above-ground pools shall be placed on any lot without the express written consent of Declarant except it is not the intent of this provision to prohibit the installation of a hot tub or sauna that does not hold more than eight (8) persons. No storage shed shall be used on any lot at any time.

6. Building Location. Except as provided for herein, no building shall be located on any lot nearer to the lot line than the minimum building lines as shown on the recorded plat. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of the building on a lot to encroach upon any other lot.

7. Animals. No animals, birds, insects, livestock or poultry of any kind shall be raised, bred, or kept on the Property except that dogs, cats or other household pets may be kept for domestic purposes only, provided that they are not kept, bred or maintained for any commercial purpose. No more than two (2) dogs or two (2) cats may be kept on any Lot except such dogs or cats in excess of such numbers that are less than three (3) months of age.

8. Soil Removal. No soil shall be removed for any commercial purpose.

9. Signs. Other than subdivision entrance features approved by Declarant and street signs, no sign of any kind shall be displayed to the public view on the Property, except one professional sign of not more than five square feet solely for the purpose of advertising the Property for sale or rent, or signs used by a builder to advertise the Property or provide directions to subcontractors and inspectors during the construction and sales period.

10. Waste Disposal. The Property shall not be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

11. Vehicles Not In Use. No automobile or motor driven vehicle shall be left upon or in front of the Property for a period longer than thirty (30) days in a condition wherein it is not able to be operated upon the public highway. After such period, the vehicle shall be considered as a nuisance and detrimental to the welfare of the neighborhood and shall be removed from the

Property.

12. Nuisances. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, no window air conditioning units facing the street or solar panels shall be permitted as improvements on any lot in the subdivision.

13. Boat, Trailer and Vehicle Parking and Storage. No truck, trailer, boat, camper, recreational vehicle or commercial vehicle shall be parked or stored in front of or on any lot unless it is in a garage or other vehicle enclosure out of view from the street and abutting properties; provided, however, that nothing herein shall prohibit the occasional and nonrecurring temporary parking of such truck, trailer, mobile home, boat, camper, recreational vehicle or commercial vehicle on the Property for a period not to exceed seventy-two (72) hours in any period of thirty (30) days or the use of a temporary trailer during the initial construction period as described herein.

14. Garage. No dwelling may be constructed on any lot unless an enclosed attached garage for at least two (2) automobiles to be parked side-by-side is also constructed thereon.

15. Antennas. Television and radio antennas, including dish-type satellite signal receiving earth stations over twenty-four (24") inches in diameter shall be prohibited on the exterior of any house or Lot. No towers of any kind, including but not limited to, television, radio and/or microwave tower, shall be erected, placed or maintained on any Lot in the Subdivision. This prohibition against satellite receiving dishes shall also apply to those receivers designed or disguised to appear to have multiple uses. Any apparatus which is permitted hereby shall be located on the rear portion of the lot behind the residence so as not to be visible from the street.

16. Fencing. No fence or structure shall be built or drainage plan altered to the detriment of the other owners within the subdivision. Any fence, hedge, planting or structure placed within a utility easement is subject to the use of such easement and is the sole responsibility of the owner of the lot. The finish grade of any lot shall substantially comply with the finish grade and drainage plan as set forth for the master plan of the subdivision. Notwithstanding any other provision hereof, no chain link or plastic fencing shall be permitted upon any of the lots within the subdivision. No fence shall be erected on any lot other than an all wood fence or a split rail fence which may have thin mesh wire backing. No fence shall exceed four feet in height nor shall be closer to the street than the structure building line. Except that six foot privacy fences are allowed around decks or hot tubs.

17. Sight-Line Limitations. No fence, wall, hedge, tree or shrub which obstructs sight lines between the heights of two and six feet above the roadways shall be placed or permitted to remain on any corner lot nearer than twenty-five (25) feet from the intersection of the centerlines of two streets or alleys, or so as to obstruct the view of traffic approaching the intersection. The same sight-line limitations shall apply to plantings or structures near points where a driveway enters a street.

18. Entry Feature(s). Any entry features, landscaping, or common fencing for the subdivision constructed by or approved by the Declarant shall be exempt from the size,

location and use provisions hereof.

## ARTICLE II

19. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by at least a majority of the then owners of the Property has been recorded and cross-referenced to this recorded Declaration, agreeing to change said covenants in whole or in part.

20. Enforcement. Enforcement of these restrictions by Declarant or by any owner of any lot the subject of these restrictions may be by proceedings at law or in equity or both against any person or persons violating or attempting to violate any restrictions, and such proceedings may be either to restrain violation or to enforce compliance or to recover damages. No failure to object to any violation of any restriction or to enforce any restriction shall be deemed a waiver of the right to do so thereafter, either as to the same violation or as to one occurring prior to or subsequent thereto. If Declarant or any owner of a lot in the subdivision prevails in a proceeding at law or in equity or both against any person or persons violating or attempting to violate any restrictions, and such proceedings may be either to restrain violation or to enforce compliance or to recover damages, then said person or person shall also be able to recover legal fees and expenses involved in such action or proceeding.

21. Severability. Each one of the covenants contained herein are independent and separate and invalidation of any one of these restrictions by judgment or court order shall in no way affect any other restrictions, which restrictions shall remain in full force and effect.

22. Miscellaneous. All pronouns and all variations thereof shall be construed so as to refer to the masculine, feminine, neuter, singular and plural forms thereof, as the identity of the person or persons or as the context or situation may require.

23. Amendment by Declarant. Declarant reserves the right to amend or modify these restrictions by a Declaration of Amendment if such amendment is requested or required by FHIA or VA to secure governmental approval for mortgage financing purposes or at the written request of the City in which the subdivision is located. The recordation of such amendment shall be sufficient evidence of such request or requirement and no further evidence shall be necessary or required.

24. Assignment. The rights, interests, duties and obligations of Declarant hereunder may be assigned at any time by written instrument.

25. Acceptance: By accepting a deed to any of the above-described real estate, a grantee accepts the same subject to the foregoing covenants and agrees for himself, his heirs, successors and assigns to be bound by each of such covenants jointly.

ARTICLE III

26. Maintenance of Entranceway, Landscape Easement, and Drainage Reserves By Declarant and Association: Until (a) the completion and sale of not less than seventy-five percent (75 %) of the dwellings in the Subdivision, or (b) January 1, 2000, whichever shall first occur, Declarant shall be responsible for the installation and reasonable and proper maintenance of the Entranceway, Landscape Easement area set forth on the recorded plat, and Drainage Reserves. On (a) January 1, 2000, or (b) the January 1st immediately following the date upon which seventy-five percent (75%) of the Lots with residential dwellings thereon, have been conveyed to bona fide purchasers, whichever first occurs, the Declarant covenants and agrees to turn over to the Association, and the Association shall accept, the responsibility for maintaining the Entranceway, Landscape Easement, and Drainage Reserves. Until such turnover date, all improvements and maintenance costs in connection with the Entranceway, Landscape Easement, and any Drainage Reserves shall be completed and paid for by the Declarant. Improvements shall include such fencing, walls, landscaping and signage as Declarant, in its sole discretion, deems necessary and desirable, complying at all times with applicable governmental restrictions. Declarant, by any instrument in writing in the nature of an assignment, will vest in the Association with the rights privileges and powers regarding such maintenance responsibility to be assumed by the Association and, when permitted by law, shall convey ownership of the Reserves to the Association.

27. Association Members: Every Owner of a Lot in Kensington Place Section I shall become a member of the Association, and each such owner, including Declarant, shall be entitled to one (1) vote on each matter submitted to vote of the members of each Lot owned by him or it; provided, however, that where title to a Lot is in more than one person, such co-owners acting jointly shall be entitled to but one (1) vote.

28. Alterations: Once the Association has assumed the responsibility for maintaining the Entranceway, Landscape Easement and Drainage Reserves, no building, wall, fence, other structure or landscaping shall be added to or removed from the Entranceway Landscape Easement, and Drainage Reserve, improvements installed by Declarant without the consent, expressed in writing, of the Association. Such consent shall be provided for by the Association according to its rules and regulations established for maintenance of the Entranceway, Landscape Easement, and Drainage Reserves.

29. Assessments: The Association shall be empowered to collect assessments for the maintenance of the Entranceway, Landscape Easements, and Drainage Reserves, and the payment of real estate taxes and assessments applicable to the Drainage Reserves areas as hereinafter provided. Any assessments established by the Association, from time to time, shall be levied in equal amounts as to each of the Lots. As soon as shall be practicable after determination that an assessment is needed, the Association shall send a written statement to each Lot Owner setting forth the amount and method of calculation of the amount assessed against each Lot and the time when the same is due. The assessment may be billed as a lump sum or in installments, as the Association shall in its sole discretion determine. No assessment shall become due and payable unless written notice has been sent or delivered to the Lot Owner obligated to pay the same at least ten (10) days prior to the due date thereof, or, if payable in installments, the due date of the first installment.

In the event any amount so assessed or levied is not paid when due and remains in arrears

for more than thirty (30) days, the Association may charge interest on the entire unpaid balance at the highest rate of interest then permitted by law or such lower rate as the Association may from time to time determine, and cause to be filed with the Delaware County, Ohio, Recorder, a notice of lien describing the Lot, the assessment amount and interest due, and executed in accordance with the formalities then required to record a lien against real estate. All assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association upon the Lot against which each such assessment is made. Each assessment, together with interest and costs, shall also be the joint and several personal obligation of the Lot Owners who owned the Lot at the time when the assessment fell due.

Upon written demand by a Lot Owner, the Association shall, within a reasonable period time, issue and furnish to each Lot Owner a certificate stating that all assessments or installments thereof (including interest and costs, if any) have been paid with respect to any specified Lot as of the date of such certificate, or, if all assessments and installations thereof have not been paid, setting forth the amount (including interest and costs, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

Notwithstanding the foregoing, the lien on the assessments provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arised, and any holder of such mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid installments of assessments or charges against the mortgaged Lot which become due and payable prior to the time such holder or purchaser took title to that Lot.

30. Authority To Assign Or Enter Into Contracts: Any of the rights, powers, duties and obligations of the Association, which, in this instrument are to be assumed by the Association, may, after such assumption, be assigned or transferred by the Association to any one corporations, associations or entities which will agree to assume said rights, powers, duties and obligations and carry out and perform the same. Further, the Association shall have the power and authority to contract any person, corporation, firm or other entity for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder.

#### ARTICLE IV

31. General: The plan of covenants, maintenance and assessments set forth herein has been established with respect to sixty-four (64) lots and the Drainage Reserves, if any. Declarant presently intends to develop land contiguous to the Subdivision into similar lots as those in the Subdivision and with improvements comparable to and of a similar nature to those constructed in the Subdivision. However market conditions and other factors make it impossible to commit that this is how this contiguous property will be developed. In the event that this adjacent property is so developed, Delcarant believes that it would be in the best interests of all Lot Owners that this adjacent property, or so much of it is so developed, be added to the plan created by this Declaration in order to effect economies of scale and accomplish similar objectives.

32. Right To Expand: Consonant with the foregoing, if within ten (10) years of the date of the recording of this Declaration, Declarant or its successors or assigns shall plat all or any portion of this contiguous property into lots substantially similar to the layout of the Subdivision, and if the same is developed with single-family residential homes on the lots all or some of those lots and reserves, if any, may, at Declarant's sole discretion, be subjected to the provisions hereof, and those lots and reserves made a part of the plan created hereby, by the execution and recording by Declarant, or its designated successors or assigns, of a Supplemental Declaration describing the property to be subject to this plan and reciting that the provisions hereof shall be applicable thereto and to the owners thereof.

33. Effects Of Annexation: Upon subjection of additional property to the terms hereof:

A. The added portion, including any additional entranceway(s) and reserve(s), shall be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if the added portion had been provided herein as constituting part of the property subjected thereto, that is, the rights, easements, covenants, restrictions and assessment plan set forth herein shall run with and bind the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to the property in the Subdivision.

B. The owner or owners of the added portion shall thereupon become Lot Owners and members of the Association to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other Lot Owners: and

C. In all other respects all of the provisions of this Declaration will include and apply to all additional property included in such Supplemental Declaration, and to the owners, mortgagees and lessees thereof, with equal meaning and of like force and effect.

In the event all or a portion of the real property developed in conjunction with the subdivision shall be subdivided at any time or times, then these restrictions shall apply to each lot in such other subdivision developed in conjunction with this subdivision as constituted after such subdivision and if similar restrictions are imposed upon the lots in such other subdivision.

IN WITNESS WHEREOF, the said Declarant, Crossmann Communities of Ohio, Inc., an Ohio Corporation has hereunto caused these presents to be subscribed effective this 12th day of December, 1996.

Signed and acknowledged  
in the presence of:

Sheila L. Bachelor  
Print Name: SHEILA L. BACHELOR  
Pamela L. Eickstadt  
Print Name: Pamela L. Eickstadt

DECLARANT:

Crossmann Communities of Ohio, Inc.  
By: Steven M. Dunn  
Steven M. Dunn  
Its: President