

13751108

TIME 3:10 P M  
RECORDED FRANKLIN CO., OHIO

0515 JUL 21 1989 (177160)

GENERAL WARRANTY DEED

JOSEPH W. TESTA, RECORDER

RECORDER'S FEE \$ 26.00

KNOW ALL MEN BY THESE PRESENTS, that Romanelli and Hughes Building Company, an Ohio corporation, of Franklin County, Ohio, for valuable consideration paid, grants to Jeffrey A. Auker, Trustee, whose tax mailing address is 1601 Schrock Road, Suite D, Columbus, Ohio, 43229, the following real property, situated in the State of Ohio, in the County of Franklin and the County of Delaware and in the City of Westerville:

Being lots One (1) through Fifty-Eight (58), inclusive, of THE OVERLOOK, SECTION 1, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 70, pages 64 and 65, Recorder's Office, Franklin County, Ohio, and of record in Plat Book 23, pages 21 and 22, Recorder's Office, Delaware County, Ohio.

Parcel #'s 80-0509 - 80-10520, FRANKLIN COUNTY

The conveyance of this real estate is subject to the following

1. All covenants, restrictions, conditions, reservations, reverts, legal highways, zoning ordinances and easements, if any, of record.
2. Real estate taxes and assessments now a lien, which Grantee assumes and agrees to pay.

This conveyance of this real estate is further subject to the following declaration of covenants, easements, restrictions, and assessment liens as hereinafter set forth:

ARTICLE I

Since the trees located throughout the subdivision intrinsically enhance all the lots in the subdivision, and are enjoyed aesthetically by all the residents of the subdivision, whether or not such trees are located on that resident's particular lot, no trees larger than six (6) inches in diameter, as determined at the time of any anticipated removal of such trees, shall be removed from any lot without the prior written approval of Romanelli and Hughes Building Company or its successor or assign. If such tree is dead or diseased beyond treatment, the owner of said lot shall obtain a written determination by someone expert on such matters that such tree is dead or diseased beyond treatment, and shall submit such written determination to Romanelli and Hughes Building Company, for approval of such tree removal, which approval shall not be unreasonably withheld. The cost of such written determination and all cost of removal of said tree shall be borne by the owner. If the owner does remove such tree(s) without prior approval or expert opinions, the owner shall be liable in damages for replacement of such tree(s) in the same size and condition as the removed tree(s) and the owner shall permit Romanelli and Hughes Building Company, to cause such tree(s) to be replaced in the same general location on the owner's lot. Romanelli and

904980  
CONVEYANCE TAX  
EXEMPT  
PALMER C. McNEAL  
FRANKLIN COUNTY AUDITOR

TRANSFERRED  
JUL 24 1989  
PALMER C. McNEAL  
FRANKLIN COUNTY, OHIO

Charger into Bar Jan 6 1998

APPROVED  
FOR TRANSFER  
FRANKLIN COUNTY  
RECORDER'S OFFICE

The Grantee has complied with...  
-1-  
NOTARIES OF PUBLIC FOR OHIO  
David L. Tamm, Justice by C. M. E.

Hughes Building Company, retains the right to release all lots from the operation of this restriction on or before December 31, 1999. Romanelli and Hughes Building Company, shall have the right to assign its rights and obligations under this Article I without consent of any owner of any lot in the subdivision. Enforcement of this article rests exclusively with Romanelli and Hughes Building Company or its successors or assigns.

ARTICLE II

In pursuance of a general plan for the protection and benefit and the mutual advantage of all of the property in The Overlook, Section 1, and all persons who may now or hereafter become owners of any part of the subdivision, and as a part of the consideration for this conveyance Grantor executes and delivers this deed of conveyance and the grantee accepts the same subject to all and each of the following reservations, restrictions, conditions, easements, charges, agreements, covenants, obligations, rights, uses and provisions hereinafter referred to as restrictions which are for the mutual benefit and protection of and shall be enforceable by all and any of the owners of the land above described, and the Grantee for itself, its successors and assigns, covenants and agrees to keep and perform each of said restrictions and to hold the said real estate above the described and each lot therein upon the following terms and subject to the following reservations, restrictions, easements, conditions, charges, agreements, covenants, obligations, rights uses and provisions and fully and punctually to observe, comply with, perform and carry out the same, to wit:

- (a) Said premises shall be used for private residential purposes only. No activity shall be conducted on any lot except those activities deemed to be customary home occupations as defined by the then existing Zoning Regulations of the City of Westerville.
- (b) Any fuel storage container or facility shall be camouflaged in such a manner as to conceal it from view from the street or abutting lots.
- (c) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.
- (d) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes.
- (e) No sign of any kind shall be displayed to the public view on any lot except one professional sign which conforms to the then existing Zoning Code for the City of Westerville, one sign of not more than six (6) square feet advertising the property for sale or rent, or signs used by the builder to identify the property during the construction and sales period.

- (f) No trucks, commercial vehicles, boats, campers, or trailers, or similar type vehicles shall be parked or stored on the premises unless the same are in a garage or other vehicle enclosure and out of view.
- (g) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- (h) Above ground swimming pools shall be prohibited on the subject property.
- (i) Antenna disc for the receiving of satellite and other electronic signals shall be prohibited on the subject property.
- (j) Clothes lines or other similar exterior hanging devices shall be prohibited on the subject property.
- (k) No present or future owners of all or any part of the said land shall occupy any garage, or any unfinished building or dwelling house, either for temporary or permanent residence, and no garage shall be erected on said land, or any part thereof, except contemporaneously with or subsequent to the erection of the dwelling house build on the premises.
- (l) No portion of the within described premises, nearer to any street than the building setback lines, shall be used for any purpose other than that of a lawn; nor shall any fence or wall of any kind, for any purposes, be erected, placed or suffered to remain on said premises nearer to any street now existing, or any hereafter created, than the front building lines of the actual building, except ornamental railings, walls, or fences not exceeding three (3) feet in height located on or adjacent to entrance platforms or steps. All perimeter or yard fencing of any size or nature shall be constructed of wood, and shall not be of a greater height than six (6) feet. Wire fencing shall be allowed only on the interior side of a new or existing wooden fence. Nothing herein contained, however, shall be construed as preventing the use of such portion of the premises for walks, drives, planting of trees or shrubbery, the growing of flowers or other ornamental plants, or for small statuary entrances, fountains or similar ornamentations for the purpose of beautifying said premises.
- (m) These reservations, restrictions, conditions, easements, charges, agreements, covenants, obligations, rights and uses and provisions shall bind the Grantee, his heirs, administrators, successors and assigns, and shall be considered covenants running with the land until the first day of January, 2020, after which

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time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

ARTICLE III

Each lot shall not be used for any other purpose than that of a dwelling place for a single private family and for purposes necessarily incidental thereto. No excavation shall be made and no building shall be erected, nor shall any materials be stored upon said premises until complete building plans and specifications for the building or buildings intended to be erected thereon, showing the landscaping and the elevation and slope and grade thereof, shall have been submitted in writing to Romanelli and Hughes Building Company, its successors or assigns or its delegate, by the Grantee, its successors or assigns, and the plans and specifications shall have been approved in writing by Romanelli and Hughes Building Company, such approval shall not be unreasonably withheld or delayed. By way of illustration, and not of limitation, the plans and specifications for any residence to be erected in The Overlook, Section 1, shall provide for a minimum of three bedrooms and shall further provide for minimum square footage in accordance with the following schedule: (i) ranch or one floor home, 2,200 square feet; (ii) two-story home, 2,600 square feet; and (iii) one and one-half story home, 2,400 square feet. Further, all residences shall have a mailbox approved by the Grantor and installed by the Builder which shall be constructed of either stone, brick, or cedar materials. All residences shall contain house numbers constructed that are in stone, six inches in height, unless otherwise approved by the Grantor.

Upon approval of the plans and specifications, no change or addition to the plans, specifications, building grade, use or other matter or thing, shall be done without the express written waiver of Romanelli and Hughes Building Company, nor shall any waiver of any terms, regulations, restrictions, charge or covenant, be a waiver of any other terms, regulations, restrictions, charge or covenant. If any approval, or any waiver is limited as to duration, then any terms, conditions, regulations, restrictions, charges, and covenants which are therein waived or suspended, shall be deemed to be suspended only for such period as is set forth in such approval or waiver, and shall thereafter apply with full force and effect. If Romanelli and Hughes Building Company, fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, such plans and specifications as have been submitted in accordance with the terms hereof shall be deemed to have been approved and the requirements herein fulfilled. If Romanelli and Hughes Building Company, ceases to exist, and unless Romanelli and Hughes Building Company, has assigned its rights herein, the approval of plans and specifications shall not be necessary and the provision of this Article shall inoperative. All construction work commenced on said premises shall be completed within a reasonable time after the start of construction, in accordance with the plans and specifications approved by Romanelli and Hughes Building Company, or its delegate, and Romanelli and Hughes Building Company, or its delegate, shall have the right to inspect all such construction work at all reasonable times to ensure the compliance with the plans and specifications submitted to it.

**ARTICLE IV**

Simultaneously with its execution hereof, Grantor has caused an Ohio unincorporated association of Lot Owners to be formed, named "The Overlook Association" (the "Association"), to administer the maintenance of the entranceways. The members of the Association are and shall be Lot Owners, and the Association's purposes are and will be to maintain the entranceways 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 entranceways and the establishment and collection of assessments. The Association may, also by a 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.

(a) Entranceway Easements: Easements are herein reserved over the recorded easement and setback (or building line) areas for Lots Numbered One (1) and Thirty-Six (36) of the Subdivision as shown on the recorded plat of the Subdivision, for the installation of improvements, repairs and maintenance of the entranceway facilities. Any Lot Owner of such lots 1 and 36 shall at all times keep such areas accessible for maintaining and repairing the entranceway facilities and such Lot Owner, by his acceptance of a deed to such Lot, agrees to be bound by these conditions.

(b) Maintenance of Entranceway by Grantor and Association: Until the completion and sale of not less than seventy-five percent (75%) of the dwellings in the Subdivision, Grantor shall be responsible for the installation and reasonable and proper maintenance of the entranceways. On 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, the Grantor covenants and agrees to turn over to the Association, and the Association shall accept, the responsibility for maintaining the entranceways. Until such turnover date, all improvements and maintenance costs in connection with the entranceways shall be completed and paid for by Grantor. Improvements shall include such fencing, walls, landscaping and signage as Grantor, in its sole discretion, deems necessary and desirable, complying at all times with applicable governmental restrictions. Grantor, by an instrument in writing in the nature of an assignment, will vest the Association with the rights, privileges and powers regarding such maintenance responsibility to be assumed by the Association.

(c) Association Members: Every owner of a Lot in The Overlook shall become a member of the Association, and each such owner, including Grantor, shall be entitled to one vote on each matter submitted to vote of the members for 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 vote.

(d) Alterations to Entranceway: Once the Association has assumed the responsibility for maintaining the entranceways, no building, wall, fence, other structure or landscaping shall be added to or removed from the entranceway improvements installed by Grantor without the consent, expressed in writing, by the Association. Such consent shall be provided for by the Association according to its rules and regulations established for maintenance of the entranceway.

(e) Assessments: The Association shall be empowered to collect assessments for the maintenance of the entranceways 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 in a lump sum or 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 Franklin County, Ohio, or 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 of 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 installments 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 of 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 arises, and any holder of such first 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 became due and payable prior to the time such holder or purchaser took title to that Lot.

(f) 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 or more 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 with 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.

(g) General: The plan of covenants, maintenance and assessments set forth herein has been established with respect to lots 1 through 58. Grantor presently intends to develop land contiguous to and north and west of the Subdivision into similar lots as those 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, Grantor believes that it would be in the best interests of all Lot owners that this adjacent property, or so much of it as is so developed, be added to the plan created by this Declaration, in order to effect economies of scale and accomplish similar objectives.

(h) Right to Expand: Consistent with the foregoing, if within six (6) years of the date of the recording of this Declaration, Grantor or its successors or assigns shall plat all or any portion of this contiguous property into lots and reserves substantially similar to the layout of the Subdivision, and if the same is developed with single-family residential homes on the lots, those lots and reserves may, at Grantor's sole discretion, be subjected to the provisions hereof, and those lots made a part of the plan created hereby, by the execution and recording by Grantor, or its designated successors or assigns, of a Supplemental Declaration describing the property to be subjected to this plan and reciting that the provisions hereof shall be applicable thereto and to the owners thereof.

(i) Effects of Annexation: Upon subjection of additional property to the terms hereof:

- (1) The added portion including any additional entranceway(s) shall thereafter 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 hereto, that is, the rights, easements, covenants, restrictions and assessments 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;
- (2) The owner or owners of the added portion lots 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
- (3) In all other respects all of the provisions of this Declaration shall 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.

#### ARTICLE V

No nuisance of any character shall be committed, suffered, or maintained on said premises, or any part thereof. All lots or parts thereof which residences are constructed shall be graded and landscaped promptly upon completion of such residences, and shall thereafter be maintained neatly and in accordance with the descriptions, plans and specifications thereof. Upon notice from Romanelli and Hughes Building Company, the owner of any lot or part thereof shall forthwith abate any nuisance and/or put such lot or part thereof in good order and in accordance with such plans, description, and specifications, and upon failure to do so, Romanelli and Hughes Building Company, may summarily abate such nuisance, restore such premises to good order, and the cost thereof shall be a lien on the subject premises until paid, but subject to any first mortgage on said premises until paid, but subject to any first mortgage on said premises, and Romanelli and Hughes Building Company, shall not be liable for any damages at law or in equity.

#### ARTICLE VI

The foregoing provisions, requirements, terms, conditions, restrictions, agreements, covenant, obligations and charges, and each and every one of them, shall be held and considered as running with the land hereby conveyed, and with each and every part thereof except as hereinbefore provided, and shall be construed toward their strict enforcement, whenever reasonably necessary to ensure uniformity and harmony of plan, development, and use of said subdivision, and if necessary, they shall be so extended and enlarged by reasonable implication as to make them fully effective to accomplish such purposes. The reasonable construction placed upon them by Romanelli and Hughes



Building Company, its successors or assigns or its delegate, in good faith shall be final and binding as to all persons and property benefited or bound thereby. The invalidity of any provisions, requirement, term, condition, restriction, agreement, covenant, obligation or charge or any part thereof, shall affect those remaining or the parts thereof. Any failure by Romanelli and Hughes Building Company, its successors or assigns, or its delegate, however long continued (except in the case of a specific waiver thereof), to object to any breach of or to enforce any provision whatever which are contained herein shall not be deemed a waiver of a right so to do thereafter, as to any such breach, or as to one occurring prior to or subsequent thereto.

#### ARTICLE VII

Grantee, its successors and assigns, shall not convey or otherwise alienate the premises, or any part thereof, or interest therein, unless such instrument of conveyance or alienation shall expressly provide that the persons receiving same shall accept and be bound by the terms and obligations herein expressed.

Prior Instrument Reference: Official Record 12246, page B-09, Franklin County Records. Deed Book 504, Page 652 and Deed Book 504, Page 717, Delaware County Records.

IN WITNESS WHEREOF, the said Romanelli and Hughes Building Company, by Vincent Romanelli, its Vice President, as Grantor, has executed this Warranty Deed this 21 day of July, 1989.

Kenneth S. Hull

Romanelli and Hughes Building  
Company

David K. Mill

Vincent Romanelli  
By: Vincent Romanelli  
Vice President

(Witnesses)

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this 21st day of July, 1989, before me, the subscriber, a Notary Public in and for said county and state, personally came the above named Romanelli and Hughes Building, by Vincent Romanelli, Vice President, as Grantor in the foregoing Deed, who acknowledged to me that he signed the foregoing instrument, and that the signing thereof was his free act and deed, for the uses and purposes therein set forth.

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IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed  
the official seal of my office on the day and year last above written.



*Karina S. Hull (Wolfe)*  
Notary Public

KARINA S. HULL  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JULY 27, 1991

This Instrument Prepared By:

Steller, Magnuson & Barone  
Attorneys at Law  
1001 Eastwind Drive, #402  
Westerville, Ohio 43081

*Chicago title*

DELAWARE COUNTY, OHIO	
FILED FOR RECORD	JUL 31 1989
6:07	O'CLOCK P M
RECORDED	Aug 7, 19 89
Vol. 565	PAGE 426
Kay C. Conklin	
COUNTY RECORDER	
FEE \$ 26.00	or

90674

Romanelli and Budget  
Residing Co

to  
Anker, Jeffrey A and

Westerville L.A. to 1 st line 58 line  
the Overcoat Area

LIB: 0515 PAGE 485