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# DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS

HOMAN & STUCKE INVESTMENT PROPERTIES, INC., an Ohio corporation ("Homan & Stucke"), is the owner in fee simple of certain real property, together with the buildings and improvements situated thereon located in New Bremen, Auglaize County, Ohio, the legal description of which is attached hereto as Exhibit "A" ("Homan & Stucke Property"). MARLENE M. KLOSE ("Klose") is the owner in fee simple of certain real property, together with the buildings and improvements situated thereon located in New Bremen, Auglaize County, Ohio, the legal description of which is attached hereto as Exhibit "B" ("Master Machine Property"). The Homan & Stucke Property and the Master Machine Property shall be collectively referred to as "Properties."

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Properties, Homan & Stucke and Klose hereby declare that the Properties shall be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

#### DEFINITIONS

- 1. "Lot" shall mean each of the lots which are described in Exhibits "A" and "B" and which comprise the Properties.
- 2. "Maintenance" shall mean the exercise of reasonable care to keep buildings, driveways, sidewalks, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.
- 3. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

# ARTICLE I PROPERTY RIGHTS

A. <u>Easements of Encroachment</u>. There shall exist reciprocal appurtenant easements as between each Lot for any encroachment due to the unwillful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or altering is in accordance with the terms of this Declaration. Such easement shall exist to a distance of not more than one foot as measured from any point on the common boundary between the Lots, along a line perpendicular to such boundary at such

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point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner.

B. <u>Easements for Support</u>. Every portion of a building or any improvement on any portion of a Lot contributing to the support of another building or improvement on another Lot shall be burdened with an easement of support for the benefit of all other such buildings and improvements.

### C. Easement for Maintenance, Repair, and Reconstruction.

- (1) Each Owner shall have an easement over, on, and through the Lot of the other Owner as may be reasonably necessary for maintenance, repair, and reconstruction.
- (2) An Owner shall repair or reimburse the other Owner for damages to the Lot and the building and improvements thereon of the other Owner arising out of the exercise of the right of easement under this Paragraph C.

# ARTICLE II MAINTENANCE AND CONDITION OF PROPERTIES

- A. <u>Obligation to Maintain</u>. Unless otherwise provided by the terms of this Declaration, each Owner shall, at his sole cost and expense, conduct Maintenance to the buildings and other improvements located on the Owner's Lot, both interior and exterior, keeping the same in a condition comparable to the condition of such buildings and other improvements at the time of their initial construction, excepting only normal wear and tear.
- B. Sharing of Roof Repair and Maintenance. The Owners shall jointly conduct the Maintenance to the roof of the building common to the Owners' Lots. The cost of such Maintenance shall be shared by the Owners in proportion to the relative square footage of the roof located on each of the Owners' Lots.
- C. <u>Condition of Properties</u>. Each Owner shall at all times keep the Owner's premises, buildings, improvements, and appurtenances in a safe, clean, wholesome condition and comply in all respects with all government, health, fire, and police requirements and regulations, and the Owner will remove at the Owner's expense any rubbish of any character whatsoever which may accumulate on the Owner's Lot.

#### D. Other Owner's Right to Maintain.

(1) In the event an Owner of a Lot fails to conduct Maintenance as required under Paragraph A or B or carry out the Owner's obligations under Paragraph C, or carry out any other Maintenance obligation under this Declaration, the other Owner, upon obtaining approval through arbitration as provided in Article XII, below (except in an emergency or other situation where because of time or other factors it is not reasonable to obtain such approval, in which case the Owner may proceed without such approval) shall have the right, through its agents, employees, and contractors, to enter such Lot and to repair, maintain, and restore the Lot and the exterior of all buildings and other improvements thereon and otherwise perform the Owner's obligations. The cost of such repair, maintenance, restoration, and other performance shall be added to and become a part of the assessment to which such Lot is subject.

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(2) If an Owner incurs such costs and expenses, the other Owner shall reimburse the Owner for the amount of such costs and expenses. If the other Owner does not reimburse the Owner upon demand, then the Owner may collect the amount which is reimbursable together with interest on the unpaid amount at the highest rate of interest then permitted by law and together with the expenses, including legal fees, incurred in collecting such amount, and/or cause an assessment to be levied by filing a certificate of lien for the unpaid amount plus interest and expenses with the Auglaize County Recorder within ninety (90) days after the day the last of such maintenance has been performed. The filing of the certificate shall have the effect of placing a lien on the Lot of the Owner charged with the lien. The lien shall remain valid for a period of five (5) years from the date a certificate of lien was duly filed, unless released or discharged prior thereto or renewed for an additional period of five (5) years by filing a notice of renewal of the lien with the Auglaize County Recorder. If the Owner whose Lot is charged with the lien believes that an assessment charged to the Lot has been improperly charged, the Owner may bring an action in the Auglaize County Common Pleas Court for discharge of that lien.

# ARTICLE III PARTY WALLS

A. <u>General Rules of Law to Apply</u>. The wall built as a part of the original construction of the building situated on the Properties and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

#### B. Repair and Maintenance.

- (1) The cost of reasonable Maintenance to the structural components of the party wall shall be shared by the Owners equally.
- (2) The cost of Maintenance to the interior surfaces of the party wall shall be the sole responsibility of the Owner whose Lot contains the interior surface.
- C. <u>Destruction by Fire or Other Casualty</u>. If a party wall is destroyed or damaged by fire or other casualty, any Owner may restore it, and the other Owner shall contribute equally to the cost of restoration. This right of contribution shall be without prejudice to any right to call for a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions.
- D. <u>Weatherproofing</u>. Notwithstanding any other provisions in this Article, an Owner who by negligent or willful acts causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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# ARTICLE IV OWNER'S OBLIGATION TO REBUILD

If all or a portion of the building or improvements located on a Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such building or improvements in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within eight (8) months after the damage occurs, unless prevented by causes beyond the control of the Owner.

# ARTICLE V HAZARD AND LIABILITY INSURANCE

### A. Fire and Extended Coverage Insurance.

- (1) The Owners shall jointly obtain and maintain insurance on the building and improvements which are common to the Owners' Lots against loss or damage by fire, lightning, and such perils as are comprehended within the term "broad form coverage" with no co-insurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. The proceeds of insurance shall be applied to reconstruct the building and improvements. All of the Owners shall be listed as co-insureds on the policy.
- (2) The cost of the insurance premium shall be shared by the Owners in proportion to the square footage of the building located on each of the Owners' Lots, unless the nature of the business operations conducted on an Owner's Lot results in an increase in the insurance premium, in which case, the Owner of such Lot shall be responsible for any increase in the insurance premium attributable to such business operations.
- B. Lot Owner's Insurance. Each Owner shall obtain and maintain such insurance as is sufficient to fully cover the contents of the Owner's building against loss by fire or other casualty. The insurance policy provided for herein as well as any other policy of insurance obtained and maintained by an Owner shall contain the release by the insurer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against the other Owner, any tenant of the other Owner or other occupant of the other Owner's property, any director, officer, employee, or agent of the other Owner or of any tenant of the other Owner or other occupant of the other Owner's property, and any member of the family, of the other Owner or the other Owner's tenant or other occupants of the other Owner's property, for recovery against any one of them for any loss occurring resulting from any of the perils insured against under such insurance policy.
- C. <u>General Premises Liability Insurance</u>. Each Owner shall be responsible for obtaining and maintaining general premises liability insurance for the Owner's Lot with such limits of coverage as such Owner deems satisfactory.

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### ARTICLE VI ARCHITECTURAL CONTROL

A. <u>Exterior Decoration</u>. The exterior of the building common to the Owners' Lots, shall be decorated in a uniform color and in a uniform manner. If the Owner of either Lot wants to change the color of the exterior of the building the Owner must first obtain the prior written approval of the other Owner before the change in color shall be effective, in which event the uniformity in color shall nevertheless be maintained.

## B. Alterations, Additions, and Improvements.

- (1) Any alterations, additions, or improvements to any Lot shall conform to and be in harmony with the external design and location in relation to surrounding structures and topography.
- (2) In the event the Owner of either Lot intends to make any alterations, additions, or improvements to any Lot which in any respect affects or changes the external appearance of the building and improvements, the Owner shall submit proposed plans and specifications showing the nature, shape, kind, heights, materials, and locations of the same to the other Owner at least fifteen (15) days before commencing construction. The other Owner shall have the right within such fifteen (15) day period to submit a written request to the Owner for arbitration specifying the manner in which the requirements of Paragraph B(1) have not been met. In the event a written request for arbitration is timely submitted, then the Owner shall not commence construction until the arbitrators have ruled on the objection. If the other Owner does not submit the request for arbitration within the fifteen (15) day period, then the Owner may construct the alteration, addition, or improvement in accordance with such plans and specifications.

# ARTICLE VII PARKING AREA

- A. <u>Grant of Easement</u>. Klose hereby grants to Homan & Stucke an easement for parking purposes over and upon the Master Machine Property twenty-one (21) feet in width and one hundred (100) feet in length along the east side of the building common to the Owners' Lots at the location of the existing parking lot.
- B. <u>Sharing of Parking Spaces</u>. Each of the Owners is entitled to the use of one-half of the parking spaces contained in the parking area for itself, its tenants or other occupants, and their employees and invitees.
- C. <u>Sharing of Repair and Maintenance</u>. The Owners shall jointly conduct the Maintenance and the snow removal to the parking area. The cost of such Maintenance of the parking area shall be shared by the Owners equally.
- D. <u>Parking Restrictions</u>. The Owners shall not park or allow any other person to park large trucks, including, but not limited to, semi-tractors, semi-trailers, and dump trucks, in the parking area at any time unless prior written approval is obtained from the other Owner.

ARTICLE VIII
PEDESTRIAN ACCESS

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- A. <u>Grant of Easement</u>. Klose hereby grants to Homan & Stucke a pedestrian access easement for the benefit of the Owner of the Homan & Stucke Property, its tenants or other occupants, and their employees and invitees over and upon the sidewalk located on the northern end of the Master Machine Property which extends from the parking area to the entrances located on the northern end of the building.
- B. <u>Sharing of Repair and Maintenance</u>. The Owners shall jointly conduct the Maintenance and snow removal to this sidewalk. The cost of such Maintenance and snow removal of this sidewalk shall be shared by the Owners equally.

# ARTICLE IX SIGNS

- A. <u>Grant of Easement</u>. Klose hereby grants to Homan & Stucke an easement over and upon the portion of the Master Machine Property at a reasonable location mutually agreeable to the Owners so that the Owner of the Homan & Stucke Property may place a sign at such location designating its business operations.
- B. <u>Joint Sign</u>. At the time that this Declaration is entered into, a joint sign designating the business operations of the Owners shall be maintained, the size, design, and location of which shall be mutually agreed upon by the Owners.
- C. <u>Sharing of Repair and Maintenance</u>. The Owners shall jointly conduct the Maintenance of the joint sign, including the Maintenance of any surrounding landscaping, and shall have easements for such purposes. The cost of such Maintenance shall be shared by the Owners equally.

### D. Right to Separate Signs.

- (1) The Owner of the Homan & Stucke Property shall have the right in the future to construct and maintain a separate sign designating the business operations at the location as designated in Paragraph A of this Article. In the event the Owner of the Homan & Stucke Property constructs a separate sign, such sign shall conform to and be in harmony with any existing signs and with the external design of surrounding structures and topography.
- (2) In the event the Owner of the Homan & Stucke Property intends to construct a separate sign, then such Owner shall submit proposed plans and specifications showing the nature, shape, heights, and materials of the sign to the Owner of the Master Machine Property at least fifteen (15) days before commencing construction. The Owner of the Master Machine Property shall have the right within such fifteen (15) day period to submit a written request to the Owner of the Homan & Stucke Property for arbitration specifying its objections to the proposed sign. In the event a written request for arbitration is timely submitted, the Owner of the Homan & Stucke Property shall not commence construction until the arbitrators have ruled on the objection. If the Owner of the Master Machine Property does not submit the request for arbitration within the fifteen (15) day period, then the Owner of the Homan & Stucke Property may construct the proposed sign in accordance with such plans and specifications.

(3) In the event separate signs are constructed, the joint sign shall become the exclusive sign of the Owner of the Master Machine Property, and each Owner shall, at its sole cost and expense, conduct Maintenance to its sign, keeping the same in a condition comparable to the condition of such sign at the time of its initial construction, excepting only normal wear and tear. The cost of such Maintenance of any landscaping surrounding the signs shall be shared by the Owners equally.

(4) In the event separate signs are constructed, the Owner of the Master Machine Property hereby grants to the Owner of the Homan & Stucke Property an ingress/egress easement over and upon the Master Machine Property as necessary to provide the repair and maintenance of the Homan & Stucke sign as set forth in Paragraph D(3). The ingress/egress easement provided herein is of such a nature that the operation of such right-of-way will have the least possible interference with the proper and reasonable use and enjoyment of the Master Machine Property.

### ARTICLE X LANDSCAPING

A. Obligation to Provide. The Owners shall jointly provide reasonably attractive, but modest, landscaping on the northern end of the building. Each Owner may provide landscaping on the Owner's Lot which shall conform to and be in harmony with the external design and location in relation to surrounding structures and topography and the landscaping on the northern end of the building.

B. Maintenance. The cost of Maintenance to the landscaping located on the northern end of the building shall be shared by the Owners equally. The cost of Maintenance to the landscaping located elsewhere on the Owners' Lots shall be the sole responsibility of the Owner on whose Lot such landscaping is located.

C. Lawn Maintenance. The Owners shall jointly maintain the lawn located on the northern end of the building, and each Owner shall maintain the lawns located on the Owner's Lot. This Maintenance shall include keeping the lawns free of weeds and other objectionable growths and mowing the lawns to restrict the growth of ground covers.

### ARTICLE XI ZONING REQUIREMENTS

Each Owner hereby agrees that the Owner's Lot shall conform to the zoning code implemented by the Village of New Bremen, Ohio, and to all future amendments thereto.

### ARTICLE XII ARBITRATION

If the Owners are unable to agree on any matter with respect to which a decision must be made under this Declaration, or if this Declaration specifically provides for the arbitration of any matter or dispute, or if no satisfactory arrangement can be made for settlement of any other dispute or

disputes between the Owners with respect to or in any way related to the Properties, then the dispute or disputes shall be subject to binding arbitration. In each such instance, an arbitrator will be chosen by each Owner. The arbitrators so chosen will choose an additional arbitrator. The arbitrators will then determine the arbitration procedure and decide the matter or matters in dispute, and a decision by a majority of the arbitrators will be binding on all Owners. However, if either Owner requests that arbitration proceed in accordance with the rules of the American Arbitration Association, then the arbitration shall proceed accordingly.

### ARTICLE XIII GENERAL PROVISIONS

Invalidation of any one of these covenants or A. Severability. restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

B. Amendments. This Declaration may be amended by duly recording an instrument executed and acknowledged by all Owners of the Properties.

C. Subordination. No breach of any of the provisions herein contained shall defeat or render invalid the lien of any mortgage made in good faith and for value as to any Lot; provided, that such provisions shall be binding on any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

D. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Owners for a period of twenty-one (21) years form the date hereof, and thereafter shall continue automatically in effect for successive additional periods of ten (10) years each unless otherwise agreed to in writing by the Owners of the Lots.

Executed at New Bremen, Ohio, on the 15th day of January, 1997.

In the presence of:

HOMAN & STUCKE INVESTMENT PROPERTIES, INC.

In the presence of:

STATE OF OHIO )
COUNTY OF AUGLAIZE )<sup>SS:</sup>

Before me, a Notary Public in and for said County and State, personally appeared Homan & Stucke Investment Properties, Inc., an Ohio corporation, by Nicholas V. Homan, its President, who acknowledged that he did sign the foregoing instrument for and on behalf of the corporation and the same is the free act and deed of the corporation and the free act and deed of him personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 15th day of January, 1997.

Notary Public

STATE OF OHIO )
COUNTY OF AUGLAIZE ) SS:

James R. Shenk
Attorney At Law
Notary Public, State of Ohio
Commission Does Not Expire

Before me, a Notary Public in and for said County and State, personally appeared Marlene M. Klose, who acknowledged that she did sign the foregoing instrument and the same is her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 15th day of January, 1997.

Notary Public



James R. Shenk
Attorney At Law
Notary Public, State of Ohio
Commission Does Not Expire
Pursuant To Sec. 147.03 0 2 0

This instrument prepared by:

FAULKNER, GARMHAUSEN, KEISTER & SHENK A Legal Professional Association Courtview Center - Suite 300 100 South Main Avenue Sidney, Ohio 45365 (937) 492-1271

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#### EXHIBIT "A"

Situate in the County of Auglaize, in the State of Ohio, and in the Village of New Bremen.

Being a tract in the Bunker Hill First Addition of said Village and being in the Northwest Quarter of Section 15, Town 7 South, Range 4 East, German Township as recorded in Plat Book Cabinet C, Page 97 of the Auglaize County Records and being more particularly described as follows:

Commencing at an iron pin at the Northwest corner of Lot One (1) for the true point of beginning; thence North 86 degrees 03' 58" East 141.75 feet along the north line of Lot 1; thence South 04 degrees 00' 19" East 300.00 feet to an iron pin; thence South 86 degrees 03' 58" West 141.75 feet along the South line of Lot 1 to an iron pin; thence North 04 degrees 00' 19" West 300.00 feet along the West line of Lot 1 to the point of beginning containing 0.976 acres of land more or less.

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#### EXHIBIT "B"

Situate in the County of Auglaize, in the State of Ohio, and in the Village of New Bremen.

Being Lot #1 in the Bunker Hill First Addition Subdivision to said Village of New Bremen.

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SAVE AND EXCEPT THE FOLLOWING TRACT OF LAND:

Being a tract in the Bunker Hill First Addition of said Village and being in the Northwest Quarter of Section 15, Town 7 South, Range 4 East, German Township as recorded in Plat Book Cabinet C, Page 97 of the Auglaize County Records and being more particularly described as follows:

Commencing at an iron pin at the Northwest corner of Lot One (1) for the true point of beginning; thence North 86 degrees 03' 58" East 141.75 feet along the north line of Lot 1; thence South 04 degrees 00' 19" East 300.00 feet to an iron pin; thence South 86 degrees 03' 58" West 141.75 feet along the South line of Lot 1 to an iron pin; thence North 04 degrees 00' 19" West 300.00 feet along the West line of Lot 1 to the point of beginning containing 0.976 acres of land more or less.

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ANN BILLINGS
AUGLAIZE CO. RECORDER

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