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THE HARBOUR HOMEOWNERS ASSOCIATION, INC.

DECLARATION OF RESTRICTIONS AND COVENANTS  
OF RECORD

This will certify that copies of this Declaration and By-Laws attached as an Exhibit hereto, were filed in the Office of the County Auditor, Erie County, Ohio, on Nov. 9, 1984.

By: R. Haacke  
Deputy Auditor

This Instrument Prepared By:

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THE HARBOUR HOMEOWNERS ASSOCIATION, INC.

J. B. WOLFF & ASSOCIATES, INC.

SANDUSKY, OHIO

DECLARATION OF RESTRICTIONS AND COVENANTS  
OF RECORD

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DECLARATION OF RESTRICTIONS AND COVENANTS OF RECORD

WHEREAS, J. B. Wolff & Associates, Inc., an Ohio corporation (hereinafter the "Developer"), desires to subject its real property, herein described together with such additions as may hereinafter be made (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 owner thereof; and

WHEREAS, the Developer deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and be assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, there has been or will be created, under the laws of the State of Ohio, a non-profit corporation known as the The Harbour Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, J. B. Wolff & Associates, Inc., being the owner of all of the following described premises as appears of record, does hereby for itself, its successors and assigns, impose upon said premises, the following restrictions, rights, limitations, agreements, covenants and conditions, which premises are described on Exhibit A, attached hereto and made a part hereof.

In accordance with the general plan for the development of The Harbour of which the above-described property is a part and such additions as may hereinafter be made, all of the above-mentioned sublots in the aforesaid division shall be held, transferred, used, occupied and conveyed subject to and in accordance with the following restrictions, rights, limitations, agreements and conditions:

ARTICLE I

Definitions

Section 1.

The following words when used in this instrument or supplemental instrument (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to The Harbour Homeowners Association, Inc., an Ohio non-profit corporation.
- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to these covenants and restrictions or those in any supplemental instrument under the provisions of Article II hereof.

- (c) "Common Properties" shall mean and refer to those areas of land described on said Plat, if any, those so designated in any supplemental instrument under the provisions of Article II hereof, and those Lots or Living Units heretofore or hereafter conveyed to the Association and designated in such conveyance as Common Properties, and intended to be devoted to the common use and enjoyment of the owners of The Properties.
- (d) "Limited Common Properties" shall mean and refer to those areas of land described on said Plat, if any, those Lots or Living Units conveyed to a private club entity and designated in such conveyance as Limited Common Properties, and those so designated in any supplemental instrument under the provisions of Article II hereof and intended to be devoted to private club purposes.
- (e) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties and Limited Common Properties as heretofore defined.
- (f) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designated and intended for use and occupancy as a residence by a single family.
- (g) "Model Home" shall mean any single family or multi-family dwelling unit or business office used solely as a model or office for the sale of other dwelling units and having no person living within said unit.
- (h) "Single Family Attached Dwellings" shall mean and refer to any buildings having common walls, including, but not limited to, town house dwellings and high rise dwellings.
- (i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The 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.
- (k) "Supplemental Instrument" shall mean and refer to instruments recorded in the future which bring other parcels within the operation of the covenants and restrictions contained herein, or which modify or add to the covenants and restrictions in accordance with Article XI, Section 1 hereof.

ARTICLE II

Property Subject to These Covenants and Restrictions:  
Additions Thereto

Section 1. Existing Property.

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to these covenants and restrictions in the property herein conveyed, all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Additions to Existing Property.

Additional lands may become subject to these covenants and restrictions in the following manner:

- (a) Additions by Action of Developer. Developer, its successors and assigns, shall have the right without consent of Owners or the Association to bring within the scheme of these covenants and restrictions of additional properties.

The additions authorized under this and the succeeding subsection shall be made by filing for record a Supplemental Instrument with respect to the additional property which shall extend the scheme of these covenants and restrictions to such property.

Such Supplemental Instrument may contain such complimentary additions and modifications of the covenants and restrictions contained in this instrument as may be necessary to reflect the different character, if any, of the added properties, and as are not inconsistent with the scheme of these covenants and restrictions.

- (b) Other Additions. Upon approval in writing of the Association, pursuant to a vote of its Members as provided in its Articles of Incorporation, the Owner of any property who desires to add it to the scheme of these covenants and restrictions and to subject it to the jurisdiction of the Association, may file for record a Supplemental Instrument of covenants and restrictions as described in subsection (a) hereof.
- (c) 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 instrument within the Existing Property together with the covenants and restrictions established upon any other properties

as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this instrument within the Existing Property except as hereinafter provided.

### ARTICLE III

#### General Plan of Development

There has been prepared by the Developer a General Plan of Development showing the proposed development of the property described in this instrument as submitted to the City of Sandusky, Ohio, as a planned unit development. The General Plan of Development shall not bind the Developer, its successors or assigns, to adhere to the Plan in any subsequent development of the land shown thereon as may be approved by the City of Sandusky, and oral representations of salesmen, agents, or employees of the Developer or of the Developer's successors in interest shall not in any way bind the Developer or its successors in interest to adhere to the Plan in any subsequent development as may be approved by the City of Sandusky. It also shall be understood that the Developer shall be free to develop such portions or sections of the lands depicted in the General Plan of Development 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 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 Declaration additional lands, and develop the same before completing the development of the Existing Property as may be approved by the City of Sandusky.

Notwithstanding anything to the contrary herein contained, the Developer, its successors and assigns, shall implement each phase of the Plan in substantial conformity to the planned unit development plans and specifications as submitted to and approved by the City of Sandusky and any subsequent amendments thereto as approved by the City of Sandusky.

### 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 by covenants of record to assessment by the Association 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.

##### Section 2. Voting Rights.

The Association shall have two classes of voting membership:

- (a) Class A. Class A Members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A Members



shall be entitled to one vote in person or by proxy for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be Members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

(b) Class B. Class B Members shall be the Developer. The Class B Member shall be entitled to four votes in person or by proxy for each Lot in which it holds the interest required for membership by Section 1 and for every Living Unit in any Single Family Attached Dwelling owned by it until such Living Unit is first sold, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, determined on the basis of the total intended units for the entire project; or
- (2) on January 1, 2000.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

### Section 3. Tenants-Land Contract Vendees.

Tenants or land contract vendees of Owners shall have no right to vote for the Lot or Living Unit in which they hold an interest unless they hold a power of attorney from such Owner or the proxy of such Owner.

## 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, 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 Developer 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 Developer, the Association is able to maintain the same but,

notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey the Common Properties to the Association not later than January 1, 2000.

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 to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- (b) the right of the Association, as provided in its Articles of Incorporation and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (c) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and
- (d) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by Members, provided that no such dedication, transfer or determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the vote of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

Section 4. Restriction on Fees Charged to Members.

Irrespective of the fact that Section 3(c) of Article V of the Declaration gives the Association the right to charge reasonable admission and other fees for the use of the Common Properties, this right, except as to assessments for maintenance, repair, replacement, snow plowing and the like as set forth in the Declaration, shall not be exercised as to Members for a period of five (5) years from the recordation of the Declaration, and after this period, only by vote of eighty percent (80%) of the Members. This restriction shall not be applicable to the Limited Common Properties.

Section 5. Association Maintenance.

The Association shall retain the Common Properties for park, recreation and open space purposes and shall maintain the Common Properties and canals and channels. The minimum standard of maintenance shall be the keeping of non-wooded areas mowed, the keeping of wooded area trails in good repair, the keeping

of the Common Properties free from trash, debris and nuisance and the dredging of canals and channels, the marking of channels and canals and maintenance of seawalls and shoreline. Further, the Association shall have sole responsibility for all snowplowing of streets, driveways, walkways and parking areas and all landscaping of The Properties and maintenance of common areas. Such recreation purposes shall include the placing or construction of recreational structures upon the Common Properties.

It is the intention of the Association to provide the snow plowing and landscaping for all of The Properties to maintain overall consistency thereof and the benefits of economy of scale.

## ARTICLE VI

### Limited Common Properties

#### Section 1. Membership.

Members shall have the right to join and maintain social membership in any private club owning or operating any Limited Common Properties upon payment of required fees, dues and assessments and upon compliance with the rules and regulations of said club governing personal conduct on the Limited Common Properties.

#### Section 2. Association Maintenance.

In the event the Limited Common Properties are not maintained in accordance with the minimum maintenance standard established in Section 5 of Article V above, said areas shall be deemed Common Properties for use and maintenance purposes only. Notwithstanding the foregoing, the Association shall have sole responsibility for snowplowing of all streets, driveways, walkways and parking areas. The maintenance obligation of the Association hereunder shall be no more than the minimum maintenance standard established in Section 4 of Article V above. Said areas may again be used for private club purposes and shall thereupon be deemed Limited Common Properties for all purposes.

#### Section 3. Maintenance Expenses.

Any maintenance expenses incurred by virtue of Section 2 of this Article VI, interest thereon and costs of collection thereof shall be a charge on the Limited Common Properties and shall be a continuing lien thereon, including, but not limited to, the pro-rata portion of snowplowing expenses and landscaping and lawn mowing incurred by the Association. The amount of such lien shall be no more than that amount required for minimum maintenance, snowplowing, landscaping and lawn mowing pursuant to the standard established in Section 5 of Article V above, plus interest thereon and costs of collection therefor. Such expenses together with such interest thereon and costs of collection thereof as hereinafter provided shall also be an obligation of the owner of the Limited Common Properties at the time when the expenses were incurred.

Section 4. Assessment Lien.

Upon payment of any maintenance expenses herein provided, the Association shall mail by registered or certified mail, copies of receipted bills for such expenses for reimbursement within ten (10) days to the owner or owners of the Limited Common Properties for which such owner or owners of the Limited Common Properties shall be liable for pursuant to Section 3 above.

If the assessments are not paid on the date when due (being the dates specified in Section 4 hereof), such interest thereon and cost of collection thereof as hereinafter provided, thereupon becomes a continuing lien on the property, which shall bind such property in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain as his or her personal obligation during such ownership period and shall pass to his or her successors in title unless the Association shall fail to furnish a certificate of unpaid assessment in the manner as is set forth in Section 9 of Article VIII. In addition to the above, the Association may deny use of the Limited Common Properties if assessments are delinquent.

If the assessment is not paid within ten (10) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, or the maximum rate of interest allowable under Ohio law, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the lien and/or the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of this action.

Section 5. Subordination of the Lien to Mortgages.

The lien for maintenance expenses, interest and costs of collection provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the maintenance assessments, interest and costs of collection 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 maintenance expenses, interest and costs of collection.

Section 6. Discharge of Lien.

Any owner of Limited Common Properties who believes that the portion of common expenses chargeable to the Limited Common Properties has been improperly charged against his or her Limited Common Properties may bring an action in the Court of Common Pleas of Erie County, Ohio for the discharge of such lien.

ARTICLE VII

Covenant for Maintenance

Section 1.

Each Owner shall keep all Lots owned by him or her, and all improvements therein or thereon including but not limited to, roadways, docks and seawalls, in good order and repair, and other appropriate external care of all 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 Trustees or the Developer, and, after thirty (30) days written notice by certified mail to the Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Lot or Parcel of Land in question and to repair, maintain and restore the Lot or 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 a mortgage upon the Lot or Parcel of Land in question.

ARTICLE VIII

Covenant for Maintenance Assessments

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

The Developer, for each Lot and Living Unit owned by it within The Properties, hereby covenants, and each Owner by acceptance of a deed therefor, whether or not it shall be so expressed in any such instrument or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges on a monthly basis in advance; (2) special assessments for emergencies as hereinafter provided; and (3) special assessments for capital improvement. Such assessments are to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made.

Each assessment, together with interest thereon and cost 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.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The 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 Common Properties, including, but not limited to, the dredging of channels and canals within The Properties and adjacent waterways to the Cedar

Point Causeway, the marking of such channels and waterways, maintenance of shorelines, seawalls, the payment of taxes and insurance thereon, repairs, replacements and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, and all snowplowing, lawn mowing and landscaping expenses as provided for in Article V, Section 5, but excluding those expenses provided for in Article VI, Section 2, which are the expenses of the owners of the Limited Common Properties.

Section 3. Basis of Annual Assessments.

The initial annual assessment shall be \$912.00 per year, paid on a monthly basis of Seventy-Six Dollars (\$76.00) per Living Unit to pay the expenses in this order:

- (1) Taxes on all common property which would include taxes on recreation buildings as well as taxes on the land.
- (2) Balance of the annual dues shall be used for maintenance of all common areas and for any other purpose the Association deems proper, including, but not limited to all costs of swimming pools, seawalls, roadways, dredging of channels and canals, marking of such channels and canals, tennis courts, guard house, guards and common area lighting, insurance, snowplowing, landscaping and lawn mowing.

The annual assessment may be increased by the vote of the Board of Trustees on an annual basis, provided such increase does not exceed ten percent (10%) over the assessment in effect for the prior fiscal year.

The Board of Trustees of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessments for any year at a lesser amount, but in no event shall the assessment be less than is required to fulfill the minimum maintenance obligations of these covenants and restrictions.

Section 4. Municipal Authority for Maintenance.

In the event the Association does not fulfill the minimum maintenance obligations required by these covenants and restrictions, the municipal entity in which the land is located has the right to enforce zoning regulations requiring such fulfillment.

Section 5. Special Assessments for Emergencies and 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 cost of any construction or reconstruction and 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 of the votes 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 and shall set forth the purpose of the meeting. Notwithstanding the foregoing, the Association may levy a special assessment for emergencies at any time for the preservation of The Properties where such special assessment is deemed by the Board of Trustees to be immediately necessary and without a vote of the Members, provided such special assessment does not exceed \$200.00 per Lot or Living Unit per annum. Any special assessment for emergencies that exceed \$200.00 per Lot or Living Unit shall be subject to the vote of the Members as provided in this Section 5.

Section 6. Change in Basis and Maximum of Annual Assessments.

Subject to the limitations of Section 3 hereof, and for the period therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change that exceeds ten percent (10%) over the assessment in effect for the prior fiscal year shall have the assent of two-thirds of the votes 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 and shall set forth the purpose of the meeting; provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and By-Laws, and under Article II, Section 2 hereof.

Section 7. Quorum for Any Action Authorized Under Section 5 and 6.

The quorum required for any action authorized by Section 5 and 6 hereof shall be as follows: At the first meeting called, as provided in Sections 5 and 6 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of the votes of each class of Members 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 Sections 5 and 6 and the required quorum at any such subsequent meeting shall be one-half 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 8. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence on June, 1985 and shall be due and payable monthly in advance thereafter. The annual assessment shall thereafter be effective as of the first day of the fiscal year of the Association for each subsequent year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment 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 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 not subject to assessment at a time other than the beginning of any assessment period. The due date of any

special assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Section 9. Duties of the Trustees.

The Trustees of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period 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 or any mortgagee a certificate in writing signed by an officer of the Association, setting forth the amount of unpaid assessments. Failure of the Association to furnish said certificate within fifteen (15) days after receipt of written demand therefor accompanied by a fee of \$10.00 sent by registered mail to the last known president, treasurer or statutory agent thereof shall discharge any lien for assessments levied prior to the date of the mailing of said demand.

Section 10. Effect of Non-Payment of Assessments: The Personal Obligation of Owner; The Lien; Remedies of the Association.

If the assessments are not paid on the date when due (being the dates specified in Section 8 hereof), such interest thereon and cost of collection thereof as hereinafter provided, thereupon becomes a continuing lien on the property, which shall bind such property in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain as his or her personal obligation during such ownership period and shall pass to his or her successors in title unless the Association shall fail to furnish such certificate of unpaid assessment set forth in Section 9 above. In addition to the above, the Association may deny use of the Common Properties and Limited Common Properties if assessments are delinquent.

If the assessment is not paid within ten (10) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, or the maximum rate of interest allowable under Ohio law, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the lien and/or the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of this action.



Section 11. 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 12. Exempt Property.

The following property subject to these restrictions shall be exempted from the assessments, charge and lien created herein:

- (a) All properties in the name of the Developer until conveyed to an Owner as defined herein. Any transfer to a person, firm, corporation or other entity merely for the purpose of changing the form of the Developer's ownership or for the purpose of holding said properties for sale thereon shall be deemed not to be a transfer to an 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 the public use.
- (c) All Common Properties.
- (d) All Limited Common Properties except for the lien provided for in Article VI hereof.
- (e) Property purchased by a builder for construction and sale of a Living Unit for a period of six (6) months from date of purchase and transfer to such builder.
- (f) Model Homes as defined heretofore.

ARTICLE IX

Covenants and Restrictions Governing Lots or  
Living Units and Waterways

Section 1. Animals.

No animal or pet of any kind, with the exception of birds, one dog and one cat per residence, may be kept or harbored on any Lot or Living Unit except by revocable permission of the Association, and the keeping of such animal shall be in accordance with the rules of the Association pertaining thereto.

Section 2. Parking of Trucks, Trailers, Boats, Mobile Homes.

No Owner shall allow the parking of trucks, trailers, boats, or mobile homes, for a period exceeding 24 hours, on The Properties except in an enclosed structure. No Owner shall park a trailer or allow a trailer to be parked over 12 hours in front of or on a Lot unless in an enclosed structure. In no case shall parking a trailer on a Lot or road be allowed on a regular basis unless it is in an enclosed structure. Docking or mooring of boats at predesignated docks, boat slips or other designated areas is permissible.

Section 3. Trash or Garbage.

No Owner shall allow trash or garbage to accumulate on any premises except in containers that are emptied periodically.

Section 4. Trade or Business.

No Owner shall carry on or permit to be carried on, on any premises, any trade or business that is evident to the public or to other Members of the Association. The Association may prescribe rules pertaining hereto.

Section 5. Signs.

No sign or other advertising device of any nature shall be placed on any Lot except (a) a sign advertising a dwelling for sale not in excess of 9 square feet; and (b) a sign on the Limited Common Properties as may be approved by the Board of Trustees.

Section 6. Roofs, Driveways and Construction.

- (a) Roofs of all dwellings shall be approved by the Architectural Committee as to texture and color so that a harmony of external design and appearance will be maintained.
- (b) All drives must be made of a hard surfaced material such as asphalt or concrete and must be hard surfaced within one (1) year after initial occupancy.
- (c) Once construction commences, same must be completed within twelve (12) months.

Section 7. Waterways.

- (a) Owners must adhere to all rules and regulations governing the waterways established by The Harbour Homeowners Association.
- (b) Watercraft owners shall adhere to all rules and regulations governing the waterways as established by the Association.
- (c) The maximum speed shall not exceed 5 MPH (no wake) in interior canals and buoyed areas.

ARTICLE X

Architectural Control Committee

Section 1. Review by Committee.

No building, docks, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made including all landscaping plans for condominium properties and single family lots until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees or designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article X will be deemed to have been fully complied with. This section shall not apply to the Developer or to Developers successors or assigns as described in Article VIII, Section 12(a) provided, however this section shall apply to builders as described in Article VIII, Section 12 (e).

Tents, camping, camping-related equipment or any type of portable living quarters shall not be permitted to be used on any of The Properties.

ARTICLE XI

General Provisions

Section 1. Duration.

The covenants and restrictions reserved in this instrument shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Owner of any land subject to these covenants and restrictions, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date of the recording of this instrument, after which time said covenants shall be automatically extended for successive period of ten (10) years unless an instrument signed by the then Owners of two-thirds of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. For purposes of meeting the two-thirds requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted; provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices.

Any notice required to be sent to any Member or Owners under the provisions of these reserved covenants and restrictions shall be deemed to have

been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement.

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Trustees.

Any action to be taken by the Association pursuant to these easements, covenants, restrictions, charges and liens shall, unless otherwise specified herein to the contrary, be taken by the Trustees of the Association.

Section 5. Right of Entry Upon Default.

The Developer reserves and is granted, and hereby grants to the Association in case of any violation or breach of any of the restrictions, covenants and easements contained in this instrument, the right to enter the property upon or as to which such violation or breach exists, and to summarily abate and/or remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, as interpreted by the Association, and the Association or its agents shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement or removal. A failure or delay to enforce any of the restrictions, covenants and easements contained in this instrument shall in no event be construed, taken or held to be a waiver thereof or acquiescence in or consent to any new, subsequent, further or succeeding breach or violation thereof.

Section 6. Rights of Owners Upon Default.

Owners, interested parties, occupants, lessees or tenants of Lots or Living Units who are in default as to any of the covenants and restrictions herein contained shall have no right to use or benefit from any of the Common Properties or Limited Common Properties or utilities or assets of the Association, but if rights, benefits, utilities or assets are used by or extended to such persons, the Association shall not be estopped from a later revocation thereof, nor be liable in damages for such revocation. Any denial of use shall not diminish any obligations of defaulting parties hereunder.

Section 7. Notice of Mortgages.

Any Owner who mortgages his or her Lot or Living Unit shall notify the Association, in such manner as the Association may direct, of the name and address of his mortgagee and thereafter shall notify the Association of the full payment,

cancellation or other alteration in the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgagees of Units".

Section 8. Severability.

The invalidity of any covenant, restriction, easement, charge, lien or any other provision of these easements, restrictions and covenants, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these easements, restrictions or covenants.

Section 9. Perpetuities and Restraints on Alienation.

If any of the options, privileges, restrictions, covenants, easements or rights created herein shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Ronald Reagan, President of the United States of America.

ARTICLE XII

Easements

Section 1. Developer's Rights.

Easements and rights-of-way are hereby expressly reserved to the Developer, 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 (1) 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 (2) storm-water drains, land drains, public and private sewers, pipe lines for supplying gas, water and heat and for other public or quasi-public utility facility, service or function, whether above ground or under ground, and
- (b) For slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by the Developer, its successors and assigns, or which might create erosion or sliding problems, or change, obstruct or retard drainage flow.

The Developer and its respective agents, successors and assigns, 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.

The Developer, its respective agents, successors and assigns, shall also have the right at the time of, or after, grading any street, or any part thereof, to

enter upon any abutting Lot and grade the portion of such Lot adjacent to such street to a slope of 2 to 1, but there shall be no obligation on it to do such grading or to maintain the slope.

Section 2. Easement Areas.

The term "easement area", as used herein, shall mean and refer (i) to those areas on each Lot with respect to which easements are shown on the recorded subdivision plat relating thereto; or (ii) if no easements are shown on any such plat, to a strip of land within the lot lines of each Lot ten (10) feet in width in the front and rear of the Lot and five (5) feet in width on each side, each side distance being measured in each case from the lot line toward the center of the Lot.

Section 3. Rights of Way.

The Developer for itself, its successors and assigns does hereby establish and create for the benefit of all Owners of Lots, Living Units and the Limited Common Properties and does hereby give, grant and convey to each of the aforementioned the following easements, licenses, rights and privileges:

- (a) Right-of-way for ingress and egress by boats, vehicles or on foot, in, through, over, under and across the streets, roads, walks, canals and channels, as the case may be, in The Properties as shown on the Site Plan as they may be built or relocated in the future) for all purposes and (if the owners of a section of canal, channel, street, road or walkway fail to maintain the thruway) the right to maintain and repair the same;
- (b) Rights to connect with and make use of utility lines, wires, pipes, conduits, cable television lines, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of The Properties and (if the owners of land upon which sections of the lines, wires, pipes, conduits, cable television lines, sewers or drainage lines are located neglect to keep them adequately maintained) the rights to maintain and repair the same.

Section 4. Benefits Intended.

The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of, and restricted solely to, the Developer and the Association and Owners of Lots, Living Units and the Limited Common Properties constructed on The Properties; and any Owner may grant the benefit of such easement, license, right or privilege to his or her tenants and guests and their immediate families for the duration of their tenancies or visits, subject to the Rules and Regulations of the Board of Trustees, but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

ARTICLE XIII

Additional Requirements of Secondary Mortgage Market

Notwithstanding anything to the contrary that may be contained in this Declaration, the Bylaws of the Association or Rules and Regulations of the Association, the following requirements shall govern the operation and conduct of the Association.

Section 1. Unpaid Assessments.

Any first mortgagee who obtains title to the subject mortgage property pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such respective property's unpaid dues or charges which accrue prior to the acquisition of title to such property by the mortgagee.

Section 2. Actions of Association.

Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) and the Owners (other than the sponsor, Developer or builder) of The Properties have given their prior written approval, the Association shall not be entitled to:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned, directly or indirectly, by such Association for the benefit of The Properties (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Properties shall not be deemed a transfer within the meaning of this clause);
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against Owners of The Properties;
- (c) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of properties, the exterior maintenance of The Properties, the maintenance of the Common Properties party walks or common fences and driveways, or the upkeep of lawns and plantings;
- (d) fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (e) use hazard insurance proceeds for losses to Common Properties for other than the repair, replacement or reconstruction of such Common Properties.

Section 3. Rights of Mortgagees.

First mortgagees of The Properties may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against Common Properties and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Properties and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement is reflected in an agreement in favor of all first mortgagees of The Properties duly executed by the Association.

Section 4. Priority of Distributions.

No provision of the constituent documents gives any Owner of The Properties, or any other party, priority over any rights of the first mortgagee of The Properties pursuant to its mortgage in the case of distribution to such Owner of The Properties of insurance proceeds or condemnation awards for losses to or taking of Common Properties.

Section 5. Reserve Fund.

Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Properties that must be replaced, repaired or maintained on a periodic basis and are payable in regular installments rather than by special assessments.

Section 6. Notification of Defaults.

A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the respective individual Owner of the subject mortgaged property of any obligation under the constituent documents which is not cured within sixty (60) days.

Section 7. Management Agreements.

Any agreement for professional management or any other contract providing for services of the Developer, sponsor, or builder, shall not exceed three (3) years. Any such agreement provides for termination by either party without cause and without payment of termination fee on ninety (90) days or less written notice.

ARTICLE XIV

Residential Protective Covenants and Restrictions

Section 1. Residential Use.

No Lot or Living Unit shall be used for other than residential purposes. No dwelling designed and intended for single family use may be rented to students, boarders or others at the same time as it is used by another family, and shall be used only for single family purposes in accordance with the applicable zoning or housing code of the City of Sandusky, Ohio.



Section 2. Display of Clothing or Machinery.

No clothing or any household fabrics shall be hung in the open on any Lot. No machinery shall be placed or operated upon any Lot except such machinery as is usual in maintenance of a private residence.

Section 3. Membership Cards.

Upon qualification for a membership in the Association, each person so qualified will be issued a membership card. Members may be required to show their membership cards to an agent of the Association as a means of verifying that said person is in fact a Member. No other persons may use the amenities unless they are a guest as defined below.

Guests may use the amenities only if they are accompanied by a Member or have a Guest Pass.

Section 4. Antennae.

There shall be no antennae or other similar devises permitted on the exterior of any Living Unit or Single Family Attached Dwellings.

IN WITNESS WHEREOF, J. B. Wolff & Associates, Inc. has hereunto set its hand by its duly authorized officers, this 1st day of November, 1984.

IN THE PRESENCE OF:

Mary Ann Sloan  
Cynthia S. [Signature]

J. B. WOLFF & ASSOCIATES, INC.

By: [Signature]

Its Chairman

And By [Signature]

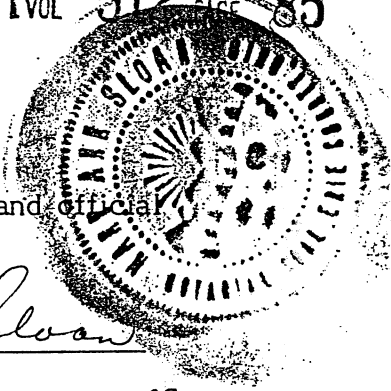
Its President

STATE OF OHIO )  
 ) SS:  
COUNTY OF ERIE )

BEFORE ME, a Notary Public in and for said County and State, personally appeared J. B. WOLFF & ASSOCIATES, INC., an Ohio corporation, by Jackson B. Wolff, its Chairman, and by Stephen C. Lochner, its President, who acknowledged that they did sign the foregoing and that the same is the free act and deed of said corporation and their free act and deed as its duly authorized officers and as individuals.

The Harbour  
C&C - 11/7/83 - 10:00 a.m. (35)

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IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio, this 1st day of November, 1984.

*Mary Ann Sloan*  
\_\_\_\_\_  
NOTARY PUBLIC  
*My Comm. Exp - 7-10-89*

This instrument prepared by:

William J. Ockington, Esq.  
Csank & Csank Co., L.P.A.  
55 Public Square, Suite 1700  
Cleveland, Ohio 44113  
(216) 589-5600

BAHAROGLU & ASSOCIATES, INC.  
CONSULTING ENGINEERS & SURVEYORS

4 East Seminary Norwalk, Ohio 44857

LEGAL DESCRIPTION  
THE HARBOUR HOMEOWNERS ASSOCIATION

Being a parcel of land located in part of Outlots 6 and 7 in Darlings Survey East of Sycamore Line, City of Sandusky, Erie County, Ohio and being more particularly described as follows:

Being the whole of 30.1324 acres of land as delineated on "Phase I Plat A Residential Planned Unit Development The Harbour" as recorded in Volume 24, Pages 78 and 79 of the Erie County Plat Records, excepting therefrom the following two (2) parcels.

PARCEL 1  
THE HARBOUR MARINA CONDOMINIUM  
UNIT OWNERS ASSOCIATION

Being a parcel of land located in part of Outlots 6 and 7 in Darlings Survey East of Sycamore Line in the City of Sandusky, Erie County, Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Causeway Drive with the centerline of the old New York Central Pier Track right of way, now or formerly owned by the City of Sandusky, thence South 48 degrees 01' 50" East along the centerline of the old New York Central Pier Track right of way, a distance of 974.00 feet to a point, thence North 41 degrees 58' 10" East, a distance of 50.00 feet to a point at the principal place of beginning for this description:

1. Thence North 41 degrees 58' 10" East, a distance of 50.00 feet to a point;
2. Thence North 48 degrees 01' 50" West, a distance of 132.50 feet to a point;
3. Thence North 41 degrees 58' 10" East, a distance of 78.85 feet to a point;
4. Thence North 19 degrees 08' 38" West, a distance of 15.41 feet to a point;
5. Thence North 48 degrees 48' 27" East, a distance of 45.23 feet to a point;
6. Thence North 36 degrees 08' 05" East, a distance of 125.00 feet to a point;

7. Thence North 53 degrees 51' 55" West, a distance of 4.00 feet to a point;
8. Thence North 36 degrees 08' 05" East, a distance of 56.54 feet to a point;
9. Thence North 49 degrees 14' 19" East, a distance of 282.29 feet to a point;
10. Thence North 48 degrees 44' 04" East, a distance of 172.65 feet to a point;
11. Thence North 50 degrees 10' 09" East, a distance of 80.50 feet to a point;
12. Thence North 73 degrees 22' 43" East, a distance of 76.86 feet to a point;
13. Thence North 84 degrees 06' 54" East, a distance of 203.87 feet to a point;
14. Thence South 85 degrees 56' 23" East, a distance of 90.17 feet to a point;
15. Thence South 41 degrees 58' 10" West, a distance of 57.08 feet to a point;
16. Thence North 48 degrees 01' 50" West, a distance of 55.79 feet to a point;
17. Thence South 86 degrees 36' 07" West, a distance of 213.09 feet to a point;
18. Thence South 71 degrees 13' 06" West, a distance of 28.65 feet to a point;
19. Thence South 60 degrees 58' 36" West, a distance of 86.35 feet to a point;
20. Thence South 01 degrees 35' 55" East, a distance of 81.45 feet to a point;
21. Thence South 43 degrees 39' 03" East, a distance of 67.38 feet to a point;
22. Thence North 87 degrees 41' 25" West, a distance of 56.57 feet to a point;
23. Thence South 47 degrees 18' 35" West, a distance of 67.74 feet to a point;
24. Thence South 52 degrees 29' 04" West, a distance of 283.23

feet to a point;

25. Thence North 37 degrees 31' 56" West, a distance of 55.00 feet to a point;

26. Thence South 74 degrees 00' 37" West, a distance of 61.57 feet to a point;

27. Thence South 33 degrees 20' 31" West, a distance of 146.66 feet to a point;

28. Thence South 44 degrees 11' 13" West, a distance of 71.22 feet to a point;

29. Thence South 19 degrees 08' 39" East, a distance of 76.24 feet to a point;

30. Thence South 49 degrees 01' 50" East, a distance of 50.00 feet to a point;

31. Thence South 83 degrees 16' 42" East, a distance of 91.84 feet to a point;

32. Thence South 48 degrees 01' 50" East, a distance of 212.00 feet to a point;

33. Thence North 31 degrees 09' 19" East, a distance of 90.61 feet to a point;

34. Thence North 16 degrees 19' 42" East, a distance of 190.66 feet to a point;

35. Thence North 77 degrees 30' 25" East, a distance of 103.36 feet to a point;

36. Thence South 48 degrees 01' 50" East, a distance of 102.43 feet to a point;

37. Thence South 05 degrees 05' 58" West, a distance of 70.00 feet to a point;

38. Thence South 14 degrees 43' 27" West, a distance of 150.72 feet to a point;

39. Thence South 28 degrees 37' 49" West, a distance of 99.69 feet to a point;

40. Thence North 60 degrees 17' 34" West a distance of 70.61 feet to a point;

41. Thence South 31 degrees 28' 41" West, a distance of 109.84 feet to a point;

42. Thence South 41 degrees 58' 10" West, a distance of 28.00 feet to a point;

43. Thence South 84 degrees 59' 40" West, a distance of 93.03 feet to a point;

44. Thence North 48 degrees 01' 50" West, along the northeasterly line of the old New York Central Pier Track right of way, a distance of 347.52 feet to the principal place of beginning and containing 4.2057 acres of land, but subject to all easements and restrictions of record.

PARCEL 2  
HARBOURMASTER INC.

Being a parcel of land located in part of Outlot 6 in Darlings Survey East of Sycamore Line in the City of Sandusky, Erie County, Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Causeway Drive with the centerline of the old New York Central Pier Track right of way, now or formerly owned by the City of Sandusky, thence South 48 degrees 01' 50" East, along the centerline of the old New York Central Pier Track right of way, a distance of 807.63 feet to a point; thence North 41 degrees 58' 10" East, a distance of 50.00 feet to a point on the northerly right of way line of the old New York Central Pier Track right of way, said point being the principal place of beginning for this description.

1. Thence North 48 degrees 48' 27" East, a distance of 182.55 feet to a point;

2. Thence North 36 degrees 08' 05" East, a distance of 124.56 feet to a point;

3. Thence South 53 degrees 51' 55" East, a distance of 4.00 feet to a point;

4. Thence South 36 degrees 08' 05" West, a distance of 125.00 feet to a point;

5. Thence South 48 degrees 48' 27" West, a distance of 45.23 feet to a point;

6. Thence South 19 degrees 08' 39" East, a distance of 15.41 feet to a point;

7. Thence South 41 degrees 58' 10" West, a distance of 78.85 feet to a point;

8. Thence South 48 degrees 01' 50" East, a distance of 132.50

feet to a point;

9. Thence South 41 degrees 58' 10" West, a distance of 50.00 feet to the northerly line of the old New York Central Pier Track right of way;

10. Thence North 48 degrees 01' 50" West along the northerly line of the old New York Central Pier Track right of way, a distance of 166.37 feet to the principal place of beginning and containing 0.2470 acres of land, but subject to all easements and restrictions of record.

The total parcel herein described, less exceptions, contains 25.6797 acres of land, but subject to all easements and restrictions of record.

#5209

LAWYERS TITLE INS. CORP.  
BOX 1280 SANDUSKY, OHIO 44870