

007986

RECEIVED FOR  
CASSIUS

STONEGATE FARMS

98 MAR 12 P

DECLARATION OF RESTRICTIONS,  
CONDITIONS, EASEMENTS AND COVENANTS

CLERMONT CO.  
BATAVIA

THIS DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS AND COVENANTS ("Declaration") is made this 24<sup>th</sup> day of February, 1998 by ARCHIE O. WILSON and SANDRA WILSON, husband and wife and EUGENE HEHEMANN and DEBRA HEHEMANN, husband and wife, (collectively, the "Declarant") under the following circumstances:

A. Declarant is the owner of that certain real property located in Clermont County, Ohio, described in Exhibit A attached hereto and made a part hereof (the "Property") by virtue of a deed recorded at Official Record 0910, Page 921 of the Clermont County, Ohio Records.

B. Declarant intends to develop the Property as a single family residential project to be known as "Stonegate Farms" with certain amenities as described herein (the "Project") and to subdivide the Property into single family lots (the "Lots"), in various phases, with the first such Phase being the Lots shown on Stonegate Subdivision Section 1 as recorded at Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Clermont County, Ohio Records (such subdivision plat hereinafter being referred to as the "Plat") and being more particularly described in Exhibit B attached hereto and made a part hereof.

C. Declarant desires and intends to impose upon the Property beneficial restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all the Property and the Project and the future owners thereof.

NOW THEREFORE, Declarant hereby declares that the portion of the Property included within the Plat is hereby subjected to the restrictions, conditions, easements and covenants of this Declaration and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following restrictions, conditions, easements and covenants, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of the Property and the Project and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof, and all such restrictions, conditions, easements and covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof.

I.

DECLARANT

Whenever the term "Declarant" appears herein, it shall include the Declarant hereof, its successors or assigns. Declarant shall have the right to assign any or all of its rights as the Declarant under this Declaration to any specific owner of the Property by executing and recording an

shall exercise all rights, authority and functions of said association, including the function of the "Architectural Committee" (as hereinafter defined).

(B) All Lot owners shall be members of the POA, with one (1) vote for each Lot owned and be liable for the assessments described herein.

(C) Lot owners shall pay an annual assessment to the POA in an amount determined by a majority of the POA members for each year. The purpose of the assessments shall be for the POA to carry out its purposes and to pay for the maintenance, repair, upkeep and replacement of any areas or facilities designated to be Community Facilities pursuant to the terms of this Declaration, to pay the insurance premiums for insurance carried in connection with the Community Facilities and to pay for all other costs of the POA associated with the ownership, use or management of the Community Facilities. The amount of said assessment shall be the same as to each Lot in the development, (without regard to the size of said Lots) and shall be applicable to all such Lots. Said assessment shall be payable by December 31st of each calendar year. The POA may elect to bill the annual assessment on a quarterly basis, in which event the owners shall pay such quarterly installments within thirty (30) days after being billed for the same. Said assessment shall be payable in full by the current Lot owner, regardless of a transfer of ownership during the calendar year. Said assessment shall not be applicable to Declarant, except as to Lots owned by Declarant on or after ten (10) years from the date of the recording hereof.

(D) In the event of the failure by a Lot owner to pay the assessment provided in Paragraph (C) hereof when due, the POA may, in addition to seeking judgment for the amount thereof, recover judgment against said owner(s) for an additional amount which shall be five (5) times the annual assessment owed and its court costs and attorneys' fees incurred in seeking payment of such assessments. Said amount, less the court costs and attorneys' fees paid by the POA in effecting collection, shall be credited to the account of said Lot owner and applied to subsequent assessments.

(E) All assessments charged against Lot owners as described herein, plus court costs and attorneys' fees incurred shall be a charge on the Lot of such owner and continuing lien upon the Lot, in addition to being the personal obligation of such owner. If any assessment is not paid within thirty (30) days after the date is due, then the POA shall have the right to file a notice of lien (in the form of an affidavit in aid of title as prescribed by Section 5301.252 of the Ohio Revised Code) and to foreclose against the lien in the same manner as mortgages are foreclosed upon in the State of Ohio. The lien described herein shall be subordinate to the lien of any first mortgage on any Lot.



## V.

ARCHITECTURAL COMMITTEE

(A) There shall be a committee formed for the purpose of reviewing and approving plans for improvements in the Project (the "Architectural Committee"). The Architectural Committee shall be composed of at least three (3) individuals selected by the POA, whose actual number, method of election and terms shall be determined by the members of the POA, or by the Declarant until such time as the POA has been formed.

(B) The Architectural Committee shall have the right, from time to time, to propose design guidelines or regulations for improvements in the Project, which, prior to being effective, shall be approved by the POA. Any modifications or termination of such guidelines or regulations, once established, must also be approved by the POA. The establishment or modifications of any design guidelines or regulations shall have no effect upon any approvals granted by the Architectural Committee prior to the adoption of the same.

(C) No structures, including houses, barns, garages, buildings of any other kind, fences, swimming pools or other items, shall be constructed, installed or altered on any Lot until the plans and specifications for the same have been approved in writing by the Architectural Committee as described in Article VI. It shall be the goal and purpose of the Architectural Committee to insure that the proposed items comply with the requirements imposed by this Declaration, all design guidelines or regulations then in effect, if any, and to otherwise insure that the proposed items are compatible with and not adversely affect the appearance or value of the remainder of the Project.

(D) Neither the Declarant, the POA nor the Architectural Committee shall be responsible in any way for any defects in either plans or specifications submitted, revised or approved, nor for any structural or other defect for work done in accordance with said plans and specifications.

(E) The Architectural Committee shall have the power to and may allow reasonable variances and adjustments of these conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations or restrictions contained herein; provided, however, that such is done in conformity to the intent and purposes hereof and provided also that in every instance such variances or adjustments will not be materially detrimental or injurious to other property or improvements in the development.

(F) The Architectural Committee may impose more strict regulations than required by the Batavia Township Rural Zoning Board or any other zoning authority then having jurisdiction, however, in no case, shall such regulations be less strict.

## VI.

CONSTRUCTION AND IMPROVEMENTS

(A) Lot owners intending to construct or alter residences or other improvements as described above in Article V must submit to the Architectural Committee a set of plans, which shall include at a minimum the following:

- (1) Site Development Plan, including drives, paths, decks, patios and all proposed improvements in connection with such construction; and
- (2) Complete and detailed construction plans and specifications.

It shall not be permissible to proceed with construction or alterations until such time as the Architectural Committee has given its written approval of said plans. In the event that the Architectural Committee fails to either approve or reject said plans within thirty (30) days from the date of their receipt, said plans shall be deemed authorized and approved.

(B) All plans and specifications for improvements not included in the initial construction, including but not limited to reconstruction, alterations or additions to any building or any structure on any Lot, including swimming pools, shall be subject to and require the authorization and approval of the Architectural Committee as provided in Paragraph (A) hereof.

## VII.

RESTRICTIONS

In addition to restrictions and protective covenants which appear otherwise herein, the Project and all Lots shall be subject to the following restrictions:

- (1) Improvements on all parcels of the development shall be only for the purpose of maintaining a single family residence, or authorized uses incident thereto.
- (2) No television or radio antennae towers may be erected or maintained within the development without the specific approval of the Architectural Committee. The location of satellite dishes must also be specifically approved by the Architectural Committee.
- (3) No signs, billboards or advertising of any kind shall be erected or maintained within the Project without the prior consent of the Architectural Committee, except that the Declarant may erect and

maintain signs or other structures designed to advertise the development and sale of parcels within the Project.

- (4) Except as originally platted, no Lot within the Project shall be subdivided into two (2) or more building sites, except that the Declarant shall have the right to subdivide or replat parcels into separate building sites so long as said subdivided or replatted parcels are not less than two (2) acres.
- (5) No house trailers shall be placed on any Lot. Tractors, campers, boats or similar recreational vehicles must be screened from neighboring and public view.
- (6) No walls or fences shall be erected or maintained within the Project without the approval of the Architectural Committee.
- (7) Each Lot, at all times, shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that they are visible from any neighboring parcel or road, except as necessary during a period of construction.
- (8) No Lot shall be used in whole or in part for the storage of any property or thing that will cause such Lot to appear in an unclean, disorderly or untidy condition or that will be otherwise obnoxious. No obnoxious or offensive activity shall be carried on upon any Lot nor shall anything be done, placed or stored thereon which may be or become an annoyance or nuisance to the neighborhood or occasion any noise or odor which will, or is likely to, disturb the peace, quiet, comfort or serenity of the occupants of nearby parcels.
- (9) No bus, truck, tractor, trailer or other commercial vehicle shall be parked within the public right-of-way within the Project.
- (10) At the commencement of any construction upon any Lot, the owner and/or contractor shall immediately place road tile in the ditch along the side of the road and all trucks delivering materials for the construction of any buildings thereon shall use the driveway in gaining access to the building site, and the owner and/or contractor shall be held responsible to see that building material trucks do not drive across the berm of the roadway in making any deliveries. Said driveway tile shall be at least twenty feet (20') long or as required by



county regulations for approved subdivisions and the driveway approach from the edge of the roadway to the road right-of-way line shall have at least eight inches (8") of base material.

- (11) No fuel oil tanks, gasoline tanks, liquid gas tanks nor swimming pools shall be placed above the surface of the ground on any Lot.
- (12) No building, swimming pool, or other structure whatsoever shall be placed within one hundred (100) lineal feet of right-of-way or within fifty (50) lineal feet of property line without the written consent of the Architectural Committee.
- (13) Excepting Declarant, no structure of a temporary character, tent, shack, trailer, camper, boat, recreational vehicle, garage, or any other outbuilding shall be used on any Lot at any time as permanent or temporary residence or dwelling, nor shall such be placed on or erected on any parcel or parcels; provided, however, that the Architectural Committee may grant permission for such temporary buildings or structures for the storage of materials during construction by the persons doing such work.
- (14) No Lot owner shall be permitted to keep horses, pigs, sheep, goats, chickens, livestock or any other offensive animals as determined by the POA upon any Lot in the Project. Notwithstanding the foregoing to the contrary, horses may be kept on Lots 10, 11 and 12 due to the location of those specific Lots relative to the remainder of the Project.
- (15) Mailboxes shall be of the type and design specified by the Declarant and/or POA.
- (16) Ranch style homes must contain a minimum of 2,000 square feet of space and all other style homes must contain at least 2,500 square feet of space.
- (17) A driveway to residential homes must be constructed with asphalt material.

## VIII.

EASEMENTS AND COMMUNITY FACILITIES

(A) There is hereby reserved, created and granted, for the benefit of the Declarant, all Lot owners and the POA, a perpetual easement over those portions of the Property shown on the Plat or on future subdivision plats for the Project as landscape/berm easements, sanitary sewer and other utility easements, storm drainage easements and lakes. Such areas and items described in the immediately preceding sentence and all street lights, sprinkling systems and components, signage and entryway features shall constitute the initial "Community Facilities".

(B) The purpose of the utility easements shall be for Declarant and all owners to install, maintain, repair, replace and use utility lines and related facilities to serve their respective Lots. Any owner disturbing the area encumbered by such utility easements by construction activities shall be required to restore the same, to the extent reasonably possible, to its original condition after completion of such construction activities. Declarant also reserves the right to assign such utility easements to any public utility provider.

(C) The purposes of the easements for drainage and lakes shall be to provide drainage detention and to properly maintain such lakes as detention facilities for the Project and to keep such lakes clean and attractive. Except as permitted herein, no owner, including the owners of the Lots upon which the same are located, shall be entitled to construct docks or other structures or items on around the Lakes without the prior consent of the Declarant and the Architectural Committee, and there shall be no swimming, fishing, boating or other activities within such Lakes without the prior approval of Declarant and the POA. Notwithstanding the preceding to the contrary, due to the specific location of the lake on Lots 10 and 11, relative to the other Lots, the preceding restrictions shall not apply to the activities of the owner of Lot 10 and Lot 11 relative to the lake located on such Lots.

(D) The purpose of the landscape/berm easements shall be to maintain and repair, replace and install landscaping and entryway signs and features for the Project.

(E) In addition to the initial Community Facilities, the Declarant shall have the right, at any time and from time to time, to create additional easements and to designate such additional easements or other items as Community Facilities to benefit the Lot owners and the Association by executing and recording supplements to this Declaration specifying and identifying the additional Community Facilities.

(F) The private ingress and egress easements shown on the Plat are hereby reserved and created and granted for the benefit of the Lots immediately adjacent to the same. Each driveway located on each such easements shall be maintained and repaired by and at the expense of the Owners of the Lots benefitting from such easement, with such costs being shared equally by such the owners of such Lots once construction of any house commences on any such Lot.



## IX.

REMEDIES FOR VIOLATIONS

(A) All provisions, restrictions, conditions, easements, covenants and agreements herein shall be binding on all of the Property and Lots and the owners thereof, regardless of the source of title of such owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date the Declarant, POA or any other Lot owner shall have notified in writing the owner or resident in possession of the Lot upon which or as to which such breach has been committed to refrain from a continuance of such action and to correct such breach, shall warrant the Declarant, the POA, or any Lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief, and if such relief be granted, the court may, in its discretion, award to the plaintiff in such action reasonable expenses in prosecuting such suite, including attorneys' fees.

(B) Violation of any of the provisions, restrictions, conditions, easements, covenants and agreements shall not defeat or render invalid the lien of any mortgage made in good faith for value as to any parcel or portion thereof in the development, but such provisions, restrictions, conditions, easements, covenants and agreements shall be enforceable against any portion thereof acquired by any person through foreclosure or by deed in lieu of foreclosure for any violation of the provisions, restrictions, conditions, easements, covenants and agreements contained herein occurring after the acquisition of said property through foreclosure, or deed in lieu of foreclosure.

(C) No delay or omission on the part of the Declarant, POA or the owner or owners of any Lot or Lots in the development in exercising any right, power or remedy herein provided for in the event of any breach of any of the provisions, restrictions, conditions, easements, covenants and agreements herein contained shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue, nor shall any action be brought or maintained by any one whomsoever against Declarant or the POA for or on account of his/her or its failure or neglect to exercise any right, power or remedy herein provided for in the event of any such breach, or for imposing herein provisions, restrictions, conditions, easements, covenants or agreements which may be unenforceable.

(D) In the event that any one or more of the provisions, restrictions, conditions, easements, covenants and agreements herein shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, restrictions, conditions, easements, covenants and agreements herein shall continue unimpaired and in full force and effect.

(E) The various rights and remedies of Declarant, the POA and the owners of Lots as provided herein are and shall be cumulative. All of them may be used, relied upon, resorted to an enforced without in any way affecting the ability of Declarant, the POA or the said property owners to use, rely upon, resort to or enforce the others, or any of them.



## X.

AMENDMENTS

(A) As of the date of this Declaration, the Lots described in Exhibit B attached hereto are subject to this Declaration. Declarant shall have the right to add additional portions of the Property to this Declaration at any time and from time to time unilaterally by executing and recording supplements to this Declaration. Each such supplement shall identify and describe the new Lots then being added to the Declaration and the new Community Facilities included within such new phase of the Project. Upon the execution and recording of each new supplement, all references contained herein to "Property", "Lots", "Project" and similar words or phrases shall be deemed to include such new portions of the Property described therein and all references herein to "Plat" shall be deemed to mean and include all such additional subdivision plats.

(B) Except for the unilateral right of Declarant to make modifications to the Declaration as described herein, to which this Article X shall not apply, all or any part of the provisions of this Declaration may be revoked, amended, or modified at any time by the filing in the Clermont County, Ohio Recorder's Office an instrument reciting said revocation, amendment or modification, executed by the owner or owners of record (as shown by the land records of Clermont County, Ohio at the time of the filing of such instrument of seventy-five percent (75%) of the Lots within the Project.

[EXECUTION PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this instrument this 28<sup>th</sup> day of January, 1998.

This Instrument Acknowledged  
in the Presence of:

Robert E. Loh  
Print Name Robert E. Loh

Archie O. Wilson  
ARCHIE O. WILSON

Annetta C. Aubrey  
Print Name Annetta C. Aubrey

Robert E. Loh  
Print Name Robert E. Loh

Sandra Wilson  
SANDRA WILSON

Annetta C. Aubrey  
Print Name Annetta C. Aubrey

Robert E. Loh  
Print Name Robert E. Loh

Eugene Hehemann  
EUGENE HEHEMANN

Annetta C. Aubrey  
Print Name Annetta C. Aubrey

Robert E. Loh  
Print Name Robert E. Loh

Debra Hehemann  
DEBRA HEHEMANN


Annetta C. Aubrey  
Print Name Annetta C. Aubrey



STATE OF OHIO )  
 )  
COUNTY OF CLERMONT )

SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 1998 by Archie O. Wilson.


  
Notary Public

ANNETTA C. AUBREY  
Notary Public, State of Ohio  
My Commission Expires July 5, 1999

STATE OF OHIO )  
 )  
COUNTY OF CLERMONT )

SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 1998 by Sandra Wilson.

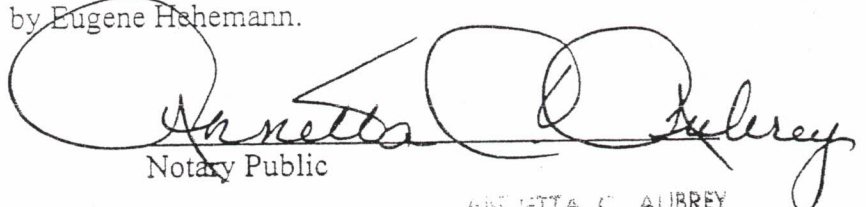
  
Notary Public

ANNETTA C. AUBREY  
Notary Public, State of Ohio  
My Commission Expires July 5, 1999

STATE OF OHIO )  
 )  
COUNTY OF CLERMONT )

SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 1998 by Eugene Hshemann.

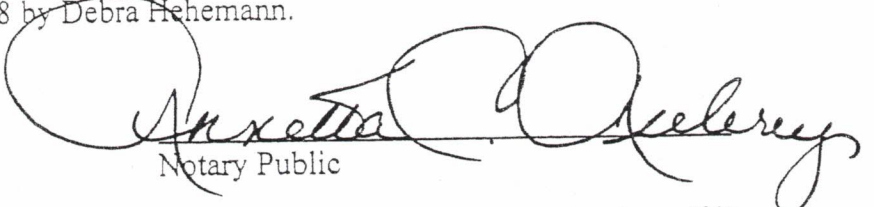
  
Notary Public

ANNETTA C. AUBREY  
Notary Public, State of Ohio  
My Commission Expires July 5, 1999

STATE OF OHIO )  
 )  
COUNTY OF CLERMONT )

SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 1998 by Debra Hshemann.

  
Notary Public

ANNETTA C. AUBREY  
Notary Public, State of Ohio  
My Commission Expires July 5, 1999

This Instrument prepared by:

Richard D. Herndon, Esq.  
Barron, Peck & Bennie  
One West Fourth Street  
Suite 1400  
Cincinnati, Ohio 45202  
(513) 721-1350

C:\WP\FILES\RDH\MIDWEST\STONEGTE\DECLARAT.RED



Situated in Batavia Township, Clermont County, Ohio, and in Scott's Military Survey No. 586, and more particularly described as follows:

Beginning at a spike in the centerline of State Route 222 which is N 86° 24' W, 644 feet plus or minus from the centerline intersection of said State Route 222 and Union Chapel Road, thence N 86° 24' W, 1074.35 feet with the centerline of State Route 222 to the northeast corner of Allen Boles, Jr., thence with the east line of Allen Boles, Jr., S 3° 01' W, 272.97 feet; thence with the line of said Boles and Robert Channel N 86° 24' W 320.00 feet to a post; thence with the west line of Channel and a fence, N 3° 01' E, 272.97 feet to the centerline of State Route 222; thence with said centerline S 86° 24' E, 320.00 feet (the last 4 courses and distances being around 2 lots totaling 2.005 acres and excepted from grantor's land); thence S 86° 24' E, 373.26 feet with the centerline of State Route 222 to the northwest corner of Royce and Luther Wardrep land; thence with the west line of Wardrep, S 0° 31' E, 640.04 feet; thence with the south line of Wardrep and George Kirchner, S 86° 22' E, 701.15 feet to a post in the line of Carl and John Miller; thence with the line of Miller and Robert Henning S 0° 44' E, 992.93 feet to a stone; thence with the lines of Henning, S 88° 55' W, 619.00 feet to an old fence post and S 0° 42' E, 437.43 feet to a post in the line of C.V. Secrist; thence with the line of Secrist and Amelia Hartmeiz N 89° 27' W, 1373.69 feet to a stone; thence with the lines of Hazel Gabriel, N 1° 42' E, 391.06 feet to a stone, S 89° 21' W, 252.03 feet to a stone and N 1° 04' E 1380.11 feet to a post marking the southwest corner of William Weimer in the line of Gabriel; thence with the lines of Weimer, S 86° 18' E, 199.98 feet to a post, and N 0° 59' E, 438.68 feet passing an angle iron at 419.81 feet to the centerline of Mt. Holly Road; thence with the centerline of Mt. Holly Road, S 86° 24' E, 53.23 feet to a spike at the centerline intersection of Mt. Holly Road and State Route 222; thence N 0° 45' E, 1611.42 feet with the centerline of State Route 222 to the southwest corner of Donald and Betty Messner's lot; thence with the lines of Messner, S 89° 35' E, 435.60 feet and N 0° 45' E 100.00 feet; thence with the line of Ungethuen, S 89° 35' E, 1451.52 feet to a stone; thence with the line of Thelma King, S 0° 26' E, 1818.68 feet to the place of beginning and containing 162.092 acres of land.

Being the result of a survey and plat dated September 10, 1960, made by Stanley E. Montgomery, Registered Surveyor No. 3879.

**Save and Except** a certain tract of land containing 76.19 acres heretofore conveyed at Volume 422, page 423, more particularly described as follows:

Situated in Batavia Township, Clermont County, Ohio, and in Scott's Military Survey No. 586, and more particularly described as follows:

Beginning at a spike at the centerline intersection of State Route No. 222 and Mt. Holly Road; thence N 0° 45' E 1611.42 feet with the center of State Route No. 222 to a spike corner to Donald and Betty Messners; thence leaving State Route No. 222 with Messners south line S 89° 35' E, 435.60 feet to a stake; thence with Messners east line 0° 45' E 100 feet to a stake; thence S 89° 35' E 1451.52 feet to an existing stone; thence S 0° 26' E 1818.68 feet to an existing spike in State Route No. 222; thence N 86° 24' W 1926.89 feet with the centerline of State Route No. 222 to the place of beginning and containing 76.198 acres of land.

Being the result of a survey and plat dated December, 1963 made by Stanley E. Montgomery, Registered Surveyor #3879.

EXHIBIT B

Being all of Lot Numbers 1 through 23 of Stonegate Subdivision, Section 1, as recorded at Plat Book 7, Page 164-170 of the Clermont County, Ohio Records.



CONSENT AND SUBORDINATION

BANK ONE, CINCINNATI, N.A., as the mortgage under that certain Open-End Mortgage dated May 16, 1997 and recorded at Official Record Book 0918, Page 099 of the Clermont County, Ohio Records (the "Mortgage") hereby consents to the preceding Declaration of Restrictions, Conditions, Easements and Covenants and agrees that the lien of such Mortgage shall be subordinate to such Declaration.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 4<sup>th</sup> day of FEBRUARY, 1998.

Signed and Acknowledged  
in the Presence of:

BANK ONE, CINCINNATI, N.A.

David M. Chesney  
Print Name David M. Chesney  
Yvonne Painter  
Print Name YVONNE PAINTER

By Daniel E. Salley  
Name DANIEL E. SALLEY  
Its SENIOR VICE PRESIDENT

STATE OF OHIO )  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of FEBRUARY, 1998 by DANIEL E. SALLEY, as the Sr. Vice President of Bank One, Cincinnati, N.A., on behalf of such national banking association.



Joan Yvonne Painter  
Notary Public  
JOAN YVONNE PAINTER  
Notary Public, State of Ohio  
My Commission Expires May 31, 1999