

**DECLARATION**

**OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by THE TECTONICS CONSTRUCTION CO., an Ohio corporation, hereinafter referred to as "Declarant"

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property situated in the Village of Brookville, County of Montgomery and State of Ohio, which is more particularly described in Exhibit A, attached hereto and made a part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to RONA VILLAGE HOMEOWNERS ASSOCIATION, INC., its successors and assigns, an Ohio nonprofit corporation. Reference to the Directors of said Association shall be deemed to mean and include its Trustees.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance by the Declarant of the first lot is described in Exhibit B, attached hereto and made a part hereof.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to THE TECTONICS CONSTRUCTION CO. , its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## **ARTICLE II**

### **PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, including a right and easement of ingress and egress both vehicular and pedestrian from and to an adjacent public street, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;

(d) the right of the Association to limit the number of guests of members,.

(e) the right of individual owners to the exclusive use of parking places as provided in this Article.

Section 2. Delegation of Use. (Previously Removed)

Section 3. Parking Rights. Ownership of each lot shall entitle the owner(s) thereof to the exclusive use of not more than two (2) automobile parking spaces as near and convenient to said lot as reasonably possible, together with the right of ingress and egress both vehicular and pedestrian in and upon said parking spaces and to and from said parking spaces to an adjacent public street. The Association shall assign permanently the above mentioned two parking spaces for each dwelling, and said spaces shall not be used for the parking of anything other than operative automobiles.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on July 1, 1975.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges, and (2) Special Assessments, and (3) Special Individual Lot Assessments. All such assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and both types of special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments - The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be One Hundred Eighty (\$180.00) Dollars per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis .

Section 7. Date of Commencement of Annual Assessments: Due Dates. The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand,, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether all assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of three percent (3%) per month. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of any such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot. (Amended 97 Jan 13)

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that such assessment lien shall be entitled to payment out of the fund created through such mortgage foreclosure or proceeding in lieu thereof, in order of the priority of such assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority, and the Common Area shall be exempt from the assessments created herein. However, no

land or improvements devoted to dwelling use shall be exempt from said assessments. (Amended 97 Jan 13)

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

No building, 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 until the plans and specifications showing the nature, kind, shape, height, materials, and location of the 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 Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board, In the event said Board has chosen to appoint such a committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE VI**

### **PARTY WALLS**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon 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.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## **ARTICLE VII**

### **EXTERIOR MAINTENANCE**

In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association shall have the right, through its agents and employees and after approval by two-thirds (2/3) vote of the Directors, to enter upon said parcel and to repair, maintain and restore the lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall become a Special Individual Lot Assessment to which such lot is subject. In the event the need for

repair, maintenance or restoration of the Lot and/or the exterior of any buildings and improvements thereon is caused by the willful or negligent act of any other owner or persons residing on any other Lot within the Properties, the cost of such repair, maintenance or restoration (as previously authorized by the vote of two-thirds of the Directors) shall constitute a Special Individual Lot Assessment against the lot owned by such other owner or occupied by such other person.

## **ARTICLE VIII**

### **USE RESTRICTIONS**

Section 1. Single family residence. (Amended 97 Jan 13) No Lot shall be used for any purpose other than as a residence site for a single family. The total number of such single family units on the properties shall not exceed fifty-nine (59) units. For the purposes of this restriction upon use, a "family" shall be deemed to mean a group of one or more persons each of whom is related to the other by blood, marriage or adoption, or a single couple, who are living together and maintaining a common household, but excluding two or more married or unmarried couples and excluding two or more parents (not married to each other or living together and maintaining a common household, and not themselves parents and child) who have their children or stepchildren living with them.

Section 2. No Roomers or Boarders. In accordance with the frequent approach in zoning codes of protecting values in residence districts by prohibiting the use of single family residences for roomers and boarders, and in order to provide similar protection for the owners of these Lots, it is hereby provided that no boarders or roomers shall be permitted in addition to the family occupying each such Lot and the single family residence erected thereon.

Section 3. Trash Storage. All trash, rubbish or garbage which is stored outdoors or placed outdoors to be collected shall be stored or placed in the storage sheds provided upon the patio area of each lot. All such trash, rubbish or garbage shall be contained in one or more storage boxes or containers, kept inside said sheds, which are flytight, rodent proof, non-flammable and reasonably

waterproof. The outdoor storage of any other materials for a continuous period exceeding fifteen days in length shall be prohibited. Provided, however, that the storage of such functional items as children's bicycles and play equipment shall be exempt from this provision. Because of the hazards of fire, the storage of highly flammable or explosive matter (other than the aforementioned trash, rubbish or garbage stored in certain containers) in the storage units on each patio is prohibited.

Section 4. Home Occupation. The restriction above to the use of any Lot as a single family residence shall not prohibit the conduct of a "home occupation" upon said lot as defined herein. Home occupation means any occupation or profession carried on by members of the immediate "family" residing on the premises, in connection with which there is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a single family residence dwelling; in connection with which there is no commodity sold upon the premises, and no person is employed other than a member of the immediate family residing on the premises, and no mechanical or electrical equipment is used except such as is permissible for and is customarily found in purely domestic or household purposes. A professional person may use his residence for infrequent consultation, or emergency treatment, or performance of occasional or emergency religious rites, but not for the general practice of his profession.

Section 5. Additional Structures. No additional and/or accessory structures of any nature whatsoever shall be erected upon any lot, in addition to the basic single family residence constructed thereon and any storage shed provided by the Declarant upon the patio area of each such Lot.

Section 6. Nuisances. No noxious or offensive activities shall be carried on upon any Lot or upon the Common Areas or facilities, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 7. Signs. No signs of any kind shall be displayed to the public view on the Properties except:

(a) On the Common Area and approved by the Directors,

(b) Signs regarding and regulating the use of the Common Area, as approved by the Directors,

(c) Signs used by the Declarant to advertise the Property for sale during the construction and sales period, and

(d) Signs on any Lot(s) no larger than five square feet in size containing the words "for sale" or "for rent" and the name and/or address and/or telephone number of the seller.

Section 8. Exterior Wiring, Antennas or Installations. No exterior wiring or antennas shall be permitted on the exterior portion of any building or improvement situated upon any Lot. No air conditioning or other type of installation shall be installed or permitted which appears on the exterior of any building or which protrudes through the walls, roof or window area of any building on any Lot, except as may be specifically authorized by two-thirds vote of the membership of both classes of the Association.

Section 9. Fire Insurance. (Amended 97 Jan 13) Each owner shall at all times maintain fire and extended coverage insurance covering the improvements upon his Lot in an amount equal to 100% of the replacement value of such improvements, with loss payable to the Owner, any first mortgagee, and any other lienholder (including the lien of the Association for assessments) as their respective interests may appear; provided, however, that this covenant shall not be applicable with respect to any unit owned by an agency of the federal government. Provided, further, that a memorandum copy or other evidence satisfactory to the Association shall be provided to the Association by each unit of such insurance coverage. This requirement is imposed by virtue of the fact that the Properties are to be occupied by townhouses and row houses, with the result that an uninsured fire loss to a building situated upon one of the Lots would have a detrimental effect upon other units and the Common Area. In the event of damage to the improvements, all insurance proceeds paid to the Owner shall be applied to the

restoration of the improvements, or, if restoration is not possible or economically feasible, the proceeds shall be applied to the replacement of the improvements; provided, however, that the Owner shall not be required to expend more than the amount of insurance proceeds received.

Section 10. Animals. (Amended 97 Jan 13) Except as hereinafter provided, no livestock, poultry, or animals of any kind shall be raised, bred, or kept on any lot or the Common Area. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained on a lot, provided that:

1) No more than a total of two (2) pets will be permitted per household; provided, however, that this number may be exceeded with respect to marine life and small animals such as gerbils, hamsters and birds if kept in appropriate cages and aquariums.

2) No such animal shall be permitted in any portion of the Common Area, except when on a leash controlled by a responsible person. The permitting of attended leashed animals on the Common Area shall be subject to such rules and regulations as the Board of Trustees may from time to time establish.

3) The right of a member to maintain an animal or animals on a lot shall be subject to termination if the Board of Trustees determines that the maintenance of the animal(s) constitutes a nuisance.

## **ARTICLE IX**

### **EASEMENTS**

Section 1. Easement for Repair, Maintenance and Restoration. The Association shall have an easement to and over all Lots for ingress and egress to the exterior portions of all buildings and improvements upon said Lots so as to enable the Association to perform its obligations, rights and duties with regard to repairs, maintenance and restoration as set forth in this Declaration.

Section 2. Easement for Encroachments. Each building on each lot shall have an easement to encroach on any other lot and upon the Common Area and facilities, and the Common Area and facilities shall have a reciprocal easement for encroachment upon each lot and building, as the same may occur as the result of overhangs in the design, deviations in construction, building movement or additions from time to time.

Section 3. Easement for Support. Every portion of a building or of the Properties contributing to the support of another building shall be burdened with an easement of support for the benefit of all other such buildings and for the benefit of the Common Area and facilities.

Section 4. Utility Easements. Easements shall exist throughout any and all buildings, over, through and under any and all lots and the Common Area for conduits, ducts, plumbing, poles, transformers, wiring and other facilities necessary or incidental to or for the furnishing of utility services servicing the Common Area or any individual lots. Ownership of all pipes, conduits, etc. within said easement shall constitute part of the Common Area and facilities in order that said pipes, conduits, etc. may be used by a number of different owners.

## ARTICLE X

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Additional land within the area described in Deed Volume 2444, page 148, of the land records of Montgomery County, Ohio, may be annexed by the Declarant without the consent of members within five years of the date of this instrument provided that the FHA and the VA determine that such annexation is in accord with the general plan heretofore approved by them.

Section 2. Other than as provided in Section 1 above, annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of Proxies entitled to cast sixty (60%) percent of the votes of each class of membership 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 above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

Section 4. Local Government Assessments. In the event any local government unit should, in connection with a street or sidewalk improvement or maintenance program, or other governmental action involving assessments, levy assessment(s) against all or part of the Lots within the Properties, said assessments shall be shared pro rata among all other Lots within the Properties and the pro rata amount so allocated to each Lot shall become and be added to the assessments to which such Lot is subject.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant, herein, has hereunto set its hand and seal this 16th day of September 1969.

THE TECTONICS CONSTRUCTION CO.,

Declarant: By: Kenneth H. Durnbaugh - Vice President      By: Sam C. Winfree - Sec / Treas