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RECORDER FRANKLIN CO., OHIO

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SEP 23 1996

RICHARD B. METCALF, RECORDER

RECORDER'S FEE 46.00

**ASBURY PARK SECTION II
SUPPLEMENTAL DECLARATION OF COVENANTS, EASEMENTS, RESTRICTIONS
ASSESSMENT LIENS AND ASBURY PARK ASSOCIATION**

23 This is a declaration of covenants, easements, restrictions and assessments made on this day of September 1996, by CREEKVIEW PARTNERS, an Ohio General Partnership, of Franklin County, Ohio ("Declarant").

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BACKGROUND

A. Declarant is the owner in fee simple of the following REAL PROPERTY: Situated in the State of Ohio, in the County of Franklin, and in the City of Reynoldsburg.

Being lots Numbered Sixty-Nine (69) through Eighty-Nine (89) inclusive of ASBURY PARK, Section II, as the same are numbered and delineated upon the recorded plat thereof, of record in Plat Book 84, Page 33, Recorder's Office, Franklin County, Ohio and subsequent sections of Asbury Park to be developed upon adjacent land currently owned by Creekview Partners.

Each of these lots is referred to herein as a "Lot", and collectively they are referred to herein as the "Lots". A "Lot Owner" is each owner of a fee simple interest in a Lot. The ASBURY PARK subdivision is referred to herein as the "Subdivision".

B. Declarant intends during the course of development of the Subdivision, to construct a certain entranceway to the Subdivision on portions of lots numbered Sixty-Nine (69) and Eighty-Nine (89) in the Subdivision and to install fencing, signage, and landscaping at said entranceway and provide for the servicing and maintenance of the improvements, landscaping and grass at the entranceway for the benefit of Declarant as well as the Lot Owners in the Subdivision.

C. Declarant also intends during the course of development of the subdivision and adjacent land, to construct two (2) storm water detention basins within the Detention Easements areas as identified on the subdivision plat and to install landscaping and grass.

D. Simultaneously with its execution hereof, Declarant has caused an Ohio unincorporated association of Lot Owners to be formed, named "Asbury Park" (the "Association"), to administer the maintenance of the entranceway and detention easement areas. The members of the Association are and shall be Lot Owners, and the Association's purposes are and will be to maintain the entranceway and detention easement areas and to enforce restrictions and conditions under which the maintenance will be carried out, all as set forth herein. The Association may, by a majority vote, adopt a set of bylaws and promulgate rules and regulations concerning maintenance of the entranceway and detention easement areas and the establishment and collection of assessments. The Association may, also by a majority vote, elect to incorporate, under statutes set forth in the Ohio Revised Code, as an Ohio corporation, not-for-profit. Further, land adjacent to the Subdivision may be added to the plan created by this Declaration to take advantage of economics of scale and reduce per lot association costs and accomplish similar

CARLILE PATCHER & MURPHY BOX (9/16)

CONVEYANCE TAX EXEMPT JOSEPH W. TESTA FRANKLIN COUNTY AUDITOR	NOT NECESSARY SEP 28 1996 JOSEPH W. TESTA AUDITOR FRANKLIN COUNTY, OHIO
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objectives.

E. Declarant desires to create a plan of restrictions easements and covenants concerning the Lots in the Subdivision and to retain in Declarant plan approval of the dwelling units to be constructed on said Lots and said easements and covenants shall also relate to the entranceway and detention easement areas for the benefit of and to protect the interests of the public, Declarant, each Lot owner, and their respective personal representatives, heirs, successors, and assigns.

Covenants, Restrictions, Easements, Assessments and Liens

Now therefore, Declarant hereby declares that the Lots shall be held, sold, conveyed and occupied subject to the following covenants, easements and restrictions which are for the purpose of protecting the values and desirability of, and which shall run with the Lots, and each part thereof, and be binding on all parties having any right, title or interest in the same, and each part thereof, and their respective personal representatives, heirs, successors and assigns, and shall inure to the benefit of and be enforceable by Declarant and each Lot Owner, and their respective personal representatives, heirs, successors and assigns, and the Association.

ARTICLE I

(A) **LAND USE**: All of said Lots in the ASBURY PARK subdivision shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot that would exceed two and one-half (2-1/2) stories in height and in no event shall any building be erected to a height exceeding thirty-five (35) feet from the finish grade of the building, together with necessary accessory buildings and structures, including a garage, an uncovered or covered and/or enclosed patio, wood fencing, an in-ground swimming pool, and a bath house. No other structure shall be constructed, erected, placed or permitted to remain upon any lot without the express written consent of Declarant. The word "structure" as used herein includes in its meaning any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including, but not limited to, above-ground swimming pool, barn, greenhouse, fencing, coop, cage, animal run, house trailer or any other temporary or permanent improvement on such Lot.

(B) **LOT SPLIT**: No Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise so as to create a new lot.

(C) **TRADE OR COMMERCIAL ACTIVITY BARRED**: No trade or commercial activity shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to any of the owners of any of said Lots in the Subdivision.

(D) **PLAN APPROVAL**: For the purpose of maintaining specific architectural guidelines and standards for the development of all said Lots within the Subdivision, each Lot owner shall be

required to submit two (2) sets of complete building and site plans with specifications for the buildings and structures intended to be erected thereon to the Declarant, or its assignee, setting forth the general arrangements of the interior and exterior of the building and/or structure, including the color and texture of the building materials, the type and character of all windows, doors, exterior light fixtures and appurtenant elements such as decorative walls, chimneys, driveways and walkways and detailing the location of the building and/or structure on the Lot including setbacks,, driveway locations, garage openings, orientation of the building and/or structure to the topography and conformance with the grading and drainage plan. By way of illustration, and not of limitation, the plans and specifications for any residence to be erected in Asbury Park shall provide for a minimum of three (3) bedrooms and shall further provide for a minimum of eighteen hundred (1,800) square feet for a two-story residence and fifteen hundred (1,500) square feet for a ranch-style residence. No split-level or bi-level style residence shall be erected on any lot. Each Lot Owner covenants that no excavation shall be made, no building and/or structure shall be erected and no materials shall be stored upon a Lot by said Lot Owner or his agents, heirs, successors or assigns until the Declarant shall have approved said plans and specifications in writing. If the Declarant fails within thirty (30) days after receipt of said plans and specifications to either approve or disapprove said plans and specifications, they shall be deemed to have been approved and the requirements herein fulfilled. If the Declarant disapproves said plans and specifications, the Lot Owner may revise and resubmit said plans and specifications until approval is received. If satisfactory plans and specifications are not received and approved by Declarant within one (1) year following conveyance of title to said Lot Owner (or such extension of time as Declarant may, at its sole option, extend), Declarant reserves and each Lot Owner, by his acceptance of a deed to a Lot, acknowledges the right of Declarant, at its option, to repurchase the Lot at the original purchase price thereof as evidenced by the closing statement executed at time of purchase.

Each Lot Owner, by his acceptance of a deed to a Lot, further acknowledges that in considering plans and specifications submitted, Declarant will take into consideration plans and specifications already approved or in the process of being reviewed for approval of proposed improvements on adjacent Lots and the effect of said proposed improvements on the Lot with reference to its effect upon the neighboring properties and overall development of the Subdivision and acknowledges that the Declarant may require submission of samples of materials to be used in the construction of said single-family residence as a condition of the approval of said plans and specifications. Each Lot Owner further acknowledges that the Declarant shall not be responsible or liable to said Lot Owner or to any other owner of Lots in the Subdivision by reason of the exercise of its judgment in approving or disapproving plans submitted nor shall it be liable for any expenses entailed to any Lot Owner in the preparation, submission and, if necessary, resubmission of proposed plans and specifications.

Each Lot Owner further agrees that no tree removal, excavation, construction or other site work which would in any way alter the Lot from its present state shall be commenced until the plans and specifications shall first have been approved in writing by Declarant in accordance herewith.

(E) BUILDING LOCATION: No building shall be located on any Lot nearer to the front

line or nearer to a side street line than the minimum building setback lines shown on the recorded plat. No portion of any Lot nearer to any street than the building setback lines shall be used for any purposes other than that of a lawn nor shall any fence or wall of any kind, for any purpose, be erected, placed or suffered to remain on any Lot nearer to any street now existing, or any hereafter created, than the front building lines of the building thereon, excepting ornamental railing, or fences not exceeding three (3) feet in height located on or adjacent to entrance platforms or steps. Nothing herein contained, however, shall be construed as preventing the use of such portion of the Lots for walks, drives, the planting of trees or shrubbery, the growing of flowers or other ornamental plants, or for small statuary entranceways, fountains or similar ornamentations for the purpose of beautifying said premises. No weed, underbrush or other unsightly growths shall be permitted to grow or remain anywhere on said Lots and no unsightly object shall be allowed to be placed or suffered to remain anywhere thereon. Nothing herein contained shall be construed so as to permit a violation of any applicable law, ordinance or governmental regulation.

(F)TEMPORARY RESIDENCE: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

(G)TEMPORARY STRUCTURE: No temporary building, trailer, garage, storage building or structure shall be placed upon any Lot for storage without the express written consent of Declarant.

(H)ANIMALS: No animals, birds, insects, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats, or other household pets which are kept for domestic purposes only, and are not kept, bred or maintained for any commercial purpose. No more than two dogs or two cats may be kept on any Lot except such dogs or cats in excess of such numbers that are less than three (3) months of age.

(I)WASTE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and removed from view from the street and abutting properties

(J)SOIL REMOVAL: No soil shall be removed for any commercial purpose.

(K)CLOTHES LINES: No clothing or any other household fabrics shall be hung in the open on any Lot, and no outside clothes drying or airing facilities shall be permitted.

(L)NUISANCES: No obnoxious or offensive activity shall be permitted on any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(M)VEHICLES NOT IN USE: No automobile or motor driven vehicle shall be left upon

any Lot for a period longer than thirty (30) days in a condition wherein it is not able to be operated upon the public highway. After such period, the vehicle shall be considered a nuisance and detrimental to the welfare of the Subdivision and shall be removed therefrom.

(N)HOBBIES: Hobbies or other activities which tend to detract from the aesthetic character of the Subdivision and any improvements used in connection with such hobbies or activities shall not be permitted unless carried out or conducted within the building erected upon the Lot and not viewable from either the street or adjoining properties. This restriction refers specifically but not exclusively to such activities as automobile, bicycle, moped, motorboat and sailboat repair.

(O)PLEASURE AND UTILITY VEHICLE AND EQUIPMENT PARKING AND STORAGE: No truck, trailer, boat, camper or other recreational vehicles, commercial vehicles or utility vehicles and equipment, including mowers, tractors and other lawn or garden equipment, shall be parked or stored on any Lot unless it is in a garage or other vehicle and/or equipment enclosure out of view from the street and abutting properties; provided, however, that nothing herein shall prohibit the occasional nonrecurring temporary parking of such truck, trailer, boat, camper, recreational vehicle or commercial vehicle on the premises for a period not to exceed seventy-two (72) hours in any period of thirty (30) days. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pickup truck which is used as an automobile vehicle by an owner of a Lot and his family.

(P)GARAGE: No dwelling may be constructed on any Lot unless an enclosed garage of at least two (2) automobiles is also constructed thereon.

(Q)SIGNS: No signs of any kind shall be displayed to the public view of any Lot, except one temporary sign of not more than ten (10) square feet advertising the property for sale or rent, signs used by a builder to advertise the property during the construction/sales period and/or signage utilized at the entranceway to the Subdivision, denoting the name of the Subdivision.

(R)ANTENNAS: Television and radio antennas, including dish-type satellite signal receiving earth stations, whether rooftop or ground mounted, shall be prohibited on the exterior of any house or Lot. No towers of any kind, including, but not limited to, television, radio and/or microwave towers, shall be erected, placed or maintained on any Lot in the Subdivision.

(S)FUEL STORAGE: Any tank for the storage of fuel placed or maintained on any Lot in the Subdivision shall be located below the surface of the ground or within the confines of the dwelling.

(T) MAILBOXES AND ADDRESS NUMBERS: Declarant reserves the right to establish standards for mailboxes. All mailboxes shall consist of cedar materials.

(U)FENCING LOTS: No chain link, cyclone, wire or other similar type metal fencing shall be constructed on any Lot. Further no stockade or privacy type fencing of any kind shall be

constructed on the perimeter of any lots situated along Waggoner Road.

(V) GRADING AND DRAINAGE: No construction, grading or other improvements shall be made to any Lot if such improvement would interfere with or otherwise alter the general grading and drainage plan of the Subdivision or any existing swales, drainage easement, detention easement, or other drainage configurations.

(W) ENTRANCEWAY EASEMENTS: Easements are herein reserved over the recorded easement and setback (no build zone or building line) areas for Lots Numbered One (1) and Forty-Five (45) of the Subdivision as shown on the recorded plat of the Subdivision, for the installation of improvements, repairs and maintenance of the entranceway facilities. Any Lot Owner of such Lots One (1) and FortyFive (45) shall at all times keep such areas accessible for maintaining and repairing the entranceway facilities and such Lot Owner, by his acceptance of a deed to such Lot, agrees to be bound by these conditions.

(X) UTILITY & ACCESS EASEMENTS AND DETENTION EASEMENTS: As to Lots Sixty-Nine (69), Seventy (70), Seventy-One (71), Seventy-Two (72), Seventy-Three (73), Seventy-Four (74), and Seventy-Five (75), utility and access easements and detention easements are designated for the purpose of controlling stormwater drainage and maintaining the Detention Easements and are designated on the Subdivision plat for the purposes set forth in the "Notes" thereon and are subject to the terms and conditions thereof.

(Y) SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street line or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient heights to prevent obstruction of such sight lines.

ARTICLE II

(A) TERMS: These covenants are to run with the Lots and Reserves and shall be binding on all Owners of the above-described real estate until January 1, 2020, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a two-thirds (2/3) of the Lot Owners is recorded, agreeing to change or terminate these covenants and restrictions.

This Declaration may be amended by a duly executed and recorded instrument signed by

the owners of no less than twothirds (2/3) of the Lots, provided that any such amendment during the first ten years after the date hereof must also be approved by the Declarant.

(B) ENFORCEMENT: Enforcement shall be proceedings by law or in equity or both by any owner of any part of the above-described real estate or by Declarant against any person or person violating or attempting to violate any covenant either to restrain violation or recover damages. No failure to object to any violations of any restrictions or to enforce any restrictions shall be deemed a waiver of the right to do so thereafter, either as to the same violations or as one occurring prior or subsequent thereto.

(C) SEVERABILITY: Each of these covenants contained herein is independent and separate and in the event any one or more such covenants shall for any reason be held invalid or unenforceable all remaining covenants shall nevertheless remain in full force and effect.

ARTICLE III

ACCEPTANCE: By accepting a deed to any of the abovedescribed real estate, a grantee accepts the same subject to the foregoing covenants and agrees for himself, his heirs, successors and assigns to be bound by each of such covenants jointly.

ARTICLE IV

(A) MAINTENANCE OF ENTRANCEWAY AND DETENTION EASEMENTS BY DECLARANT AND ASSOCIATION: Until the completion and sale of not less than thirty-four of the dwellings in the Subdivision (inclusive of Asbury Park Section I), Declarant shall be responsible for the installation and reasonable and proper maintenance of the entranceway and detention easements areas. On the January 1st immediately following the date upon which thirty-four of the Lots, with residential dwellings thereon, have been conveyed to bona fide purchasers, the Declarant covenants and agrees to turn over to the Association, and the Association shall accept, the responsibility for maintaining the entranceway and detention easements areas. Until such turnover date, all improvements and maintenance costs in connection with the entranceway and detention easements areas shall be completed and paid for by Declarant. Improvements shall include such fencing, walls, landscaping and signage as Declarant, in its sole discretion, deems necessary and desirable, complying at all time with applicable governmental restrictions. Declarant, by an instrument in writing in the nature of an assignment, will vest the Association with the rights, privileges and powers regarding such maintenance and responsibility to be assumed by the Association.

(B) ASSOCIATION MEMBERS: Every owner of a Lot in Asbury Park shall become a member of the Association, and each such owner, including Declarant, shall be entitled to one vote on each matter submitted to vote of the members for each Lot owned by him or it; provided, however, that where title to a Lot is in more than one person, such co-owners acting jointly shall be entitled to but one vote.

(C)ALTERATIONS TO ENTRANCEWAY AND DETENTION EASEMENTS: the Association has assumed the responsibility for maintaining the entranceway and detention easements areas, no building, wall, fence, other structure or landscaping shall be added to or removed from the entranceway improvements and detention easements areas installed by Declarant without the consent, expressed in writing, by the Association. Such consent shall be provided for by the Association according to its rules and regulations established for maintenance of the entranceway and detention easements areas.

(D)ASSESSMENTS: The Association shall be empowered to collect assessments for the maintenance of the entranceway and detention easements areas and as hereinafter provided. Any assessments established by the Association, from time to time, shall be levied in equal amounts as to each of the Lots. As soon as shall be practicable after determination that an assessment is needed, the Association shall send a written statement to each Lot Owner setting forth the amount and method of calculation of the amount assessed against each Lot, and the time when the same is due. The assessment may be billed in a lump sum or in installments, as the Association shall, in its sole discretion, determine. No assessment shall become due and payable unless written notice has been sent or delivered to the Lot Owner obligated to pay the same at least ten (10) days prior to the due date thereof, or, if payable in installments, the due date of the first installment. The maximum annual assessment for the first year for which assessments are levied shall be Twenty (\$20.00) Dollars per Lot (or a proportionate part thereof, if only a part year) provided that each year after the first full calendar year for which assessments are levied the annual assessment (i) shall be in the amount as recommended by the trustees, and (ii) may be increased by Lot owners exercising no less than two-thirds of the voting powers of Lot owners, voting, in person or by proxy, at a meeting called for this purpose. Further, the trustees may fix the annual assessment at an amount so long as the same is not in excess of the amount of the previous years assessment.

In the event any amount so assessed or levied is not paid when due and remains in arrears for more than thirty (30) days, the Association may charge interest on the entire unpaid balance at the highest rate of interest then permitted by law or such lower rate as the Association may from time to time determine, and cause to be filed with the Franklin County, Ohio, Recorder, a notice of lien describing the Lot, the assessment amount and interest due, and executed in accordance with the formalities then required to record a lien against real estate. All assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association upon the Lot against which each such assessment is made. Each assessment, together with interest and costs, shall also be the joint and several personal obligation of the Lot Owners who owned the Lot at the time when the assessment fell due.

Upon written demand by a Lot Owner, the Association shall, within a reasonable period of time, issue and furnish to each Lot Owner a certificate stating that all assessments or installments thereof (including interest and costs, if any) have been paid with respect to any specified Lot as of the date of such certificate, or, if all assessments and installments thereof have not been paid, setting forth the amount (including interest and costs, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated

as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

Notwithstanding the foregoing, the lien of the assessments provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid installments of assessments or charges against the mortgaged Lot which became due and payable prior to the time such holder or purchaser took title to that Lot.

(E) AUTHORITY TO ASSIGN OR ENTER INTO CONTRACTS: Any of the rights, powers, duties and obligations of the Association, which, in this instrument are to be assumed by the Association, may, after such assumption, be assigned or transferred by the Association to any one or more corporations, associations or entities which will agree to assume said rights, powers, duties and obligations and carry out and perform the same. Further, the Association shall have the power and authority to contract with any person, corporation, firm or other entity for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder.

ARTICLE V

(A) GENERAL: The plan of covenants, maintenance and assessments set forth herein has been established with respect to twenty-one (21) lots.

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

(C) EFFECTS OF ANNEXATION: Upon subjection of additional property to the terms hereof:

- (1) The added portion including any additional entranceway(s) and reserve(s) shall thereafter be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if the added portion had been provided herein as constituting part of the property subjected hereto, that is, the rights, easements, covenants, restrictions and assessments plan set forth herein shall run with and bind the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this

Declaration apply to the property in the Subdivision;

- (2) The owner or owners of the added portion lots shall thereupon become Lot Owners, and members of the Association, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other Lot owners; and
- (3) In all other respects all of the provisions of this Declaration shall include and apply to all additional property included in such Supplemental Declaration, and to the owners, mortgagees and Lessees thereof, with equal meaning and of like force and effect.

WITNESS his hand this 23rd day of September 1996.

Signed and acknowledged
in the presence of:

CREEKVIEW PARTNERS
an Ohio General Partnership

[Signature]
Alisa K. Argust
 (print name)
Jennifer L. Carter
 JENNIFER L. CARTER
 (print name)

By: [Signature]
 Frank J. Cipriano, General Partner

STATE OF OHIO, COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED that on the 23rd day of September 1996, before me, the subscriber, a Notary Public in and for said county and state, personally appeared the above named CREEKVIEW PARTNERS, an Ohio General Partnership, by Frank J. Cipriano, its General Partner, the Declarant in the foregoing instrument, who acknowledged the signing thereof to be his voluntary act and deed, for and on behalf of CREEKVIEW PARTNERS.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.



ALISA K. ARGUST
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES AUG. 14, 2000

[Signature]
 Notary Public

PARTNERSHIP	
FILING DATE	<u>7-30-91</u>
RECORDED VOL	<u>17381</u> PAGE <u>D-05</u>
RECORDER FRANKLIN COUNTY, OHIO	