

DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

102588

This Agreement made this 21<sup>st</sup> day of August, 1990, by and between MULTICON COMMUNITIES, INC., an Ohio corporation, with offices at 941 Chatham Lane, Columbus, Ohio 43221, the Grantor and hereinafter sometimes referred to as "Multicon", and JOHN E. WERNZ and JOAN WERNZ, husband and wife, the Grantees and hereinafter sometimes referred to as "Wernz."

WHEREAS, Multicon is the owner of certain real property situated in the County of Franklin, in the State of Ohio and in the City of Dublin:

Being Lot No. Forty-nine (49) of LLEWELLYN FARMS, SECTION NO. 2, PART 1, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 64, pages 9 and 10, Recorder's Office, Franklin County, Ohio (hereinafter "Lot 49").

WHEREAS, Wernz are the owners of certain real property situated in the County of Franklin, in the State of Ohio and in the City of Dublin:

Being Lot No. Forty-eight (48) of LLEWELLYN FARMS, SECTION NO. 1, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 60, pages 31 and 32, Recorder's Office, Franklin County, Ohio (hereinafter "Lot 48").

WHEREAS, a private driveway has been constructed on Lot 49 to provide ingress and egress to Dublin Road, hereinafter the "Driveway", and

WHEREAS, access from and to Dublin Road and Lot 48 presently requires the owner of that lot to cross over and use said Driveway for pedestrian and vehicular access to said Lot 48; and

WHEREAS, Multicon and Wernz want to provide an ingress/egress easement for Lot 48 over said Driveway and to provide for a maintenance plan of said Driveway to protect the interests of the public, each of the lot owners, and their respective heirs, successors, and assigns;

NOW, THEREFORE, for valuable consideration and the mutual covenants and agreements herein contained, the parties hereto do hereby agree for themselves, their respective heirs, successors, and assigns, that Lot 48 and Lot 49 shall be held, sold, conveyed and occupied subject to the following driveway easement and maintenance plan which shall run with the Lots and be binding on all parties having any right, title or interest in the Lots and their respective heirs, successors, and assigns.

GRANT

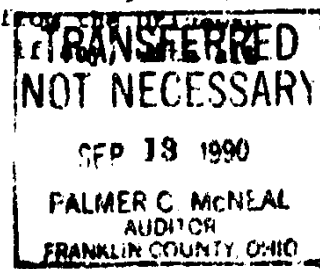
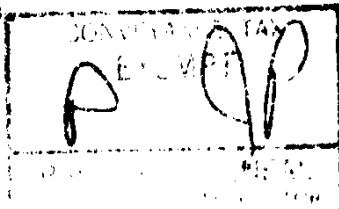
1. Multicon hereby grants to Wernz, their heirs, successors, and assigns, an easement and right of way for pedestrian and vehicular ingress and egress purposes to and from Dublin Road over that portion of the Driveway, which is shown and delineated by the cross-hatched area upon the attached drawing marked Exhibit "A".

2. Multicon and Wernz hereby establish a common access driveway maintenance agreement. The following covenants, agreements, restrictions, and reservations shall run with Lots Numbered 48 and 49 and shall be binding upon and shall inure to the benefit of all subsequent grantees, their respective heirs, successors, personal representatives and assigns.

a. All decisions as to the extent of maintenance, repair, and upkeep, or the need for such maintenance, repair and upkeep for the Driveway shall be made by the owner of Lot 49.

b. The terms "maintenance", "repair", and "upkeep" as used in this instrument shall be interpreted in their broadest sense. The Driveway is a paved, asphalt structure. The terms include, but shall in no way be limited to, snow removal, replacement, repair or repaving, sealing or filling of the asphalt Driveway, the removal of obstructions and overhangs from the Driveway as needed, grass and weed control, and drainage maintenance, associated labor and material costs.

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c. Relative to the total expense for maintenance, repair, and upkeep of the Driveway, each respective lot shall be responsible for and is hereby charged with the following percentage of the total expense:

1. Lot No. 48 is hereby charged with fifty percent (50%) of the total expenses;
2. Lot No. 49 is hereby charged with fifty percent (50%) of the total expenses.

To the extent that the need for repair or maintenance is caused or results from the acts or failure to act of the owner or owners of one Lot, or the guests or invitees of only the owner or owners of one Lot, whether or not there was negligence or a willful act, the lot owners of that Lot shall be solely responsible for the cost of such repair and maintenance.

d. The Driveway shall, at all times, be free from obstruction of any kind so as to allow for the proper passage of motor vehicles. All trees, overhanging branches, or other obstructions to the free passage of public safety vehicles shall be removed and shall be kept removed and maintained at all times. The entrance to the three-car garage and the area in front of the same shall be kept free and unobstructed at all times for the use of the owner of Lot 49. The area used as the entrance from the Driveway to Lot 48 shall be kept free and unobstructed at all times for the use of the owner of Lot 48.

e. The Driveway shall be maintained at its present width and length and in its current state, an asphalt paved driveway.

f. No compensation shall be paid to the owner of Lot 48 if said owner personally provides for maintenance, repair, and upkeep of any area of the Driveway. Any work so done by the owner of Lot 48 without the consent of the owner of Lot 49 shall be considered to be gratuitous in nature. An agreement to provide compensation to the owner of Lot 48 for any maintenance, repair, and upkeep of said Driveway shall be in writing and shall be with the consent of the owner of Lot 49. Said agreement may be terminated by either of the lot owners. In all construction, repair, and maintenance work, due precaution and care shall be taken to not damage the property of either of the lot owners.

g. Since the Driveway is wholly situated on Lot 49 and the appearance and maintenance of said Driveway will directly affect the property value of said lot, the lot owner of Lot 49 shall have the authority, on his/her/their own, to institute maintenance, repair and upkeep procedures without having the approval of the other lot owner sharing the Driveway. However, the owner of Lot 49 shall not have the right to do other than provide for the maintenance, repair and upkeep of the Driveway. If the owner of Lot 49 decides to repave the Driveway with a material other than asphalt without the consent of the owner of Lot 48, then the owner of Lot 48 shall not be required to pay its share of the paving cost of the Driveway, but will be required to continue its share of the maintenance, repair and upkeep of said new Driveway surface.

h. The owners of the lots shall be entitled to establish procedures for the providing of maintenance, repair and upkeep of the Driveway as they deem fit.

i. This maintenance agreement may be modified so long as said modification is in writing, approved by both of the lot owners, and shall be recorded in the Franklin County Recorder's Office.

j. All remedies, legal and equitable, shall be available to the owners of both Lots to provide for the proper enforcement of the regulations and agreement established herein including the collection of unpaid costs.

k. In the event that the owner of Lot 48 shall not pay the established maintenance costs for the Driveway to the owner of Lot 49, and such amount shall remain unpaid for a period of thirty (30) days past the due date, this easement and right-of-way shall automatically terminate and thereafter be null and void, and the owner of Lot 48 shall no longer be permitted the use of the Driveway. Further, in the event the owners of Lots Numbered 48 and 49 should commence using, for ingress and egress to their respective Lots, the adjacent 10' by 60' ingress and egress easement areas to each Lot, as such areas are shown on the subdivision plats for Llewellyn Farms, Section No. 1 and Llewellyn Farms, Section No. 2, Part 1, this easement and the right-of-way

granted hereunder shall automatically terminate and thereafter be null and void, and the owner of Lot 48 shall no longer be permitted the use of the Driveway as now constituted.

Except as provided in subparagraph (k) above, this agreement shall be perpetual and shall constitute an easement and a covenant running with each of the respective Lots; provided however, that nothing herein contained shall be construed as a conveyance by Multicon of its rights in the fee of the Lot upon which the Driveway is situated.

This agreement shall bind and inure to the benefit of the respective heirs, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Driveway Easement and Maintenance Agreement the day and year first above written.

Signed and acknowledged in the presence of: (as to (1))

GRANTOR: Multicon Communities, Inc., an Ohio corporation

Handwritten signatures of two individuals.

by: Jean E. Krieger, Treasurer (1)

(as to (2) and (3))

GRANTEES:

Handwritten signatures of John R. Wernz and Joan Wernz.

John R. Wernz (2) and Joan Wernz (3)

STATE OF OHIO, COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this 31st day of August, 1990, before me, the subscriber, a Notary Public in and for said County, personally came Multicon Communities, Inc., an Ohio corporation, by Jean E. Krieger, its Treasurer, who acknowledged the signing thereof to be her voluntary act and deed for and on behalf of Multicon Communities, Inc.

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



SUSAN WILGUS, NOTARY PUBLIC, STATE OF OHIO, MY COMMISSION EXPIRES JUNE 26, 1995

Handwritten signature of Susan Wilgus, Notary Public

STATE OF OHIO, COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this 31st day of August, 1990, before me, the subscriber, a Notary Public in and for said County, personally came John R. Wernz and Joan Wernz, husband and wife, who acknowledged the signing thereof to be their voluntary act and deed.

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



SUSAN WILGUS, NOTARY PUBLIC, STATE OF OHIO, MY COMMISSION EXPIRES JUNE 26, 1995

Handwritten signature of Susan Wilgus, Notary Public

This Instrument Prepared by: Thomas Markworth, Attorney, 941 Chatham Lane, Suite 11, Columbus, Ohio 43221, (614) 497-5422

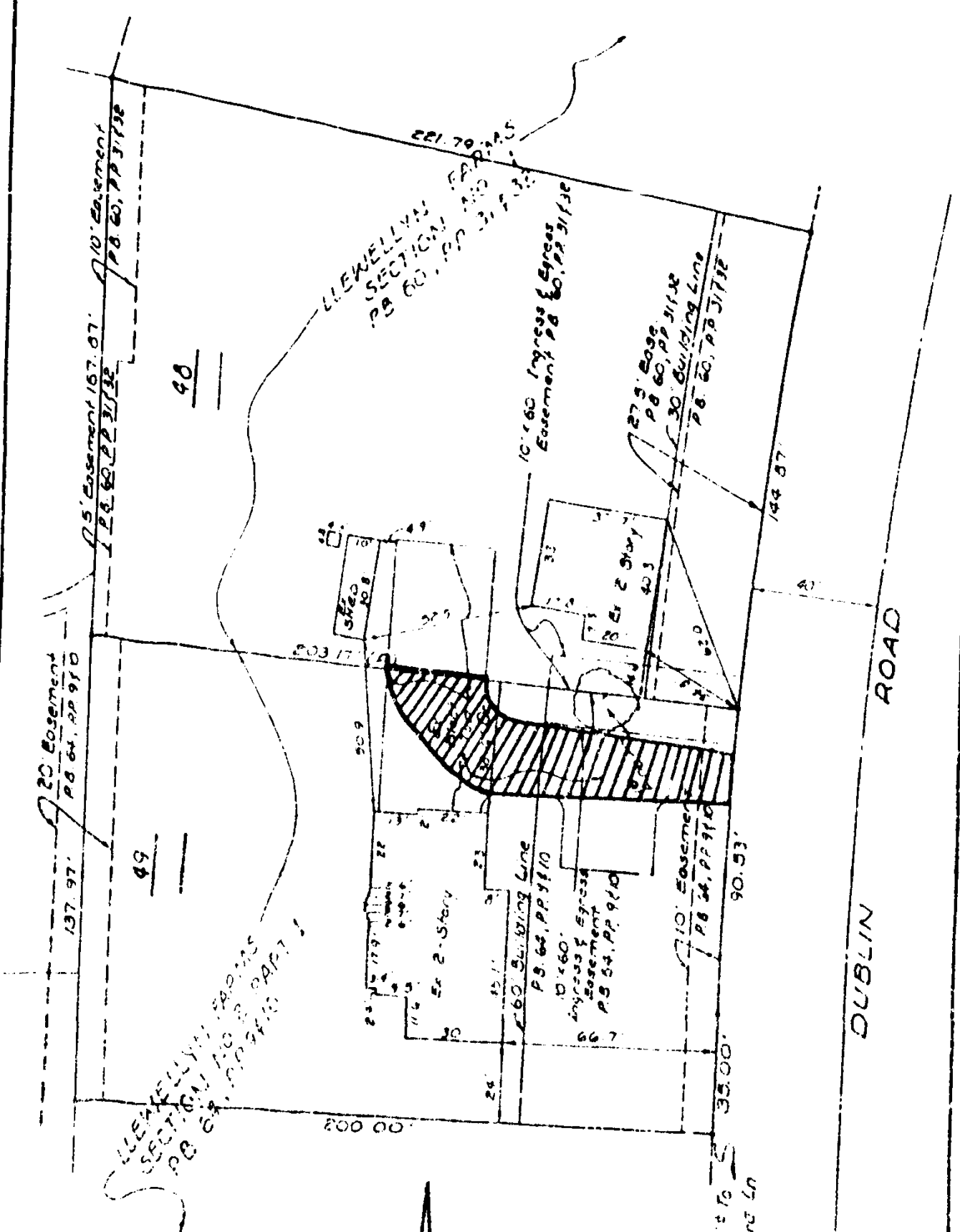
RECORDED FRANKLIN CO., OHIO, SEP 13 1990, FEE 2500, RECORDING FEE 14.00

# EXHIBIT "A"

## LOCATION MAP

LOT NO. 48 & 49  
PLAT BOOKS 60 & 64  
PAGES 3132, 9 & 10  
March 20, 1990

LLEWELLYN FARMS SECTIONS 1 & 2  
DUBLIN  
FRANKLIN COUNTY, OHIO  
Scale: 1" = 30'



BAUER, DAVIDSON & MERCHANT, INC.  
CONSULTING ENGINEERS