



Doc ID: 010215700015 Type: OFF
Kind: DECLARATION
Recorded: 03/26/2007 at 02:20:06 PM
Fee Amt: \$136.00 Page 1 of 15
Lorain County, Ohio
Judith M Nedwick County Recorder
File **2007-0195865**

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
RIVER ESTATES**

TRANSFERRED
IN COMPLIANCE WITH SEC. 319-202
OHIO REV. CODE
MAR 26 2007

MARK R. STEWART
LORAIN COUNTY AUDITOR

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
RIVER ESTATES**

THIS DECLARATION, made on the date hereinafter set forth by **RIVER ESTATES, INC.**, an Ohio corporation hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of all lots in River Estates, Village of Grafton, County of Lorain, State of Ohio, for which a plat is recorded at Plat V. 84 p. 33, 34 Lorain County Records.

WHEREAS, the Declarant intends to establish and grant a Conservation Easement to Ohio Stream Preservation, Inc. ("OSP") upon the terms and conditions set forth in the Grant of Conservation Easement attached hereto as Exhibit B (the "Conservation Easement");

WHEREAS, the Declarant, has or will file for record with the Lorain County Auditor and Lorain County Recorder, this Declaration of Covenants, Conditions and Restrictions, a Grant of Conservation Easement which provides for the protection of Conservation Easement Areas, and a Natural Resources Plan, all of which references the Conservation Easement, held by OSP, said Conservation Easement that encumbers the Eleven (11) Lots at **RIVER ESTATES**;

WHEREAS, Purchasers of Lots acknowledge that they have received a complete copy of, and has read or will read, the Grant of Conservation Easement;

WHEREAS, Declarant and all Purchasers of Lots are required to pay a Point-of-Sale Stewardship Assessment (Transfer Fee) paid in connection with the transfer of any interest in such Lot, which transfer fee shall be paid to OSP;

NOW, THEREFORE, Declarant hereby declares that it has established a general plan for the property, with covenants, conditions and restrictions as set forth herein. Declarant further states that said covenants, conditions and restrictions shall apply to, benefit and bind the Declarant and any current or subsequent owner of any part of the property, and that all of the property shall be subject to said covenants, conditions and restrictions, which shall run with the land.

**ARTICLE I
DEFINITIONS**

- A. "Assessment" means the share of common expenses and other charges including, but not limited to, conditions, obligations or restrictions of this Declaration or the By-Laws, the costs of any action to obtain injunctive relief against such noncompliance, any other charges or assessments permitted by this Declaration or the By-Laws against the Owner or Ownership Interest, interest upon each assessment from the date the assessment or

charge first comes due to the date paid in full, and the reasonable costs of collecting any unpaid assessments and charges, including court costs and reasonable attorneys' fees.

- B.** "Association" shall mean and refer to **RIVER ESTATES HOMEOWNERS' ASSOCIATION**, a not-for-profit corporation.
- C.** "Board" means those persons, who, as a group, serve as the Board of Trustees of the Association.
- D.** "By-Laws" means the By-Laws of the Association, affixed hereto as "Exhibit A" and incorporated herein, as may be amended from time to time.
- E.** "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, including open space. The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall be all land shown on the Plat of River Estates other than Lots.
- F.** "Conservation Easement". The easement agreement entitled Grant of Conservation Easement between Ohio Stream Preservation, Inc., an Ohio not-for-profit corporation, and Declarant, which has been duly recorded in the records of the Lorain County Recorder and/or Auditor as Instrument No. _____
- G.** "Homeowner" (synonymous with "Owner") shall mean and refer to the record title holder, whether one or more persons or entities, of a legal title to any Lot which is a part of the Property, including contract sellers, but excluding those who have such interest merely as security for the performance of an obligation.
- H.** "Lot" shall mean and refer to the individual sublots as shown upon any recorded subdivision map of the Property. Declarant has agreed to convey to _____ a portion of _____ described in Exhibit C affixed hereto and incorporated herein. The land so conveyed shall not be subject to this Declaration. The owner thereof, his/her/their heirs, successors and assigns shall not be members of the Association and shall have none of the rights and obligations of this Declaration.
- I.** "Occupant" means the person or persons in possession of a Lot, regardless of whether that person is a Homeowner.
- J.** "Ohio Stream Preservation, Inc." or "OSP". The non-profit corporation, hereafter referred to as OSP, or any successor organization having stewardship obligations with regard to the Protected Property responsible for the preservation and protection of the Protected Property as defined in the Conservation Easement, whose address at the time of this filing is P.O. Box 23835, Chagrin Falls, Ohio 44023 and whose phone number at the time of this filing is (440) 439-2920.

- K. "Open Space" means land held in common by all owners of the association including, without limitation, Block A, Block B and the roadway as shown on the Plat of River Estates.
- L. "Protected Property" shall be all land within the area of the recorded plat for the Subdivision marked "Protected Property" or other title describing the area of property protected by the Grant of Conservation Easement. The Protected Property was created by the Declarant granting to OSP an interest in the real estate by the means of the Conservation Easement.
- M. "Person" means a human being, a corporation, partnership, and any other legal entity to which the law attributes the capacity of having rights and duties.
- N. "Plat" shall mean the Plat of **RIVER ESTATES** recorded in the office of the Lorain County Recorder.
- O. "Property" shall mean and refer to that certain real property known as **RIVER ESTATES** and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- P. "Stewardship Assessment" means the expense including, but not limited to, conditions, obligations or restrictions of this Declaration or the By-Laws, the costs of any action to obtain injunctive relief against such noncompliance, any other charges or assessments permitted by this Declaration or the By-Laws against the Owner or Ownership Interest, interest upon each assessment from the date the assessment or charge first comes due to the date paid in full, and the reasonable costs of collecting any unpaid assessments and charges, including court costs and reasonable attorneys' fees.
- Q. "Unit" shall mean and refer to the individual dwelling or residence, together with the Lot and improvements thereon
- R. "Wetlands Mitigation Credits," "Stream Mitigation Credits," and "Stream Restoration credits" are credits that the Declarant, as owner of land containing wetlands, may sell, by an existing agreement with the U. S. Army Corps of Engineers, to landowners who are required to mitigate the loss of wetlands on their properties.

ARTICLE II PROPERTY RIGHTS

- A. **Title to Common Property.** The Declarant shall retain the legal title to the Common Property and Facilities until such time as it has completed any improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Property and Facilities to the Association not later than January 1, 2013. The Declarant reserves the right to dedicate or transfer interests in part of the Common Area to one or more public agency or

authority, provided that such dedication or conveyance does not materially diminish the value of the Units and further provided that *neither the Declarant nor the Association nor any unit owners* shall request dedication of the private roadway to the Village of Grafton.

- B. Owners' Easements.** Every Homeowner shall have a right and easement in and to the common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to 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 agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded. *Under no circumstances shall the Association, its members, or any unit owners request dedication of the private roadway to the Village of Grafton.*
- C. Delegation of Use.** Any Homeowner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.
- D. Reservation of Easement Rights.** Declaration reserves to itself, and to its successors and assigns, (a) the right to enter upon and use so much of the Common Area as may be reasonably necessary to construct the Units; and (b) the right to grant consents, easements and rights of way for the construction, operation and maintenance of the electric, cable television and telephone poles, wires and conduits, including underground facilities, and for drainage, water lines, sewers and any other facilities or utilities deemed convenient or necessary by Declarant or its successors and assigns for the service of the Property or for the service of other property pursuant to agreements with such property owners regarding sharing of utility lines, services, equipment and facilities. Declarant also reserves to itself, its successors and assigns, and to and for the benefit of the Association, the right to go upon or permit any public or quasi-public utility company to go upon the Lots and common Area from time to time (a) to install, maintain and remove utility lines and equipment and to trim trees and shrubbery which may interfere with the successful and convenient operation thereof and (b) to exercise the rights and powers of the Association with respect to Lot and Units. No Owner shall have the right to reserve or grant any easements or rights of way upon or over any of the Lots without prior written consent of the Declarant, its successors and assigns. *The provisions of any easement are subject and subordinate to the Conservation Easement.*
- E. Assignment of Conservation Easement.** In accordance with the terms and provisions of Exhibit B attached hereto and incorporated herein by this reference, a conservation easement is granted to Ohio Stream Preservation, Inc., an Ohio not-for-profit conservation organization over the Protected Property. The Protected Property shall remain in its present physical condition subject to natural changes. Any activity on or use of the Protected Property which is inconsistent with the provisions of the Conservation Easement, is expressly prohibited. OSP shall have the right to carry out all duties and rights granted to OSP by the Conservation Easement, including the right to take all

enforcement actions against parties violating the terms and conditions of the Conservation Easement. In the event of a conflict between any provision of this Declaration regarding the Protected Property and the provisions of the Conservation Easement, the provisions of the Conservation Easement shall control. All easements and rights described herein are easements appurtenant to the Protected Property, including the Lots, Homes and the Common Areas, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Declarant, the Developer, and their respective successors and assigns, Grafton Township and Lorain County, and any Builder, Owner, Tenant, Occupant, purchaser, mortgagee, or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor therein, their successors and assigns, as easements appurtenant to the remainder of such properties, easements created by this Declaration for the benefit of any Builder, Owner, Tenant, Occupant, purchaser, mortgagee, or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

- F. License to Enter Upon Private Roadway.** Subdivider herein agrees to grant to the Village of Grafton (i.e., Fire Department, Police Department, Service Department and the like), a license to enter upon any private roadway within the Subdivision for the purposes of carrying out patrolling and security and necessary governmental functions. While present on said private roadway, said public employees or agents for the various departments shall have those rights, privileges, defenses and immunities granted employees of political subdivisions set forth in Ohio Revised Code including, but not limited to Chapter 2744.
- G. River Estates Ltd. Project.** Declarant has received approval from the Army Corps of Engineers and the Ohio Environmental Protection Agency to establish the River Estates Ltd. Project to sell wetland mitigation credits, stream mitigation credits and stream restoration credits to entities required to mitigate or restore for impacts to wetlands and/or waters under federal and state law.

Declarant reserves the exclusive right to sell and convey all wetland mitigation credits, stream mitigation credits and stream restoration credits on the River Estates property, including lots and common area.

Declarant further reserves an easement on and over River Estates property for the purpose of monitoring and maintaining the wetlands thereof to the extent required by the Federal Clean Water Act 33USC Subsection 1344 and Chapter 6111 Ohio Revised Code. At such time as the Declarant shall have conveyed the common area to the Association, the Declarant shall transfer and convey the foregoing easement to the Association. The Association shall assume all obligations of the Declarant for maintaining the wetlands

located on the River Estates property as to the extent required by federal and state clean water acts

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

- A.** Every Homeowner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.
- B.** The Association shall have two classes of voting membership:
 - Class A.** Class A member shall be all Homeowners, 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 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 nine (9) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership or at such earlier time as the Declarant may waive Class B membership, in writing.

ARTICLE IV ASSESSMENTS

- A. General.** Assessments for the common Expenses shall be made in the manner provided herein and in the By-Laws. Each Unit shall bear an equal share of the assessments.
- B. 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 Property and for the improvement and maintenance of the Common Area, including, without limitation, maintenance, repair and snow removal on private roadways.
- C. Lien of Association.** The Association shall have a lien upon each Homeowner's Ownership Interest for the payment of the portion of any assessments or Common Expenses chargeable against such Unit which remain unpaid for ten (10) days after the same have become due and payable, from the time a certificate therefore, subscribed by the President of the Association, is filed with the Recorder of Lorain County, Ohio, pursuant to authorization given by the Board. Upon filing such a lien, notification thereof shall be by regular mail to the Homeowner at the address of his/her lot. Such certificate shall contain a description of the Unit, the name or names of the recorder Owner or Owners thereof and the amount of such unpaid portion of the Common Expenses, assessments, and other amounts due. Such lien shall also secure all amounts which may

become due after the filing of the lien. Such lien shall remain valid for five (5) years from the time of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the Court. The Association's lien shall include the costs of collection, including reasonable attorney fees. In addition, each Owner and any occupant thereof shall be personally liable for such expenses chargeable for the period of his ownership or occupancy.

- D. Collection.** Assessments, both annual and special, may be collected on a monthly, quarterly or annual basis, as from time to time determined by the Board of Trustees.
- E. Date of Commencement of Annual Assessments; Due Dates.** Assessments for a Unit within the Property, the completed plat for which is filed with the Recorder's office, shall be first payable starting with the occupancy of said Unit by a purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assessment against each completed Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Homeowner subject thereto. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.
- F. 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 six (6%) percent per annum. The Association may bring an action at law against the Homeowner personally obligated to pay the same, or foreclose the lien against the property. 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.
- G. Non-Liability of Foreclosure Sale Purchase for Past Due Common Expenses.** Where a first mortgagee or other purchaser acquires title to a Unit as a result of foreclosure of the first mortgage, or if a first mortgagee should accept a deed in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the share of the Common Expenses or other assessments by the Association chargeable to such Unit which became due before such acquisition of title unless such share is secured by a lien for assessments recorded prior to the recording of the foreclosed mortgage. Any funds received on the judicial sale of the Unit in excess of the first mortgage lien, the court costs and the real estate taxes, shall, however, be paid over to the Association, to the extent of the unpaid assessments due the Association. The Owner of a Unit prior to the judicial sale thereof shall be and remain after the date of the judicial sale personally and primarily liable for the assessments against the judicially sold Unit up to the date of the judicial sale; but such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Units, including that of such acquirer, its successors and assigns.

H. Liability for Assessments Upon Voluntary Conveyance. In a conveyance of a Unit, other than a conveyance described in Section I, above, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his Unit for his share of Common Expenses to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Board, within ten (10) days after receipt by the Board of his request, setting forth the amount of all unpaid assessments or other charges; and such grantee shall not be liable for, nor shall the Unit conveyed by subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement. As used in this paragraph "grantor" shall include a decedent and "grantee" shall include a devisee or heir, donee, or any other successor or assign of a grantor.

I. Point-of-Sale Stewardship Assessment to Ohio Stream Preservation, Inc. All Buyers/Homeowners of Lots in River Estates are required to pay a Point-of-Sale Stewardship Assessment paid in connection with the transfer of any interest in such Lot, which fee shall be paid to OSP. In order, the following fees shall be paid to OSP:

- a. Declarant shall pay to OSP a fixed fee of \$500.00 per Lot upon the initial transfer of each Lot in the Development.
- b. The Initial Buyer/Homeowner of the Lot shall pay to OSP, at closing, a one-time Initial Stewardship Assessment in the amount equal to one-quarter of one percent (0.25% (0.0025)) of the final contract price of the Lot and home, or one and one-quarter percent (1.25% (1.25)) of the final contract price of the Lot (if sold separately) as reflected on a purchase agreement or sales contract and prior to Buyer's receipt of a Certificate of Occupancy.
- c. Successive Buyers/Homeowners of each Lot shall pay to OSP, at closing, a Stewardship Assessment in an amount equal to one-quarter of one percent (0.25% or 0.0025) of the total sales price of the Lot, and home or one and one-quarter percent (1.25% or 0.0125) of the final sales price of a lot without a home including that portion of such consideration attributable to improvements (e.g. construction loans), other contiguous land, whether or not subject to the Easement, and any fixtures permanently attached to the Development and Protected Property and such contiguous land.

Both the Initial Assessment and Stewardship Assessment shall become due and payable upon the transfer of fee title to any Lot within the Development and collected by the representative closing agent or title company at the time of closing or paid directly by the buyer to OSP, as provided in this Declaration.

In the event the Assessment is not paid within thirty (30) days after transfer of title, OSP shall have the right to file a lien against the Buyer/Homeowner to secure the continuing

obligation, as described in the Grant of Conservation Easement, to pay the Assessment, together with (a) interest on the unpaid amount of the Assessment at an annual rate equal to six percent (6%) per annum and (b) OSP's costs of collection, including reasonable attorney fees and costs. Such lien may be enforced and/or foreclosed in accordance with the laws of the State of Ohio and the above-referenced procedures found in Article IV, subsections A-H.

ARTICLE V PURPOSE AND RESTRICTIONS ON USE

A. Purpose. The Property shall be used exclusively for single-family residence purposes and purposes ancillary thereto.

B. Restrictions.

1. Each Lot shall be used only for private, single family, residential purposes and only one single family residence shall be constructed or erected on any Lot. After a structure has been erected in accordance with these Restrictions and covenants, it shall not be altered or converted so as to violate any of the Restrictions or Covenants contained herein.

2. In addition to the home described above, not more than one out-building, for purposes ancillary to the home located on said Lot, shall be built or maintained on said Lot. Any such out-building shall be constructed in the same architectural style and with the same materials and in the same fashion as the home to which the out-building is ancillary and shall be located in the backyard of the Lot. Any such out-building shall be used only for storage purposes.

3. No recreational vehicle, boat, camper, mobile home, trailer, truck, van, bus, or similar vehicle (whether or not motorized) shall be parked or stored on any Lot or on any street (located on the Property), except in a garage (provided that the vehicle does not protrude from the garage). Notwithstanding the foregoing to the contrary, any such vehicle not owned by the Owner of a Lot or any occupant of a Lot and which is owned by a party visiting the Owner of a Lot or any occupant of a Lot, may be parked on the driveway of a Lot for not more than seventy-two (72) hours during any sixty (60) day period.

4. Notwithstanding any contrary provision of these Restrictions and covenants, the Declarant or any other entity which is improving all or any portion of the Property or is constructing or erecting a home on a Lot, may park and use one or more trailers or temporary structures or out-buildings on a Lot. Notwithstanding any provision of these Restrictions and Covenants to the contrary, Declarant or any entity or individual to whom Declarant has given written authorization, may use all or any portion of the Property for purposes of the sale of Lots and activities incidental thereto.

5. Except for refuse relating to the construction of a structure on a Lot, garbage, refuse and waste material may not be kept outside of a structure on any Lot, except in a sanitary, clean and covered container.

**ARTICLE VI
MANAGEMENT, MAINTENANCE, REPAIRS,
ALTERATIONS AND IMPROVEMENTS**

A. The responsibility of the association shall be as follows:

1. The Association shall manage the Common Areas and Facilities and shall maintain and keep the same in good working order, condition and repair, in a clean, neat, safe, and sanitary condition, and in conformity with all applicable laws, ordinances and regulations and shall make all necessary repairs, replacements, alterations and other improvements in a good and workmanlike manner. The Association shall maintain in good condition and shall repair and replace as needed the private roadway on the property and shall be responsible for snow removal on said roadway. The Village of Grafton will have no responsibility for maintenance, repair, replacement or snow removal on the private roadway.

2. The Association shall pay all charges, if any, for electricity and other services used, rented or supplied to or in connection with the common Areas and any facilities to be constructed on the Common Area.

3. Except to the extent of any insurance proceeds payable in respect thereof, the Association and the Association's agents and employees shall not be liable for, and each Owner and occupant waives all claims for injury or death to persons or loss or damage to property, or any consequential or incidental damage or loss, resulting from any accident or occurrence in or upon any Unit, Common Area, or any other part of the Property.

B. Damage Resulting from Exercise of Easements. All damage caused to the Property or the property of any Homeowner as a result of any act or work performed pursuant to the authority granted or reserved in this Article or as a result of the use of any easement granted or reserved herein shall be repaired, replaced or corrected promptly by the person performing the act or work by the grantee or holder of the easement being exercised, at the expense of such person, so that any such property so damaged will be restored (or replaced) to the condition in which it existed immediately prior to such damage. Notwithstanding the foregoing, the Village of Grafton shall not be required to repair, replace or correct any damage except as provided in Chapter 2744 Ohio Revised Code.

**ARTICLE VII
INSURANCE**

A. The Homeowners' Association shall, upon conveyance of legal title of the common

Property and Facilities to the Homeowners' Association by the Declarant, obtain liability insurance in such amounts and coverage as determined by the Board of Trustees of the Association, naming the Homeowner and the Homeowners' Association as insureds.

B. Cost of any such insurance purchased by the Association as required under this document for the benefit and protection of the Homeowner and the Homeowners' Association shall be included in the annual assessment as herein set forth. It shall be the obligation and duty of the board of Managers of the Homeowners' Association to establish a fair and equitable method of apportioning the costs of insurance so acquired to each Homeowner.

ARTICLE VIII GENERAL PROVISIONS

A. 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.

B. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

C. Duration. This Declaration shall run with the land and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

D. Modification. The Declarant reserves unto itself so long as the Declarant is the owner of any portion of the Property, the right to amend, annul or waive the terms and conditions of this Declaration provided no such change shall materially and adversely affect the value of any Unit or shall prevent a Unit from being used in the same manner that it was being used prior to the adoption of such change.

Developer shall obtain the prior written consent of OSP, which consent may be withheld in OSP's sole discretion, with regard to any amendment to this Declaration affecting either the Conservation Easement or the Stewardship Assessment.

After the sale or conveyance of all of the Property by Declarant, the Covenants and Restrictions of this Declaration may be modified, effective on the sixtieth (60th) day following a meeting of the Members held for such purposes, by the affirmative vote of Members entitled to exercise three-quarters (3/4) of the voting power of each class, provided that written notice shall be given to every Member at least thirty (30) days in advance of the date of the meeting stating that such modification will be considered at such meeting. The Declaration may not be amended to request dedication of the private roadway to the Village of Grafton without the express consent of the Village of Grafton. Further, the Declaration shall not be amended to permit development of the open space. Promptly following the meeting at which such modification is enacted, the

President and Secretary of the Association shall execute and record an instrument reciting such modification.

E. Homeowners' Acceptance. Each Homeowner, by the acceptance of a deed, lease or other instrument of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such Homeowner in like manner as though the provisions of this Declaration were recited and stipulated in every deed of conveyance.

F. Partial Invalidity. If any of the privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush and Dick Cheney.

G. Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted or delegated to it by or pursuant to this Declaration or the By-Laws attached hereto or in Declarant's (or their representative's) capacity as owner, manager or seller of the Property or any part thereof, whether or not such claim (i) shall be asserted by a Homeowner, occupant, the Association, or by any person or entity claiming through any of them; or (ii) shall be on the account of injury to person or damage to or less property wherever located and however caused; or (iii) shall arise **ex contractu** or (except in the case of intentional torts or gross negligence) **ex delictu**. Without limiting the generality of the foregoing the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function or disrepair of any utility services (electricity, gas, water, sewage, etc.). None of the foregoing provisions of this Section shall, however, relieve or release Declarant from any obligations undertaken by it for the benefit of the Homeowner to make and pay for repairs, renewals, alterations, replacements and improvements of the Property.

H. The captions used in this Declaration are inserted solely for convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the test hereof.

I. The Association books, records, financial statements, Declaration, By-Laws and Rules shall be available to any mortgagees and their authorized agents upon request during normal business hours at the office of the Association, and copies thereof may be made at such mortgagee's cost.

ARTICLE IX

North Olmsted, OH 44070
(440) 779-6636

LCTC
ELYRIA, OH 44035