

RE-RECORD

MIAMI COUNTY RECORDER
JOHN W. O'BRIEN
0442528
PRESENTED FOR RECORD
MIAMI COUNTY, TROY, OHIO
02/16/2006 10:18:39AM

REFERENCES 2
RECORDING FEE 0.00
PAGES: 16

~~MIAMI COUNTY RECORDER
JOHN W. O'BRIEN
0441809
PRESENTED FOR RECORD
MIAMI COUNTY, TROY, OHIO
02/06/2006 10:17:56AM~~

**SECOND AMENDED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

REFERENCES 0
RECORDING FEE 140.00
PAGES: 16

OPERER RESIDENTIAL CONSTRUCTION, LTD., an Ohio limited liability company ("Developer"), is the owner in fee simple of certain real property located in the City of Troy, Miami County, Ohio, known by official plat description as Edgewater Subdivision Section One, pursuant to a record plan filed for record in Plat Book 19, Page 31; Edgewater Subdivision Section Two, pursuant to a record plan filed for record in Plat Book 19, Page 109; Edgewater Subdivision Section Three pursuant to a record plan filed for record in Plat Book 20, Page 135 and Edgewater Subdivision Section Four pursuant to a record plan filed for record in Plat Book 21, Page 9, all of the Miami County, Ohio Plat Records ("Subdivision"), the legal description of which real property is attached hereto as "Exhibit A."

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the Lots constituting the Subdivision, Developer hereby declares that all of the real property described above together with such additional property as may be added to the Subdivision pursuant to Article VI of the Declaration, and each part thereof shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof. This Agreement and the easements, covenants, conditions, and restrictions set forth in this Declaration shall not be binding upon any other land owned by Developer other than the land contained within the Lots in the Subdivision, even though the other land may be contiguous with the land in the Subdivision.

DEFINITIONS

1. "Association" shall mean and refer to Edgewater Owners Association, an Ohio non-profit corporation, its successors and assigns.
2. "Declaration" shall mean this Amended Declaration of Covenants, Conditions, and Restrictions which shall supersede the original Declaration filed by the Developer at Volume 710, Page 359 of the Official Records of Miami County Recorder and any and all amendments to such original Declaration.
3. "Developer" shall mean Oberer Residential Construction, Ltd., and its successors and assigns, provided that the rights specifically reserved to Developer under this Declaration shall accrue only to such successors and assigns as are designated in writing by Developer as successors and assigns of such rights.
4. "Easement Areas" shall mean all real and personal Subdivision owned, under easement, leased or managed by the Association for the common use and enjoyment of the Owners. This real and personal Subdivision includes, but is not limited to, any of the following types of areas, facilities and amenities now or in the future located on or serving the Subdivision:
 - (a) areas designated as "Open Space," "Common Area," or "Reserve Area" on the maps attached hereto as Exhibit B and/or on the recorded plat(s) of the Subdivision, or as easement areas in favor of the Association or the Subdivision generally, together with all improvements and amenities associated with each such area, including, for example, landscaping, woods/natural areas, irrigation systems, hiking/biking trails, identification and directional signs, pavilions, gazebos and other monuments, soccer fields, sports courts, benches, and all utilities (electricity, water, sewer, etc.) necessary for the maintenance and operation of these areas, facilities, and amenities;
 - (b) entrance walls, streetscape (landscaping and fencing), lighting, irrigation and associated utilities for the entrance to the Subdivision from State Route 202, and/or along Edgewater Boulevard, and/or at other locations within the Subdivision where the development, its neighborhoods or amenities are identified, within easement areas or reserve areas established for the benefit of the Association;
 - (c) stormwater detention areas or retention areas located on the Subdivision (in areas designated as Open Space, Common Area, Reserve Area or as private drainage easements) or located off-site but serving

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the Subdivision through recorded easements, including the ponds, pipes, headwalls, ditches, culverts, landscaping and other facilities located in those areas, to the extent not provided and maintained by public authorities;

(d) drainage lines and facilities located within areas designated as private drainage easements on the recorded plat(s) of the Subdivision, including all storm drains, inlets, pipes, headwalls, culverts, outlets and associated improvements and landscaping (subject to the obligation of each Owner to maintain the landscaping on his or her own Lot);

(e) trees, plantings, landscaping, lighting and irrigation systems and other improvements within boulevard/island areas of public rights-of-way, to the extent not provided or maintained by a public authority, but only if specifically identified on the plat(s) of the Subdivision or by the Association as Common Subdivision; otherwise the Owners of individual Lots will be responsible for maintaining the landscaping within the public rights-of-way adjoining the Lots to the extent not provided by a public authority;

(e) hiking/biking trails within easement areas designated as such on the recorded plat(s) of the Subdivision; and/or

(f) fencing, landscaping, mounding and other facilities established on or adjacent to the perimeter of the Subdivision pursuant to recorded easements for the benefit of the Association; however, unless otherwise indicated on the recorded easement or otherwise assumed by the Association by a duly authorized written agreement, the responsibility for maintaining landscaping, fencing and mounding located on a Lot shall be borne by the Owner of the Lot.

5. "General Expenses" shall include all expenses incurred by the Association to maintain its existence and the maintenance and control of the Easement Areas, including, but not limited to, storm water retention ponds, fountain equipment, trees and landscaping, stream and drainage areas, walking bridges, signs and any other improvements located upon the Easement Areas, and shall also include any other costs incurred by the Association in the performance of its duty pursuant to this Declaration. General Expenses shall also include all expenses incurred by the Association to maintain the streets, curbs, and gutters constructed in the Subdivision until such time as the dedication of such improvements are accepted by the City of Troy, which expenses shall include, but are not limited to, expenses for the cleaning and snow plowing of streets within the Subdivision.

6. "Lot" shall mean any plot of land shown on any recorded map or plat of the Subdivision, excluding any plot of land conveyed by the Developer to the City of Troy, Ohio.

7. "Member" shall mean every person or entity who holds membership in the Association.

8. "Mortgage" shall mean a conventional mortgage or a deed of trust.

9. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

10. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

11. "Subdivision" shall mean the property, the legal description of which is attached hereto as "Exhibit A" and such additional property as may be subjected to the provisions of this Declaration from time to time.

ARTICLE I. NEIGHBORHOOD ASSOCIATION

1.1 Organization. The Association has been formed as an Ohio not-for-profit corporation pursuant to the provisions of Chapter 1702 of the Ohio Revised Code by the filing of its Articles of Incorporation with the Secretary of State of Ohio. The Association has or may adopt and may amend from time to time a Code of Regulations and Bylaws.

1.2 Membership. Every Owner of a Lot shall be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of a Lot.

1.3 Voting Rights. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a given Lot, all such persons shall be members and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lot except that Developer shall be entitled to exercise three (3) votes for each Lot owned by Developer. Notwithstanding any other

provision of this Declaration or the Code of Regulations of the Association, those Members present at any annual or special meeting, in person or by proxy, shall constitute a quorum for authorization of any action taken at such meeting.

1.4 Administration of Subdivision. The administration of the Subdivision shall be in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and such rules and regulations as are duly adopted by the Association from time to time. Each Owner, tenant, or occupant of a Lot shall comply with the provisions of this Declaration, the Articles of Incorporation, the Code of Regulations and any Bylaws, and such rules and regulations.

1.5 Delegation to Managing Agent. The Association may delegate all or any portion of its authority to discharge its responsibility to a managing agent, subject to the following limitations:

(a) Any such delegation shall be by written contract with a term of no longer than one (1) year in duration;

(b) Any such contract shall be terminable by either party without cause upon sixty (60) days written notice without any termination charges or other penalties.

1.6 Rights of Developer. Notwithstanding the provisions of Section 1.3 of this Article, the powers, rights, duties, and functions of the Association shall be exercised by a Board of Trustees selected solely by the Developer until such time as a special meeting of the Members is called by the Trustees which shall be held within one hundred eighty (180) days after the Closing of the sale of all Lots in the Subdivision by the Developer, or until Developer waives such requirement by calling a special meeting of Members for the purpose of relinquishing such rights, whichever shall first occur.

ARTICLE II. MAINTENANCE OF EASEMENT AREA

2.1 Easement Areas. The Easement Area shall include storm water retention ponds, grass areas, walking trails, benches, fountain equipment, and other landscaping, and improvements within any portion of an Easement Area.

2.2 Maintenance of Easement Areas. The Association shall be responsible for the maintenance and control of the Easement Areas.

The cost to the Association in performing its duties under this section shall be assessed against the Lots in the Subdivision as a General Expense in the manner set forth in Article III of this Declaration.

The Association shall maintain the Easement Areas in such manner to allow storm water to accumulate in and/or discharge regularly from the storm water retention and detention facilities. The maintenance responsibilities of the Association shall include, but are not limited to, the following:

(a) The Association shall be responsible for the removal of any debris and sediment in the storm water retention and detention facility.

(b) The Association shall be responsible for keeping any inflow and discharge pipes associated with any such facility free from obstruction.

(c) The Association shall be responsible for routine mowing and maintenance of the grounds within the Easement Areas not covered with water.

(d) The Association shall have the power and duty to keep the Easement Areas free from debris and obstructions, to remove any obstruction which may be placed in the Easement Areas and to take such other corrective action as may be necessary to permit proper drainage, retention, and detention of storm water through the Subdivision.

(e) The Association shall be responsible for the maintenance of all improvements within the Easement Areas, including, but not limited to, fountain equipment, trees, and landscaping, walking path, and signs identifying the Subdivision.

2.3 Owner's Easement of Enjoyment. Every Owner of a Lot which includes any portion of the Easement Areas shall have an easement of use and enjoyment in and to that portion of the Easement Areas located on the Lot. No other Owners may have access to any Easement Areas located on the Lot of another Owner. The easement for enjoyment shall be subject to any restrictions and limitations in this Declaration.

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2.4 Easement for Maintenance. The Association shall have an easement over, under, and through all Lots and Easement Areas, for ingress and egress and to allow the Association to perform its maintenance duties and other obligations and exercise its rights as set forth in this Declaration.

2.5 Inspection by City of Troy. The City of Troy shall have the permanent and irrevocable right and authority to inspect and monitor the drainage in the water retention facilities that are developed under this plan. In the event that the facilities are not properly constructed or maintained, upon the failure of the Developer or the Association to take corrective action after being duly notified by the City, the City shall have the right, but not the obligation to take whatever action is necessary to correct any improper construction, maintenance, or operational functions.

2.6 Regulations of Easement Areas. The Association shall have the right to establish rules regarding the use of any portion of the Easement Areas, provided such rules are not in conflict with any provision contained in this Declaration, and are reasonably established to protect the safety and welfare of the Owners and their guests, or are established to assure the continued service of the Easement Areas for the purpose for which they were designed.

2.7 Signage Area Easement. Every Owner or Lot on which signage is located hereby grants, conveys, and assigns to the Association an easement and right-of-way over the Lot for purposes of access to signage and for performing any landscaping, maintenance, and/or repair to such signage and signage area.

ARTICLE III. ASSESSMENTS

3.1 Lien and Personal Obligation of Assessments. Developer hereby covenants for each Lot within the Subdivision, and each Owner of a Lot is hereby deemed to covenant by acceptance of the deed for such Lot, whether or not it shall be so expressed in the deed, to pay to the Association (a) annual assessments, and (b) special assessments for maintenance and capital improvements. The annual and special assessments, together with interest, costs, and attorneys' fees incurred by the Association to collect such assessments shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due.

3.2 Purpose of Assessments. The assessments levied by the Association shall be to pay for the General Expenses incurred: (a) to promote the health, safety, and welfare of the residents in the Subdivision; (b) for the improvement and maintenance of the Easement Areas situated within the Subdivision; and (c) for such other purposes as may be determined by the Board of Trustees of the Association.

3.3 Amount of Annual Assessment. The Board of Trustees shall be empowered to levy, assess, and collect from the Owner of each and every Lot in the Subdivision, excepting those Lots owned by the Developer, an annual assessment in the sum of \$250 per year. Provided, however, that such limit of \$250 per Lot per year may be increased upon the approval of a majority of the Lot Owners in the Subdivision.

3.4 Special Assessments for Maintenance Improvements. In addition to the annual assessments authorized above, the Board of Trustees may levy special assessments for the purpose of defraying in whole or in part, the cost of any maintenance, construction, repair, or replacement of improvements on the Easement Areas, including fixtures and personal property related thereto, or the acquisition of any item of capital asset by the Association. Any such assessment must be approved by a majority of the Members.

3.5 Advancements by Developer. Developer recognizes that until a sufficient number of Lots are conveyed to Owners, the expenses of the Association to maintain the Easement Areas may be greater than the amount assessed. Developer, at its option, may advance funds to the Association in such amounts as are appropriate to pay the expenses of the Association. Such advances shall be recognized by the Board of Trustees of the Association as a loan repayable at such time and in such installment amounts, together with reasonable interest, as Developer shall determine; it being Developer's intention to permit the Association to operate and maintain the Easement Areas for the benefit of all Members in the early phases of the Subdivision.

3.6 Commencement and Collection of Assessments. Assessments provided for herein shall commence at such time and shall be payable on such terms as established by the Board of Trustees of the Association. Notice of assessments shall be sent to every Owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments against a specific Lot have been paid, and may cause to be recorded in the public records of Miami County, Ohio, a list of delinquent assessments.

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3.7 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest from the due date at the rate established from time to time by the Board of Trustees of the Association. The Association may bring an action at law against the Owner personally obligated to pay the same and/or may foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments.

3.8 Subordination of Assessment Lien to Mortgages. The assessment lien provided for herein shall be subordinate to the lien of any first Mortgage. A sale or transfer of any Lot shall not affect the assessment lien.

ARTICLE IV. INSURANCE

4.1 Liability Insurance for Easement Areas. The Association shall maintain liability insurance for bodily injury, or death occurring on, in, about, or arising from the Easement Areas, including but not limited to the storm water retention ponds on those Easement Areas. The dollar amount of such insurance protection shall be as determined by the Board of Trustees.

4.2 Additional Insurance. The Board of Trustees may obtain such other insurance as it deems necessary or appropriate in connection with the performance of the duties of the Association, including but not limited to, financial surety bonds and officers' and trustees' insurance.

4.3 Insurance Costs To Be General Expenses. The cost of all such insurance shall be part of the General Expenses of the Association and shall be paid from assessments.

ARTICLE V. ARCHITECTURAL CONTROL

5.1 Creation of Architectural Committee. The Board of Trustees shall appoint a committee to be known as the Architectural Committee or upon their failure to so appoint, shall themselves act as such Committee. The Architectural Committee (the "Committee") shall be composed of not less than three (3) and not more than five (5) members who shall serve at the pleasure of the Board. Except as provided in section 5.2, regardless of the number of members of the Committee, at least two-thirds (2/3) of the members of the Committee shall be Owners of Lots in the Subdivision. The members of the Committee shall not be entitled to any compensation for services rendered or performed pursuant to the provisions of this Declaration.

5.2 Developer Appointments. Notwithstanding the provisions in section 5.1, Developer reserves the right to appoint all of the initial and successor members of the Committee, none of whom need be an owner of a lot in the Subdivision, with this right to continue until Developer elects (by written instrument recorded in the Office of the Recorder of Miami County, Ohio) to terminate its control of the Committee. After Developer's control of the Committee has been terminated, the Board of Trustees shall thereafter have the authority to appoint the Committee.

5.3 Committee Approval.

(a) No building, fence, wall, structure, parking lot, driveway, drainage improvement, permanent advertising sign, permanent landscaping (including existing trees but excluding the removal of dead trees or foliage), grade of the real property, or other improvement shall be changed, commenced, erected, or maintained upon any Lot in the Subdivision, nor shall any exterior addition, change, alteration or restoration or to the same be made until the construction plans and specifications showing the nature, kind, shape, size, height, materials, colors, and location of the same in adequate detail as required by the Committee shall have been submitted to and approved in writing by the Committee as to harmony of external design, construction, and location in relation to existing or proposed surrounding structures and topography and as to the general suitability of the construction or landscaping with other construction in the Subdivision and as to the relative value and quality of such improvements, landscaping additions, changes, alterations, or restorations. Approval by the Committee shall be arrived at by a simple majority vote of the members.

(b) In the event the Committee shall fail to approve or disapprove any construction plans and specifications or landscape plan within thirty (30) days after the same shall have been submitted to it, then the approval will be deemed to have been given. Any approval obtained, whether by default or otherwise, shall be null and void unless construction is commenced within one hundred eighty (180) days after the date of approval or date of original sale whichever occurs later.

5.4 Rules. The Architectural Committee may establish rules consistent with the standards set forth on this Declaration to govern the construction of any improvements, landscaping, additions, or changes on Lots in the Subdivision.

5.5 Approval of Committee: How Evidenced. Whenever in this Article approval of the Architectural Committee is required, such approval shall be in writing.

5.6 Responsibility. Neither the Committee, the Association, nor the Developer nor their representative agents shall be responsible for defects in plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defect in any work done according to such plans and specifications.

5.7 Construction by Developer. Nothing in this Article shall be construed to require Developer to obtain approval of the Architectural Committee prior to undertaking the initial construction of any structure or dwelling unit on any of the Lots on the property or on any annexed property.

ARTICLE VI. ANNEXATION OF ADDITIONAL PROPERTY

6.1 Contemplated Annexation by Developer. Developer is the Owner in fee simple of the real property described in "Exhibit C" and contemplates construction of additional dwelling units on such real property or on part of such real property. Developer further contemplates submitting the land in "Exhibit C," with any improvements thereon, or a part of the land, to the provisions of this Declaration, so that the same will become in all respects part of the Subdivision. Developer hereby reserves the right at any time and from time to time to take the action so contemplated in submitting the land or any part of the land described in "Exhibit C" hereof to the provisions of this Declaration. Developer further reserves the right at any time, and from time to time, to add real property (in addition to the property described in Exhibit "C") which may hereafter be acquired by Developer to this Declaration so that such additional property will become in all respects part of the Subdivision.

6.2 Reservation of Right to Amend Declaration. Developer hereby reserves the right from time to time to amend this Declaration in such respects as Developer may deem advisable so as to include the real property or any part of the real property described in "Exhibit C" and to include any real property hereafter acquired by the Developer and the improvements constructed thereon as part of the Subdivision. Developer further reserves the right from time to time to amend this Declaration in such respects as Developer may deem advisable so as to add additional property to the definition of "Easement Areas," so that such additional Easement Areas will become subject to all of the terms and conditions of this Declaration, including those terms governing the maintenance and control of Easement Areas by the Association.

6.3 Consent and Approval for Annexation Amendments. Developer on its own behalf as the Owner of all Lots in the Subdivision and on behalf of all subsequent Owners, hereby consents and approves, and each Owner and each Owner's Mortgagee by accepting of a deed conveying such ownership, or a Mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Article VI and each Owner and the respective Mortgagees by the acceptance of a deed conveying such ownership or a Mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Developer their Attorney-in-Fact, coupled with an interest, and authorizes, directs, and empowers such Attorney, at the option of the Attorney in the event that the Developer exercises the rights reserved above to add to the Subdivision additional property to execute, acknowledge, and record for and in the name of such Owner an amendment of this Declaration for such purpose and for and in the name of such respective Mortgagees a consent to such amendment.

ARTICLE VII. PROTECTIVE COVENANTS AND RESTRICTIONS

7.1 Applicability of Zoning Regulations and Ordinances. Land use of all lots is governed by the Zoning Regulations and other ordinances for the City of Troy, Ohio as presently enacted or hereafter amended. The Troy regulations and ordinances may in certain respects be more strict or stringent than these covenants and restrictions, and these covenants and restrictions shall not be deemed to relieve the owner of its obligation to comply with any applicable Troy regulations and ordinances.

7.2 Residential Purposes. All lots in the Subdivision shall be used exclusively for single family residential purposes.

7.3 Lot Subdivision and Building Sites. None of the lots shall at any time be divided into more than one (1) building site and no building site shall be less in area than the area of the smallest lot platted in the Subdivision. A single lot together with contiguous portion or portions of one or more adjacent lots or, subject to limitation on building site size, contiguous portions of adjacent lots may be used for one (1) building site, but only upon approval of the Association. If approval of the City of Troy Planning Commission is required by the City of Troy Subdivision Regulations, then no lot may be subdivided unless authorized by the City of Troy Planning Commission as well as the Association.

7.4. Building Setbacks. Building setbacks shall be observed as provided on the Plat and shall be subject to any minimum building setback lines set forth in the applicable Troy zoning laws and ordinances. If encroachments are permitted by applicable Troy zoning laws and ordinances, then such encroachments shall also be permitted under this Declaration.

7.5. Lot Maintenance.

(a) All lots, whether occupied or unoccupied, shall at all times be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris thereon. In order to implement effective control of this provision, there is reserved to the Association for itself and its agents, the right, but not the obligation, after ten (10) days notice to any lot owner, to enter upon any residential lot with such equipment and devices as may be necessary for the purpose of mowing, removing, cleaning or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Association detracts from the overall beauty or safety of the Subdivision.

(b) Entrance upon such property for such purposes shall not constitute a trespass. The Association may charge the owner a reasonable cost for such services, which charge shall constitute a lien upon the lot enforceable by appropriate proceedings at law or equity; provided, however, that the lien shall be subordinate to the lien of any first mortgage or deed of trust encumbering the lot. The provisions of this section shall not be construed as an obligation on the part of the Association to mow, clear, cut, or prune any lot, nor to provide garbage or trash removal services.

7.6. Garbage Containers. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery, fencing, or other appropriate means so as not to be visible from any road, or within sight distance of the lot at any time except during refuse collection.

7.7. Fuel Containers. Containers for storage of home heating oil or propane gas for use by the individual property owner shall not be permitted.

7.8. Signs. Signs, billboards, and advertising structures of any kind are prohibited with the following exceptions:

1. Builder and contractor signs during construction periods.
2. One professional sign of not more than four square feet to advertise a lot for sale during a sales period.
3. Developer's sign or signs advertising the Subdivision.

7.9. Utilities. Except for above ground electric lines around the perimeter of the Subdivision, all utilities shall be installed underground.

7.10. Landscaping. Plans for initial landscaping must be submitted to the Association for approval within ninety (90) days after completion of construction. Although the Association shall have the authority to approve any landscaping plan submitted, it is suggested as a guideline that a minimum of two percent (2%) of the building construction cost be allocated for landscaping each building site. Landscaping includes seeding and planting of trees, shrubs, and ground covers, excluding rough grading work. Landscape work must be completed within six (6) months of occupancy. The Association may require sod or other erosion protection as a condition of approval.

7.11. Completion of Construction.

(a) Construction of a residence building on any building site is to be completed within two (2) years from the date of the original purchase from Developer, and completion of construction is expected within one (1) year from the date of beginning construction. Developer reserves the right to repurchase any lot in the Subdivision upon which the construction of the residential building has not been completed within two (2) years from the date of the original sale from Developer.

(b) In the event the Developer exercises the repurchase right set forth in section 2.11(a), Developer shall give written notice to the then owner of record of the lot or lots, the notice to be by certified mail addressed to the mailing address for tax purposes. The repurchase price which the Developer shall pay for such lot, in the event of such repurchase, shall be the sales price of such lot upon its original sale, without interest or allowance for appreciation in value. Developer, at its sole discretion, may waive its right to repurchase any lot or lots in the Subdivision. In no event shall the Developer be entitled to exercise the repurchase right after four (4) years from the original sale. The owner

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shall transfer the lot or lots to Developer by limited warranty deed free and clear of any liens and encumbrances arising subsequent to the date of the closing of the purchase of lot or lots from Developer.

7.12. Fences. Fences shall not be constructed within any utility easement. Otherwise all fence designs and location shall be in keeping with the architectural character of the structure and shall be approved by the Association. No chain link fencing, barbed wire, wire field fencing, metal fencing, or similar fencing shall be permitted. No fence or hedge greater than four feet in height shall be placed or allowed to remain nearer to the street than the minimum setback line.

7.13. Drainage. Drainage of surface water, storm water and/or foundation drains shall not be connected to sanitary sewers.

7.14. Sump Pump Effluent. Sump pump systems shall be connected to and all sump pump effluent shall be discharged into storm drains as approved by the Developer or the Troy Engineer. No pump or piping device shall discharge sump pump effluent into a public right-of-way, into a detention basin, or into sanitary sewers.

7.15. Animals. No animals, livestock or poultry of any kind or description shall be raised, kept, or bred on any lot in the Subdivision. Notwithstanding the foregoing, dogs (up to but not exceeding two (2) per lot), cats, or other usual household pets may be kept on any lot, provided that no such household pet may be kept on any lot for commercial purposes and provided further that no dog which constitutes a threat, danger or nuisance to any Owner or other individual may be kept on any Lot at any time. The determination as to whether any dog constitutes a threat, danger or nuisance shall be made within the sole discretion of the Developer or the Association.

7.16. Outbuildings and Structures. Due to the maintenance issues with outbuildings and detached structures that sometimes occur after the original owner sells his or her lot, the Committee strongly discourages the installation of outbuildings or detached structures. However, if a property owner submits a written request and site plan to the Committee detailing the shape, size, height, materials, color, and location of the outbuilding or detached structure, which is signed and dated by all contiguous property owners in support of the request, the outbuilding or detached structure may be permitted by the Committee provided the following requirements are met:

- (1) The outbuilding or detached structure shall not contain more than one hundred (100) square feet of floor area;
- (2) The outbuilding or detached structure shall not be more than twenty (20) feet from the primary residential structure;
- (3) The outbuilding or detached structure shall be in the rear of the primary residential building and no part thereof shall extend beyond the side lines of the primary residential structure as if the lines were extended to the rear of the lot;
- (4) The shape, size, height, materials, color, and location of the outbuilding or detached structure shall be compatible with that of the principal residential structure;
- (5) The outbuilding or detached structure shall be approved by the Committee under the procedures provided for in this Declaration; and
- (6) No more than one (1) outbuilding or detached structure shall be contained on any lot.

The final decision regarding the approval of any outbuilding or detached structure shall be within the sole discretion of the Committee. After construction of the outbuilding or detached structure is completed, if the Committee, in its sole discretion, determines that the outbuilding or detached structure is not properly maintained by the owner, the Committee shall have the right to order repair or removal of the outbuilding or detached structure by providing written notice to the owner. If the owner fails to perform the repair or removal of the outbuilding or detached structure within thirty (30) days of receipt of the written notice, the Committee shall have the right to complete the repair or removal, and the owner shall promptly reimburse the Committee for all costs and expenses incurred in connection with such repair or removal, which costs and expenses shall constitute a lien upon the owner's Lot enforceable by appropriate proceedings at law or equity.

No structure of a temporary character, including but not limited to a trailer, tent, shack, garage, barn or other outbuilding, shall be used on any lot at any time as a residence, either temporarily or permanently.

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7.17. Sidewalks. Although it is the ultimate responsibility of Developer, as a condition to the release of its bond, to insure that sidewalks are installed, sidewalks required to be installed by the City of Troy shall be installed by the owner at owner's expense. Developer reserves the right to establish plans and specifications for any such sidewalks, and the owner shall comply with any such plans and specifications. If the owner refuses or fails to install the sidewalks promptly upon demand by the Developer or by the City of Troy, the Developer shall have the right to install the sidewalks, and owner shall promptly reimburse Developer for all costs and expenses incurred in connection with the installation of the sidewalks, which costs and expenses shall constitute a lien upon the lot enforceable by appropriate proceedings at law or equity.

7.18. Vehicles.

(a) No boat, boat trailer, house trailer, camper, van, recreational vehicle, tent, or equipment or vehicle of a similar nature shall be parked or stored on any road, street, driveway, yard, or lot in the Subdivision for any period of time, except in an enclosed garage. No truck of any size greater than a pickup truck shall be parked on any part of the Subdivision at any time except such limited period as may be necessary to service any part of the Subdivision. No inoperable motor vehicle shall be parked on any part of the Subdivision at any time except within an enclosed garage. No owner shall repair any motor vehicle, boat, trailer, or other vehicle on any portion of any lot, or on any street in the Subdivision, except in an enclosed garage, unless and except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

(b) The provisions of this section 7.18 are not intended to replace any applicable Troy ordinance or regulation, and every owner shall comply with all applicable Troy ordinances and regulations.

7.19. Parking.

(a) On-street parking on any street in the Subdivision shall be restricted to occasional parking for special occasions only, not to exceed twenty-four (24) hours.

(b) The provisions of this section 7.19 are not intended to replace any applicable Troy ordinance or regulation, and every owner shall comply with all applicable Troy ordinances and regulations.

7.20. Association Responsibility. Neither the Association nor Developer nor their representative agents shall be responsible for defects in plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defect in any work done according to such plans and specifications.

7.21. Size of Residence. Each one-story single family residential structure erected on any building site shall have not less than 1,200 square feet of living area, and each multi-story (including 1-1/2 story, by-level, tri-level, or 2 story) single family residence structure erected on any building site shall have not less than 1,500 square feet of living area. The square footage shall exclude garage space and basement, decking, patios and porches. The first floor of all structures shall have a ceiling height of not less than eight (8) feet in all enclosed, heated, habitable space.

7.22. Roof Pitch. The roof of all primary residential structures and all garages shall have a minimum pitch of 6/12 (i.e., the minimum increase in height of the roof shall be six (6) inches for every twelve (12) inches of horizontal span of the roof).

7.23. Garage. All single family residences shall have a minimum two (2) car attached garage.

7.24. Solar Panels. The use of solar panels shall not be permitted.

7.25. Antennas and Satellite Dishes. No exposed or exterior radio or television transmission or receiving antennas, and no satellite dishes which exceed 24 inches in diameter shall be erected, placed, or maintained on any part of the Subdivision.

7.26. Vents. Vents protruding through the roof should be placed on rear roof surfaces when possible and be painted a color to blend with roof coloring.

7.27. Swimming Pools. Swimming pools shall match architectural character of the structure and be approved by the Association. No above ground pools shall be permitted except for one portable children's wading pool not to exceed 49 square feet in size and 16 inches in height.

7.28. Mailboxes. The Association may designate a mailbox design which must be used by each lot owner. The mailbox erected by the lot owner shall meet U.S. Postal Service specifications and applicable Troy ordinances.

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7.29. Driveways. All driveways shall be concrete or other non-asphaltic hard surface pavement and should extend from the garage door to the rear of the sidewalk and shall be approved by the Association. The driveway approach shall be concrete pavement from the curb to the sidewalk and shall be constructed in accordance with Troy specifications.

7.30. Clothes Lines. The use of exterior clothes lines shall not be permitted.

7.31. Flag Poles. The use of free standing flag poles is strongly discouraged by the Association. However, if an owner submits a written request to the Association detailing the placement, type, size, height and lighting of the pole and flag, which is signed and dated by all contiguous property owners in support of the request, the flag pole may be permitted by the Association. The final decision regarding the approval of any freestanding flag pole shall be within the sole discretion of the Association. After installation of the free standing flag pole, if the Association, in its sole discretion, determines that the flag pole, the flag, or any lighting is not properly maintained by the owner, the Association shall have the right to order repair or removal of the flag pole by providing written notice to the owner. If the owner fails to perform the repair or removal of the flag pole within thirty (30) days of receipt of the written notice, the Association shall have the right to complete the repair or removal, and the owner shall promptly reimburse the Association for all costs and expenses incurred in connection with such repair or removal, which costs and expenses shall constitute a lien upon the owner's Lot enforceable by appropriate proceedings at law or equity.

Flag poles may be attached to a residential structure provided that Association approval is obtained with respect to the placement and type of flag pole to be installed.

7.32. Basketball Goals. No basketball goals shall be permitted to be attached to any residential structure; however, free standing basketball goals may be permitted provided that Association approval is obtained with respect to the placement and type of basketball goal and supporting structures.

7.33. Nuisances. No noxious or offensive activity which would constitute a nuisance shall be carried on in any lot.

7.34. Repairs. Each owner shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of the residence at the time of its initial construction, normal wear and tear excepted.

7.35. Trees Prohibited. No trees shall be planted between the curb and sidewalks required to be installed by the City of Troy, and no trees shall be planted within a public right of way or within a public easement.

7.36. Construction Material All exterior walls of all structures constructed in the Subdivision shall be covered with cedar or vinyl or brick, stone, or other cementitious material approved in writing by the Association. At least 50% of the front exterior of each home shall be covered with brick.

ARTICLE VIII. EASEMENTS FOR UTILITIES

8.1 Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of the Subdivision. No structure or other materials or improvements that may damage or interfere with the installation and maintenance of utilities shall be placed or permitted to remain within these easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility are responsible.

ARTICLE IX ENFORCEMENT

9.1 In the event of an actual or threatened violation or breach of any of these restrictions, or any amendments or supplement to them, by any Lot Owner or by any person or entity using or occupying any Lot, then Developer, the Association, or any Lot Owner or Owners shall have the right to compel compliance with the terms and conditions of this Declaration, by any proceeding at law or in equity in and by any other course of action or use of any other legal remedies which may be appropriate. No delay or failure on the part of an aggrieved party to invoke any available remedy shall be held to be a waiver of any right or remedy available to the party upon the recurrence or continuation of the violation. Nothing herein shall be construed to require the Developer, the Association, or any Lot Owner or Owners to take any action contemplated in this Article to enforce the restrictions.

9.2 All costs, expenses, and attorney fees incurred by the Developer or the Association in connection with their efforts to compel compliance with the terms and conditions of this Declaration shall be paid by the Owner or

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Owners against whom such compliance is sought and all such costs, expenses, and attorney fees shall constitute a lien upon the Owner's Lot which lien shall be enforceable by appropriate proceedings at law or equity.

9.3 The Owner or grantee of any Lot which is subject to these restrictions, by acceptance of a deed or other instrument conveying title to the Lot, shall agree, and shall be deemed to have agreed to the filing of a certificate or affidavit of lien in the Office of the Recorder of Miami County, Ohio which shall constitute a lien upon the Owner's Lot for any and all unpaid assessments and any and all costs incurred by the Developer or the Association in connection with their efforts to compel compliance with the terms and conditions of this Declaration, together with interest, costs and attorney fees incurred by the Developer or the Association to collect such assessments or in connection with the enforcement of this Declaration. The Owner or grantee of any Lot shall agree, and shall be deemed to have agreed that the filing of the affidavit or certificate of lien shall constitute a lien upon the Lot for a period of five (5) years from the date of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property. The Owner or grantee of any Lot shall agree, and shall be deemed to have agreed, that such lien shall be prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Developer or on behalf of the Association.

ARTICLE X. LOT OWNER ACCEPTANCE

10.1 The Owner or grantee of any Lot which is subject to these restrictions, by acceptance of the deed or other instrument conveying title to the Lot, or by the execution of a contract of the purchase of the Lot, whether from Developer or from a subsequent Owner of the Lot, shall accept, and shall be deemed to have accepted, the deed or other contract upon and subject to the restrictions contained in this Declaration, all of them being covenants running with the land.

ARTICLE XI. TERM AND MODIFICATION

11.1 This Declaration may be amended only by the sole act of Developer up to the time Developer relinquishes control of the Association. Thereafter, a majority vote of the Lot Owners may amend this Declaration. Unless so amended this Declaration shall run for an initial period of thirty (30) years with successive automatic renewal periods of ten (10) years each.

ARTICLE XII. SEVERABILITY

12.1 Each restriction is hereby declared to be independent from the remainder of the restrictions. Invalidation of any one of the restrictions shall in no way affect any of the other restrictions.

12.2 The provisions of these restrictions are in addition to, and supplemental of, any ordinances, laws and regulations of the City of Troy, Ohio.

ARTICLE XIII. ASSOCIATION ADDRESS

13.1 All matters or plans required to be submitted to the Association for approval or review shall be addressed and delivered to:

EDGEWATER OWNERS ASSOCIATION
PO BOX 402
TROY, OHIO 45373
edgewaterassociation@outlook.com

or to such other address as the Association shall subsequently designate by written instrument recorded in the office of the Recorder of Miami County, Ohio.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

14.1 Finality of Association and Developer Decisions. In all matters involving the interpretation and construction of the terms and provisions of this Declaration, the decisions of the Association and/or the Developer shall be final and in no event be deemed arbitrary or capricious.

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14.2 Non-Liability. Neither the Developer nor the Association, nor any of their members, agents, employees, contractors, successors or assigns, shall be liable to any Owner or any other party for loss, claims, or demands asserted on account of their administration of the Association or these restrictions or the performance of their duties hereunder or any failure or defect in such administration and performance.

14.3 Rules and Regulations. The Association may adopt and enforce reasonable rules and regulations pertaining to the construction on, and use of the Lots in the Subdivision, which shall be binding on the Owners of Lots in the Subdivision in the same manner as this Declaration.

14.4 Rights of Developer. Nothing in this Declaration shall be understood or construed to prevent Developer or the employees, contractors, or subcontractors of Developer from:

(a) Doing on any part or parts of the Subdivision property owned or controlled by Developer, or its representative, whatever it determines may be reasonably necessary or advisable in connection with the completion of the work of developing the Lots within the Subdivision, of establishing the Subdivision as a residential community, or of disposing of the Lots;

(b) Constructing and maintaining on any part or parts of the Subdivision property owned or controlled by Developer, or its representative, such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease, or otherwise;

(c) Maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale of Subdivision Lots.

Executed at Troy, Ohio on the 31st day of JANUARY 2006.

OBERER RESIDENTIAL CONSTRUCTION, LTD.
An Ohio Limited Liability Company

By: [Signature]

Its: TREASURER

STATE OF OHIO Madison
COUNTY OF ~~MIAMI~~ SS:

Before me, a Notary Public in and for said county and state, personally appeared Oberer Residential Construction, Ltd., an Ohio limited liability company, by Robert M. McCann, its Treasurer, who acknowledged that she did sign the foregoing Declaration of Covenants, Conditions, and Restrictions and that the same is her free act and the free act and deed of the Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Troy, Ohio, this 31st day of JANUARY 2006.

[Signature]
Notary Public

MICHELE D. KEMPHUES, Notary Public
In and for the State of Ohio
My Commission Expires Aug. 3, 2006

This instrument prepared by: FAULKNER, GARMHAUSEN, KEISTER & SHENK, A Legal Professional Association, Courtview Center - Suite 300, 100 South Main Avenue, Sidney, Ohio 45365, (937) 492-1271

G:\Troy Land Dev\2nd Amended Dec of Subdivision (Edgewater)
MAS: clf 1/19/06

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