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**DECLARATION OF COVENANTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS FOR  
OAK CREEK EAST**

This Declaration of, Covenants, Easements, Conditions and Restrictions (the “Declaration”) made this 19th day of May, 1998 by Oak Creek East, LTD., an Ohio limited liability company (the “Developer”).

**Background**

- A. Developer is the owner in fee simple of certain real property more fully described in Exhibit A attached hereto and by this reference incorporated herein.
- B. Developer desires to develop the Property into a residential subdivision, and to restrict the use and occupancy of the Property for the protection of the Property and the future owners of the Property.
- C. Developer declares that all of the Property shall be held, developed, encumbered, leased, occupied, improved, used, and conveyed subject to the following covenants, easements, conditions and restrictions, which are for the purpose of protecting the value and desirability of, And which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of any portion of the Property.

**ARTICLE I**

**DEFINITIONS**

As used herein, the following terms shall have the following definitions:

1. **“Annual Assessment”** - the amount to be paid to the Association by each Owner annually.
2. **“Assessments”** - collectively referring to Annual Assessments, Lot Assessments and Special Assessments.
3. **“Association”** - Oak Creek East Homeowners’ Association, an Ohio non-profit corporation, its successors and assigns.
4. **“Association Documents”** - the Articles of Incorporation, Code of Regulations and any and all procedures, rules, regulations or policies adopted by the Association.
5. **“Board”** - the board of trustees of the Association.

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6. **“Common Expenses”** – expenses incurred in maintaining the Common Property.
7. **“Common Property”** - all real and personal property now or hereafter acquired pursuant to this Declaration or otherwise and owned by the Association for the common use and the enjoyment of the Owners.
8. **“Developer”** - Oak Creek East, LLC and any manager, general partner, shareholder, successor or assign thereof to which Developer specifically assigns any of its rights under this Declaration by a written instrument.
9. **“Improvements”** - all buildings, outbuildings and garages; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools and tennis courts; slope and drainage alterations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches; planted trees, hedges, shrubs and other forms of landscaping that are more than 30 feet high when fully grown; and all other structures of every type.
10. **“Lot”** - a discrete parcel of real property identified upon the recorded subdivision plat of the Property, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Developer, excluding the Common Property and any portion of the Property dedicated for public use.
11. **“Lot Assessment”** - an assessment that the Board may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner of those Lots; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Lot Assessment by the Board.
12. **“Manager”** - the person or entity retained by the Board to assist in the management of the Association as set forth in Article V, Section 6.
13. **“Member”** - any person or entity entitled to membership in the Association, as provided for in Article IV.
14. **“Owner”** - the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for performance of an obligation and also excluding the Developer.
15. **“Property”** - all of the real property described in Exhibit A attached hereto and such additional property as may be annexed by amendment to this Declaration, or that is owned in fee simple by the Association, together with all easements and appurtenances.
16. **“Reserve Fund”** - the fund established pursuant to Article VI.

17. “**Rules**” - the rules and regulations governing use of the Property and the Common Property, as may be established by the Board from time to time pursuant to Article V.

18. “**Special Assessment**” - an assessment levied by the Association against all Lots pursuant to Article VI or at a special meeting of the Members of the Association to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Reserve Fund.

19. “**State**” - the State of Ohio.

20. “**Turnover Date**” - the date described in Article VI, Section 3.

## **ARTICLE II**

### **ARCHITECTURAL CONTROL**

Section 1. **Approval Required.** No Improvements or change of any kind, including without limitation any

- (a) building, construction, placement of or addition to or alteration of any structure (whether temporary or permanent);
- (b) changes in color, material finish, or appearance of any improvement;
- (c) excavation, alteration of grade;
- (d) landscaping, tree or shrubbery removal or plantings, or landscaping plan;
- (e) construction, placement of or addition to or alteration of any:
  - (i) fencing, walls, screening;
  - (ii) walkways, driveways, parking area;
  - (iii) patio, deck, porch;
  - (iv) swimming pool, hot tub, spa;
  - (v) children’s recreational equipment or structures (including treehouses, playhouses, basketball hoops, and playground equipment)
  - (vi) tennis court or other athletic facility; or
  - (vii) flag pole, exterior lighting, ornamentation, or sign; or
- (f) any other change which in any way alters the exterior appearance of the lot from its theretofore natural or improved state, including a change, alteration or other modification of any of the foregoing previously approved hereunder.

shall be commenced or permitted to remain on any Lot unless such Improvement or change has the prior written approval of the Developer. No excavation shall be made, no construction begun and no materials shall be stored on the Lot until receipt of written approval from the Developer. A single story dwelling shall have a minimum of 1,600 square feet of living area, exclusive of porches and garages, and a two story dwelling shall have a minimum of 1,800 square feet of living area, exclusive of porches and garages.

Section 2. **Method to Request Approval.** All approvals shall be requested by submission to the Developer of plans and specifications in duplicate, showing the following:

- (a) The arrangement of the interior and exterior of the residential structure including:
  - (i) color and texture of building materials;
  - (ii) type and character of all windows, doors and exterior lighting fixtures;
  - (iii) type and character of all chimneys;
  - (iv) location of the structure and orientation of the structure to the topography
- (b) Existing and proposed land contours and grades;
- (c) All buildings and other Improvements including walkways, access drives and parking areas, and other improved areas, and the locations thereof on the site, existing or proposed;
- (d) All landscaping, including existing and proposed tree locations and planting areas (and specie thereof), mailbox locations, and exterior ornamentation (a detailed landscape plan must be submitted);
- (e) Plans for all floors, cross sections and elevations, including projections and wing walls;
- (f) Exterior lighting plans;
- (g) Plans and specifications for all outdoor recreational and play areas, including swimming pool, spa, or other athletic facility;.
- (h) Plans and specifications for walls, fencing, and screening;
- (i) Plans and specifications for patios, decks, and porches or any other exterior changes or Improvements;
- (j) The names and credentials of the architects, including landscape architects, and builders, of the Improvements;

- (k) Such additional information, data, specifications and drawings as may be reasonably requested by the Developer

Specifications shall describe types of construction and exterior materials to be used, including, without limitation, the colors and manufacturers thereof, and shall otherwise be prepared according to standards established from time to time by the Developer.

Section 3. **Basis of Approval.** Approval shall be based, among other things, upon conformity and harmony of the proposed plans and specifications with the design and quality of the Property and neighboring property as to the external design, appearance and type of construction, materials, colors, setting, height, grade, finish grade elevation, and landscaping and tree removal; and conformity of the plans and specifications to the purpose and general intent of this Declaration.

Section 4. **Building Actions.** If Developer disapproves the plans and specifications, the Owner may revise and resubmit the plans and specifications until approval is received. The actions of the Developer through its approval or disapproval of plans and other information submitted pursuant hereto, shall be conclusive and binding.

Section 5. **No Liability.** Neither the Developer nor any agent or employee, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, nonfeasance or misfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom or any other effect on other Lots and Owners of the Property. Every person or entity who submits plans to the Developer agrees, by submission of such plans, that he or it will not bring any action or suit against the Developer to recover any damages or to require the Developer to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance with this Declaration.

Section 6. **No Reliance.** No Lot Owner may rely upon the submission and/or approval of any such plans or the buildings or structures described therein, or upon the Developer, to maintain the quality of, or a design plan for, the Property.

Section 7. **Requirement of Completion: Notice of Completion. Non-completion or Non-compliance.** An Owner shall cause any Improvement to be diligently pursued to completion within eighteen (18) months after the date construction is commenced. Any Improvement which has been partially or totally destroyed by fire or otherwise shall be repaired or removed within three (3) months after the time of such destruction. Upon the completion of any Improvement, the Owner may file with the Developer a notice of completion and compliance which shall give rise to a conclusive presumption in favor of the Owner that the Improvement is completed and in compliance with all provisions of this Article II, unless within thirty (30) days of the filing the Developer gives actual notice of non-compliance or non-completion. Notice of

non-compliance or non-completion will be considered to be delivered when it is posted on or about the Improvements in question or delivered by certified mail or in person to the Owner.

### **ARTICLE III**

#### **USE RESTRICTIONS**

Section 1. **Residential Purposes.** Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a residence.

Section 2. **Use of Common Property.** The Common Property may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the residential use of a Lot. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation and enjoyment of the Owners and occupants and shall comply with the provisions of this Declaration, the laws of the State and the Rules.

Section 3. **Trade or Commercial Activity Barred.** No trade or commercial activity shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to any of the Owners.

Section 4. **Maintenance of Lots and Improvements.** The Lots, including any land which has been altered from its natural state existing at the time of this Declaration, shall be landscaped according to plans approved in writing by the Developer. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping approved by the Developer shall be installed no later than one hundred eighty (180) days following occupancy of, or completion of, any building, whichever occurs first. The Lot shall be regularly mowed and no Lot shall be allowed to become overgrown or unsightly. No vegetable or other produce garden may be located so as to be visible from outside the Lot. All Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Developer.

Section 5. **Site Placement.** All buildings and other Improvements shall be placed so that the existing topography and landscape shall be disturbed as little as possible, and so that the maximum number of desirable trees and other natural features will be preserved, unless the Developer approves in writing some other placement.

Section 6. **Exterior Materials and Colors.** Finish building materials shall be applied to all sides of the exteriors of buildings. Colors and building materials shall be harmonious and compatible with colors of the natural surrounding and adjacent buildings and

Improvements. The Developer shall have the sole right to approve or disapprove materials and colors so controlled.

Section 7. **Garage.** No dwelling may be constructed on any Lot unless an attached enclosed garage for at least two automobiles is also constructed thereon.

Section 8. **Service Screening., Storage Areas.** All garbage, trash and other waste shall be placed in containers which shall be concealed and contained within buildings, or shall be concealed by means of a screening wall of material similar to and compatible with that of the building on the Lot, or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. These elements shall be integrated with the building plan, designed so as not to attract attention, and shall be located in as reasonably inconspicuous a manner as possible. Unless specifically approved by the Developer, no materials, supplies or equipment shall be stored on the Lot except inside a closed building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets or properties.

Section 9. **Drives, Curbs and Walks.** Drives, curbs, parking areas and walks shall be constructed or altered only in accordance with plans and specifications submitted to and approved in writing by the Developer.

Section 10. **Storage Tanks.** No storage tanks, including, but not limited to, those used for storage of water, gasoline, oil, other liquid or any gas, shall be permitted on a Lot outside a building except as approved in writing by the Developer.

Section 11. **Building Exterior.** All windows, porches, balconies and the exterior of buildings shall at all times be maintained in a neat and orderly manner. Draperies and other window treatment shall be harmonious with the outside of each building

Section 12. **Removal of Trees.** In order that the natural beauty of the Property may be preserved, no living tree having a caliper measurement or diameter of six (6) inches or more shall be destroyed or removed from a Lot, unless specifically approved by the Developer. In the event of a violation of this paragraph, Developer may, at its option, cause any tree so removed or destroyed to be replaced with another tree and the Owner of the Lot on which the tree was located shall reimburse Developer for all expenses incurred by it; provided, however, that with respect to the replacement of a tree, there shall be no obligation of reimbursement in any amount in excess of the expenses which would be incurred if the destroyed or removed tree were replaced with a tree similar in type and size.

Section 13. **Pools and Hot Tubs.** No above ground swimming pool which requires a filtration system or is more than six (6) feet in diameter and 18 inches deep shall be placed or maintained on any Lot. No other swimming pool, hot tub or spa may be placed or maintained on any Lot without the prior written approval of the Developer.

Section 14. **Playground Equipment/Tennis Courts.** No playground equipment or tennis or similar court shall be placed or maintained on any Lot without the prior written approval of the Developer.

Section 15. **Fencing.** Fencing shall be restricted to fence heights of not more than 42” with the fencing constructed of split rail with the option of woven wire being placed on the inside of the rail fence, provided it is approved by the Developer in writing.

Section 16. **Mailboxes.** All mailboxes on the Property shall be selected by the Developer, who shall also prescribe the location and installation of the boxes. Owners shall purchase and maintain the required boxes.

Section 17. **Exterior Lighting.** Only exterior lighting which has the prior written approval of the Developer may be installed on a Lot.

Section 18. **Hobbies.** Hobbies or activities that tend to detract from the aesthetic character of the Lot, and Improvements used in connection with such hobbies or activities, shall not be permitted unless carried out or conducted within a building and not visible from either the street or the front of any lot.

Section 19. **Temporary Residences.** No structure of a temporary character, trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all terrain vehicle (ATV), camper or camping trailer, basement, tent, shack, garage, barn, storage shed, or other outbuilding shall be used as a residence on any Lot either temporarily or permanently.

Section 20. **Mineral Exploration.** The Lot shall not be used in any manner to explore for, use or commercially exploit any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, soil or other substance located in or under the ground. In particular, no wells may be located on the Lot and no water may be removed from any pond, lake or other body of water located on, adjacent to, or near the Lot.

Section 21. **Machinery and Equipment.** No commercial machinery or equipment of any kind shall be placed, operated or maintained upon the Lot except such machinery or equipment reasonably necessary for use in connection with maintenance or construction of Improvements as approved by the Developer.

Section 22. **Signs.** No signs of any kind shall be displayed on any Lot, except one temporary sign of not more than two feet by two feet (2’ x 2’) advertising the property for sale or rent, or used by the builder to advertise the property during the construction sales period, or signs the restriction of which is prohibited by law

Section 23. **Antennae** No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be maintained on the premises, to the extent permissible under applicable statutes and regulations, including those administered by the Federal Communications Commission, except that this restriction shall



not apply to satellite dishes with a diameter less than twenty-four inches (24”), erected or installed to minimize visibility from the street which the dwelling fronts.

Section 24. **Solar Panels.** No solar panels, attached or detached, shall be permitted on any Lot.

Section 25. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighboring property. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, no speakers, horns, whistles, bells or other sound devices which can be heard off the Lot, shall be located, used or placed on a Lot, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

Section 26. **Temporary Improvements.** No temporary building or structures shall be permitted on any Lot; provided, however, trailers, temporary buildings, barricades and the like shall be permitted during construction of initial Improvements on any Lot, provided the design, appearance and location has the prior written approval of the Developer. Such Improvements shall be removed not later than fourteen (14) days after the date of completion of the Improvements for which the temporary structure was used, and shall be permitted to remain for no longer than one (1) year, unless a greater period is approved in writing by the Developer.

Section 27. **Animals.** No animals, birds, insects, livestock, reptile or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats and other household pets which are kept for domestic purposes only, and are not kept, bred or maintained for any commercial purpose. No more than two dogs or two cats or two other pets which are permitted outdoors may be kept on any Lot except when animals in excess of such numbers are less than three months old.

Section 28. **Vehicle Parking and Storage.** No automobile, trailer, boat, camper, recreational vehicle, commercial vehicle or other motor driven vehicle shall be parked or stored on any Lot unless it is in a garage, except that:

(a) such vehicles, if operable, may be parked outside the garage for an occasional nonrecurring, temporary period not to exceed twenty-four (24) hours in any ten (10) days; and

(b). automobiles in good condition may be parked outside the garage on a regular basis if there is insufficient space in the garage and the automobiles are driven regularly by a person residing on the Lot.

Section 29. **Lot Split.** No Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise, so as to create a new building lot.

Section 30. **Contiguous Lots.** An Owner may use more than one Lot as a site for a single dwelling unit only if the Owner obtains the prior written permission of the Developer.

Section 31. **Utility and Drainage Easements.** Location of easements for the installation of utilities and for surface drainage are reserved as shown on the recorded plat. No lines, wires or other devices for communication purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy, shall be constructed, placed or maintained anywhere in or upon the Property unless they are placed and maintained underground or concealed in, under or on buildings or other Improvements; provided that above-ground electrical transformers and other equipment may be permitted if property screened with the prior written approval of the Developer. All gas, water, sewer, oil and other pipes for gas or liquid transmission shall be placed underground or within or under buildings or other Improvements. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone service incident to the construction of Improvements.

Section 32. **Use of Other Easements.** In addition to the utility easements herein designated, easements in the private streets are hereby reserved and granted to the Developer, and any utility company or governmental unit engaged in supplying one or more utility services to the Property to install, lay, erect, construct, renew, operate, repair, replace, maintain or remove all and every type of gas, water, sanitary or storm sewer or other utility facilities.

Section 33. **Drainage and Grading.** No drainage ditches, cuts, swales, streams, impoundments, ponds, or lakes; no mounds, knobs, dams or hills, and no other physical improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be destroyed, altered or modified without the prior written approval of the Developer. No Improvements to a Lot shall be made in any manner whatsoever that are inconsistent with the master grading plans established by the Developer for the Lots, as the plans now exist or may hereafter be modified from time to time, without the prior written approval of the Developer. All Lot Owners shall obtain certification from a licensed engineer after completing any Improvement that the master grading plans have been observed. Whenever, because of construction of Improvements on a Lot, or for some other reason, silt runs off the Lot onto any adjacent property, the Owner of the Lot shall be obligated to provide a means of siltation control to prevent such run off. Roof drains, foundation drains, or other clean water connections to the sanitary sewer system are prohibited.

Section 34. **Lakes and Ponds.** No Owner, or any other person, shall have access to, or the right to use, any lake, pond, stream or other body of water in or adjacent to the Property for boating, swimming or any other purpose.

Section 35. **Entrance Walls, Fencing. Identification Signs, Earthmounds and Landscaping.** The walls, fencing, subdivision identification signs, earthmounds, electrical facilities, irrigation systems and landscaping placed on any of the Lots on the Property by Developer shall not be removed or changed except by the Developer who shall have the right to enter the Lots to do so. They shall be maintained in good condition by the Association or, if not, by the Owners of the Lots on which such features are located.

Section 36. **No Build Zone.** No structure of any kind may be erected or permitted to

extend into those areas shown on the plat as “no build zones.

Section 37. **Governmental Regulations Statements.** Each Lot is subject to all present and future applicable laws, ordinances, rules, regulations and orders of the United States Government, the State of Ohio, Delaware County, Orange Township, and any other political subdivision and any administrative agency of any of the foregoing. Nothing herein shall be construed as permitting any action or condition prohibited by such applicable laws, ordinances, rules, regulations and orders. In the event of any conflict between such applicable laws, ordinances, rules, regulations and orders and this Declaration, the most restrictive provisions shall govern and control.

#### **ARTICLE IV**

##### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. **Membership.** Every Owner shall be deemed to have a membership in the Association. Membership is a right appurtenant to and inseparable from an Owner’s fee simple title in a Lot, and such right of membership shall automatically transfer to any transferee of fee simple title to a Lot at the time such title is conveyed or at such time as a land installment contract is entered for the conveyance of fee simple title. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest or mortgage shall not terminate an Owner’s membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event an Owner consists of more than one person, such persons shall have one membership in the Association in common.

Section 2. **Governance.** Voting and all other matters regarding the governance and operation of the Association shall be set forth in the Association Documents.

#### **ARTICLE V**

##### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 1. **Common Property.** Developer may, from time to time, at Developer’s option, convey to the Association for the use and benefit of the Association and the Members real or personal property, or any interest therein, as part of the Common Property in the nature of an easement appurtenant to the Property. The Association shall accept title to any interest in any real or personal property transferred to it by Developer. The Association, subject to the rights of the Owners set forth in this Declaration and the Association Documents, shall be responsible for the exclusive management and control of the Common Property, if any, and all improvements thereon, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, in accordance with the terms and conditions of this Declaration.

Section 2. **Personal Property and Real Property for Common Use.** The Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Developer.

Section 3. **Cost-Sharing Agreements.** The Association may enter into cost-sharing agreements with other home owners associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, landscaping, storm water retention facilities, mounding, fencing and any other improvements that benefit the Property.

Section 4. **Rules and Regulations.** The Association may make and enforce reasonable rules and regulations governing the use of the Property, which shall be consistent with this Declaration and the Association Documents. The Association shall have the power to impose sanctions on Owners, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Declaration, the Association Documents or the Rules against any Owner, tenant, guest or invitee of any Owner, the amount shall be due and payable by such Owner and shall be a Lot Assessment against such Owner's Lot.

Section 5. **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration, and every other right or privilege reasonably implied from the existence of any right or privilege granted in this Declaration, or reasonably necessary to effect any such right or privilege.

Section 6. **Managing Agent.** The Board may retain and employ on behalf of the Association a Manager, which may be Developer, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The term of any management agreement shall not exceed three years and shall allow for termination by either party, without cause, and without penalty, upon no more than 90 days' prior written notice.

Section 7. **Insurance.**

A. The Association shall be required to obtain and maintain adequate blanket property insurance, liability insurance and flood insurance covering all of the Common Property in an amount as is commonly required by prudent institutional mortgage investors.

B. The Association may, in the Board's discretion, obtain and maintain the following insurance: (a) fidelity bond coverage and workers' compensation insurance for all officers, directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers' and trustees' liability insurance to fund the obligations of

the Association under Article VIII, Section 4, (d) additional insurance against such other hazards and casualties as is required by law, and (e) any other insurance the Association deems necessary.

C. In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Association may levy a Special Assessment pursuant to Article VI, Section 4 to cover the additional costs.

Section 8. **Condemnation.** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property, or any portion thereof. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Owners.

Section 9 **Books, Records.** Upon reasonable request of any Member, the Association shall be required to make available for inspection all books, records and financial statements of the Association

## **ARTICLE VI**

### **ASSESSMENTS**

Section 1. **Reserve Fund.** The Board may establish a Reserve Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Property.

Section 2. **Types of Assessments.** The Developer, for each Lot owned, covenants and agrees, and each Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the following assessments: (i) Annual Assessments; (ii) Special Assessments; and (iii) Lot Assessments. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Property or by abandoning his/her Lot. Annual and Special Assessments shall be fixed at a uniform rate for all Lots.

Section 3. **Annual Assessments.** The Board shall annually estimate the Common Expenses and the expenses, if any, it expects the Association to incur in the Association's next ensuing fiscal year for the maintenance, operation and management of the Association, (which may include amounts, if any, for the Reserve Fund -- as may be determined by the Board) and shall assess each Owner of a Lot an Annual Assessment equal to such estimated expenses divided by the total number of Lots. The Annual Assessments shall be paid in accordance with the procedures set forth in the Rules. Notwithstanding the foregoing to the contrary (i) prior to

January 1, 2000 in no event shall the Annual Assessments for each Lot exceed \$250.00; and (ii) prior to the date that Developer relinquishes its right to appoint members of the Board as set forth in the Association Documents (the "Turnover Date"), Developer may elect to pay the Annual Assessments applicable to Lots owned by Developer or in lieu thereof, not pay such Annual Assessments and pay any deficit incurred in operating the Association.

Section 4. **Special Assessments.** The Board may levy against any Lot(s) a Special Assessment to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Reserve Fund; provided that any such assessment shall have the assent of two-thirds (2/3) of Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. A quorum must be present at any such meeting.

Section 5. **Lot Assessments.** The Board may levy a Lot Assessment against any Lot(s) and the Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. Upon its determination to levy a Lot Assessment, the Board shall give the affected Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, 10 days prior to the effective date of the levy of any Lot Assessment. The Board may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Owner who violates the Rules, the Association Documents or any provision of this Declaration, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules, the Association Documents, or provisions of this Declaration.

Section 6. **Remedies.**

A. **Late Charge; Acceleration.** If any Assessment remains unpaid for 10 days after all or any part thereof shall become due and payable, the Board may charge interest at the lesser of the rate of 12% per annum or the highest rate permitted by law, together with an administrative collection charge of \$25.

B. **Liability for Unpaid Assessments.** Each Assessment or installment of an Assessment, together with interest thereon and any costs of collection, including reasonable attorneys' fees shall become the personal obligation of the Owner(s) beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute an action at law on behalf of the Association against the Owner(s) personally obligated to pay any delinquent assessment. An Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable and both such Owner and

his/her successor in title shall be jointly and severally liable therefor. Except as otherwise provided herein, the transfer of an interest in a Lot shall neither impair the Association's lien against that Lot for any delinquent Assessment nor prohibit the Association from foreclosing that lien.

C. **Liens.** All unpaid Assessments, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied, if any Assessment remains unpaid for 10 days after it is due, then the Board may authorize any officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and costs, with the appropriate governmental office containing a description of the Lot which the lien encumbers, the name(s) of the Owner(s) of that Lot, the amount of the unpaid portion of the Assessment, and such other information as the laws of the State may require. The certificate may be signed by any officer, authorized agent or Manager of the Association. Upon the filing of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall remain valid for a period of five years from the date such certificate is duly filed, unless the lien is released earlier or satisfied in the same manner provided by the law of the State for the release and satisfaction of mortgages on real property, or unless the lien is discharged by the final judgment or order of any court having jurisdiction. Notwithstanding the foregoing, the lien for Assessments provided for in this Section shall be subordinate to the lien of any bona fide first mortgage on a Lot.

D. **Vote on Association Matters: Use of Common Property.** If any Assessment remains unpaid for 30 days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Property, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.

## **ARTICLE VII**

### **MAINTENANCE**

Section 1. **Maintenance by Association.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures, and improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property.

Section 2. **Maintenance by Owner.** Each Owner or occupant shall repair, replace, and maintain in good order and condition, at his/her expense, portions of, improvements to, structures on, and, equipment and components used in connection with, his/her Lot. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at his/her own expense all maintenance,

repairs and replacements within such Lot that, if omitted, would adversely affect the safety and usefulness of the Common Property. Each Owner shall maintain those portions of his/her Lot that are adjacent to any portion of the Common Property in accordance with the Rules and the requirements set forth in this Declaration.

Section 3. **Right of Association to Repair Lot**, If any Owner fails to maintain his/her Lot in the manner required herein, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Property by Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of this Declaration, then the Board may authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred.

Section 4. **Damage to Common Property By Owner or Occupant**. If the Common Property is damaged by any Owner or occupant, his/her family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

## **ARTICLE VIII**

### **MISCELLANEOUS**

Section 1. **Term**. This Declaration shall bind and run with the land for a term of 30 years from and after the date that this Declaration is filed for recording with the appropriate governmental office and thereafter shall automatically renew forever for successive periods of 10 years each, unless earlier terminated by a majority of the Members.

Section 2. **Enforcement: Waiver**. This Declaration may be enforced by any proceeding at law or in equity by the Developer, any Owner, the Association and their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant or restriction, to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees). Failure of Developer, the Association or any Owner to enforce any provision of this Declaration or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement of this Declaration or the Rules.

Section 3. **Amendments**. Until the Turnover Date, Developer may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants,



conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, Developer may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) necessary to conform to the requirements of United States Federal Housing Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. An amendment to this Declaration shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments' to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Developer, to reflect and address the different character or intended development of any such additional property.

Section 4. **Developer's Rights to Complete Development.** Developer shall have the right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter Improvements on any property owned by Developer; (c) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Developer or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Developer shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of Developer or require Developer to obtain approval to: (i) excavate, cut, fill or grade any property owned by Developer or to construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (iii) require Developer to seek or obtain the approval of the Association for any such activity or Improvement on any Common Property or any property owned by Developer. Nothing in this Section shall limit or impair the reserved rights of Developer as elsewhere provided in this Declaration.

Section 5. **Developer's Rights to Replat Developer's Property.** Developer reserves the right, at any time and from time to time, to amend, alter or replat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Developer shall be the subject of any such amendment, alteration or replatting. Each Owner and Member and the Association, for

themselves and their successors and assigns, hereby consents to and approves any such amendment, alteration or replatting and shall be deemed to have joined in the same.

Section 6. **Indemnification.** The Association shall indemnify every officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The officers and trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The officers and trustees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any officer or trustee, or former officer or trustee, may be entitled.

Section 7. **Severability.** If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law of the State, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

Section 8. **Captions.** The caption of each Article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.

Section 9. **Notices.** Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.

## **ARTICLE IX**

### **ACCEPTANCE**

Section 1. **Acceptance.** By accepting a deed to any Lot or any portion of the Property, an Owner accepts the same subject to this Declaration and agrees for him or herself, his or her heirs, successors and assigns to be bound by each of the covenants.

IN WITNESS WHEREOF, the Developer has caused the execution this Declaration as of the date first above written.

Signed and acknowledged in the presence of:

OAK CREEK EAST, LTD., an Ohio limited liability company

By: M/I SCHOTTENSTEIN HOMES, INC., an Ohio corporation

By: [Signature]  
Paul S. Coppel  
Senior Vice President/General Counsel

[Signature]  
Print Name: JANIS A. ECKSTEIN  
[Signature]  
Print Name: ALBA ELIZABETH McCLERNAN

By: DOMINION HOMES, INC. an Ohio corporation

By: [Signature]  
David S. Borrer  
Executive Vice President

[Signature]  
Print Name: HEIDI M. JENSEN  
[Signature]  
Print Name: PATTY G. CROCKER

STATE OF OHIO :  
: SS  
COUNTY OF FRANKLIN :

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May, 1998, by Paul S. Coppel, Senior Vice President/General Counsel of M/I Schottenstein Homes, Inc., an Ohio corporation, on behalf of the corporation.

[Signature]  
Notary Public



STATE OF OHIO :  
: SS  
COUNTY OF FRANKLIN :

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 1998, by David S. Borrer, Executive Vice President of Dominion Homes, Inc., an Ohio corporation, on behalf of the corporation.

[Signature]  
Notary Public  
[Signature]  
PATTY G. CROCKER  
Notary Public, State of Ohio  
My Commission Expires  
Feb. 26, 2000



**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

Situated in the State of Ohio, County of Delaware, Township of Orange and being further described as follows:

Being Lots Numbered Three Thousand Sixty Hundred Forty-nine (3649) through Three Thousand Seven Hundred Six (3706), both inclusive, of OAK CREEK EAST SECTION 1, as the same are numbered and delineated upon the recorded plat thereof of record in Plat Cabinet 2, Slides 79-79A and 79B, Recorder's Office, Delaware County, Ohio.

**FIRST SUPPLEMENTAL DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR OAK CREEK EAST**

THIS FIRST SUPPLEMENTAL DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR OAK CREEK EAST (the "First Supplemental Declaration") is made as of the 14<sup>th</sup> day of April, 1999, by Oak Creek East, Ltd., an Ohio limited liability company (hereinafter referred to as "Developer").

WHEREAS, on May 21, 1998 Developer filed that certain Declaration of Covenants, Easements, Conditions and Restrictions for Oak Creek East (the "Declaration") recorded at Deed Book Vol. 0642, page 630 in the office of the recorder, Delaware County, Ohio;

WHEREAS, pursuant to the terms of Article I, paragraph 15 of the Declaration, Developer reserved the right to annex additional property and to submit any such property to covenants, easements, conditions and restrictions, and provisions of the Declaration;

WHEREAS, the Developer is the owner of all the real property located in Delaware County, Ohio, more particularly described in Exhibit A attached hereto and incorporated herein by reference and desires to submit such property to the covenants, easements, conditions and restrictions, provisions of the Declaration;

WHEREAS, the real property described in Exhibit A is part of the additional property;

NOW THEREFORE, pursuant to the powers reserved in Article I, paragraph 15 of the Declaration, Developer hereby declares that:

1. Defined Words and Phrases. Unless otherwise defined herein, capitalized words and phrases herein shall have the meanings assigned to such words and phrases in the Declaration

2. Additional Property. All the real property described in Exhibit A shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the covenants, easements, conditions, and restrictions, and provisions of the Declaration as the same is supplemented and amended from time to time, which shall run with the real property described in Exhibit A and shall be binding upon, and inure to the benefit of, all parties now or hereafter having any right, title or interest in such property or any part thereof, and their heirs, personal and legal representatives, successors and assigns.

3. Effect of Amendment. In the case of conflict between the Declaration and this First Supplemental Declaration, the terms of this First Supplemental Declaration shall control. Any term or provision of the Declaration not amended by this First Supplemental Declaration shall remain the same and in full force and effect.

IN WITNESS WHEREOF, the Developer has executed this First Supplemental Declaration as of the date first above written.

Signed in the Presence of:

OAK CREEK EAST, LTD  
an Ohio limited liability company

By: M/I SCHOTTENSTEINHOMES, INC.,  
an Ohio corporation, Managing Member

[Signature]  
Witness Name: JANIS A. ECKSTEIN

By: [Signature]  
Paul S. Coppel  
President Land Operations/General Counsel

[Signature]  
Witness Name: VICKI H. LARME

By: DOMINION HOMES, INC.,  
an Ohio corporation

[Signature]  
Witness Name: Molly A. O'Connor

By: [Signature]  
David S. Borrer  
Executive Vice President

[Signature]  
Witness Name: PATTY G. CROCKER

STATE OF OHIO  
COUNTY OF FRANKLIN, ss:

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of April, 1999, by Paul S. Coppel, President Land Operations/General Counsel of M/I Schottenstein Homes, Inc., an Ohio corporation, on behalf of the corporation.

[Signature]  
Notary Public  
JANIS A. ECKSTEIN  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JULY 27, 2002

STATE OF OHIO  
COUNTY OF FRANKLIN, ss:

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of April, 1999, by David S. Borrer, Executive Vice President of Dominion Homes, Inc., an Ohio corporation, on behalf of the corporation.

[Signature]  
Notary Public

This instrument prepared by: Developer

[Signature]  
Notary Public  
PATTY G. CROCKER  
Notary Public, State of Ohio  
My Commission Expires  
Feb. 26, 2000

**EXHIBIT A**

Situated in the State of Ohio, County of Delaware and Township of Orange and being more particularly described as follows:

Being Lots Numbered Three Thousand Nine Hundred Nine (3909) to Three Thousand Nine Hundred Ninety-two (3992), both inclusive, of OAK CREEK EAST SECTION 2, as the same are numbered and delineated upon the recorded plat thereof of record in Plat Cabinet 2, Slides 174, 174A, 174B, Recorder's Office, Delaware County, Ohio.

**ADDENDUM A  
REGULATIONS ADDED BY TRUSTEES**

Pursuant to rights granted to the Association in Article II, Section 2, of the DECLARATION OF COVENANTS et. al of Oak Creek East, the following regulations or standards have established:

**1. Exterior privacy panels shall be made of wood.**

Added at trustee meeting April 11, 2003 by unanimous vote.

**2. A fence is any structure, regardless of its composition, including a wall, that is erected in such a manner or position so as to enclose, partially enclose, or divide any property or part thereof from a joining premises. (from Barton v. Village of Powell, 1999)**

Added at trustee meeting June 3, 2003, by unanimous vote.

**THIS IS A COPY! NOT TO BE USED AS A LEGAL DOCUMENT!**

**AMENDMENT OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR OAK CREEK EAST**

WHEREAS, the undersigned declarants are owners of certain lots located; Situated in the State of Ohio, County of Delaware, Township of Orange and being further described as follows:

Being Lots Numbered Three Thousand Sixty Hundred Forty-nine (3649) through Three Thousand Seven Hundred Six (3706), both inclusive, of OAK CREEK EAST SECTION 1, as the same are numbered and delineated upon the recorded plat thereof of record in Plat Cabinet 2, Slides 79-79A and 79B, Recorder's Office, Delaware County, Ohio.

WHEREAS, there are currently existing Declaration of Covenants, Easements, Conditions and Restrictions for Oak Creek East (the "Bylaws") recorded at **Deed Book Vol. 0642, page 630** in the office of the recorder, Delaware County, Ohio;

WHEREAS, said restrictions provide under Section 8.01 that the code of regulations may be amended by two third vote of eligible lot owners, and

NOW THEREFORE, the undersigned owners, in pursuance with the general plan of development and in accordance with the provision for amendment of the original restrictions, do hereby execute and deliver this Declaration and the following "Bylaws" amendment. The original restrictions are hereby modified as follows:

**Article II Use Restrictions**

Section 15. **Fencing.** Fencing shall be restricted to fence heights of not more than 48" with the fencing constructed of split rail, black iron or steel and open in design, with the option of woven wire being placed on the inside of the rail fence, provided it is approved by the Developer in writing.

IN WITNESS WHEREOF, the Association, by its undersigned duly authorized officer or agent, has hereunto set its hand this date May 2, 2011.

Signed and acknowledged OAK CREEK EAST HOMEOWNERS' ASSOCIATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF DELAWARE, ss:

The foregoing instrument was acknowledged before me this 2nd day of May, 2011, by Matthew Scheibeck, the President of OAK CREEK EAST HOMEOWNERS' ASSOCIATION, an Ohio corporation not for profit, on behalf of the corporation.

\_\_\_\_\_  
Notary Public, State of Ohio