

200200027162
Filed for Record in
DELAWARE COUNTY, OHIO
KAY E. CONKLIN
06-13-2002 At 10:17 am.
DECLARATION 48.00
OR Book 209 Page 2347 - 2356

**DECLARATION OF RESTRICTIVE COVENANTS FOR
RIVER'S EDGE AT ALUM CREEK SUBDIVISION**

OR Book 209 Page 2347 - 2356

NOTATION

ARTICLE I - Declaration/Purpose

200200027162
COOLIDGE WALL WOMSLEY
& LOMBARD
33 W FIRST ST SUITE 600
DAYTON, OH 45402

WHEREAS, the undersigned, Maronda Homes, Inc. of Ohio, an Ohio corporation, with offices at 3811 Twin Creeks Drive, Columbus, Ohio 43204, is the owner of 14.038 Acres of real property located in Orange Township, Delaware County, Ohio, inclusive of River's Edge at Alum Creek Section 1, as the same are delineated upon the recorded plat thereof, of record in Plat Cabinet 2, Slide 681 and 681A, Recorder's Office, Delaware County, Ohio.

WHEREAS, in order to advance the purposes of this Declaration, River's Edge at Alum Creek Homeowners' Association, Inc. ("Association"), an Ohio nonprofit corporation, has been established for the purpose of owning, operating, maintaining, and administering portions of River's Edge at Alum Creek Subdivision ("River's Edge"), together with certain improvements constructed and developed or to be constructed and developed thereon, including but not limited to, Common Areas as dedicated from time to time by Declarant for the common use by the Owners of Lots within River's Edge; and the Association, as formed by Declarant, has joined in this Declaration for purposes of accepting of all powers and duties of operation, administration, maintenance and repair as delegated and assigned by Declarant, together with the collection and disbursement of "operating expenses" (as defined herein); and

WHEREAS, the Association shall administer and enforce the provisions of this Declaration with the costs incurred by the Association in connection with the operation, administration, maintenance and repair, being an encumbrance upon those portions of River's Edge which are benefited thereby (as set forth herein); and

WHEREAS, Declarant hereby reserves the right within its sole and absolute discretion to create and record such supplementary Declarations for each replat with such terms and conditions as Declarant deems appropriate; and

WHEREAS, the undersigned, as such Owner of the above mentioned Lots in said plan, desires to restrict the use to or for which the said Lots may be put.

NOW, THEREFORE, be it known that the undersigned, as such Owner, on behalf of itself, and of its successors and assigns, hereby adopts the following restrictions and covenants as applicable to the above mentioned Lots in said plan:

ARTICLE II - Definitions

As used herein, the following terms shall have the meanings set forth herein:

2.01 Articles. The Articles of Incorporation of River's Edge at Alum Creek Homeowners' Association, Inc., an Ohio nonprofit corporation.

2.02 Association. Is River's Edge at Alum Creek Homeowners' Association, Inc., an Ohio nonprofit corporation, and its successors and assigns.

2.03 Board. The Board of Directors of the Association.

2.04 Builder. A person or entity (other than Declarant) who or which acquires title to any Lot or parcel for the purpose of construction of a residential dwelling thereon with the strict purpose of reselling the improved Lot to an Owner.

2.05 Code of Regulations. The Code of Regulations of the Association.

2.06 Common Area. The land, improvements or facilities controlled and/or owned by the Association devoted to the common use and enjoyment of the Owners, including without limitation, detention areas and areas designated on the Plat as Open Space, which Open Space.

2.07 Declarant. Maronda Homes, Inc. of Ohio, an Ohio corporation, and any person or entity acquiring all of Declarant's then-remaining interests in the Property.

2.08 Declaration. This Declaration of Restrictive Covenants for River's Edge at Alum Creek Subdivision.

2.09 Lot. Each separate tract depicted, designated and shown upon any recorded subdivision Plat, or created by a Lot split of a tract depicted, designated and shown upon any recorded subdivision Plat, excepting, however, any tract described in the Declaration or subdivision Plat as Common Area.

2.10 Member. Every person or entity who holds membership in the Association.

2.11 Operating Expenses. The expenses of the Association for which all Members are liable.

2.12 Owner. The holder of record title in fee simple to any Lot, whether or not such title holder actually resides on the Lot. This term excludes those persons or entities holding record title merely as security for the performance of an obligation by the Declarant and any Builder.

2.13 Plat. Each and every subdivision record plan of real estate as recorded in the plat records of Delaware County, Ohio which affects this Property.

2.14 Property. All land described in this Declaration.

ARTICLE III - Protective Covenants and Restrictions

3.01 Lots Use. No Lot shall be used except for residential purposes, except as provided herein, including Section 3.17 herein. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling, not to exceed two and one-half (2 1/2) stores in height.

3.02 Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the undersigned herein as to the quality of workmanship and materials, harmony of external design with structures in the subdivision, and location with respect to topography and finish grade elevation; provided, however, that the undersigned's approval shall not be construed to be a warranty by the undersigned regarding the quality of workmanship, materials, suitability of materials and compliance with applicable zoning and building laws. If the undersigned shall fail to approve or disapprove any proposed plans and specifications within thirty (30) days after the same shall have been submitted to it for approval, such plans and specifications shall be deemed to have received the approval of the undersigned.

3.03 Building Location. No building shall be located on any Lot nearer to the Lot line than the minimum building front, rear and side lines as shown on the recorded plat; provided, however, if the appropriate governmental authority shall grant a variance to such setbacks, then the requirements hereof shall be so modified. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of the building on a Lot to encroach upon any other Lot. No portion of any Lot nearer to any street than the building setbacks line shall be used for any purposes other than that of a lawn. No fence, wall, hedge or screening panel shall be constructed, erected, planted or permitted to exist nearer to the front line of any Lot than the rear line of the house constructed on said Lot; provided, however, decorative walls, fences, hedges and screen panels, not of wire, link, connected pipe or metal construction of any kind, and not more than three (3) feet in height shall be permitted on the minimum building setback line as shown on the recorded plat of said subdivision. A decorative structure or structures constructed at any entrance to the said subdivision shall not be deemed a violation of this covenant. Fences or walls shall not be located closer to the street than a line parallel to the street and extending from the rear corner of the home, and in no event shall fences be located closer to any street than the building line shown on the recorded plat, except for ornamental railings, walls or fences not exceeding three (3) feet in height located on or adjacent to entrance platforms or steps. Nothing herein contained, however, shall be construed as preventing the use of such portion of the Lot for walks, the planting of trees and shrubbery, the growing of flowers or other ornamental plants, or for small statuary entranceways, fountains, or similar ornamentation for the purpose of beautifying said premises. Nothing herein shall be construed as to permit a violation of any applicable law, ordinance or governmental regulation.

3.04 Nuisances. No obnoxious or offensive activity shall be permitted on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

3.05 Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence,

either temporarily or permanently, other than those used by Declarant or its builder as a temporary construction trailer.

3.06 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

3.07 Signs. No sign of any kind shall be displayed to the public view on any Lot, except one professional sign of not more than six (6) square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during the construction and sales period, including signs used by the undersigned, its agent and assigns in the operation of a model home and/or sales office.

3.08 Waste Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers and out of view of the general public. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

3.09 Miscellaneous Restrictions. The following structures and improvements shall not be permitted on any Lot in the subdivision:

- a. Satellite dishes greater than two (2) feet in diameter;
- b. Solar panels;
- c. Storage tanks, whether above or below-ground (except in conjunction with gas cooking grills);
- d. Outdoor clotheslines;
- e. Above-ground pools (except hot tubs);
- f. Metal storage buildings; and
- g. Television or radio antennas.

3.10 Sight Distance of Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be permitted to remain on any corner Lot formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street line, or in the case of a rounded property corner from the intersection of the street property lines extended. The same line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

3.11 Vehicles Not In Use. No automobile or motor-driven vehicle shall be left upon or in front of a Lot for a period longer than thirty (30) days in condition wherein it is unable to be operated upon the public highway, after which time the vehicle shall be considered a nuisance to the welfare of the neighborhood and shall be removed from the Lot at the Lot Owner's expense.

3.12 Boat, Trailer and Vehicle Parking Storage. No truck, boat, trailer, camper, recreational vehicle or commercial vehicle shall be parked or stored in front of or on any Lot unless it is in a garage or other vehicle enclosure out of the view from the street and abutting properties; provided, however, that nothing herein shall prohibit the occasional and nonrecurring temporary parking of such truck, boat, trailer, camper, recreational vehicle or commercial vehicle on the premises for a period not to exceed seventy-two (72) hours in any period of thirty (30) days.

3.13 Fences and Walls. No fence or wall shall be constructed except as permitted by Declarant.

3.14 Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended, for successive periods of ten (10) years unless otherwise provided in an instrument amending this Declaration in the manner provided for herein.

3.15 Grading and Drainage. Without the prior written consent of the undersigned, no construction, grading or other improvements shall be made to any Lot if such improvement would interfere with or otherwise alter the general grading and drainage plan of the subdivision or any existing swales, floodways, or other drainage configuration.

3.16 Enforcement. Enforcement of these restrictions by the undersigned or by any Owner of any Lot subject to these restrictions may proceed at law or in equity or both against any person or persons violating or attempting to violate any restrictions, and such proceedings may be either to restrain violation or to enforce compliance or to recover damages. No failure to object to any violation of any restriction shall be deemed a waiver of the right to do so thereafter, either as to the same violation or as to one occurring prior to or subsequent thereto. If the undersigned or any Owner of a Lot in River's Edge, prevails in a proceeding at law or in equity or both against any person or persons violating or attempting to violate any restrictions, and such proceedings may be either to restrain violation or to enforce compliance or to recover damages, then said person or persons shall be also able to recover legal fees and expenses involved in such action or proceeding.

3.17 Severability. Each one of the covenants contained herein are independent and separate and invalidation of any one of these restrictions by judgment or court order shall in no way affect any other restrictions, which restrictions shall remain in full force and effect.

3.18 Addition of Property. From time to time, the Declarant or any successor or assign, may subject land adjacent to the Property to the terms and conditions of this Declaration without the assent of the Association or the Owners of Lots already included in the Property, and after each subsection, such annexation property shall thereafter be included in the defined term Property as used in this Declaration. Declarant reserves the sole and absolute discretion to add land adjacent to the Property to this Declaration.

3.19 Amendment. So long as Declarant owns at least one (1) Lot within the Property, Declarant may amend this Declaration as it sees fit in its sole discretion. After all Lots are sold and/or transferred, this Declaration is subject to amendment by a majority vote of all members of the Association. Declarant may institute such amendments, including the execution of replats and amendments thereto without the necessity of signatures by any other Members/Owners. This reservation of right to sign such replats and amendments is a covenant running with the land reserved exclusively to Declarant or its successors and assigns and any subsequent conveyance from Declarant shall be subject to this reserved right so that no grantee in any deed or other instrument purporting to grant an interest in a Lot may claim to have received any right to execute replats or amendments.

3.20 Dedication Rights. Declarant and/or the Association hereby specifically reserves the right to "Dedicate to the Use of the Public" any part of or all of the streets, detention areas and easements in part or in full.

3.21 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Within these easements, no structures, plantings or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

The Owner of each Lot covered by these covenants shall have an easement over all Lots adjoining his property to discharge over those Lots all surface waters that naturally rise in or flow or fall upon his property. All Lots are subject to such an easement in favor of the Owners of adjoining Lots and their successors and assigns, which easement shall be a covenant running with the property. Except to the extent that any Owner has altered the grade or drainage pattern of his property to the detriment of adjoining properties, in violation of these covenants, any Owner of a Lot who, in violation of this covenant, institutes any legal proceeding against any adjoining Owner for discharge of surface waters over his property shall be liable to indemnify and hold harmless the Owner against whom the proceedings have been instituted from any and all attorneys' fees, damages assessed or other legal expense or cost of any kind incurred in the defense of the proceeding.

3.22 Landscape Buffers. If landscape buffers are required on certain Lots by Orange Township, the Owners of such Lots shall maintain in good condition the landscape buffer zones so required. **Lots 4349 and 4338 shall maintain in good condition, the mounding/landscape buffer installed by the undersigned along Bale Kenyon Road pursuant to the requirements of the Orange Township Zoning Department.**

ARTICLE IV - Association

4.01 Identification and Formation. The name of the Association is: " River's Edge at Alum Creek Homeowners' Association, Inc." The Association has been formed as an Ohio nonprofit corporation pursuant to the provisions of Chapter 1702 of the Ohio Revised Code. .

4.02 Membership. Every person or entity who is an Owner, Declarant or Builder shall be a Member of the Association. All memberships in the Association shall be appurtenant to the Lot owned by each Member. Memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. The ownership of such Lot shall be the sole qualification for membership in the Association.

4.03 Voting Rights. Voting Rights of members shall be as provided in the Code of Regulations of the Association.

4.04 Transfer Fee. The Association may levy a reasonable transfer fee against new Owners and their Lots to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

4.05 Relationship to above mentioned Lots. This Declaration applies to all land and all buildings within the description of property above.

4.06 Power; Authority; Duties. The Association shall have all the rights, powers, and duties established, invested, or imposed in this Declaration, its Articles, Code of Regulations, and duly adopted rules and regulations, and the laws of the State of Ohio applicable with respect to Ohio not-for-profit corporations.

4.07 Specific Powers. Among other things, the Association shall have the following specific powers:

- A. Enforce the provisions of this Declaration;
- B. Acquire title, manage, maintain, repair and replace all Common Areas and facilities, and pay all costs of utilities, operation, maintenance, repairs, replacement, gardening and other necessary services for the Common Areas and facilities;
- C. Grant easements or licenses where necessary for utilities and other service facilities over, on and across the Common Areas and facilities and within platted easements across Lots;
- D. Levy and collect assessments from the Owners of Lots and enforce payments of such assessments;
- E. Pay all taxes and special assessments that would be a lien upon the Common Areas and facilities, and discharge any lien or encumbrance levied against the project or the Common Areas and facilities;

The foregoing instrument was acknowledged before me this 16th day of May, 2002, by Jim Bauer, Vice President of Maronda Homes, Inc. of Ohio, an Ohio corporation, for and on behalf of said corporation.

DOROTHY KERRIGAN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 03-05-06

Dorothy Kerrigan
Notary Public



THIS INSTRUMENT PREPARED BY:
M. Shannon Martin
Attorney at Law
33 West First Street, Suite 600
Dayton, Ohio 45402

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EXHIBIT A

Situate in the Township of Orange, County of Delaware and State of Ohio and being Lots Numbered 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 4359, 4360, 4361, 4362, 4363, and 4364 of RIVER'S EDGE AT ALUM CREEK, SECTION 1, as recorded in Plat Cabinet 2, Slide 681 and 681A of the Plat Records of Delaware County, Ohio.

002526-619
6-11-02

Date Time
11-19-2003 02:20 pm.

**FIRST AMENDMENT TO DECLARATION OF
RESTRICTIVE COVENANTS FOR
RIVER'S EDGE AT ALUM CREEK SUBDIVISION**

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR RIVER'S EDGE AT ALUM CREEK SUBDIVISION, ORANGE TOWNSHIP, COUNTY OF DELAWARE, STATE OF OHIO (the "Declaration") is executed this 10th day of November, 2003, by MARONDA HOMES, INC. OF OHIO, hereinafter referred to as "Declarant."

RECITALS

A. Certain real property was submitted to the application of the Declaration, which real property is located in the Township of Orange, County of Delaware, State of Ohio, and more fully described as follows ("Property"):

Being Lots Numbered 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 4359, 4360, 4361, 4362, 4363, and 4364 of RIVER'S EDGE AT ALUM CREEK, SECTION 1, as recorded in Plat Cabinet 2, Slide 681 and 681A of the Plat Records of Delaware County, Ohio.

B. The Declaration was filed on June 13, 2002 at Official Record Book 209, Page 2347 et seq. of the deed records of Delaware County, Ohio.

C. The Declarant is the owner of the property located adjacent to the Property and more fully described as follows ("Additional Property"):

Situated in the State of Ohio, County of Delaware, Township of Berlin, being Lots Numbered 5973 through 6013, inclusive, of RIVER'S EDGE AT ALUM CREEK, SECTION 2, as recorded in Plat Cabinet 3, Slide 134 and 134 A of the Plat Records of Delaware County, Ohio.

D. Declarant has determined to submit the Additional Property to the provisions of the Declaration.

E. The Declaration provides that the Declarant may subject additional property to the operation of the Declaration.

NOW, THEREFORE, Declarant hereby declares that:

1. All of the terms used herein which are defined in the Declaration shall be interpreted to have the same meaning as defined in the Declaration unless specifically hereinafter amended.

2. Declarant is the owner of the Additional Property, together with all easements, rights, and appurtenances belonging thereto, all of which is hereby submitted to the provisions of the Declaration and is hereby included and made part of the Property.

3. The Declaration is hereby amended in the following respects.

The legal description referred to in Declaration is hereby amended by adding thereto the Additional Property described in Paragraph C of the Recitals in this Amendment.

4. Except as specifically hereinabove amended, all of the provisions of the Declaration shall be and hereby are declared to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment effective this 10th day of November, 2003.

MARONDA HOMES, INC. OF OHIO,
an Ohio corporation

By Jim Bauer
Jim Bauer, Vice President

STATE OF OHIO, COUNTY OF FRANKLIN, ss:

The foregoing instrument was acknowledged before me this 10th day of November 2003, by Jim Bauer, Vice President of Maronda Homes, Inc. of Ohio, an Ohio corporation, on behalf of the corporation.

Dorothy Kerrigan
Notary Public

Prepared By:
M. Shannon Martin, Esq.
Coolidge, Wall, Womsley & Lombard Co., LPA
33 W. First Street, Suite 600
Dayton, Ohio 45402
(937) 223-8177

DOROTHY KERRIGAN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 03-05-06

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SECOND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR RIVER'S EDGE AT ALUM CREEK SUBDIVISION

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR RIVER'S EDGE AT ALUM CREEK SUBDIVISION ("Second Amendment") is executed this 24th day of January, 2005, by MARONDA HOMES, INC. OF OHIO, an Ohio corporation, hereinafter referred to as "Declarant."

RECITALS

A. Declarant submitted certain property, described below, to the application of a Declaration of Restrictive Covenants for River's Edge at Alum Creek Subdivision by instrument recorded on June 13, 2002 at Official Record Book 209, Pages 2347 through 2356 of the Delaware County, Ohio Recorder's office, as amended by a First Amendment to Declaration of Restrictive Covenant for River's Edge at Alum Creek Subdivision recorded on November 19, 2003 at Official Record Book 446, Page 37 through 38 of the Delaware County, Ohio Recorder's office (collectively, the "Declaration").

B. The Declaration, as amended, relates to a certain real property located in the Township of Orange, Delaware County, Ohio, inclusive of a 14.038 acre tract of real property known as River's Edge at Alum Creek Subdivision, Section 1, as the same is delineated upon the recorded plat thereof, of record in Plat Cabinet 2, Slides 681 and 681 A, of the Recorder's Office, Delaware County, Ohio and a 20.42 acre tract of real property known as River's Edge at Alum Creek Subdivision, Section 2, as the same is delineated on the record plat thereof, of record in Plat Cabinet 3, Slide 134 and 134A of the Plat Records of Delaware County, Ohio (collectively, the "Property").

C. Pursuant to the Declaration, the River's Edge at Alum Creek Homeowners' Association, Inc. is authorized and obligated to levy and collect assessments from the Owners (defined herein) of Lots and enforce payment of such assessments and to enforce the covenants and restrictions contained in the Declaration.

D. Declarant desires to amend the Declaration to state with more specificity, the rights, obligations and remedies of the Association and the Owners with respect to assessments due thereunder and violations of the Declaration or the Rules or Association Documents (as defined or described in the Declaration).

E. Section 3.19 of the Declaration provides that the Declarant may amend the Declaration so long as Declarant owns at least one (1) Lot within the Property.

NOW, THEREFORE, Declarant hereby declares that:

1. All of the terms used herein which are defined in the Declaration shall be interpreted to have the same meaning as defined in the Declaration unless specifically hereinafter amended.

2. A. The following language is hereby added to the end of Section 3.16 of the Declaration:

"In addition, the duly authorized agents, officers, contractors, and employees of the Association (if formed) shall have a right of entry and access to the Property, including without limitation the Lots, for the purpose of performing the Association's rights or

200500004388
CORLISSE WALKER
33 W FIRST ST
OF OHIO
MONSIEY & LOMBARD

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Filed for Record in
DELAWARE COUNTY, OHIO
ANDREW D BRENNER
02-02-2005 02:03:29 pm
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OR Book# 582 Page 44 - 47

obligations set forth in this Declaration. The Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Area, but only during reasonable hours and after providing seventy-two (20) hours advance notice to the Owner, except in cases of emergency."

B. The following language is hereby added to the Declaration as Article V thereof:

ARTICLE V - Assessments and Liens

5.01 **Operating Fund; Liens.** The Board shall establish an Operating Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Area. The Declarant, 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 assessments due hereunder or assessed from time to time by the Board ("Assessments"), including: (i) any annual or monthly Assessments charged to pay for common expenses; (ii) any special Assessments 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, however, that capital expenditures in excess of \$5,000.00 shall be approved by at least two-thirds of the Members); and (iii) any individual Lot Assessment ("Lot Assessment") against any individual 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 enforcement (including court costs and the Association's legal fees, if applicable) relative to any deed restriction violation which exists on such Lot(s) (as more particularly described below); 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. The Board also 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 adopted by the Board, 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. Upon its determination to levy an individual 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.

5.02 **Interest: Late Charge.** 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 twelve percent (12%) per annum or the highest rate permitted by law, and the Board, or the Manager, if applicable, may collect an administrative collection charge in an amount to be established from time to time by the Board.

5.03 **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 therefore. 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.

5.04 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 ten (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 (5) years from the date such certificate is duly filed, and may thereafter be renewed for like consecutive terms, until and 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.

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

3. Except as specifically hereinabove amended, all of the Provisions of the Declaration shall be and hereby are declared to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment effective this 24 day of January, 2005.

MARONDA HOMES, INC. OF OHIO,
an Ohio corporation

By Lawrence A. Apstein
Print Lawrence A. Apstein Jr
Title VP

STATE OF OHIO, COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this 24th day of January, 2005, by Lawrence A. Augustine of Maronda Homes, Inc. of Ohio, an Ohio corporation, on behalf of the corporation.

Dorothy Kerrigan
Notary Public

This instrument prepared by:
M. Shannon Martin, Esq.
33 West First Street, Suite 600
Dayton, Ohio 45402



DOROTHY KERRIGAN
Notary Public, State of Ohio
My commission expires 03-05-2006

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