

WOODS ON SELDOM SEEN PHASE III

AMENDED AND RESTATED **DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS IS AN AMENDMENT AND COMPLETE RESTATEMENT of certain Covenants and Restrictions that apply to and govern uses of the residential lots and residences located in Woods on Seldom Seen Phase III subdivision in Delaware County, Ohio, (“Woods on Seldom Seen Phase III” and “the Subdivision”), which subdivision was created and exists under and pursuant to the subdivision plats for Woods on Seldom Seen Phase III, Part I recorded on July 25, 2001, in Plat Cabinet 2, at pages 559 through 559B, and Part II recorded on March 14, 2002, in Plat Cabinet 2, at pages 697 through 697A, with all references being to the records of the Recorder of Delaware County, Ohio. This instrument shall become effective on the date it is recorded with the Recorder of Delaware County, Ohio. It is made upon the approval of no less than two-thirds (66 2/3%) of the owners of parcels of real property (the “Lots”) in Woods on Seldom Seen Phase III, Parts I & II¹, which owners (the “Lot Owners”) are the members of Woods on Seldom Seen Phase III Homeowners’ Association, Inc., an Ohio not-for-profit corporation (“the Association”). The signatures of the Lot Owners approving these amended and restated covenants and restrictions are attached to this instrument.

The residential Lots in Woods on Seldom Seen Phase III, Parts I & II, are encumbered by certain covenants and restrictions imposed by a Quit Claim Deed recorded April 18, 2000 in Official Record

¹ This amendment and restatement applies *only* to the properties in Woods on Seldom Seen Phase III subdivision (created in two parts by the two plats referenced above), *and does not apply* to any property in Woods on Seldom Seen Phase I subdivision (created and existing pursuant to the plat recorded on or about September 29, 1989, recorded in Plat Book 23, pages 67-71), or to any property in Woods on Seldom Seen Phase II subdivision (created and existing pursuant to the plat recorded on or about July 16, 1997, recorded in Plat Cabinet I, Slides 735-735A, with all references being to the records of the Recorder of Delaware County, Ohio). Since the date of creation of the Association, it has not governed or administered any of the excluded property. By the approval and the recording of this instrument, the owners of property in Phase III wish to make it clear that they are not bound by the restrictions for, and are not part of any homeowners’ associations for, the Phase I or Phase II subdivisions.

Book 29, at page 1093, *et seq.*, records of the Recorder of Delaware County, Ohio (hereinafter, that deed shall be referred to as the "First Restrictions").

Additionally, some of the Lots in Woods on Seldom Seen Phase III, Parts I & II encumbered by the First Restrictions are also encumbered and restricted by the Declaration of Covenants, Easements and Restrictions of Woods on Seldom Seen Phase III, Parts I & II, recorded on October 30, 2002, by the instrument recorded in Official Records Book 258, at page 1179 *et seq.*, records of the Recorder of Delaware County, Liberty Township, Ohio (hereinafter, that instrument shall be referred to as the "Second Restrictions"), and supplements thereto recorded in Official Records Book 268, at page 111 *et seq.*, Official Records Book 284, at page 1310 *et seq.*, and Official Records Book 355, at page 2, *et seq.* all of the records of the Recorder of Delaware County, Ohio. Additionally, many of the deeds pursuant to which the Lot Owners acquired title to the Lots contain or incorporate covenants and restrictions that are identical to, or substantially identical to, the covenants and restrictions identified above, and those covenants and restrictions are also amended by this instrument.

Hereinafter, the instruments identified as the First Restrictions, the Second Restrictions, the covenants made a part of the Lot Owners' deeds, and all prior amendments to these instruments shall be referred to, collectively, as "the Restrictions".

WITNESSETH:

WHEREAS, a paragraph contained in the First Restrictions and the Second Restrictions, and in all supplements and amendments thereto, provides that the covenants established by each instrument can be changed in whole or in part by the recording of an instrument signed by no less than two-thirds (66 2/3%) of the owners of the Lots in Woods on Seldom Seen Phase III subdivision; and,

WHEREAS, this instrument has been approved, adopted, and signed by no less than two-thirds (66 2/3%) of the Lot Owners in each of the groups of Lots described in the First Restrictions and the Second Restrictions, and all supplements thereto, and by no less than two-thirds (66 2/3%) of all of the Lot Owners in The Woods on Seldom Seen Phase III Subdivision, representing not less than two-thirds (66 2/3%) of the members of the Association; and,

WHEREAS, the Lot Owners (who are also the members of the Association) desire to continue to provide for the preservation of the values and amenities of Woods on Seldom Seen Phase III, and to this end they desire to continue to subject the real property described in the plats of record in Plat Cabinet 2, at pages 559 through 559B, and Plat Cabinet 2 at pages 697 through 697A, records of the Recorder of Delaware County, including the property subdivided by these plats and described in the First Restrictions and the Second Restrictions, and all supplements thereto, and to subject and continue to subject the properties and the Lot Owners and occupants of the Lots to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth, each and all of which are hereby declared to be for the benefit of said property and each and every owner and occupant of a Lot in the Subdivision;

NOW, THEREFORE, the undersigned Lot Owners (the members of the Association), amending the First Restrictions and the Second Restrictions, declare that all real property in Woods on Seldom Seen Phase III, Parts I & II (as identified in the above described plats) shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following terms used hereafter in this document shall have these meanings, supplementing and in some cases modifying the definitions contained in §5312.01 of the Ohio Revised Code, unless the context requires otherwise. Where applicable, words not defined below shall have the meaning assigned by the provisions of §5312.04 of the Ohio Revised Code, as existing on the date of the recording of this instrument:

1. **“Amended and Restated Declaration” and “Declaration”** mean this instrument, the provisions of which all property in Woods on Seldom Seen Phase III is hereby submitted, and all amendments hereto.
2. **“Architectural Review Committee”** means and shall be the committee comprised of the Board of Directors of the Association together with four additional members elected for one year terms by the members of the Association voting at each annual meeting of the members, or appointed by the Board pursuant to Article IV, Section 1 of this instrument should there be resignations or insufficient members selected by member vote, whose consent, generally, must be obtained to construct new or change or modify existing Improvements or Dwellings in the Subdivision.
3. **“Articles” and “Articles of Incorporation”** mean the Articles, filed with the Secretary of State of Ohio on September 19, 2000, incorporating “Woods on Seldom Seen Phase III Homeowners’ Association, Inc.” as a nonprofit corporation under the provisions of Chapter 1702 of the Ohio Revised Code (“Chapter 1702”) (Ohio’s enabling nonprofit corporation Act).
4. **“Association”** means Woods on Seldom Seen Phase III Homeowners’ Association, Inc., which is an Ohio nonprofit corporation whose members are all Owners of a fee simple interest in a Lot or Lots in the Subdivision.
5. **“Association Governing Documents”** means the First Restrictions, the Second Restrictions, all amendments and supplements to the First Restrictions and the Second Restrictions, and the deeds imposing restrictions as referred to above, all of which are modified prospectively by this instrument, this Amended and Restated Declaration, and all properly approved and recorded amendments hereto, the plats of Woods on Seldom Seen Phase III, and any other covenants, restrictions and easements of record not amended, restated or changed by this instrument, if any, on all or any part of the property in the Subdivision, the Articles of Incorporation and Code of Regulations of the Association (A copy of which is attached hereto as Attachment 1), and all rules, regulations, policies and procedures adopted by the Association or its Board from time to time pursuant to the powers granted by this instrument.
6. **“Board” and “Board of Directors”** mean those persons who, as a group, serve as the Board of Directors of the Association.
7. **“Code of Regulations”** means the code of regulations of the Association (often referred to as “Bylaws”) created under and pursuant to the provisions of Chapter 1702, providing certain operating rules and procedures for the Association, recorded with this document in accordance with the provisions of Chapter 5312 of the Ohio Revised Code.

8. **“Common Elements”** means all real and personal property (including easement rights and fixtures) now owned or hereafter conveyed to or acquired by the Association for the common use and the enjoyment of all the Lot Owners, or for the operation of the Association.
9. **“Design Guidelines”** mean such guidelines for construction, reconstruction, alteration, decoration, or improvements of Dwellings and Improvements as may be adopted from time to time by the Architectural Review Committee and the Association, as hereinafter provided.
10. **“Director” and “Directors”** mean that person or those persons serving, at the time pertinent, as a member of the Board of Directors of the Association.
11. **“Dwelling”** means and includes all structures to be used for residential purposes, together with all projections and extensions thereof and accessory structures, whether or not connected or attached, including, but not limited to, garages, porches, canopies, shelters and storage structures.
12. **“Eligible Holder of a First Mortgage Lien”** means the holder of a valid recorded first mortgage on a Lot, which holder has given written notice to the Association stating the holder's name, address, and Lot or Lots subject to its mortgage.
13. **“Exempt Property”** means any real property a part of Woods on Seldom Seen Phase III (a) now or hereafter dedicated to common public use or owned by the United States, the State of Ohio, Delaware County, Liberty Township, any school board, or similar governmental body, or any instrumentality or agency or any such entity, for so long as any such entity or any such instrumentality or agency shall be the Owner thereof, or (b) owned by the Association; but only for so long as such property is not utilized as a residence.
14. **“Improvements”** means all buildings, outbuildings, ancillary buildings, garages and structures, and includes, among other things, all Dwellings as hereinbefore defined, antennae and satellite dishes; swimming pools; swing sets, playground equipment, playhouses and forts; tennis courts, sport courts, rinks, and all other types of recreational fixtures and facilities; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches; and all forms of hardscape landscaping, including mounds, fill, and excavations of over one foot in depth; and including all topographic changes which affect water flow over, between, and onto or from Lots, plantings or trees that have the potential to grow over six (6) feet in height or width; signs; watering systems; and all other structures and additions of every type, whether attached or not attached, and whether permanent or temporary; installed or placed in Woods on Seldom Seen Phase III provided, however, that all improvements completely installed and intact in good condition as of the date of recordation of this Amended and Restated Declaration are hereby deemed to be approved Improvements, and not subject to any further approval requirement by the Association. This provision, however, does not provide approval for any improvement or change that is demonstrated to adversely or detrimentally impact, physically, another landowner's Lot.
15. **“Lot”** means a discrete parcel of real property created for the purpose of construction or maintenance of a Dwelling thereon and subjected to the provisions of this Declaration as identified upon a recorded subdivision plat of Woods on Seldom Seen Phase III, or recorded re-subdivision thereof.
16. **“Lot Owner” or “Owner”** means the holder of record title to the fee interest in any Lot, whether or not such title holder actually resides in a Dwelling on such Lot, and whether or not there is a

Dwelling on that Lot, and excludes those having an interest in a Lot or Lots merely as security for the performance of an obligation.

17. **“Occupant”** means a person lawfully residing in a Dwelling on a Lot, regardless of whether that person is a Lot Owner.
18. **“Person”** means a natural individual, trustee, corporation, partnership, limited liability company, or other legal entity capable of holding title to real property.
19. **“Woods on Seldom Seen Phase III” and “the Subdivision”** means the subdivision of single family lots and homes and common area that benefits all Lot Owners that has been created and subjected to the provisions hereof, including both Parts I and II of Woods on Seldom Seen Phase III, and all rights and appurtenances thereto, and any subsequent additions thereto.

ARTICLE II

THE PROPERTY

Section 1. Property Subject. The property which shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the terms of this Amended and Restated Declaration shall initially consist of all property in Woods on Seldom Seen Phase III, situated in the State of Ohio, County of Delaware, Township of Liberty, and consists of all of the Lots in Woods on Seldom Seen Phase III, Parts I & II.

Section 2. Common Elements.

(a) **Use of Common Elements.** The Common Elements shall be for the benefit and use of all Lot Owners, and shall not be used for the benefit or used for the benefit of less than all Lot Owners. The Common Elements shall not be used for any purposes other than those for which they are designed.

(b) **Repair and Maintenance.** The Common Elements shall be repaired and maintained by the Association. The responsibility to repair and maintain shall also include responsibility for the payment of real estate taxes, if any, becoming due and payable during the time of the Association’s ownership thereof, and the carrying of such liability insurance as is reasonably prudent and customary with respect to similar properties. The cost of repairs and maintenance to, and the replacement of, Common Elements shall be borne by the Association.

(c) **Authority to Convey Common Elements.** Notwithstanding any other provision hereof, the Association shall have the power and authority to dedicate or convey Common Elements owned by the Association for public use or a public purpose, and to grant easements thereon for the installation, operation and maintenance of utility lines and facilities, all as may be determined from time to time by not less than a majority vote of all of the Lot Owners.

(d) **No Dedication.** Nothing contained in this Article implies any right or license to the public to access or to use the Common Elements.

ARTICLE III

THE ASSOCIATION

Section 1. Organization. An Association of the owners of the Lots already exists, and is named Woods on Seldom Seen Phase III Homeowners' Association, Inc. This Association has been established and has operated as an Ohio nonprofit corporation by the filing of Articles of Incorporation with the Ohio Secretary of State, by the adoption of a Code of Regulations (Bylaws), and by the operations from the date of its formation through the date hereof. Pursuant to §5312.02(D) of the Ohio Revised Code, the Amended Code of Regulations of the Association are attached hereto as Amended and Restated Declaration Attachment 1, and made a part hereof by this reference.

Section 2. Membership. Every Lot Owner having a recorded fee simple interest in a Lot shall, while holding such interest, be and continue to be a member of the Association. However, although each such holder is a member, there shall only be one membership per Lot, and in the event the fee simple interest in a Lot is held by more than one Person, the co-interest holders of such interests while holding such interests shall have only one membership in the Association as tenants in common, with respect to that Lot. In any case involving a recorded land installment contract, the Land Contract Vendee shall be deemed and considered to be the member of the Association for the purpose of voting. Such membership is appurtenant to and inseparable from such interests. Status as a member shall automatically transfer to the transferee of that interest at the time a fee simple interest is transferred of record. The foregoing is not intended to include Persons or entities that hold an interest merely as security for the performance of an obligation and the giving of a security interest or mortgage shall not terminate the membership.

Section 3. Powers; Authority; Duties. The Association shall have all the rights, powers, and duties established, invested, or imposed pursuant hereto, its Articles, Code of Regulations, its duly adopted rules and regulations, all Association Governing Documents, and the laws of the State of Ohio applicable with respect to Ohio nonprofit corporations. Among other things, the Association, through its Board of Directors or by a vote of the membership when required by this instrument, or by law; shall have the power to own and/or hold easements with respect to, and maintain Common Elements; enforce and administer the provisions of this Declaration, and properly adopted rules and regulations of the Association, enforce and administer all Association Governing Documents; levy and collect assessments; collect and maintain reserves for replacement or anticipated expenditures; own and convey real estate; sue and be sued; enter into contracts; and take such other actions as appropriate in fulfilling the purposes for which the Association exists. The Association shall have the power to borrow money or pledge assets or receivables only upon the approval of not less than two-thirds (66 2/3%) of all of the Lot Owners. The Association shall pursue this general plan for the protection and benefit and the mutual advantage of all the property in the Subdivision and all persons who may now or hereafter become Owners of any part of any Lot in the Subdivision.

Section 4. Governance. The Association shall be governed by provisions set forth herein and its Articles of Incorporation and Bylaws (Code of Regulations). Members with respect to a Lot shall be entitled to a single vote with respect to that Lot, which vote shall be exercised, if at all, as a single vote.

ARTICLE IV

ARCHITECTURAL REVIEW

Section 1. Architectural Review.

(a) **Establishment of Architectural Review Committee.** The Architectural Review Committee has in the past consisted of the Board of Directors. From and after the date of recordation of this Amended and Restated Declaration, the Architectural Review Committee shall consist of the Board of Directors and four (4) additional Lot Owners, selected or appointed as proscribed by the definition of the Architectural Review Committee in Article I of this Amended and Restated Declaration.

(b) **Purposes.** The purposes of the Architectural Review Committee shall be to:

(i) Establish, maintain and preserve all design controls, and develop, adopt, and apply such Design Guidelines as may be promulgated from time to time;

(ii) Review, approve, and disapprove proposed plans for Improvements; and,

(iii) Inspect exterior components of Improvements for compliance with approvals and conditions of approval, and for compliance with design controls and adopted Design Guidelines, and take action to enforce the architectural review requirements and guidelines when such processes and requirements are not followed, provided that the Architectural Review Committee shall have no authority to inspect or take any action regarding the interior components of any Dwelling. Excepting in a case of an emergency, all inspections shall be preceded by not less than forty-eight (48) hours notice to an affected Lot Owner, and shall be conducted in a reasonable and non-intrusive manner that respects the privacy rights of all owners and occupants.

(c) **Design Guidelines.** The Association, by not less than a majority vote of the members voting at an annual meeting or a special meeting of members called for this purpose, may from time to time establish architectural, building, and environmental standards for all Improvements in Woods on Seldom Seen Phase III, in order to assure that the Subdivision will be maintained as a high-quality residential development with harmonious and pleasing appearance, and a safe and secure residential community. These Design Guidelines, among other things, may contain architectural, building and environmental standards, and shall control and regulate external design, quality and types of construction, materials and colors to be utilized, setting, height, grade, finished ground elevations, landscaping, tree removal, and any and all other aspects of construction, or regarding safety, or related to visual appearance, of all Improvements. These standards shall also include all items necessary to conform to and comply with the lawful requirements of all public authorities, including, without limitation, lawful statutes, ordinances, rules and regulations, standards, directives and zoning texts.

(d) **Responsibilities; Effect of Actions.** The Architectural Review Committee shall exercise its best judgment to see that all Improvements are built to

conform to the Design Guidelines and the restrictions contained in the Association Governing Documents. The decisions of the Architectural Review Committee as to conformity with the Design Guidelines and the restrictions contained in the Association Governing Documents shall be conclusive and binding on all parties unless, within fourteen (14) days following the issuance of written notice of the action or decision to all Lot Owners, a Lot Owner demands in writing review of the action or decision by the membership of the Association, in which case a meeting of the membership of the Association shall be held within thirty (30) days following the date of the written demand. A vote of not less than a majority of all of the Lot Owners shall be sufficient to reverse, modify, or change any decision of the Architectural Review Committee. The Architectural Review Committee may also periodically view, without entry upon any Lot, all property in Woods on Seldom Seen Phase III and actions taken with respect thereto, and advise the Board of all violations of the covenants and restrictions imposed hereby, for further action at the discretion of the Association.

Section 2. Plan Approval; Duty to Build.

(a) **Requirement of Plan Approval.** No Improvements visible to the exterior shall be commenced, erected, or maintained on any Lot, nor shall any exterior addition to, or change or alteration, of any such Improvements be made, nor shall any substantial change in exterior color be made, until the same shall have first been approved in writing by the Architectural Review Committee as provided herein, following notice of the request to all adjoining property owners. Approval shall be requested by submission to the Architectural Review Committee of plans and specifications, showing all areas of proposed construction or change, as required by the Architectural Review Committee, which can include requests for drawings or descriptions of, but not limited to, the following:

- (i) Existing and proposed land contours and grades;
- (ii) All buildings, and other Improvements, access drives, and other improved areas, and the locations thereof on the site;
- (iii) All hardscape landscaping improvements;
- (iv) Plans for all floors, cross sections and elevations, including projections and wing-walls;
- (v) Exterior lighting plans, excluding low voltage landscaping lighting;
- (vi) Mail boxes and address markers;
- (vii) Walls, fencing, and screening plans;
- (viii) Patio, deck, gazebo, and porch plans;
- (ix) Plans for parking areas;

(x) Plans for swing sets, play areas, playhouses, forts, play structures, basketball backboards, tennis and other sport and recreational courts; and similar improvements;

(xi) Samples of materials to be used to the extent requested by the Architectural Review Committee; and

(xii) Such other information, data, and drawings as may be reasonably requested by the Architectural Review Committee.

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 the Design Guidelines and all restrictions contained herein.

(b) **Basis of Approval; Commitment to Build.** Approval shall be based, among other things, upon conformity and harmony of the proposed plans with the restrictions contained in Association Governing Documents, the Design Guidelines, and other structures in Woods on Seldom Seen Phase III; the effect of the erection and use of Improvements on neighboring property; and conformity of the plans and specifications to the purpose and intent of the provisions of this Amended and Restated Declaration. Approval of plans and specifications shall constitute the commitment of the Owner to install the approved Improvements according to the approved plans and specifications within a reasonable time, not to be longer than one (1) year from the date of approval.

(c) **Failure to Approve or Disapprove.** If the Architectural Review Committee fails either to approve or disapprove any such plans and specifications within twenty-one (21) days after a complete set of plans and specifications have been delivered to it, subject only to the member approval option that is established in Section 1(d) above, it shall be conclusively presumed that the Architectural Review Committee has approved those plans and specifications. In disapproving any plans or specifications the Architectural Review Committee shall specify the elements which are deemed objectionable, and shall describe the basis for any such objection.

(d) **Liability Relating to Approvals.** Neither the Association, the Board of Directors, the Architectural Review Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone submitting plans and specifications for approval by reason of mistakes in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve the same.

Section 3. Variances. To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of these provisions, the Architectural Review Committee by majority vote shall have the authority to grant reasonable variances from the provisions hereof, provided that the activity or condition is not prohibited by applicable law, the variance is not opposed by the reasonable opposition of any adjacent land owner, and provided further that, in the judgment of the Architectural Review Committee, the variance is in the best interests of the community and is within the spirit of the standards of the Architectural Review Committee. The decision of the Architectural Review Committee as to any variance request shall be conclusive and binding on all parties unless, within fourteen (14) days following the issuance of written notice of the action or decision to all Lot Owners, a Lot Owner demands in writing review of the action or decision by the membership of the Association, in which case a meeting of the membership of the Association shall be held within thirty (30) days following

the date of the written demand. A vote of not less than a majority of all of the Lot Owners shall be sufficient to reverse, modify, or change any decision of the Architectural Review Committee upon any variance decision. No variance granted pursuant hereto shall constitute a waiver of any provision hereof as applied to any other person or any other part of Woods on Seldom Seen Phase III.

ARTICLE V

PROTECTIVE COVENANTS AND RESTRICTIONS

The following covenants and restrictions concerning the use of each Lot and occupancy of Dwellings thereon shall run with the land and be binding upon every Lot Owner and Occupant, their respective heirs, successors and assigns, as well as their family members, guest, licensees, and invitees:

Section 1. Uses.

(a) **Residential Uses.** Except as otherwise specifically provided in this Amended and Restated Declaration, no Dwelling on a Lot nor any portion of any Lot shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no residence may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. The foregoing notwithstanding, an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business, making professional telephone calls, or corresponding in or from a residence is engaging in a use expressly declared customarily incidental to residential use, and is not in violation of these restrictions.

(b) **Transient Uses.** No Dwelling on a Lot shall be rented or used for transient or hotel purposes, which is defined as: (i) rental for a period less than ninety (90) days, or (ii) rental under which Occupants are provided customary hotel services, such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services, or (iii) rental to roomers or boarders, that is, rental to one or more Persons of only a portion of a Dwelling on a Lot. Nothing in this paragraph shall limit or restrict the ability of any Lot Owner or Occupant to house relatives, foreign exchange students, employ and house an “aupair”, nanny, or housekeeper, or engage in any similar pursuit.

(c) **Temporary Structure Use.** No incomplete structure or structure of a temporary character, trailer, tent (except for temporary party or recreational tents), shack, garage, ancillary building, barn or other outbuilding shall be used at any time as a residence, either temporarily or permanently.

(d) **Hobbies.** Hobbies or activities that are visible or audible from the exterior and tend to detract from the aesthetic character of Woods on Seldom Seen Phase III, and Improvements used in connection with such hobbies or activities, shall not be permitted. This limitation has reference to, but is not limited to, such activities as automobile and boat repair.

(e) **Offensive Activities.** No noxious or offensive trade or activity shall be carried on or permitted upon any part of Woods on Seldom Seen Phase III, nor shall

anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing:

(i) **Waste.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the exterior of any Lot or upon any portion of Woods on Seldom Seen Phase III. All trash and construction debris shall be removed by the Lot Owner at least weekly during construction and road frontage for each Lot shall be cleared daily of all construction debris;

(ii) **Odors.** No odors shall be permitted to arise or to be emitted from any Lot so as to render any portion of Woods on Seldom Seen Phase III unsanitary, unsightly, offensive, or detrimental to any of the remainder of Woods on Seldom Seen Phase III or to any Occupants thereof;

(iii) **Lighting.** No exterior lights, the principal beam of which shines upon portions of Woods on Seldom Seen Phase III other than the Lot upon which they are located, or otherwise carry unreasonable interference with the use and enjoyment of any Lot by the Occupants thereof shall be permitted on any Lot, provided that lighting of the Common Elements, including but not limited to lighting of subdivision entryway features, shall not be prohibited nor constitute an unreasonable interference with the use or enjoyment of any Lot or Occupant; and

(iv) **Sound.** Speakers, horns, whistles, bells or other sound devices, used in such a way that they repeatedly disturb any Lot Owner or Occupant in the Woods on Seldom Seen Phase III subdivision, either live or by recording device, is prohibited.

(f) **Service Screening; Storage Areas.** Except during the active period of construction on any Lot, garbage and refuse shall be placed in containers, which shall be concealed and contained within Dwellings or ancillary buildings or concealed by means of a screening wall of materials comparable to the materials and colors used on the Dwelling or ancillary building until the time scheduled for pick up and disposal. Except during the active period of construction on any Lot, no materials, supplies or equipment shall be stored in Woods on Seldom Seen Phase III except inside closed buildings.

(g) **Machinery and Equipment.** No commercial machinery or equipment of any kind shall be placed, operated or maintained in Woods on Seldom Seen Phase III except such machinery or equipment reasonably necessary for use in connection with the maintenance or the construction of Improvements. Except under specified circumstances or in specific instances approved, in advance, by the Board, no noise emitting equipment shall be used before 7:30 a.m. or after 9:00 p.m., excepting only emergency generators operating at times when electric power from a public utility supplier is unavailable.

(h) **Vehicles, Trailers, Boats, Commercial Vehicles and Motor Homes.** No trucks, no prohibited commercial vehicles, no boats, no trailers, no campers and no mobile homes shall be parked or stored on any street or on any Lot in Woods on Seldom Seen Phase III (except in an enclosed structure shielded from view) for any time period longer than seventy-two (72) hours in any fourteen (14) day period.

For the purpose of this section, the terms "truck" and "prohibited commercial vehicle" shall include all vehicles that have a length of more than twenty-three (23) feet, and all vehicles that include any visible exterior storage of tools or materials except no more than two (2) visible ladders. Dump trucks, tow trucks, flat bed car hauling trucks, panel trucks, and semi type tractors and trailers shall in every instance be considered to be a prohibited truck and/or a prohibited commercial vehicle. For the purpose of this section, the word "trailer" shall include landscaping trailer, open bed trailer, trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of personal property, whether resting on wheels, jacks, tires or other foundation.

Furthermore, no automobile, truck, or other motor-driven vehicle, or trailer, in a condition where it is unlicensed, unregistered, apparently inoperable, extensively damaged, disabled, dismantled, or otherwise not in a condition to be lawfully operated upon the public highway, or any vehicle component or part, shall be placed, parked or stored in any visible location on or in front of a Lot or Dwelling for a period of time longer than thirty (30) days. After this time the vehicle, trailer or part shall be deemed to be a nuisance, and the Board shall have the power to cause the vehicle, trailer or component or part to be removed; provided that the Board places a notice on the offending vehicle, trailer, component or part, or notifies the Lot Owner where the vehicle is located by mail or personal delivery, advising the owner of the Lot or vehicle that the vehicle, trailer, component or part is subject to towing or removal at least five (5) days prior to the Board having the vehicle, trailer, component or part to be towed or removed.

(i) **Animals.** Except as hereinafter provided, no animals, livestock, birds, poultry or other fowl, or species of insects, shall be raised, bred, kept, or maintained on any Lot, or any portion thereof. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Dwelling on a Lot provided that: (i) no more than three (3) of any type of animal, other than fish, may be maintained in any residence (except when less than three (3) months of age); (ii) the Board shall have the right to levy enforcement charges against persons who do not clean up after their pets; and (iii) the right to maintain any particular animal or any particular breed or species of animal shall be subject to termination if the Association, upon the approval or consent of at least a majority of all of its members, determines that maintenance of such animal, breed or species constitutes a nuisance or creates a detrimental effect on other Lot Owners or Occupants, or Woods on Seldom Seen Phase III as a whole or possession of which violates any law, rule, regulation or ordinance promulgated by a governmental or quasi-governmental entity. In addition, any animal defined as "vicious" or "dangerous" pursuant to the provisions of Ohio Revised Code Chapter 955, as the same may be amended from time to time, is specifically prohibited.

(j) **Open Fires.** Trash burning is prohibited.

(k) **Registered Sex Offenders.** No Improvements which are constructed on any Lot may be occupied for any purpose or for any period of time by a Registered Sex Offender (defined as any person who is classified, labeled or otherwise designated under applicable sections of the Ohio Revised Code or Federal Law, as amended from time to time, as a "sexual predator", "habitual sex offender" or "sexually oriented offender", including any replacement or substitute term or variation therefore resulting from any amendment to any applicable law); provided, however, that the foregoing prohibition is

not intended to, nor shall it be interpreted to create, a duty on behalf the Association or any Owner to inquire about, or take any affirmative action to determine, the status of any Owner, tenant, guest, or invitee as a Registered Sex Offender. The occupancy of any Improvements by a Registered Sex Offender shall constitute a violation of this Declaration and shall entitle any Owner, the Association and their respective heirs, successors and assigns to enforce this Declaration in accordance with its terms.

Section 2. Building, Improvement, and Other Limitations.

(a) **Lot Splits.** No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. All Lots shall consist of at least one (1) acre.

(b) **Dwelling Size, Roofs.** Except as otherwise provided in this Declaration no buildings shall be constructed on a Lot except one single-family dwelling that does not exceed thirty-five (35) feet in height from the finish grade of the building at the front elevation, and that, exclusive of garages, open porches, basements or other areas below grade has a minimum square foot floor area of not less than 2,200 square feet of dwelling area for a single story ranch dwelling, 2,600 square feet of dwelling area for a one and one-half story dwelling, and 3,000 square feet of dwelling area for a two story dwelling.

(c) **Garages, Driveways.** Each single-family residence must have at least a three-car attached garage with an overhead door or doors.

(d) **Outbuildings, Temporary Improvements.** No outbuilding, ancillary building, prefabricated storage shed or temporary building, structure or outside dwelling for animals shall be permitted. All other types of structures, such as pool houses and playhouses, shall require the prior approval of the Architectural Review Committee.

(e) **Antennas.** No antenna or dish for transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used or maintained on any Lot outside any building, whether attached to an improvement or otherwise, including, but not limited to satellite dishes, unless approved by the Architectural Review Committee, or unless required to be permitted by law, and the further limitation that satellite dishes may not exceed one (1) meter in diameter and must be erected or installed to minimize visibility from the street which the Dwelling on the Lot fronts.

(f) **Utility Service.** No lines, wires or other devices providing utility services, including telephone, television, data, and radio signals, or for transmission of electric current or energy, shall be constructed, placed or maintained anywhere in Woods on Seldom Seen Phase III unless the same shall be in or by conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings, screened from view or other approved Improvements; provided, above ground electrical transformers and other equipment may be permitted if currently existing or permitted pursuant to the provisions of existing easements, or if properly screened and approved by the Architectural Review Committee. In addition, all gas, water, sewer, oil and other pipes for gas or liquid transmission shall also be placed underground or within or under buildings or screened from view. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of an approved Improvement, or in response to a utility failure, storm, or similar disaster or event.

(g) **Improvement Location.** All 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 Architectural Review Committee approves in writing some other placement. All Dwellings must be situated between the front and rear setback lines, as shown on a plat of Woods on Seldom Seen Phase III. For purposes hereof, eaves and steps shall not be considered part of a Dwelling, provided that this shall not be construed to permit any portion of any Dwelling to encroach on another Lot.

(h) **Sight Distance at Intersections.** No fence, wall, hedge, object, structure, or shrub or vegetative planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-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. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines.

(i) **Storage Tanks.** Unless otherwise permitted by properly adopted design guidelines, no storage tanks, including, but not limited to, those used for storage of water, gasoline, oil, other liquid or any gas, shall be permitted in Woods on Seldom Seen Phase III outside of a building, except (a) storage tanks used during the construction of Improvements; and (b) propane tanks having a capacity of thirty (30) pounds or less, for use to power a gas barbecue grill.

(j) **Improvement Exteriors.** All windows, porches, balconies, decks, patios and the exteriors of buildings and other Improvements shall at all times be maintained in a neat, clean and orderly condition. Unless otherwise permitted by properly adopted design guidelines, no clotheslines or other visible outside drying or airing facilities shall be permitted on the exterior of any Dwelling, and no clothing or any other household fabrics shall be hung in the open on any Lot.

(k) **Exterior Materials and Colors.** Finish building materials shall be applied to all sides of the exteriors of all Dwellings and other buildings. Finish exterior building materials used on a Dwelling shall be limited to materials such as cedar or other appropriate wood, wood substitute product, brick, stone, synthetic stone, or stucco, natural or natural looking. Colors shall be harmonious and compatible with colors of the natural surrounding and other adjacent buildings. All ancillary buildings, if any are approved by the Architectural Review Committee, shall be designed as to be comparable in material and color with the home and/or surroundings. Ancillary buildings, if permitted, may not be roofed or sided with metal barn-roof type materials, but colored metal roofing and siding may be used with prior approval of color, style, and use by the Architectural Review Committee. The Architectural Review Committee shall have the right to approve or disapprove exterior materials and colors.

(l) **Signs.** No signs of any character shall be erected, posted or displayed in Woods on Seldom Seen Phase III except: (i) street and identification signs installed by, or

at the direction of, the Association or any governmental agency; (ii) one temporary professional real estate sign on a Lot not to exceed six (6) square feet in area advertising that a Lot or residence is for sale or lease; (iii) signs on the Common Elements approved by the Association regarding or regulating the use of the Common Elements; (iv) contractors signs announcing the names of contractors participating in a property improvement may be temporarily displayed, provided that such signs shall not exceed six (6) square feet per side, shall extend no more than four (4) feet above the ground, and shall be displayed for not more than thirty (30) days; (v) school support or spirit signs; and (vi) election related signs, which signs may be erected not more than thirty (30) days prior to an election, and shall be removed within three (3) days following an election.

(m) **Landscaping.** The Lots and appropriate Common Elements shall be landscaped and maintained. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated, and free of trash and other unsightly material. Each Lot Owner shall remove dead and diseased trees and limbs from that Lot Owner's Lot. Landscaping and seeding shall be completed within sixty (60) days of completion of the Dwelling, weather permitting. No live tree exceeding six inches (6") in diameter shall be removed from any Lot without the approval of the Architectural Review Committee unless presenting a danger to the Lot or an adjacent Lot, or unless diseased or dead.

(n) **Maintenance.** Subject to limitations on use and maintenance as shown and set forth on a plat of Woods on Seldom Seen Phase III, no Lot or Improvement shall be permitted to become overgrown, unsightly or to fall into disrepair, and all buildings and Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished, and all lawns are to be neatly maintained. Vacant Lots must be mowed by the Lot Owner of the vacant Lot at least eight (8) times between April 15 and August 15, and at least three (3) times between August 15 and October 1. At no time shall grass constituting the lawn on a Lot be permitted to exceed twelve inches (12") in height or such other lesser height as required pursuant to local zoning or other governmental standard.

(o) **Drainage and Grading.** No drainage ditches, cuts, swales, impoundments, mounds, knobs, 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 pattern, may be destroyed, altered or modified by or at the direction or with the consent of any Lot Owner without the prior consent of the Architectural Review Committee and all Lot Owners whose lots are physically impacted by such action. Unless otherwise provided, every Owner of a Lot abutting any drainage course or channel shall maintain their portion of the drainage course and keep the same free from debris and obstructions of any kind. The Association shall not have any liability for maintaining any drainage, drainage course or channel. Any existing field drainage tile that is obstructed by site improvements and that is not eliminated or modified pursuant to the drainage plan for Woods on Seldom Seen Phase III shall be reconnected to the drainage system so as to operate in a manner as good as or better than the operation of the field drainage tile prior to the obstruction by the site improvements. No Improvement shall be made in any manner whatsoever that is inconsistent with the master grading plans established for Woods on Seldom Seen Phase III, or any part thereof, without the prior written consent of the Architectural Review Committee and all Lot Owners whose lots are physically impacted by such action.

(p) **Soil Removal.** No rock, gravel, or soil shall be removed from any Lot for commercial purposes.

(q) **Fences.** No fence, wall, or barrier of any kind may be erected on any Lot or Common Element, except as required by law, or with the prior written approval of the Architectural Review Committee, and then only after prior written notice has been provided to the Owners of any Lot adjacent to the Lot or Common Element on which the fence, wall or barrier is to be erected at least twenty-one (21) days prior to the commencement of the construction of the fence, wall or barrier. By way of example, and not limitation, compliance with the following standards shall be considered by the Architectural Review Committee in reviewing fence applications:

(i) fences or walls shall be constructed of approved materials only; provided that in no event shall chain link fencing be permitted;

(ii) unless otherwise approved in writing by the Architectural Review Committee, in its sole discretion, no fence or wall shall be constructed in excess of forty-eight inches (48") above grade; provided that fences constructed immediately around approved decks and hot tubs may be seventy-two inches (72") above grade; and

(iii) fences or walls shall not be located closer to the street than a line parallel to the street and extending from the midpoint between the front and rear corners of the Dwelling, and in no event shall fences or walls be located closer to any street than the building line shown on the recorded plat, nor shall any fence or wall be located on the front or side yards, except for ornamental railings, walls or fences not exceeding three feet (3') in height which are located on or adjacent to entrance platforms or steps, or as otherwise provided herein.

(r) **Swimming Pools.** Above-ground swimming pools are not permitted. Swimming pools, hot tubs, lap pools and other types of pools and ponds shall be subject to the prior written approval of the Architectural Review Committee, and shall comply with all governmental regulation for swimming pools, including fencing requirements.

(s) **Solar Panels.** Solar panels shall be subject to the prior written approval of the Architectural Review Committee.

(t) **Window Air Conditioning Units.** Except as otherwise permitted by the Architectural Review Committee, no window air conditioning unit shall be permitted in any window in a Dwelling that faces a public street.

(u) **Storage.** No open storage of any kind is permitted.

(v) **Governmental Regulations.** Each building site 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, Liberty Township and any other political subdivision and any administrative agency of any of the foregoing having jurisdiction thereof. Nothing herein shall be construed as permitting any action or condition prohibited by such applicable laws, ordinances, rule, regulations and orders. In the event of any conflict between any such applicable laws, ordinances, rules, regulations

and orders and these protective covenants, the most restrictive provisions shall govern and control.

(w) **External Lighting.** Each Lot is required to provide at least one exterior pole lamp located adjacent to the Lot's driveway entrance. The lamp shall not be designed so as to disturb other Lots located in Woods on Seldom Seen Phase III and shall not exceed eight feet (8') in height.

(x) **Mailboxes.** Each Dwelling shall have a mailbox which compliments its architecture as well as those of surrounding homes. If a Lot Owner decides not to have a mailbox, the entire mailbox structure shall be completely removed.

ARTICLE VI

REPAIR AND MAINTENANCE RESPONSIBILITIES

Section 1. The Association. Subject to budgetary limitations and the right of the Board to exercise reasonable business judgments and the provisions hereof, the Association shall, at its cost, maintain, repair and replace all Improvements constituting a part of the Common Elements, which are to be for the benefit of all Lot Owners. The Board at its sole discretion may maintain the entrance area, which has an easement in favor of the Association, located along Rutherford Road and Bakircay Lane, in order to keep a well maintained look to the entryway into the Subdivision.

Section 2. Lot Owners. The maintenance, repair, and replacement of a Dwelling and other Improvements on a Lot, other than Improvements on Lots located within easement areas to be maintained by the Association, if any, shall be the responsibility of the owner or owners of that Lot, at the cost of that Lot Owner or Lot Owners. In the event the need for maintenance or repair of any part of the Common Elements is caused by the negligent or intentional act of any Lot Owner or Occupant, the cost of the repair or replacement of that Common Element shall be the responsibility of the Lot Owner or occupant who caused the damage.

In the event that any Lot Owner fails or refuses after reasonable notice of at least fourteen (14) days to maintain or repair his or her Lot, or any Improvement on his or her Lot, the Association may perform the same if it includes lawn mowing, weed cutting, trash removal, or the elimination of a dangerous or unhealthy situation, and the cost thereof shall constitute a special individual assessment and charge, as hereinafter defined, on the Lot owned by that Lot Owner or Lot Owners and on that Lot. The determination that such maintenance or repair is necessary and/or has been so caused shall be made by the Board of Directors. In all other instances of a maintenance or repair failure by a Lot Owner, injunctive relief shall remain available to the Association and any other Lot Owner.

ARTICLE VII

UTILITY SERVICES

Each Lot Owner by acceptance of a deed to a Lot agrees to pay for utility services separately metered or separately charged by the utility company to that Lot. The Association shall arrange for the provision of utility services, if any, to the Common Elements and shall pay the costs of such services separately metered to the Association by the utility company.

ARTICLE VIII

INSURANCE; LOSSES; BONDS

Section 1. Fire and Extended Coverage Insurance. The Board of Directors shall have the authority to and shall, if possible, obtain insurance for all buildings, structures, fixtures and equipment and common personal property, now or at any time hereafter constituting a part of the Common Elements, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard coverage endorsements, with such limits and coverage as is deemed appropriate by the Board. This insurance:

(a) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Lot and its appurtenant interest superior to the lien of a first mortgage;

(b) shall be obtained from an insurance company authorized to write such insurance in the State of Ohio, which has a current rating of Class B/VI, or better, or, if such company has a financial rating of Class V, then such company must have a general policy holder's rating of at least "A," all as determined by the latest edition of Best's Insurance Reports or its successors guide, or, if the insurer does not satisfy these rating requirements, that insurer is reinsured by a company that has a B/VI or better rating;

(c) shall be written in the name of the Association;

(d) shall provide that the insurance carrier shall notify all first mortgagees named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy; and

(e) unless otherwise determined by the Board, shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Lot Owners.

Section 2. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of general liability insurance covering all of the Common Elements insuring the Association, the Directors, and the Lot Owners and Occupants, with such limits as the Board of Directors may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, and (b) \$1,000,000 for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of any Lot Owner or Occupant because of negligent acts of the Association, the Board, or other Lot Owners and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and other legal liability, including liability under contractual indemnity clauses and liability arising out of lawsuits related to any employment contracts of the Association. Each such policy must provide that it may not be canceled or substantially modified by any party, without at least ten (10) days prior written notice to the Association and Eligible holders of first mortgage liens on a Lot or Lots. Additionally, the Board shall purchase and maintain all insurance required by the provisions of Chapter 5312 of the Ohio Revised Code, as the same may be amended from time to time.

Section 3. Other Association Insurance. In addition, the Board may at its discretion obtain and maintain contractual liability insurance, directors' and officers' liability insurance, fidelity bond coverage, and such other insurance as the Board may determine.

ARTICLE IX

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitations. Every Lot Owner shall have an unrestricted right of access to and from that Lot Owner's Lot. Each Lot Owner shall be deemed to have delegated that Lot Owner's right of enjoyment of ingress and egress to the Occupants of that Lot Owner's Lot. In addition, all Lot Owners and Occupants of Dwellings on Lots, and their guests, shall have the right to enter and utilize the Common Elements of Woods on Seldom Seen Phase III, (other than those Common Elements consisting of easement rights only), for the purposes for which they are designed and intended, provided that such uses shall be subject to the restrictions and covenants contained in the Association Governing Documents, restrictions set forth on any plat of Woods on Seldom Seen Phase III, and all rules and regulations established by the Association.

Section 2. Association Entry, Repair and Maintenance Easements. Subject to the limitations set forth in this instrument, the Association, through the Board, shall have a right of entry and access to, over, upon and through all of the Lots to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to the protection, the maintenance, repair, or the replacement of any Common Element, the use or maintenance of any easement, or the examination or the elimination of any nuisance.

Section 3. Easements for Encroachments. Each Lot and the Common Elements shall be subject to and benefited by easements for encroachments on or by any other Lot and upon the Common Elements created or arising by reason of overhangs, or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the Improvements. Valid easements for these encroachments and for the maintenance of same shall and do exist so long as the encroachments remain.

Section 4. Easement for Support. Every portion of a building or utility line or any Improvement on any portion of Woods on Seldom Seen Phase III contributing to the support of another building, utility line or improvement on another portion of Woods on Seldom Seen Phase III shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, Improvements and other portions of Woods on Seldom Seen Phase III. The individual Lot Owner of each Lot shall have the responsibility for maintaining such easements for support.

Section 5. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Elements in the performance of their duties.

Section 6. Utility Easements and Building Setbacks. Each Lot is encumbered by utility easements and minimum building setbacks as shown on the plats of Woods on Seldom Seen Phase III.

Section 7. Acquiring Easements and Property. The Association shall acquire additional property or easements only upon the affirmative vote and approval of not less than two-thirds (66 2/3 %) of all Lot Owners. Further, the Association shall not have any power to require any Lot Owner to grant

any new easement or right of way, or convey property to the Association, without that Lot Owner's consent.

Section 8. Power of Attorney. Each Lot Owner, by acceptance of a deed to a Lot, appoints the Association or its designated representative as his, her, its, or their attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Lot Owner, such deeds of easement, licenses, permits, and other instruments as may be necessary to effectuate or enforce the covenants established by this Amended and Restated Declaration. This power is for the benefit of each and every Lot Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable. This Power of Attorney is limited and granted only and exclusively for the purpose of effectuating the covenants of this Amended and Restated Declaration.

Section 9. General. Unless specifically limited herein otherwise, the easements described herein shall run with the land and pass with the title to the benefited properties, shall be appurtenant to the properties benefited thereby, shall be enforceable by the owners of the properties benefited thereby, and shall be perpetual. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Amended and Restated Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Lot.

ARTICLE X

ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. Subject to the provisions of this Article, each Lot (other than a Lot, if any, becoming Exempt Property, and the owner(s) thereof) shall be subject to the following assessments, and the owner or owners of each Lot by acceptance of a deed to a Lot (whether or not it shall be so expressed in such deed) covenant and agree to pay to the Association: (a) operating assessments, (b) special assessments for capital improvements and (c) special individual assessments, all of which are to be established and collected as hereinafter provided.

Section 2. Operating Assessments. For the purposes of providing funds to pay:

-the cost of the maintenance, repair, replacement, and other services to be provided by the Association including but not limited to the maintenance, repair, and replacement of the Common Elements;

-the costs for insurance and bond premiums to be provided and paid for by the Association;

-the estimated cost for utility services, if any, charged to or otherwise properly payable by the Association;

-the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Association;

-an amount deemed adequate by the Association to establish and maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and

for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and

-the estimated next periods costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, landscaping, mowing, planting, lighting, real estate taxes for Common Elements for the use and benefit of all Lot Owners, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded;

The Association shall establish and collect operating assessments determined as follows:

(a) **Operating Assessments.** Prior to October 1 of each calendar year, the Board of Directors of the Association shall establish a budget for anticipated operating expenses for the next following operating assessment period commencing on January 1st of the next calendar year, and apportion the amount so determined in equal shares among all Lots in Woods on Seldom Seen Phase III. The budget shall be submitted to the members of the Association at each Annual Meeting for approval. If a budget is not approved by a majority of the members voting at any Annual Meeting, the previously approved budget and the assessment amounts determined under that budget, shall continue to be effective until such time as a new budget is approved by a majority of the members voting at a subsequent Annual Meeting or at any Special Meeting conducted for this purpose. The Association shall assess each such Lot and that Lot's Owners for the apportioned annual amount. All pro-rations of annual assessments upon Lot conveyances shall be made by the Lot Owners and their predecessor or successor Owners, and shall not be made by the Association.

(b) **Payments.** All operating assessments shall be payable annually, in advance, unless otherwise determined by the members as a part of their approval of any budget.

(c) **Insufficient Collections.** Except as provided in subparagraph (a) of this section, if the amounts collected for operating expenses are, at any time, insufficient to meet all obligations for which these funds are to be used, the deficiency shall be assessed by the Association equally among all Lots subject to operating assessments.

Section 3. Special Assessments for Capital Improvements

(a) In addition to operating assessments, the Association may levy, at any time, special assessments to construct, reconstruct or replace capital improvements on or constituting a part of the Common Elements to the extent that reserves therefor are insufficient. All such special assessments for capital improvements must be approved by not less than a majority of all of the Lot Owners, at either an annual meeting or at a special meeting of the membership convened for the purpose of consideration of such a special assessment. New capital improvements not replacing existing improvements shall not be constructed, nor funds assessed therefor, without the prior consent of Lot Owners exercising no less than two-thirds (66 2/3%) of the voting power of Lot Owners.

(b) Any such assessment shall be divided equally among all Lots that are subject to operating assessments, and shall become due and payable on such date or dates as the Board determines following written notice to those Lot Owners; provided that no such special assessment shall be due and payable on fewer than thirty (30) days written notice.

Section 4. Special Individual Assessments. In the event that pursuant to the provisions hereof or any Association rule or regulation a Lot Owner becomes obligated to the Association for the payment of money to the Association, other than as an operating assessment or a special assessment for capital improvements, such as, but not limited to, the cost of making repairs the responsibility of a Lot Owner or Lot Owners, or the payment for damages to Common Elements by reason of negligent or willful acts or omission of the Lot Owner or Lot Owners, the Association may levy a special individual assessment against that Lot Owner, and that Lot Owner's Lot or Lots, upon the approval of not less than a majority of the Lot Owners voting at an Annual Meeting or a Special Meeting held for that purpose. All such special individual assessments shall become due and payable on such date as the Association determines.

Section 5. Effective Date of Assessment. Except as otherwise provided herein, any assessment, other than special individual assessments, established in accordance herewith shall be due and payable thirty (30) days after written notice of the amount thereof is sent by the Association to the Lot Owner. Written notice mailed or delivered to a Lot Owner's Lot shall constitute notice to that Lot Owner, unless the Lot Owner has delivered written notice to the Association of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Lot Owner.

Section 6. Independent Covenant. The obligation of each Lot Owner to pay any assessment is an independent covenant, and the existence of any dispute or alleged failure of any kind, sort or nature on the part of the Association, shall in no circumstances be grounds or other basis for a Lot Owner to assert an offset or to fail to pay any assessment when due and payable.

Section 7. Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any assessment or portion of any installment of any assessment is not paid within thirty (30) days after the same has become due and a late notice has been provided by mail or email, the Board of Directors, at its option, without demand or notice, may (i) charge interest on the entire unpaid balance at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine, and (ii) charge a reasonable, uniform, late fee, as determined from time to time by the Association.

(b) Operating, special assessments for capital improvements, and special individual assessments, together with interest, late fees, administrative charges, and all collection and enforcement costs, including reasonable attorney fees, shall be a charge and a continuing lien in favor of the Association upon the Lot against which each such assessment is made.

(c) At any time after an assessment or any portion of any assessment levied pursuant hereto remains unpaid for sixty (60) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, interest, late fees, and costs, including attorney fees, may be filed with the Delaware County Recorder, pursuant to authorization given by the Board of Directors. The certificate shall contain a description of the Lot against which the lien exists, the

name or names of the record Owner or Owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by such officer of the Association as the Board shall designate. The foregoing provisions providing for the filing of a certificate of lien are not in derogation of, and do not impair, the continuing lien provided for in subsection (b), above, nor is the filing of such a certificate a prerequisite to the filing of an action in foreclosure.

(d) The lien provided for herein shall remain valid, and shall remain as evidence of a lien secured delinquency, for a period of five (5) years from the date a certificate of lien or renewal certificate was duly filed therefor, unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(e) Any Lot Owner or Lot Owners who believe that an assessment chargeable to his, her, its or their Lot (for which a certificate of lien has been filed by the Association) has been improperly charged against that Lot, may bring an action in the Court of Common Pleas of Delaware County for the discharge of that lien and/or a declaratory judgment that such assessment was unlawful. The filing of such action shall not be grounds for an offset or to withhold payment. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Lot, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien and a refund of an assessment or portion thereof determined to be unlawful.

(f) Each such assessment together with interest, administrative charges, late fees and costs, including reasonable attorney fees, shall also be the joint and several personal obligation of the Lot Owners who owned the Lot at the time when the assessment became due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that Lot Owner or Lot Owners' successors in title unless expressly assumed by the successors, or required by applicable law, provided, however, that the right of the Association to a lien against that Lot, or to foreclose any lien thereon for these delinquent assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) The Association, upon the approval of the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, administrative charges, and costs, including attorney's fees. The Association, upon the approval of not less than a majority of its members voting at an Annual Meeting or at a Special Meeting called for that purpose, may bring an action at law or in equity against the Lot Owner or Lot Owners personally obligated to pay an unpaid obligation to the Association, and/or an action to foreclose a lien, or any one or more of these. In any foreclosure action, the Lot Owner or Lot Owners affected shall be required to pay a reasonable rental for that Lot during the pendency of such action, and the Association as plaintiff or as a cross-claimant in any such foreclosure action, shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any amounts due to the Association to the extent permitted by Ohio law.

(h) All costs of enforcement of any provision of this Amended and Restated Declaration and/or the Association's Rules and Regulations including, without limitation, all costs, expenses, and reasonable attorney's fees incurred in any enforcement effort shall be the responsibility of any Lot Owner or Lot Owners in violation of any restriction or provision.

(i) No Lot Owner or Lot Owners may waive or otherwise escape liability for the assessments provided for in this Amended and Restated Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of that Lot Owner's or those Lot Owners' Lot or Lots.

Section 8. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by a designated representative of the Association, setting forth whether the assessments on a specified Lot have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Lot which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Lot Owner.

ARTICLE XI

USE OF FUNDS

Section 1. Application of Assessments. The Association shall apply all funds received by it pursuant hereto, and all other funds and property received by it from any source, to the fulfillment of the purposes of the Association as hereinbefore provided, for the benefit of all Association members.

Section 2. Authority to Borrow Funds. The Association shall have the power to borrow money or pledge or mortgage assets or receivables only upon the approval of not less than two-thirds (66 2/3%) of all of the Lot Owners.

Section 3. Authority to Maintain Surplus. The Association shall not be obligated to spend in any particular time period all the sums collected or received by it in such time period or in any other time period and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the assessment in any year, but may carry forward from year to year and time to time such surplus as the Association may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 4. Authority to Enter Into Contracts. The Association, through the Board, shall have the power and authority to contract with any person, corporation, firm or other entity for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder, and to delegate such powers and authority to any agent or employee of the Association, and the exercise of those powers and authority by such person, corporation, firm, entity, agent or employee shall be deemed the exercise of those powers and authority by the Association, except

that no independent contractor shall be deemed by virtue of these provisions to be the agent of the Association. There shall be no requirement of any bond or surety for the Association, its agents, employees, or others assuring the exercise of the powers and authority granted hereunder, except as the Association deems necessary or desirable for the safeguarding of any funds received by the Association. Notwithstanding the foregoing, the Board shall be required to obtain the approval of not less than a majority of the Lot Owners voting at an Annual Meeting, or at a Special Meeting conducted for that purpose, prior to entering any contract for a period longer than one year and/or for more than \$5,000.00, unless part of an approved budget. No Lot Owner shall receive a personal benefit from entering into a contract with the Association except for compensation that is ordinary and common for similar product or service in the business or industry involved.

ARTICLE XII

CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every Person who now or hereafter owns or acquires any rights, title or estate in any Lot is and shall be conclusively deemed to have consented and agreed to every covenant, condition, easement and restriction contained herein, whether or not a reference to these is contained in the instrument by which that Person acquired an interest in that Lot.

ARTICLE XIII

OPEN RECORDS TO ASSOCIATION MEMBERS AND RIGHTS OF MORTGAGEES

Section 1. Notices. Any Lot Owner affected shall be provided written notice, and any Eligible holder of a first mortgage lien upon a Lot, upon written request to the Association (which request shall state the name and address of such holder and a description of the Lot), shall be entitled to timely written notice of:

- (a) any proposed amendment of these restrictions;
- (b) any proposed termination of the Association;
- (c) any decision to construct significant new capital improvements not replacing existing improvements;
- (d) any default under these restrictions which gives rise to a cause of action by the Association against the owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days; and
- (e) times and places of meetings of members of the Association.

• **Section 2. Inspection of Association Books and Records.** Each Lot Owner and each Eligible holder of a first mortgage lien on any Lot shall be entitled, upon request, to:

- (a) inspect the books and records of the Association during normal business hours; and
- (b) require the preparation of and receive an annual financial statement of the Association for the immediately preceding fiscal year, certified by an officer of the

Association, except that such statement need not be furnished earlier than ninety (90) days following the end of such fiscal year.

The Lot Owners shall also have reasonable access to inspect the books, minutes, records and financial statements of the Association. The Association shall be entitled to charge any requesting party a reasonable charge for copies of book, records, or statement.

ARTICLE XIV

ENFORCEMENT

Section 1. Interpretation. It is the intention of the Association and its members that all questions concerning the intention, validity, or meaning of this document or any provision in this document shall be construed and resolved according to the laws of the State of Ohio. In case of uncertainty as to the meaning of any article, paragraph, sentence, clause, phrase or word contained herein, the members of the Association, by a majority vote of Lot Owners voting at any Annual Meeting or Special Meeting called for that purpose, shall have the right to determine such meaning.

Section 2. Violation Abatement. No sooner than fourteen (14) days following the delivery of a written notice demanding abatement of a property maintenance condition in violation of these restrictions or any rule of the Association, except in any case where the Board of Directors unanimously declares an emergency, which shall establish an immediate right, the violation or breach of any restriction contained herein that involves maintenance, repair, or any condition that is needed in order to avoid damage or harm to any neighboring property or owner, the Association shall have the right to enter the Lot involved and correct the violation at the expense of the owner or owners of the Lot involved, the cost of which (including administrative charges and attorney's fees) may be assessed and collected as a special individual assessment.

Section 3. Enforcement. In addition to any other remedies provided herein, the Board, the Architectural Review Committee, the Association, and each Lot Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or now or hereafter imposed by or through the Association. Further, the Association and each Lot Owner shall have rights of action against each other for failure to comply with the provisions hereof, and with respect to decisions made pursuant to authority granted hereunder. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Lot or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 4. Failure to Enforce. Failure by the Board, Architectural Review Committee, the Association, an Officer or by any Lot Owner to proceed with such enforcement of any provision hereof or action taken pursuant thereto shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge.

Section 5. No Duty to Enforce. Notwithstanding any provision hereof, neither the Architectural Review Committee, the Association, the Board of Directors, nor any Officer of the Association shall owe a duty to any Lot Owner, or any party claiming through a Lot Owner, to enforce any particular covenant, restriction, condition, term, or provision of any Association Governing Document in any particular situation. The Association, the Board, all Officers and all committees shall have the right to exercise the

“business judgment rule,” to enforce the restrictions and rules in a fair, equitable, and consistent manner, always keeping in mind the fact that the efforts and resources of the Association should focus on major issues, and issues involving multiple owners and residents, and not trivial or inconsequential matters. By purchasing or owning a Lot, the Owners thereof and their respective personal representatives, heirs, successors and assigns hereby waive any claim against the Board, the Officers, the Architectural Review Committee and the Association, and release these persons and entities from any liability arising from any failure by such person or entity to enforce any provision of any Association Governing Document.

ARTICLE XV

EFFECTIVE PERIOD; AMENDMENT

Section 1. Effective Period. The covenants and restrictions set forth herein shall run with and bind Woods on Seldom Seen Phase III and each portion thereof for a period of forty (40) years, after which time the same shall be automatically extended for successive period of ten (10) years unless terminated, modified, or amended as provided in Sections 2 and 3 of this Article XV.

Section 2. Amendments. Except as otherwise provided herein, this Declaration may be modified or amended with the approval and consent of Lot Owners holding not less than seventy-five percent (75%) of the voting power of the Lot Owners in the Association, provided that the consent of all Lot Owners shall be required for any amendment which effects a change in the voting power of any Lot Owner, the proportionate share of expenses of the Association of any Lot Owner, or the fundamental purposes for which the Association is organized, or which results in the termination of the Association or the overall plan of restrictions set forth herein, or that removes any specific protection given to any Person pursuant hereto.

Section 3. Method to Amend. An amendment to this Amended and Restated Declaration, adopted with the consents aforesaid, shall contain a certificate by an officer that states that the amendment was duly adopted in accordance with the foregoing provisions. Any amendment so adopted and executed shall be effective upon the filing of the same with the Recorder of Delaware County, Ohio.

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Joint and Several Obligations. Each and every obligation of a Lot Owner hereunder shall be the joint and several obligation of each Lot Owner of a fee simple interest in that Lot, and any demand, notice or other communication or action given or taken hereunder or pursuant hereto or by one of such joint Lot Owners, shall be deemed given, taken or received by all such joint Lot Owners.

Section 2. Severability. Invalidation of any one of the covenants, restrictions or other provisions hereof by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Mutuality. All restrictions, conditions and covenants contained herein are made for the direct, mutual, and reciprocal benefit of the Association, and the present and future owners of Lots in Woods on Seldom Seen Phase III, and each part thereof, and their respective personal representatives, heirs, successors, and assigns; the provisions hereof shall create mutual equitable servitudes upon the property submitted to these restrictions and each part thereof in favor of each other part thereof; and any Lot referred to herein as benefited hereby; the provisions hereof shall create reciprocal rights and obligations between the respective owners of all such Lots and privity of contract and estate between all

owners thereof; and the provisions hereof shall, as to the owner of any such Lot, his, her, its or their respective heirs, personal representatives, successors and assigns, operate as covenants running with the land for the benefit of all such Lots and the owners thereof.

Section 4. Notices. Notices, demands or other communications to a Lot Owner shall be given in writing by personal delivery to the Lot Owner or posting at the Lot, if a residence has been constructed on such Lot, by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Lot Owner as shown by the records of the Association, by email if requested in writing in that format by any Lot Owner, or as otherwise designated in writing by the Lot Owner. Any demand, notice or other communication or action given or taken hereunder or by one of the joint Lot Owners of a Lot shall be deemed to be given, taken, or received by all such joint Lot Owners.

Section 5. Construction. In interpreting words and phrases herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. Any rule of construction to the effect that any ambiguities are to be resolved against the party who drafted the document shall not be utilized in interpreting this Declaration and any attachments hereto.

Section 6. Captions. The captions or headings of the parts hereof are intended for convenience only and are not intended to be a part of the context hereof, and do not in any way define, limit, or describe the scope or intent of any provision hereof.

IN WITNESS WHEREOF in accordance with all if the requirements of the Governing Documents for the amendment of those documents the following Lot Owners, constituting not less than two-thirds (66 2/3 %) that is of all of the Lot Owners in the Subdivision, and not less than two-thirds (66 2/3%) of the Members of the Association, have approved, agreed to and consented to the adoption and the recording of this Amended and Restated Declaration as of the ___ day of _____, 2010. Multiple Consent pages follow.

Signature Page

The undersigned, being all of the record owners of Lot ____ of Woods of Seldom Seen III subdivision in Delaware County, Ohio, or being the lawfully empowered and authorized officer, trustee, or representative of any entity owning such Lot, hereby vote for, consent to, and agree to be bound by the Amended and Restated Declaration of Covenants and Restriction for Woods on Seldom Seen Phase III, as recommended for approval by a majority of the Directors of the Woods on Seldom Seen Phase III Association, Inc, on November ____, 2010.

Printed Name: _____

Printed Name: _____

State of Ohio
County of _____, SS

On this ____ day of _____, 2010 before me, a notary public in and for said County and State, personally appeared _____ and _____, each of whom signed the foregoing instrument and acknowledged his or her signature to be his or her free and voluntary act and deed.

Notary Public.

This instrument was prepared by William L. Loveland, Loveland & Brosius, LLC, 50 West Broad Street, Suite 3300, Columbus, Ohio 43215