

Delaware County

The Grantor Has Complied With

Section 319.202 Of The R.C.

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 WOODS ON SELDOM SEEN
 % DAVE LICKOVITCH
 8573 BAKIRCAY LANE
 POWELL OH 43065

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;

