

**DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
BLUE HERON ESTATES LLC**

Declarant, **Blue Heron Estates, LLC**, an Ohio limited liability corporation, is the owner of certain real estate in the Township of Belpre, Washington County, Ohio, described in Exhibit “A”, attached hereto and incorporated herein (hereinafter referred to as “Property”).

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and reservation of easements herein, which are for the purpose of protecting the value and desirability of and which shall run with the Property submitted hereunder or which may subsequently be added, and shall be binding on all parties having any right, title or interest in the Property, its successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

- 1.1. Additional Land.** “Additional Land” means the property described in Exhibit “B” which may be made subject to this Declaration pursuant to Article XII.
- 1.2. Allocated Interests.** “Allocated Interests” means the Common Expense Liability and votes in the Association as set forth in article III.
- 1.3. Assessments.** “Assessments” means those charges upon the Lots established by Article VII of this Declaration.
- 1.4. Association.** “Association” means The Blue Heron Estates Homeowners Association, Inc., an Ohio nonprofit limited liability corporation, its successors and assigns. Except as the context otherwise requires “Association” shall mean the Board of Trustees acting on behalf of the Association.
- 1.5. Board.** “Board” shall mean the Board of Trustees of the Association.
- 1.6. Builder.** “Builder” means any person or entity (including the Declarant) who acquires a Lot for the purpose of improving that Lot and erecting a Dwelling Unit thereon for resale to an Owner.
- 1.7. Common Elements.** “Common Elements” shall mean any real estate owned or leased by the Association other than a Lot, including easements in favor of the Association.

- 1.8. Common Expense Liability.** “Common Expense Liability” means the liability for Common Expenses allocated to each Lot pursuant to Article III, of this Declaration.
- 1.9. Common Expenses.** “Common Expenses” means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.
- 1.10. Declarant.** “Declarant” means Blue Heron Estates, LLC, its successors and assigns.
- 1.11. Declaration.** “Declaration” means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for The Blue Heron Estates Homeowner Association, Inc., including any amendments hereto.
- 1.12. Dwelling Unit.** “Dwelling Unit” means a building situated on the Properties designed and intended for use and occupancy as a single family residence.
- 1.13. Lot.** “Lot” means the physical portion of the Property designated for separate ownership or occupancy, the boundaries of which are described pursuant to Article II, Section 2.1.
- 1.14. Member.** “Member” means any person or entity entitled to membership in the Association as provided herein.
- 1.15. Occupant.** “Occupant” means any person in the possession of a Lot or Dwelling Unit whether or not such possession is lawful and shall include but not be limited to, an Owner’s family members, guests, invitees, tenants, and lessees.
- 1.16. Owner.** “Owner” means the Declarant or other person or entity who owns a Lot, but does not include a person or entity having an interest in a Lot solely as security for an obligation.
- 1.17. Property.** “Property” or “Properties” means the real estate described in Exhibit “A” attached hereto and any other property which may be made subject to the terms of this Declaration, together with any improvements made thereon.
- 1.18. Record Plat.** “Record Plat” means the record plat for Blue Heron Estates Subdivision, the First Phase of which is record as **OR Volume 16, pages 8-10** in the Washington County, Ohio Recorder’s Plat Records.
- 1.19. Surface Water Management System.** “Surface Water Management System” shall mean the system designed for the Property by the Declarant for storm water, soil erosion and sediment control. Such system shall include all existing watercourses, ditches, retention basins and swales located on the Property.

ARTICLE II

LOTS

- 2.1. Description of Lot Boundaries.** The boundaries of the Lots shall be those as set forth on the Record Plat.

ARTICLE III

ALLOCATION OF ALLOCATED INTERESTS

- 3.1. **Common Expense Liability.** The allocation of Allocated Interests for Common Expenses Liability shall be determined in accordance with the allocation of the various assessments as set forth in Article VII, Section 7.8.
- 3.2. **Votes in the Association.** The allocation of Allocated Interests for voting purposes shall be on vote per Lot or dwelling unit.

ARTICLE IV

COMMON ELEMENTS AND EASEMENTS

- 4.1. **Description.** The Common Elements shall be any portion of the Property owned by the Association in fee or by easement or leased to the Association.
- 4.2. **Easements.** The Lots and Common Elements shall be subject to certain easements. These easements shall be appurtenant to and pass with the title to the Lots.
 - 4.2.1 **Enjoyment.** The Common Elements and Lots shall be subject to an easement of enjoyment in favor of the Lots and Owners. Such easements shall be limited to the purpose for which the easements are created. Nothing herein shall be construed to provide any right of access to the Lots by any persons who are not Owners thereof.
 - 4.2.2 **Drainage.** The Lots shall be subject to easements in favor of the Lots benefited for Surface Water Management as further defined in Article V. No Owner shall do anything within a Lot or Dwelling Unit which shall unreasonably increase the flow of surface water.
 - 4.2.3 **Washington County.** A non-exclusive easement is granted to Washington County, and to all police, fire and other emergency personnel, ambulance operators, delivery, garbage and trash removal personnel, and to all similar persons, and to the local governmental authorities, but not to the public in general, to enter upon the Common Elements and the Surface Water Management System in the performance of their duties.
- 4.3. **Owner's Delegation Rights.** Any Owner may delegate his or her easement rights and rights of enjoyment to the Common Elements to any Occupants, and any guests, invitees, tenants or lessees thereof. Any Owner who has leased his or her Lot shall be deemed to have delegated such rights. Any such delegation, however, shall in accordance with and subject to reasonable rules, regulations and limitation as may be adopted by the Association in accordance with its Code of Regulations.
- 4.4. **Limitation on Common Elements and Easements.** All Common Elements, easements and rights granted herein are subject to:

- 4.4.1. Restrictions set forth in this Declaration.
- 4.4.2. Any rules and regulations adopted by the Association and the right to enforce such rules and regulations.
- 4.4.3. The right of the Association to levy assessments for the Common Expenses and other assessments as set forth herein.
- 4.4.4. The right of the Declarant and the Association to amend the Record Plat and to grant further rights and easements within, upon, over, under, and across the Common Elements for the benefit of the Owners, the Association or Declarant. The Association, however, shall have no right to amend the Record Plat with respect to the Lots.
- 4.4.5. The Common Elements cannot be mortgaged or conveyed without the consent of two-thirds of the Owners, excluding the Declarant. During any Declarant Control Period as set forth in Article XIII, no portion of the Common Elements can be dedicated without the prior approval of the Federal Housing Administration or the Veterans Administration, if either such agency is insuring or guaranteeing the mortgage on any Lot.
- 4.4.6. All rights granted to the Association in this Declaration.

ARTICLE V

SURFACE WATER MANAGEMENT

- 5.1. **Surface Water Management Systems.** The Surface Water management System shall consist of the “Storm Easements” and “Storm Water Management Easements” as shown on the Record Plat. The Association shall maintain and administer the Surface Water Management System in accordance with the guidelines as may be promulgated from time to time by Washington County, Belpre Township and/or the State of Ohio. The Association shall have primary responsibility for the maintenance of the retention/detention basin, including any pipes, concrete gutters or mechanical devices.
- 5.2. **Surface Water Management System Easements.** Each Lot shall be subject to and shall be benefited by an easement for storm sewer, drainage and surface water management as more particularly shown on the Record Plat. Such easements shall be not-exclusive as to the Owners and shall run to the Association, which has control and responsibility for drainage and surface water management. Such easement, however, shall not run to the public at large.
- 5.3. **Access to Lots.** For the purpose solely of performing the maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon the Lot at reasonable hours on any day.

- 5.4. Individual Maintenance.** Each Owner shall maintain that portion of the Surface Water Management System, which serves only that Owner's Lot. Each Owner shall have primary responsibility for grass-cutting and vegetation control within the easements located on his or her Lot. Such responsibility shall include keeping their easements clean and unobstructed. Maintenance of the Surface Water Management System shall in accordance with the guidelines and standards set forth by Washington County, Belpre Township and/or the State of Ohio. If any portion of the Surface Water Management System which serves only one Lot is damaged, the Owner of that portion shall promptly cause it to be repaired.
- 5.5. Restrictions on use.** No Owner shall use or permit any other persons to use the Surface Water Management System in any manner which would constitute a nuisance, hazard or unsanitary condition or be in violation of any local, state, or federal law ordinance, rule, regulation or statute.

ARTICLE VI

OWNERS ASSOCIATION

- 6.1. Formation.** The Declarant has caused or will cause to be chartered in accordance with Chapter 1702 of the Ohio Revised Code, a nonprofit corporation named Blue Heron Estates Homeowners Association, Inc. The purposes for the Association are to provide for the administrative governance, maintenance and upkeep of the Property and to promote the health, safety, and welfare of the Owners and Occupants of the Property.
- 6.2. Membership.** The membership of the Association shall at all times consist exclusively of Owners of the Lots. All such Owners shall be Members. Membership shall be appurtenant to and may not be separated from such ownership.
- 6.3. Powers of the Association.** Subject to Special Declarant Rights hereinafter set forth, the Association may:
- 6.3.1.** Adopt and amend a Code of Regulations for the government of the Association, the conduct of its affairs and the management of the Property.
 - 6.3.2.** Adopt rules and regulations for the use and occupation of the Common Elements and to enforce violations of the rules and regulation and the provisions and restrictions of the Declaration as against the Owners and Occupants.
 - 6.3.3.** Adopt, amend and promulgate design guidelines and architectural standards.
 - 6.3.4.** Adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Owners.
 - 6.3.5.** Hire and discharge managing agents and other employees, agents and independent contractors.

- 6.3.6. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the community.
 - 6.3.7. Make contracts and incur liabilities.
 - 6.3.8. Regulate the use, maintenance, repair, replacement and modification of the Common Elements for which the Association has maintenance responsibility and other rights as set forth herein.
 - 6.3.9. Cause additional improvements to be made as part of the Common Elements except that this power shall be limited to improvement required solely for surface water management.
 - 6.3.10. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property.
 - 6.3.11. Grant easements, liens, licenses and concessions through or over the Common Elements.
 - 6.3.12. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Owners.
 - 6.3.13. Impose charges for late payments of Assessments and after notice and an opportunity to be heard, levy reasonable fines for violations of the Declarations, Code of Regulations, Rules and Regulations of the Association.
 - 6.3.14. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or for statements of unpaid Assessments.
 - 6.3.15. Provide for indemnification of its officers and board of trustees and maintain directors' and officers' liability insurance.
 - 6.3.16. Assign its right to future income, including the right to receive Common Expense Assessments, except that this power shall be limited to the purposes of repair of existing structures or improvements.
 - 6.3.17. Exercise any other powers conferred by the Declaration, Code of Regulations or Articles of the limited liability company.
 - 6.3.18. Exercise all other powers that may be exercised in this state by nonprofit limited liability companies.
 - 6.3.19. Exercise any other powers necessary and proper for the governance and operation of the Association.
- 6.4. **Voting Rights.** Subject to Special Declarant Rights as set forth in Article XIII, Members shall be entitled to vote on matters properly before them in accordance with this Article, the Code of Regulations and the laws of the State of Ohio.

- 6.5. Number of Votes.** Each Lot or dwelling unit shall have one vote. If only one of several Owners for a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. The Association may adopt rules regarding deadlocks. No votes allocated to any Lots owned by the Association may be cast.
- 6.6. Proxies.** A vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If an Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall terminate one year after its date, unless it specifies a shorter time. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering the Lot, its presentation to the Board of a copy of the mortgage shall be notice of proxy designation, and if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of a revocation of a proxy designation shall not affect any vote or act previously taken. Each proxy shall automatically cease upon conveyance of the Lot.

Unless expressly reserved and the Association is notified of such reservation, a land contract vendee as defined in Chapter 5313 of the Revised Code, shall be deemed the proxy of a land contract vendor for purposes of this section.

- 6.7. Annual Meeting.** A meeting of the Members of the Association must be held at least once each year.
- 6.8. Management Agent.** The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, certain powers granted to the Board by this Declaration. The Declarant, or an affiliate of the Declarant, may be employed as a managing agent or manager.

No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

ARTICLE VII

ASSESSMENTS

- 7.1. Establishment of Assessments.** There are hereby established for the benefit of the Association, its successors and assigns, as a charge on each Lot, certain Assessments for Common Expenses and other expenses. Each Owner, by acceptance of a deed, covenants and agrees to pay such Assessments. The Annual General Assessment shall be levied upon a lot after such time as each respective lot is sold by the Declarant: the Declarant shall not be responsible for an Annual General Assessment on any lot owned by

the Declarant.

- 7.2. Purpose of the Assessments.** The Assessments are established for the benefit and use of the Association and shall be used in covering the costs of its Common Expenses and for other such purposes as hereinafter set forth.
- 7.3. Annual General Assessment.** There is hereby established an Annual General Assessment for the purpose of the Common Expenses of the Association. The Common Expenses shall be, but not limited to, (1) operation, maintenance, repair and replacement as required by this Declaration; (2) the cost of any insurance required by this Declaration; (3) reasonable reserves for contingencies and replacement; and (4) administrative, accounting, legal and management fees; (5) all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration.
- 7.4. Individual assessment.** The Association after approval by two-thirds (2/3) vote of all members of the Board shall have the right to assess an individual Lot for any of the following:
- 7.4.1.** Any costs incurred by the Association in the performance of any maintenance in accordance with Article VIII, Section 8.3.
 - 7.4.2.** Any charges or fines imposed or levied in accordance with Article IX, Section 9.3.1.1.
 - 7.4.3.** Any costs incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, tenants, guests or invitees, including attorney fees, court costs and other expenses incurred.
 - 7.4.4.** Any costs associated with the enforcement of this Declaration or the Rules and Regulations of the Association, including, but not limited to attorney fee, witness fees and costs, and court costs.
- 7.5. Working Capital Fund; Initial Assessment.** At the time of closing of a Lot from a Builder, the purchaser of such Lot shall be assessed the sum of \$100.00 as such purchaser's initial capital contribution to the working capital fund of the Association. This Assessment shall be used by the Association for its operating expenses. Such Assessment is not an advance payment of the Annual General Assessment, and it will not be held in any sort of trust or reserve account. Builders shall not be subject to such Working Capital Fund Assessment.
- 7.6. Computation and Payment of Annual General Assessment.** The Annual General Assessment shall be computed and levied in accordance with the budget adopted by the Board pursuant to the Code of Regulations. This Assessment shall be effective as to each Lot on the first day of the Association's fiscal year. The initial Annual General Assessment as to each Lot shall commence on the first day of the month following the earlier of (I) its conveyance to an Owner other than a Builder; or (II) occupation of the Dwelling Unit. The initial Annual General Assessment shall be prorated on a monthly basis to the end of the Association's fiscal year, and shall be collected at closing of the conveyance of the Lot from the Builder. So long as there has been no default in payment

of the Assessment, it shall be payable in semi-annual installments due on the first day of each fiscal year. The Board shall have the power from time to time to adopt such billing, collection and payment procedures, charges and other payment time schedules as it deems appropriate.

- 7.7. Annual Assessment.** Beginning with the recording of this Declaration and until December 31, 2010, the maximum Annual General Assessment shall be \$275.00 Dollars. Beginning with Assessments levied as of January 1, 2008, and annually thereafter, the Board, without a vote of the Owners, may increase or decrease the Annual General Assessment. If the board increases the Annual General Assessment, then, within thirty (30) days of notice of such increase, ten (10) percent of the Members in good standing, may petition the Board for a special meeting of the Association to consider such increase. At such meeting sixty-six and two-thirds (66 2/3%) percent of the Members in good standing may vote to reduce the increase by any amount therein proposed, but not lower than the previous years maximum amount.
- 7.8. Allocation of Assessments.** The Common Expense Liability of each Lot shall be its portion of the Common Expense. The Common Expense Liability and the Annual General Assessment shall be allocated equally to each Lot. The other Assessments shall be allocated as applicable to the respective Lots and as determined by the Board.
- 7.9. Lien for Assessments.** The Association shall have a lien for any Assessment levied against a Lot, for fines imposed against an Owner or Occupant, and for interest, costs and reasonable attorney fees.
- 7.9.1. Creation.** The lien for Assessments is created by this Declaration and shall be a charge and a continuing lien on each Lot which shall run with the land. All persons or entities acquiring an interest in a Lot after the filing of the Declaration take such interest subject to the lien.
- 7.9.2. Effective Dates.** The lien for the Common Expense Liability for each Lot as set forth in the Annual General Assessment shall be effective on the first day of fiscal year of the Association. The lien for other Assessments shall be effective on the first day of the month following the notice of levy on the Owners affected.
- 7.9.3. Perfection.** Recording of this Declaration constitutes notice and perfection of the Lien.
- 7.9.4. Notice of Lien.** The Association may file a notice of lien with the Recorder of Washington County. Such notice shall not be required for the Association enforce its lien.
- 7.9.5. Priority of the Lien.** The lien created by this Section shall be prior to all liens and encumbrances recorded subsequent to this Declaration except the lien for real estate taxes and assessments and the lien of any bona fide first mortgage filed of record.

- 7.9.6. Subordination and Mortgage Protection.** Notwithstanding any of the provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration (and any late charges, interest, costs and attorney fees) shall be subordinate to, and shall in no way affect the rights of the holder of a first mortgage made in good faith for value received; provided, however, that such subordination shall apply only to Assessments, or installments thereof, which have become due and payable prior to the date of Sheriff's sale of such Lot pursuant to a foreclosure or the date of a deed in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagee or the purchaser of a Lot at such sale from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment. Mortgagees are not required to collect Assessments on behalf of the Association. Failure to pay Assessments shall not constitute a default under any mortgage insured by FHA/VA.
- 7.9.7. Extinguishment of the Lien.** A lien for unpaid Assessments is extinguished unless proceedings to enforce it are instituted within five (5) years after the full amount of the Assessment becomes due. If an Owner of a Lot subject to a lien files a petition for relief under the United States Bankruptcy Code, then the period of time to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay under Section 362 of the Bankruptcy Code is lifted.
- 7.9.8. Estoppel Certificate.** Upon request of any mortgagee or Owner and upon payment in full of all Assessments and other charges permitted by this Declaration that are due to the Association, the Association shall execute and deliver to such mortgagee or Owner an Estoppel Certificate. Such certificate shall be in recordable form and shall note the payment of the outstanding Assessments and charges and that the Association is estopped from the enforcement of its lien with respect to Assessment and charges becoming due and payable prior to the date of the Certificate. The Association may charge a reasonable fee for the preparation of such certificate.
- 7.10. Delinquency and Acceleration.** Any installment of an Assessment provided for by this Declaration shall become delinquent if not paid on the due date as established by this Declaration or by the Board. With respect to each installment of an Assessment not paid within five (5) days of its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, costs of collection, reasonable attorney fees and interest at the rate provided in Section 1343.03 of the Ohio Revised Code (and as amended from time to time). Interest shall be calculated from the date of delinquency to the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days of its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment without further notice or demand to the Owner. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law or this Declaration. The filing of any petition for relief pursuant to the United States Bankruptcy Code by an Owner whose Assessment has been accelerated shall operate as a restoration of the Assessment to its prior status as if it has not been accelerated.

- 7.11. Remedies Cumulative.** A suit to recover money judgment for unpaid Assessments and charges may be maintained without foreclosing or waiving the right to enforce the lien. A foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.
- 7.12. Personal Obligation.** The Assessments, including fines, if any, payable by each Owner, together with any penalty, interest, costs and reasonable attorney fees shall be the personal obligation of the Owner of the Lot at the time incurred. The personal obligation shall not pass to any successors in title unless expressly assumed by them.
- 7.13. Statement of Unpaid Assessments.** The Association shall upon written request of the Owner, contract purchaser, or first mortgagee, furnish a statement setting forth the amount of unpaid Assessments against the Lot. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and every Owner. The Association may charge a reasonable amount for this statement.
- 7.14. No Waiver of Liability for Common Expenses.** No Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Assessments are made.

ARTICLE VIII

UPKEEP OF THE PROPERTY

- 8.1. Lots.** Each and every Lot, its Dwelling Unit and any improvement erected thereon shall be maintained in a reasonable manner in accordance with the standard generally prevailing throughout the Property.
- 8.2. Common Elements.** The Association shall maintain the Common Elements.
- 8.3. Association's Right to Maintain.** In the event that an Owner shall fail to provide maintenance as required by this Declaration in a manner satisfactory to the Association, and such Owner has failed to comply for ten (10) days after being so notified of such failure and upon being provided an opportunity to be heard concerning such failure, then the Association shall have the right, through its agents and employees, to enter upon said lot and repair, maintain and restore the Lot. In the event that such failure poses a health, safety or security risk, then no notice or hearing need be given. The cost of such maintenance and repair shall be assessed against the subject Lot in accordance with Article VII, Section 7.4. Nothing in this Section shall be construed as giving the Association any right to repair, maintain or restore any Dwelling Unit.
- 8.4. Access to Lots.** For the purpose solely of performing the maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day.

ARTICLE IX

RESTRICTIONS

- 9.1. Use and Occupancy.** The following restrictions are applicable to the use and occupancy of the Property.
- 9.1.1. Compliance with Laws.** No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner.
- 9.1.2. Harmful Discharges.** There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (other than normal residential chimney emissions), no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emission, production, storage or discharge may adversely effect the use or intended use of any portion of the Property or may adversely effect the health, safety or comfort of any person. No waste nor any substance or materials of any kind shall be discharged into any public sewer or the Surface Water Management System serving the Property or any part thereof in violation of any regulation or any public body having jurisdiction over such public sewer, or Surface Water Management System.
- 9.1.3. Noise.** No person shall cause any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.
- 9.1.4. Signs.** No signs of any character shall be erected, posted or displayed upon the Property, except: (1) marketing signs installed by the Declarant or any Builder while actively marketing the Lots for sale; (2) street and identification signs installed by the Association or the Declarant; (3) temporary signs and security signs as set forth in the Design Guidelines; (4) reasonably sized political signs installed in accordance with the time frames and size limits set forth in the Design Guidelines, and (5) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is for sale.
- 9.1.5. No Trade Business.** No trade or business of any kind may be conducted in or from any Lot or Dwelling Unit except that an Owner or Occupant of a Lot or Dwelling Unit may conduct such business activity within the Lot or Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming on the Lot who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property.

The terms “business” and “trade” as used in this provision shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (1) such activity is engaged in full-time or part-time; (2) such activity is intended to or does generate a profit; (3) a license is required thereof. The term “trade” or “business” for the purpose of this restriction shall not include the construction, operation and maintenance of any model home or homes and sales offices by any builder during reasonable hours.

9.1.6. Trash. Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Trash containers (except during construction) shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any Lot.

9.1.7. Parking; Vehicle Repairs. Except in connection with construction activities, trucks, trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if in garages. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any portion of the Property. Vehicle repairs and storage of vehicles are permitted on the Property only if in garages. Recreational vehicles and boats may be parked in the driveways for a period not to exceed forty-eight (48) hours for the purpose of cleaning, loading or unloading.

9.1.8. Animals. No animals, birds, insects, livestock, or poultry of any kind shall be raised, bred or kept on the property except dogs, cats and other household pets which are kept for domestic purposes only, and are not kept, bred or maintained for any commercial purpose. No more than two (2) dogs or two (2) cats may be kept on any lot or in any building or combination of buildings on any lot except when such dogs or cats in excess of such numbers are less than three months of age. It is the intention of this paragraph that such dogs, cats, and other household pets as are permitted, shall be totally indoor pets, except for the necessities of nature, and shall not be kept or maintained outside of the house, garage or other buildings on the premises.

9.1.9. Open fires. Open burning is not permitted on the Property, except that outdoor fireplaces, grills, and chimneys may be used if equipped with fire screens to prevent the discharge of embers or ashes. Fires are to be used only for the preparation of food. Fuel used must be of the type normally used for food preparation. Specifically forbidden would be the burning of any painted or treated wood or any product that produces noxious smoke, odors or pollutants.

9.2. Architectural Restrictions. The following architectural restrictions shall be applicable to the Lots.

9.2.1. Plan Approval. No Structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place until the requirements of this section have been fully met. Prior to any construction, the Owner or Builder shall first submit to the Declarant (which for the terms of this section shall include its designee) a complete set of building plans for the proposed construction. The Declarant shall approve, reject or modify such plans in a writing sent to the Owner or Builder in question not more than thirty (30) days after the plans are submitted to the Declarant. The thirty (30) day period shall commence upon execution of a written notice by the Declarant acknowledging receipt of plans and specifications and all information required therewith. The Declarant shall review the plans as to the quality of workmanship and design and harmony of external structures with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation. The Declarant shall not unreasonably withhold approval of any plans that conform in every way with the Declaration and with the general character of the development on neighboring Lots within the Property. If the Declarant fails to approve, reject, or modify the plans within the thirty (30) day period, the Declarant's approval shall be deemed to have been given, and no further permission shall be needed before the improvements described in such plans may be constructed or installed. However, in no event shall any improvements be constructed or installed which violate any term of this Declaration.

9.2.1.1. Declarant's Plan Approval Period. Declarant's right of plan approval shall exist for as long as Declarant owns any Lot in the Properties. Declarant's right of plan approval shall include any alterations to existing Lots or Dwelling Units and/or items requiring prior approval by this Declaration. In any items or matters that are discretionary, the Declarant's decision shall be conclusive upon all parties.

9.2.1.2. Design Guidelines. The Declarant shall prepare and, on behalf of itself and the Association, shall promulgate design and development guidelines governing construction within the Properties, which shall include application and review procedures to be followed in submitting an application for approval hereunder ("Design Guidelines"). The Design Guidelines shall be those of the Association, and the Declarant and/or the Association shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner. The Declarant and/or the Association shall make the Design Guidelines available to Builders and Owners who seek to engage in construction upon all or any portion of the Property. **There is no requirement that these Guidelines be recorded or rerecorded if amended or modified. Each Builder and Owner is cautioned to request the most current version of the Guidelines prior to undertaking any improvement. The most current version shall be on file with the Declarant and/or the Association.**

- 9.2.1.3. Association's Right of Plan Approval.** After Declarant's right of plan approval has expired, the Association shall be responsible for plan approval. The Declarant may assign its right of plan approval, or any portion thereof, to the Association.
- 9.2.1.4. No Liability.** Each Owner and Builder are responsible to insure that all construction or any modifications, are in compliance with the restrictions and approved plans. If the Developer or the Trustees have acted in good faith on the basis of such information possessed by them, neither the Developer, the Board nor any Trustee shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any work whether or not pursuant approved plans, drawings, and specifications.
- 9.2.2. Dwelling Type.** No building shall be erected, altered, placed or be permitted to remain on any Lot other than one single-family dwelling and a garage for at least two cars.
- 9.2.3. Dwelling Floor Areas.** The living area of the Dwelling Unit exclusive of porches, decks, attics, basements, areas not heated year round and garages shall be no less than the areas set forth in the Design Guidelines.
- 9.2.4. Roof Requirements.** The roof and gables of each Dwelling unit shall be in accordance with the Design Guidelines.
- 9.2.5. Set Back, Minimum Elevation and Yard Requirements.** All Dwelling Units shall be located in accordance with the building set back lines, minimum basement elevation and yard requirements as shown on the Record Plat and as set forth in the Design Guidelines. The Owner or Builder shall be responsible for compliance with these standards.
- 9.2.6. Front Yards and Driveways.** Front yards shall be landscaped within ninety (90) days after closing, weather permitting. All driveways shall be concrete.
- 9.2.7. Construction Materials.** No Dwelling Units shall be constructed of concrete block, cinder block or other similar materials unless the exterior of the Dwelling Unit is covered with brick and/or siding. No underground Dwelling Units shall be permitted.
- 9.2.8. Exterior Siding.** Any wooden sheeting materials must have prior approval.
- 9.2.9. Front Storage.** No front porch shall be used for the storage of any items except normal porch furniture. No front yard shall be used for storage of any kind of items. This restriction shall not apply to building materials and/or equipment stored on the Lot during construction of the Dwelling Unit.
- 9.2.10. Radio and Television Antennas.** With the exception of eighteen inch home satellite dishes, no exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of television, radio, satellite or other signals of any

kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Dwelling Unit, without the prior written approval as provided in Section 9.2.1., and in accordance with the Design Guidelines established by the Declarant or the Association. Nothing herein shall be construed so as to be in conflict with current Federal Communications Commission's rules and regulations for antennas.

9.2.11. Air Conditioning and Heat Pump Equipment. Air conditioning and heating equipment should be located and in such a manner so as to provide minimum visual impact from other lots.

9.2.12. Awnings. No awnings for windows, doors or patios may be erected or used.

9.2.13. Exterior Carpeting. No exterior carpeting shall be permitted if it is visible from the street or any neighboring Lot.

9.2.14. Fences. No fence of any sort may be erected unless and until prior approval in accordance with Section 9.2.1. has been obtained. All fences must comply with the Design Guidelines. The Declarant reserves the right to prohibit fences on certain Lots. No chain link or other metal fences shall be permitted. No fence shall be erected in the front yard with the exception of underground invisible pet fences. For purposes of this section, the front yard shall run from the street right of way to the rear line of the Dwelling Unit.

9.2.15. Other Structures. No structure of a temporary character, trailer, or shack shall be permitted on any Lot. Barns, storage sheds or other outbuildings must have prior approval in accordance with Section 9.2. Such outbuildings must comply with the Design Guidelines. Construction trailers and/or storage sheds shall be permitted only during construction. Above ground and semi-exposed pools are not permitted. Any in-ground pool or spa must be screened with a privacy fence in accordance with Design Guidelines. Play equipment and basketball hoops must comply with Design Guidelines. No outdoor clothes drying apparatus shall be permitted.

9.2.16. Completion. Construction of a Dwelling Unit on any Lot shall be completed within one (1) year from the date construction is started.

9.2.17. Lot Maintenance. All lots must be kept mowed and free of debris and clutter. During construction, each Owner and builder shall be responsible for keeping the streets and adjacent Lots clean and free of debris. The Declarant shall have the right to assess an Owner or Builder for the cost of mowing or clean up in the event that the Owner or Builder fails to do so.

9.3. Remedies for Breach of covenants and Restrictions. The violation of any covenant or restriction, contained in the Declaration or violation of any rule or regulation duly adopted by the Board shall give the Board the authority to enforce the covenants, restrictions, rules and regulations in accordance with this Section.

9.3.1. Actions. The Board may take any of the following actions.

- 9.3.1.1.** Levy a fine against the Owner or Occupant which shall also be an Individual Assessment under Section 7.4.
 - 9.3.1.2.** To enter upon a Lot or portion thereof upon which or, as to which, such violation or breach exists and to summarily abate and remove at the expense of the Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, and the Board, or its agents shall not be thereby deemed guilty in any manner of trespass or wrongful act.
 - 9.3.1.3.** To institute appropriate legal proceedings to enjoin, abate or remedy the continuance of any breach.
 - 9.3.1.4.** Undertake such dispute resolution methods such as mediation and arbitration, except that this provision shall not be construed as any requirement to do so as a condition precedent to legal proceedings.
- 9.3.2. Notice and Opportunity to be Heard.** Prior to any action, the Board shall give the Owner and/or Occupant reasonable notice of the violation and an opportunity to be heard. Such notice and opportunity shall not be required in emergency situations or for repeated or continuing violations.
- 9.3.3. Individual Actions.** Each Owner is empowered to enforce the covenants by appropriate legal proceedings or alternative dispute resolution methods.

ARTICLE X

INSURANCE AND CASUALTY LOSSES

- 10.1. Insurance.** The Board or its duly authorized agent shall have the authority to and shall obtain such insurance as it may deem necessary to protect the Common Elements, the Owners, the Association and the Board.
- 10.2. Repair and Restoration.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

ARTICLE XI

CONDEMNATION

- 11.1.** Whenever all or any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, it any) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited

by law. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed as follows:

- 11.2.** If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five (75%) percent of the Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements, to be extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article X hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XII

DEVELOPMENT RIGHTS

- 12.1. Submission of Additional Land.** The Declarant reserves the rights to submit all or any portion of the Additional Land to the terms of this Declaration without consent of the Owners for a period of seven (7) years beginning with the date of recording of the Declaration. The submission shall be accomplished by the filing of a Supplemental Declaration identifying the Additional Land, the Lots and the Common Elements. During any Declarant Control Period, annexation of Additional Land shall require the prior approval of the Federal Housing Administration or the Veterans Administration, if either such agency is insuring or guaranteeing the mortgage on any Lot.
- 12.2. Notice to the Board.** The Declarant shall promptly notify the Board of the filing of any Supplemental Declaration.
- 12.3. Easements Reserved.** The Declarant reserves for itself, its successors and assigns and any Builder, the following easements:
 - 12.3.1.** Easements for drainage and all utilities as shown on the Record Plat.
 - 12.3.2.** Easements for ingress, egress, drainage and all utilities over the Common Elements provided that such easements do not unreasonably interfere with any Owner's rights of enjoyment.
 - 12.3.3.** An easement over the Common Elements as may be reasonably necessary for the purpose of discharging its obligations or exercising any rights under the Declaration.
 - 12.3.4.** An easement for ingress, egress, drainage and all utilities over the Common Elements and in favor of the Additional Property and the right to convey that easements to others in the event that the Additional Property is not submitted to this Declaration.

12.4. Assignment of Development Rights. The Declarant reserves the right to assign any or all of its Development Rights to any person or entity for the purpose of further development and improvement of the Property. No assignment shall be effective unless in a writing filed with the Recorder of Washington County, Ohio.

12.5. Transfer of Development Rights by Foreclosure. Unless otherwise provided in any mortgage securing the Property held by Declarant, in the case of foreclosure of such mortgage, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, of any portion of the Property held by the Declarant subject to the Development Rights herein reserved (including the Special Declarant Rights), a person acquiring title to such property, but only upon his request, succeeds to all such Development Rights. The judgment or instrument conveying title must provide for the transfer of such rights. Upon foreclosure sale, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, the Declarant ceases to have any of the rights herein reserved. A successor to the Development Rights held by a transferee who acquired such rights pursuant to this Section, may declare by a recorded instrument the intention to hold such rights solely for transfer to another person. Thereafter, until transferring such Development Rights to any person acquiring title to the Property subject to the Development Rights, or until recording an instrument permitting exercise of such rights, that successor may not exercise any of those rights, and any attempted exercise is void. So long as a successor Declarant may not exercise any Development Rights under this section, such Declarant is not subject to any liability as a Declarant.

ARTICLE XIII

SPECIAL DECLARANT RIGHTS

13.1. Use for Sale Purposes. Declarant reserve for itself, its successors and assigns, and any Builder the right to maintain sales offices and models on the Lots.

13.2. Signs and Marketing. The Declarant reserve the right for itself and any Builder to post signs and displays in the Property to promote sales of Lots, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Owners.

13.3. Control of the Association.

13.3.1. Appointment of Trustees and Officers. The Declarant reserve the right to appoint and remove the members of the Board and the Officers of the Association during the Declarant Control Period which commence upon the recording of this Declaration and shall terminate no later than the earlier of:

13.3.1.1. Sixty (60) days after the conveyance of seventy-five (75) percent of the Lots (including Lots to be included on the Additional Land) to Owners other than Declarant or any Builder;

13.3.1.2. Seven (7) years after recording of this Declaration.

13.3.2. Early Termination of Control. The Declarant may voluntarily surrender the

right to appoint and remove trustees and officers before the termination of the period set forth above. In that event, the Declarant may require, for the duration of that period, that specified actions of the Association or the Board, be approved by Declarant before they become effective. Such voluntary termination shall be evidenced by a recorded instrument executed by the Declarant setting forth the termination of right to appoint and the actions which require Declarant's approval.

13.4. Declarant's Personal Property. The Declarant and any Builder reserve the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant and Builder reserve the right to remove, within one (1) year after the sale of the last Lot, from the Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

13.5. Right to Amend Documents. Notwithstanding anything above to the contrary, this Declaration may be amended at any time without the vote of Owners by a written instrument executed by the Declarant for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarant's original intent; making any change necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Limited liability company, or any other agency which may insure or purchase loans on a Lot. No such amendment, however, shall materially affect any Owner's interest in the Association or the Common Elements. Each Owner and his mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by a Declarant to be necessary or proper to effectuate the provisions of this paragraph.

ARTICLE XIV

DURATION, AMENDMENT AND TERMINATION

14.1. Duration. This Declaration, and its provisions, shall be covenants running with the land and shall bind the property and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by Declarant, the Association, and each Owner, Occupant and their legal representatives, heirs, devisees, successors and assigns and shall continue in full force and effect for twenty(20) years from the date on which this Declaration is recorded. Thereafter this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article.

14.2. Amendment. Except as provided in Section 13.5, and subject to section 7.1, prior to the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument executed by Declarant, approved by the Owners of at least 75% of all Lots, and the prior approval of the Federal Housing Administration or

the Veterans Administration, if either such agency is insuring or guaranteeing the mortgage on any Lot.

14.2.1. Except as provided in this Section 12.5, and subject to section 7.1, after the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument approved by the Owners of at least seventy-five (75%) percent of all Lots.

14.2.2. All Amendments shall be executed by the Declarant, and any Builder, if required, and shall be executed by the President and Secretary of the Association. Such Amendment shall certify that the proper notices were sent and that the requisite vote was obtained. Amendments need not be signed by the Owners nor the Federal Housing Administration or the Veterans Administration.

14.3. Amendments by Board. The Board may amend the Declaration and any Supplemental Declaration in any manner necessary for any of the following:

14.3.1. To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, and similar institutions;

14.3.2. To meet the requirements of insurance underwriters;

14.3.3. To bring the Declaration into compliance with the laws of the United States, the State of Ohio or any political subdivision thereof; or

14.3.4. To correct clerical or typographical errors or obvious factual errors in the Declaration, Supplemental or an exhibit to the Declaration.

14.4 Termination. This Declaration and the regime created thereby may be terminated only in accordance with this Section.

14.4.1. Consent required. This Declaration may be terminated only upon consent of eighty (80) percent of the Owners, and if during the Declarant Control Period, by consent the Declarant and the prior approval of the Federal Housing Administration or the Veterans Administration, if either such agency is insuring or guaranteeing the mortgage on any Lot.

14.4.2. Agreement to Terminate. No termination shall be effective unless an agreement to terminate is filed for record with the Washington County Recorder. This agreement shall be executed in the same manner as a deed by the requisite number of Owners. The agreement shall provide for disposition of the Common Elements, disposition of Association funds and other resolutions and provisions necessary to terminate the regime and wind up the affairs of the Association.

ARTICLE XV

MISCELLANEOUS

EXHIBIT A

Lots to be submitted

Situated in Belpre Township, County of Washington and State of Ohio, and known as being Sublot Nos. 1 thru 5 and 36 through 41 as recorded in the sub-division plat book, Volume 0016, page 0008 and known as “Phase I” of the “Blue Heron Estates subdivision”, a part of the property recorded under the name “Blue Heron Estates, LLC”, as recorded in Volume 0450, Page 1823, Washington County records.

EXHIBIT B

Additional Land

The Additional Land shall consist of the

Appointment of Trustees and Officers

Pursuant to the authority reserved in Article XIII, Section 13.3 of the Declaration, Blue Heron Estates, LLC hereby makes the following appointments:

Trustees of the Association

Officers of the Association

President _____
Vice-President _____
Secretary _____
Treasurer _____

Adopted this _____ day or _____, 2008

Blue Heron Estates, LLC

By _____