

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS**

FOR

GARDENS AT HIGHLAND SUBDIVISION

THIS WILL CERTIFY THAT A COPY OF THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS WAS FILED IN THE OFFICE OF THE FISCAL OFFICER OF SUMMIT COUNTY, OHIO.

DATED: 5/27/15

BY: **KRISTEN M. SCALISE CPA, CFE**

Katie Mancino
Katie Mancino

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Kristen Scalise, Summit Co Fiscal Office

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR GARDENS AT HIGHLAND SUBDIVISION

WHEREAS, the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements ("Declaration") for the Gardens at Highland Subdivision ("Association") and the Bylaws for the Association ("Bylaws"), Exhibit C to the Declaration, were originally recorded October 7, 2007 with the Summit County Fiscal Officer, as document No. 55484453; and

WHEREAS, the Association is a non-profit corporation consisting of all Members in the Association and as such is the representative of all Members; and

WHEREAS, Article X, Section 10.4 of the Declaration authorizes amendments to the Declaration; and

WHEREAS, Article 11, Section 11.07 of the Bylaws authorizes amendments to the Bylaws; and

WHEREAS, the vote of at least three-fourths (75%) of all Members have executed an instrument in writing setting forth specifically the new matter to be added to the Declaration; and

WHEREAS, the vote of at least a majority (51%) of a quorum of Members present at a regular meeting, in person or by proxy, of the Association have executed an instrument in writing setting forth specifically the new matter to be added to the Bylaws; and

WHEREAS, the Association has in its records the consents to the Amendment signed by Members representing 75% of the Members and further has in its records the consents, if any, of the Mortgage Holders as certified by the Secretary in the attached Exhibit B

WHEREAS, the Association has in its records the consents to the Amendment signed by Members representing 95% of the Members present in person or by proxy at a regular meeting and further has in its records the consents, if any, of the Mortgage Holders as certified by the Secretary in the attached Exhibit B; and

WHEREAS, attached hereto as Exhibit A is an Affidavit of the President of the Association that proper notice of the Amendment was delivered personally or sent by mail to all Members on the records of the Association and Mortgage Holders who are entitled to timely notice pursuant to Article 11, Section 11.11 of the Bylaws; and

WHEREAS, the proceedings necessary to amend the Declaration and Bylaws as required by Chapter 5312 of the Ohio Revised Code and the Declaration and Bylaws have in all respects been complied with.

NOW THEREFORE, the following hereby amends the Declaration and Bylaws as follows:

DELETE the Section 5.12 of Article V entitled "Capital Contribution and Assessment at Closing" from the Declaration in its entirety.

DELETE the stricken through language from and INSERT the underlined language to Article VII, Section 7.1.8 of the Declaration entitled "Lot Landscaping, Driveways and Walks" as follows:

7.1.8. Lot Landscaping, Driveways and Walks: Proposed landscape plans require approval by the Declarant or Association. Plans shall include planting lists with sizes and types of all plantings included and such other information as may be deemed necessary to assure the quality of the landscape installation. Lots shall be planted with grass and landscaped within ninety (90) days of completion of the Dwelling Unit, weather permitting. All driveways shall be paved with asphalt, concrete, paver bricks or paving stone, and any driveway, as of the date of the recording of this amendment, that is asphalt, paver bricks or paving stones shall be permitted to remain until major repairs or replacements of the existing driveway are needed, at which point, concrete must be used. Gravel, dirt, or aggregate driveways are prohibited. Hard surface walks shall be provided to the front entry door of the dwelling Unit and the service door to the garage if any.

DELETE the Section 7.1.15 of Article VII entitled "Fences" from the December 2008 First Amendment to the Declaration in its entirety and replace it with the following:

7.1.15 Fences:

(a) No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, excepting a retaining wall, shall be erected, placed or suffered to remain upon (i) any landscape easement, (ii) open-space easement, (iii) greenbelt easement, or (iv) upon any Lot nearer to any street than the rear building line of the residence located on the Lot. Unless otherwise approved by the Board, fences shall not be of wire or chain link construction and no such fence shall exceed 3'6" in height. On a corner Lot, in addition to the restrictions set forth above, no fence or portion thereof shall be erected or placed or suffered to remain upon said corner Lot, closer to the side street than the building set back line for such residence. In order to comply with all applicable law, fences around swimming pools may be constructed of metal, provided the specifications and location for such fences, as well as the location of the swimming pools, are approved by the Board in writing.

(b) The term "fence" as used herein shall be liberally construed as to accomplish the purpose of these restrictions, and shall specifically include, but not be limited to, contrived barriers of any type, including those of shrubs, hedges or walls. The term "side street" as used herein shall refer to any street contiguous to any Lot which does not face the front door of the residence.

(c) This section shall not apply to: (i) underground invisible dog-type fences; or (ii) decorative fences or retaining walls installed by the Declarant or Builder in connection with the development of the Property or original construction of a Living Unit.

DELETE the stricken through language from and INSERT the underlined language to Article VII, Section 7.1.19 of the Declaration entitled "Mailboxes" as follows:

7.1.19. Mailboxes: The United States Postal Service will be installing Central Distribution Units. All replacement mailboxes must be approved in advance by the Board in writing and must keep with the current aesthetics.

DELETE the stricken through language from the first sentence of the first paragraph of Article VIII, Section 8.1.6 of the Declaration entitled "Prohibited Accessory Structures" as follows:

8.1.6. Prohibited Accessory Structures: No permanent or temporary accessory building, tent, storage shed, mobile home, or free standing greenhouse shall be erected or permitted to remain upon a Lot.

INSERT the following new paragraph to the existing Article VIII, Section 8.1.6 of the Declaration entitled "Prohibited Accessory Structures" as follows:

Storage sheds shall be permitted on any Lot provided the procedures provided for in Section 7.1.7 are adhered to and written approval is obtained from the Association for the structure. Both construction materials and colors must match those used on the Dwelling Unit and any storage shed must be placed so that it is not visible from the street.

INSERT the underlined language to Article 8, Section 8.1.10 of the Declaration entitled "Obstruction of Easements and Drainage" as follows:

Unless otherwise specifically provided in an executed easement, no structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot, except for those improvements for which a public authority, utility company, or the Association is responsible.

INSERT the following new section 8.1.15 to Article VIII of the Declaration entitled "Sexual Predators" as follows:

No person: (a) whose name appears on the state registry of sex offenders and child-victim offenders maintained under section 2950.13 of the Revised Code, or (b) whose name is indicated on the state registry of sex offenders and child-victim offenders as being convicted of or having plead guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense, is permitted to establish a residence, occupy, or maintain a residence within any Living Unit within the Gardens at Highland Homeowners Association.



The Association may seek to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, any breach of this prohibition. If any Owner (either by his/her own registration or by the registration of any resident, occupant or tenant) shall breach this residency prohibition, said Owner shall pay to the Association, in addition to any other sums due, all costs and expenses incurred by the Association in connection with the enforcement of this provision, including reasonable attorney fees and court costs. Said costs and expenses shall be charged as an Assessment against said Owner. The Association, in addition to all other remedies available, shall have the right to place a lien upon the estate or interest of said Owner as further explained and set forth in this Declaration.

This residency prohibition shall not be deemed to be abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur. This residency prohibition does not impose a duty on the Association or the Board to monitor the state registry of sexual offenders maintained under section 2950.13 of the Revised Code.

INSERT the following new section 8.1.16 to Article VIII of the Declaration entitled "Trash Collection" as follows:

In the event the City of Macedonia elects to allow residents to choose a trash provider, the Board shall choose the provider and negotiate a contract on behalf of the Association residents. All residents shall use the provider selected by the Board, and shall be billed directly from the provider for the service. The Association shall bear no responsibility for the services billed to the Owners.

DELETE the stricken through language from and ADD the underlined language to Article 2, Section 2.01 of the Bylaws entitled "Registered Office" as follows:

2.01. Registered Office. The registered office of the corporation shall be at the offices of the current managing agent. 6650 West Snowville Road, Suite J, Brecksville, Ohio 44141-3242, and the name of the registered agent of the corporation is ~~Richard Baneroft.~~

INSERT the underlined language to Article 8, Section 8.02 of the Bylaws entitled "Number; Qualification; Election; Term" as follows:

8.02. Number; Qualification; Election; Term. The Board of Directors shall consist of three Directors, each of whom shall be a Member of the Association or a partner or employee of the Declarant, or its subsidiaries or affiliates. To qualify to serve, the Member shall be in good standing with the Association, which shall mean that all assessments are paid in full and the Member is not in violation of the Declaration or these Bylaws. The Members of the initial Board of Directors shall serve terms of two years until the annual meeting of Members following such election in the designated term of office of such Directors. Each Director elected to replace an original Director upon the expiration of his term of office shall serve for a term of office ending with the third annual meeting of the Members following his election or until his successor shall

be elected and shall qualify. Prior to conversion of the Class B Membership to Class A Membership, the Directors shall be appointed by the Class B Member.

DELETE the language contained in Article 10, Section 10.04, of the Bylaws entitled "Salaries" in its entirety and replace with the following new language.

10.04. Salaries. Officers of the corporations shall serve without compensation or salary; however, any officer may receive reimbursement for any expenses paid with the officer's own funds, on behalf of the Association upon submission of a receipt to the Board.

DELETE the stricken through language from and ADD the underlined language to Article 11, Section 11.07 of the Bylaws entitled "Amendments; Procedure" as follows:

11.07. Amendments; Procedure. These Bylaws may be amended at a meeting of the Members or outside of a meeting as provided for herein. ~~At~~ at a regular meeting or special meeting of the Members, the Bylaws may be amended by a vote of the majority of a quorum of each class of Members present in person or by proxy. The Bylaws may also be amended by twenty-five percent (25%) of the voting power of the Association, outside of a meeting, provided a written ballot indicating the exact language to be added or removed is distributed to all Members changed are provided to each member along with a date by which to return the ballot. The ballot for either method shall include a place indicating the Owner, the address or lot number along with a signature and date line. The ballot shall serve as a power of attorney to the Board allowing the Board to execute the Amendment and file the same with Summit County on behalf of the Members of the Association. ~~provided that~~ Any matter stated herein ~~to be or~~ which is in fact governed by the Declaration of Covenants and Restrictions applicable to the Properties may not be amended except as provided in such Declaration. Notwithstanding any contrary provision of these Bylaws, the provisions of Article 5, Section 5.01 shall not be amended prior to one (1) year after conversion of the Class B Membership to Class A Membership. Notwithstanding any provision of these Bylaws to the contrary, Developer shall have the same rights to amend the Bylaws as they have to amend the Declaration.

Any conflict between this document and any prior version of the Declaration and Bylaws shall be interpreted in favor of this document. Upon the recording of this Amendment, only Members of record at the time of such filing shall have standing to contest the validity of the Amendment, whether of procedural, substantive, or any other grounds, provided further that any such challenge shall be brought within one year of the recording of the Amendment to the Bylaws.

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Kristen Scalise, Summit Co Fiscal Office

GARDENS AT HIGHLAND HOMEOWNERS ASSOCIATION, INC.

IN WITNESS WHEREOF, the officers of the Gardens at Highland Homeowners Association, Inc. has caused the execution of this instrument this 27th day of April 2015.

Signed and acknowledged in the presence of all:

By: Michael Ekis
Michael Ekis, President

By: Enrique Arnedo
Enrique Arnedo Secretary

This instrument prepared by:

Ott & Associates Co., L.P.A.
1300 East 9th Street, Suite 1520
Cleveland, Ohio 44114
Telephone: (216) 771-2600
Facsimile: (216) 830-8939

STATE OF OHIO)
) SS.
COUNTY OF SUMMIT)

BEFORE ME, a Notary Public in and for said County, personally appeared the above-named Gardens at Highland Homeowners Association, Inc., by its President, **MICHAEL EKIS**, and its Secretary, **ENRIQUE ARNEDE**, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 27th day of April, 2015.



SHANNON L. FEATHERS
Notary Public
State of Ohio
My Commission Expires
On 10/27/15

[Signature]
Notary Public

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Kristen Scalise, Summit Co Fiscal Office

EXHIBIT A

AFFIDAVIT

STATE OF OHIO)
) SS.
COUNTY OF SUMMIT)

MICHAEL EKIS, being first duly sworn, states as follows:


1. He is the President of the Gardens at Highland Homeowners Association, Inc.
2. As such President, he caused copies of the Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Gardens at Highland Homeowners Association Inc. to be delivered personally or sent by mail to all Members on the records of the Association and Mortgage Holders who are entitled to timely notice.
3. Further affiant sayeth naught.



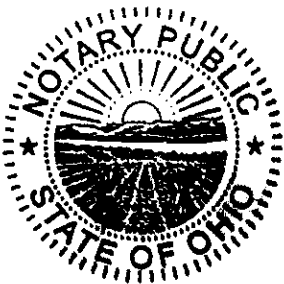
Michael Ekis, President

BEFORE ME, a Notary Public in and for said County, personally appeared the above-named **MICHAEL EKIS** who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 27th day of April, 2015.



Notary Public




SHANNON L. FEATHERS
Notary Public
State of Ohio
My Commission Expires
On 10/27/15

EXHIBIT B

CERTIFICATION OF SECRETARY

The undersigned, being the duly elected and qualified Secretary of the Gardens at Highland Homeowners Association, Inc. hereby certifies that there are no Mortgage Holders on record with the Association; therefore, no consents to the proposed Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements were obtained.




Enrique Arnedo, Secretary

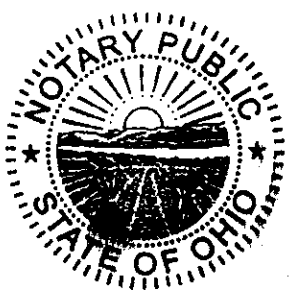
STATE OF OHIO)
) SS.
COUNTY OF SUMMIT)

BEFORE ME, a Notary Public in and for said County, personally appeared the above-named **ENRIQUE ARNEDO** who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 27th day of April, 2015.



Notary Public



SHANNON L. FEATHERS
Notary Public
State of Ohio
My Commission Expires
On 10/27/15