

AMENDED DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR HAWKSMOOR SUBDIVISION, PHASE II, BAINBRIDGE TOWNSHIP, OHIO

This Amended Declaration of Covenants, Easements and Restrictions for Hawksmoor Subdivision, Phase II, Bainbridge Township, Ohio is made and executed effective the 2nd day of April, 2003, by **BAINBRIDGE PARTNERS, LTD.**, an Ohio limited liability company and **THE HAWKSMOOR ASSOCIATION**, an Ohio nonprofit corporation.

WITNESSETH

WHEREAS, the real property known as Phase II of the Hawksmoor Subdivision, Bainbridge Township, Geauga County, Ohio as shown on the Plat recorded at Plat Volume 34, Page 111, Geauga County Record of Plats and more fully described in Exhibit "A" attached hereto and incorporated herein by reference is subject to the Declaration of Covenants, Easements and Restrictions for Hawksmoor Subdivision, Phase II, Bainbridge Township, Ohio recorded on April 5, 2002 as Instrument 200200624796 at Book 1469, Page 87, Geauga County Recorder's Office (the "Declaration"); and

WHEREAS, the Geauga County Water Management and Sediment Control Regulations Revised March 21, 1998, including Section 4.07 thereof, require the Declaration to provide for the inspection and maintenance of permanent storm water management facilities; and

WHEREAS, Section 9.1 of the Declaration expressly authorizes The Hawksmoor Association and Bainbridge Partners, Ltd. to amend the Declaration unilaterally at any time within one year of the recording of the Declaration; and

NOW THEREFORE, Bainbridge Partners, Ltd. and The Hawksmoor Association hereby jointly and severally amend the Declaration to add Section 6.4 entitled "Storm Water Retention Basin" so as to comply with the Geauga County Water Management and Sediment Control Regulations Revised March 21, 1998:

SECTION 1 -- EXHIBITS AND DEFINITIONS

1.1 -- Exhibits

Legal description of the property subject to this Declaration is attached hereto and made a part hereof as Exhibit A.

1.2 -- Definitions

The following terms, wherever used in this Declaration, shall be deemed to have the meaning as set forth immediately following each term:

200300656386
Filed for Record in
GEAUGA COUNTY, OHIO
MARY MARGARET MCBRIDE
04-04-2003 At 03:49 pm.
RST 90.00
OR Book 1602 Page 412 - 432

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a. **Architectural Review Committee.** The term "Architectural Review Committee" shall be deemed to mean the committee established and empowered pursuant to Section 5 of the Declaration for the purpose of approving the plans and specifications for any Improvements to be made to the Subdivision.

b. **Articles.** The term "Articles" shall be deemed to mean the Articles of Incorporation of The Hawksmoor Association as recorded in the office of the Ohio Secretary of State, together with any and all amendments thereto which may from time to time be similarly recorded.

c. **Assessments.** The term "Assessments" shall be deemed to mean all Insurance Charges, Maintenance Charges, Taxes and Utilities Charges, together with any and all other charges, costs, expenses, fees, fines, levies and penalties to be paid to the Association by the Owners in accordance with the terms and conditions set forth in this Declaration.

d. **Association.** The term "Association" shall be deemed to mean The Hawksmoor Association, a nonprofit corporation formed pursuant to the laws of the State of Ohio, together with its successors and assigns.

e. **Board of Trustees.** The term "Board of Trustees" shall be deemed to mean the trustees duly elected by the Members of the Association who sit as the Association's trustees in accordance with Chapter 1702 of the Ohio Revised Code.

f. **Bylaws.** The term "Bylaws" shall be deemed to mean the codified rules and regulations pertaining to the government of the business and affairs of the Association which have been duly adopted as such by its Members, together with any and all amendments or modifications from time made thereto.

g. **Common Areas.** The term "Common Areas" shall mean all real property within the Subdivision now or hereafter owned by Declarant or otherwise held for the common use and enjoyment of the owners or occupants. Common Areas shall include the entrance to the Subdivision, those areas of land intended to remain as Open Spaces, Easement Areas, any recreational facilities and the land on which recreation facilities, if any, are located, and buffer zones for the common use, benefit and enjoyment of all owners and occupants of the Subdivision.

h. **Declarant.** The term "Declarant" shall be deemed to mean both the Association and the Developers, together with their respective successors and assigns.

i. **Declaration.** The term "Declaration" shall be deemed to mean this Declaration of Covenants, Easements and Restrictions for Hawksmoor Subdivision, Bainbridge Township, Ohio, together with any and all amendments and modifications thereto from time to time adopted and recorded in the office of the Recorder, Geauga County, Ohio.

j. **Developer of Phase I.** The term "Developer of Phase I" shall be deemed to mean Hawksmoor

Development, Inc., an Ohio corporation, and its successors and assigns.

k. Developer of Phase II. The term "Developer of Phase II" shall be deemed to mean Bainbridge Partners, Ltd., an Ohio limited liability company, and its successors and assigns.

l. Developers. The term "Developers" shall be deemed to mean both the Developer of Phase I and the Developer of Phase II.

m. Documents. The term "Documents" shall be deemed to mean the Articles, the By-laws, the Rules and Regulations and this Declaration.

n. Easement Areas. The term "Easement Areas" shall be deemed to mean those areas so designated on the Plat, including any easements referred to by marginal notation on the Plat, and shall include, but not be limited to, landscaping and/or sign easement areas, storm water swales, and utility areas located in the right of way, which areas are more fully described or referred to on the Plat.

o. Improvements. The term "Improvements" shall be deemed to mean any building, facility, structure or other enhancement, whether or not the same may be habitable, enclosed, decorative or otherwise, together with any and all landscaping material (including planted vegetation) wherever located or intended to be located in the Subdivision.

p. Member. The term "Member" shall be deemed to mean the Developer and all Owners, each of whom shall be a Member of the Association, as provided in the Articles.

q. Open Spaces. The term "Open Spaces" shall be deemed to mean land that is dedicated or permanently assigned to park or recreation use, including Common Areas.

r. Owner. The term "Owner" shall be deemed to mean all of the legal owner(s) of the title to a freehold estate in a Sublot, regardless of whether or not such person(s) or party(ies) are in actual possession thereof. Any and all disputes concerning the identity of the owner shall be resolved by an examination of the Deed Records of Geauga County, Ohio.

s. The term "Phase I" shall be deemed to mean the real property described and referred to as Hawksmoor Phase I on the Plat and consisting of 16.500 acres of land, including Sublot Nos. 1 - 6.

t. The term "Phase II" shall be deemed to mean the real property referred to as Hawksmoor Phase II on the Plat and described on Exhibit A attached hereto, including Sublot Nos. 7 - 31.

u. Plat. The term "Plat" shall be deemed to mean the Plats of the Hawksmoor Subdivision as recorded in the Plat Records of Geauga County, Ohio, together with any and all additions, amendments, modifications and revisions thereto.

v. Residence. The term "Residence" shall be deemed to mean a single family residential dwelling

unit which is constructed upon a Sublot.

w. Rules and Regulations. The term "Rules and Regulations" shall be deemed to mean such rules and regulations as may be adopted from time to time by the Board of Trustees and relating to the care, maintenance, operation and use of the Easement Areas.

x. Subdivision. The term "Subdivision" shall be deemed to mean the entire tract of land designated as the Hawksmoor Subdivision on the Plat, including all Sublots designated thereon.

y. Sublot. The term "Sublot" shall be deemed to mean any one of the individual lots sequentially numbered and designated as such on the Plat.

z. User. The term "User" shall be deemed to mean each and every occupant of a Residence, together with such occupant's guests and invitees.

SECTION 2 -- SUBJECT PROPERTY

2.1 -- Included Property

All the real property described on the Plat, other than rights-of-way which have been or are intended to be dedicated public roadways, shall be and hereby are made subject to this Declaration.

2.2 -- Abandoned Roadways

In the event that any of the rights-of-way described on the Plat as public roads should ever be abandoned by the applicable government authorities, then and in such event, such rights-of-way shall become subject to this Declaration.

2.3 -- Future Conveyances

Each and every conveyance of a Sublot, or any part thereof or any interest therein, shall clearly indicate that such conveyance is made subject to the terms and conditions contained in this Declaration and that the transferee with respect to such conveyance shall be bound by the terms and conditions contained in this Declaration. Further, the terms and conditions contained in this Declaration shall be deemed to be covenants running with the land and shall be binding upon any and all persons or parties having an interest in the Subdivision, including their heirs, administrators, executives, personal representatives, successors and assigns.

SECTION 3 -- EASEMENTS

3.1 -- Temporary Easements

The Declarant, its agents, assignees, contractors, designees and employees shall have free and

complete access to the Subdivision for the purpose of constructing, installing, maintaining and inspecting any and all Improvements to be located thereon by the Declarant.

3.2 -- Permanent Easements

There shall be located within the Subdivision such permanent easements as may be necessary for utilities, landscaping, detention basins, retention basins, and such other purposes as may be indicated or referred to on the Plat, particularly the Easement Areas.

SECTION 4 – OWNERSHIP, OPERATION AND USE OF COMMON AREAS/OPEN SPACES

4.1 – Title and Conveyance

Developer of Phase II may retain legal title to Common Areas/Open Spaces in Phase II until such time as in the opinion of Developer of Phase II the Association is able to maintain the same. At such time as Developer of Phase II shall determine, legal title to Common Areas/Open Spaces in Phase II shall be conveyed by Developer to the Association, free and clear of all liens and encumbrances, except the covenants, easements, restrictions and provisions of this Declaration, and easements, restrictions, conditions and other similar matters of record, and real estate taxes and assessments which are a lien but not yet due and payable at the time of said conveyance, and zoning and other ordinances, if any. The Association shall hold title to Common Areas/Open Spaces subject to the provisions of this Declaration.

4.2 -- Maintenance

Common Areas/Open Spaces shall be maintained and retained in a "natural" state with the exception of:

- (i) areas required to be seeded with grass, which shall be mowed and maintained in accordance with Township ordinances and resolutions;
- (ii) areas, if any, that the Association may develop for recreational purposes; and
- (iii) areas that are subject to existing easement rights and areas that are subject to easement rights reserved and granted herein.

4.3 -- Use

Declarant and all Owners and social invitees of Owners shall have the right to enter upon, use and enjoy Common Areas/Open Spaces for their intended purposes in accordance with this Declaration and the Association's Bylaws, Rules and Regulations, and any limitations as may be adopted in accordance therewith.

4.4 -- Delegation of Use

Any Owner may delegate, in accordance with the Bylaws and the Rules and Regulations of the Association, and any limitations as may be adopted in accordance therewith, his or her right of use and enjoyment of the Common Areas/Open Spaces and facilities to the members of his or her family, tenants, and social invitees, and shall be deemed to have made a delegation of such rights to the occupants of any leased Residence.

SECTION 5 -- ARCHITECTURAL REVIEW COMMITTEE

5.1 -- Members

The Architectural Review Committee shall be composed of no less than three (3) natural persons appointed from time to time by the Board of Trustees of the Association.

5.2 -- Purpose

The purpose of the Architectural Review Committee shall be to approve any and all plans, drawings and specifications concerning the construction of any Improvement wherever located in the subdivision. The Architectural Review Committee shall have the right and authority to authorize, approve, consent to, permit or adopt any rules concerning the construction, maintenance, improvement, reconstruction and removal of any and all improvements of any kind, type or nature whatsoever, wherever located in the subdivision, subject to the exercise of any comparable rights by applicable governmental authorities.

5.3 -- Authority to Act

The affirmative vote of a majority of the then members of the Architectural Review committee shall be required in order to adopt, issue or promulgate any approval, authorization, consent, permit or rule pursuant to this Section 5.

5.4 -- Submission of Plans and Specifications

A minimum of two (2) sets of plans and specifications prepared by and bearing the seal of a licensed architect shall be submitted to the Architectural Review Committee for its approval prior to the commencement of any work in conjunction with the construction,

maintenance, improvement, reconstruction and removal of any Improvements in the subdivision. The Architectural Review Committee shall have the right to require that any and all such plans and specifications shall be prepared in sufficient detail so as to clearly indicate that the Improvement will comply with the provisions of this Declaration.

5.5 -- Review and Decision

The Architectural Review Committee shall review the plans and specifications submitted to it as promptly as is reasonably practicable for the purpose of determining whether or not the same comply with all of the terms and conditions contained in this Declaration. The Architectural Review Committee shall render its decision within one (1) month from and after the date on which the plans and specifications are submitted. If the plans and specifications are approved, the Architectural Review Committee shall clearly so indicate by writing, typing or stamping the word "APPROVED" on each separate sheet contained in the plans and specifications. If the plans and specifications are disapproved, the Architectural Review Committee shall clearly so indicate by writing, typing or stamping the word "DISAPPROVED" on each separate sheet contained in the plans and specifications. Each and every such sheet so stamped or marked shall bear the signature of a majority of the then members of the Architectural Review Committee immediately beneath the word "APPROVED" or "DISAPPROVED" as the case may be. Not less than one (1) complete set of such approved or disapproved plans and specifications shall be retained by the Architectural Review Committee for its records, and not less than one (1) complete set of such approved or disapproved plans and specifications shall be returned to the party submitting same. The failure of the Architectural Review Committee to approve the plans and specifications within one (1) month period as aforesaid shall be deemed to mean that the plans and specifications were disapproved.

5.6 -- Grounds for Disapproval

In any case where the Architectural Review Committee shall either disapprove or conditionally approve any plans and specifications submitted hereunder, then and in such event, such disapproval or qualified approval shall be accompanied by a written statement clearly indicating the grounds upon which such disapproval or qualified approval is based. Further, the Architectural Review Committee, shall, if requested and if possible, make reasonable efforts to assist and advise the party submitting such plans and specifications, or his representative, for the purpose of amending the same so as to obtain the future approval of the Architectural Review Committee, the Architectural Review Committee shall have the right to disapprove any plans and specifications submitted hereunder for any of the reasons set forth below:

- a. Noncompliance with Declaration. Failure of such plans and/or specifications to comply with the requirements set forth in this Declaration shall constitute reasonable grounds for disapproval.
- b. Insufficient Information. Failure to include sufficient information on such plans and/or specifications as may be reasonably necessary for the purpose of determining whether or not the same comply with the requirements set forth in this Declaration shall constitute reasonable grounds for disapproval.
- c. Incompatibility of Design. Incompatibility of design or appearance of any proposed Improvement with respect to the other improvements then located in the Subdivision or previously approved for construction in the Subdivision shall constitute reasonable grounds for disapproval.

d. Incompatibility of Use. Incompatibility of use of any proposed Improvement with respect to other Improvements then located in the Subdivision or previously approved for construction in the Subdivision shall constitute reasonable grounds for disapproval.

e. Improper Location. Improper location of any proposed Improvement with respect to any front, rear or side yard setbacks as shown on the Plat or otherwise required by appropriate Governmental authorities shall constitute reasonable grounds for Disapproval.

f. Improper Grading. The proposed grading of any Sublot in such a manner as may cause or create a drainage problem on adjacent property or would result in an unreasonable difference in elevation with respect to adjacent property shall constitute reasonable grounds for disapproval.

g. Other Reasons. Any other reason which, in the reasonable judgment of the Architectural Review Committee, will render the proposed Improvement and/or its use inharmonious with the other Improvements and/or uses in the Subdivision shall constitute reasonable grounds for disapproval.

5.7 -- Appeal

Should the Architectural Review Committee disapprove any plans and specifications submitted hereunder, then and in such event, the party submitting such plans and specifications shall have the right to appeal that decision to the Board of Trustees of the Association. Such appeal must be submitted to the Board of Trustees in writing within one (1) month after the date of receipt of the decision from the Architectural Review Committee. The Board of Trustees shall, within one (1) month after the date of receipt of the written request for the review, examine the plans and specifications, together with the grounds for disapproval or qualified approval by the Architectural Review Committee and issue its written opinion to the party requesting such appeal. It shall require a majority of the then members of the Board of Trustees to reverse a decision of the Architectural Review Committee, either in whole or in part. Should the actions by the Board of Trustees result in the approval of the plans and specifications, either in and of itself or in conjunction with a prior partial or qualified approval by the Architectural Review Committee, then and in such event, such plans and specifications shall be deemed to have been approved by the Architectural Review Committee.

5.8 -- Violations and Remedies

Should any improvements be altered, built, constructed, demolished, enhanced, erected, improved, placed or maintained upon, reconstructed or removed from or upon the Subdivision, or should the use thereof be modified in any way from the use originally approved by the Architectural Review Committee as provided in this Section 5, such act shall be deemed to be a violation of this Section 5 and this Declaration. Any party committing any of the aforesaid acts in contravention of this Section 5 shall, immediately upon the receipt of written notice of such violation from the Architectural Review Committee, cease and desist from the commission of any such act and immediately commence to take such steps as will alleviate or remedy any such condition of default

and shall continue with all due diligence thereafter until the satisfactory completion of same. Should the party committing such act in contravention of this Section 5 fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any and all other rights or remedies available to it at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

- a. Abate Violation. The Association shall have the right to cause its agents and employees to enter upon the Common Areas for the purpose of summarily abating any such use and/or removing any such building or structure.
- b. Seek Injunction. The Association shall have the right to apply to a court having jurisdiction over the Subdivision and have the right to obtain any injunction for the purpose of abating any such use and/or removing any such building or structure wherever located in the Subdivision.
- c. Seek Reimbursement. The Association shall be entitled to the full and complete reimbursement from any party committing any of the aforesaid acts in contravention of this Section 5, of any costs, damages and expenses (including attorney's fees) incurred for the purpose of remedying any such condition of default.

SECTION 6 -- IMPROVEMENTS

6.1 -- Approval of Plans and Specifications Required

No Person shall commence the alteration, building, construction, demolition, enhancement, erection, improvement, reconstruction or removal of any Improvement or permit any Improvement to be placed or maintained. Upon any part of the subdivision or permit the use of any Improvement or Sublot to be altered or modified in any way without the prior written approval of the Architectural Review Committee of the building plans, plat and grading plans, and residence specifications, as set forth in Section 5 above.

6.2 -- Building and Use Restrictions

Except as the Architectural Review Committee may otherwise specifically permit, in writing, the following building and use restrictions shall apply with respect to the alteration, building, construction, demolition, enhancement, erection, Improvement, reconstruction, or removal of any Improvements or the placing or maintaining of any Improvements upon any Sublot:

- a. Use. Each Sublot shall be used for single family residential dwelling unit purposes in conformity with the terms and conditions contained in this Declaration. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any Sublot, except

with regard to the Improvements constructed or to be constructed by Declarant or by the owners of any Sublot in construction of their Residences.

b. **Residence Location.** The proposed location of any Residence or other Improvement upon any Sublot shall be clearly depicted upon a site plan or plot plan in relation to the boundary lines of any such Sublot. The Architectural Review Committee shall have no authority whatsoever to approve any plans or specifications showing the location of any improvement which would violate the zoning ordinances of the applicable governmental authorities on the front side or rear lot line minimum setback requirements indicated on the Plat.

c. **Residence size Requirements.** Each Residence constructed upon a Sublot contain not less than three thousand five hundred (3,500) square feet of space utilized by the occupants thereof for living space, exclusive of any attics, basements, breezeways, garages, porches, patios or other enclosed areas not heated for year-round living.

d. **Trees.** Prior approval by the Architectural Review Committee shall be required for the clearing or removal of any living trees with a diameter of five inches (5") or more located between the street right-of-way and the recorded building set-back line, except when necessary to construct walks or driveways.

e. **Driveway.** All driveways shall be composed of concrete, asphalt or paving brick and all concrete drives shall have a minimum thickness of no less than 4" and all driveways shall be installed over an adequately compacted gravel base.

f. **Garage.** No garage doors shall be allowed to face on the front of any street. The external construction and color scheme of any garage shall match the construction and color scheme of the residence located on the same Sublot. All garages shall have a concrete floor and have a roof covering matching that of the Residence on the same Sublot.

g. **Roof Pitch.** The slope or pitch of the roof of any Improvement shall not be less than nine inches (9") of uniform vertical decline over any twelve inch (12") interval in the horizontal direction, unless approved by Committee.

h. **Gutters and Downspouts.** Rain gutters shall be attached to the lower edge of all roofs, where appropriate. Such rain gutters shall be connected to appropriate downspouts.

i. **Siding.** All materials used for exterior siding shall be subject to the approval of the Architectural Review Committee with regard to size, color, method of application, etc.

j. **Foundation materials.** Any and all areas of exposed foundation must be covered or veneered with decorative brick or stone to grade.

k. **Utilities.** All utilities, including but not limited to sewers, natural gas lines, water lines,

electrical lines, telephone lines, cable television, etc., shall be installed underground.

1. Fences. The size, materials and location of any and all fences must be approved by the Architectural Review Committee.

m. Signs. No advertising sign or billboard or other advertising device shall be built, placed or permitted or suffered to, remain on any Sublot subsequent to the completion of construction of a Residence.

n. Pets, Livestock, etc. No livestock of any kind shall be permitted on any Sublot. Pets of a usual and customary nature maybe kept on any Sublot provided that the same are not permitted to run at large and enter upon adjacent Sublots or otherwise be permitted to become offensive to the occupants of other Sublots.

o. Satellite Dishes. No satellite dish, antenna or other large exterior communications device shall be permitted on any Sublot without first obtaining approval from the Architectural Review Committee.

p. Maintenance and Repair. Each Owner shall be responsible to make all repairs and replacements necessary for the purpose of keeping and maintaining such owner's Residence and Sublot in a clean and safe condition, in good order and repair, attractive looking and neat, and in accordance with all applicable building, health, and fire codes, rules and regulations. The storm water detention basins, retention basins and all drainage swales, including rear yard and side yard swales, located on individual Sublots shall be maintained in working order by the owner of each respective Sublot. The cost of maintenance shall be the sole responsibility of the owner of each such Sublot. Maintenance shall include maintaining a vegetative cover to minimize soil erosion, keeping the pipe and earthen spillway free of debris, protecting the outlets from erosion, and keeping the dam and earthen spillway free of trees. The storm water detention basins, retention basins and swales shall not be removed or modified without the prior written consent of the Geauga Soil and Water Conservation District. The owners of the respective Sublots on which the storm water detention basins, retention basins and swales are located shall permit access to the storm water detention basins, retention basins and swales at reasonable times for regular inspection by the Geauga Soil and Water Conservation District or its authorized representative to ensure that the basins and swales are maintained in proper working condition.

q. Vehicles. No boat, trailer, airplane, junk car, unlicensed vehicle or recreational vehicle shall be parked on any part of a Sublot, except that a boat, truck, trailer or recreational vehicle may be parked on the driveway for the limited purpose of loading or unloading the same, and a boat, truck, trailer, unlicensed vehicle and recreational vehicle may be parked inside the garage of any Residence.

r. Nuisance. No obnoxious or offensive activities shall be carried on or maintained on any portion of any Sublot (including the Easement Areas), nor shall anything be done thereon which maybe or become a nuisance or annoyance to the occupants of other residences. No tent, trailer, shack, Barn

or any out-building, nor any form of living quarters of a temporary nature shall be placed or permitted to remain on any Sublot, except as specifically provided herein. No clothes line or clothes pole or other device or mechanism for the hanging of clothes shall be maintained on any Sublot, unless the same is screened from street view and from the view of persons on neighboring Sublots.

6.3 -- Environmental Restrictions

a. **Wetlands.** All Sublot owners are hereby notified that if a jurisdictional wetland area exists on their Sublot, a permit is required, regardless of the size of the area, if you intend to or ever do disturb any jurisdictional wetland in any way. These jurisdictional wetlands exist on Sublot Nos. 15, 16, 19, and 20, and on portions of the Common Areas. Permits can be obtained from the United States Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York, 14207-3199. The local number for the Corps of Engineers is (216) 437-5840.

b. **Storm Water Discharge.** Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with construction activity to a water body(ies) of the United States without a National Pollutant Discharge Elimination System (NPDES) permit. The development of Phase II of the Hawksmoor Subdivision is covered by Ohio EPA General Storm Water NPDES Permit(s) For Construction. The Declarant is required to inform the purchaser of any Sublot of the purchaser's obligation to file an Individual Lot Notice of Intent (Individual Lot NOI), and advise that the purchaser is required to abide by the terms and conditions of the NPDES Permit. Each purchaser/owner of the individual Sublots is required to submit an Individual Lot Notice of Intent for coverage under Ohio EPA Storm Water Construction General Permit. The Individual Lot NOI must be sent to the following address:

Ohio Environmental Protection Agency
General Permit Program
P.O. Box 1049
Columbus, Ohio 43266-0149

Each purchaser/owner of the individual Sublots is hereby notified of the foregoing requirements and by purchase of the individual Sublots agrees to comply with all of the foregoing requirements and to indemnify and hold Bainbridge Partners, Ltd. absolutely harmless from any loss, claim or liability in any manner connected with the Individual Lot NOI and/or purchaser's (or purchaser's contractor's) failure to comply with the applicable regulations now in effect or as hereafter modified.

6.4 -- Storm Water Retention Basin

There is an existing storm water retention located on and/or between Sublots 8 and 9. The owners of these sublots shall not cause or permit the flow of water through this storm water retention basin to become obstructed or impeded. The Association shall be responsible for all necessary maintenance, repairs and/or improvements to the storm water retention basin, including, without limitation, mowing, periodic removal of damaging vegetation, debris, and excess sediment

and such other general maintenance as is reasonably necessary to allow for the unobstructed flow of water through the storm water retention basin. The Association shall have the right to enter upon all lands reasonably necessary to perform any reasonable or necessary inspections, maintenance, repairs or improvements to the storm water retention basin. The Geauga Soil and Water Conservation District shall have the right to inspect the storm water retention basin at all reasonable times and the Geauga Soil and Water Conservation District shall have the right to enter upon all lands reasonably necessary to complete any such inspections. The storm water retention basin shall not be altered in any manner without the prior written consent of the Geauga Soil and Water Conservation District. Notwithstanding any provision to the contrary set forth elsewhere in this Declaration, the terms and provisions of this Section 6.4 shall remain in full force and effect and shall not be amended or terminated without the written consent of the Geauga Soil and Water Conservation District.

SECTION 7 -- ASSOCIATION

7.1 -- Formation and Purpose

The Association is a nonprofit corporation formed pursuant to the laws of the State of Ohio. Its purpose is to fulfill all of the duties, obligations and responsibilities of the Association pursuant to the terms and conditions contained in the Declaration.

7.2 -- Association Documents

The Association shall be governed and controlled by the Articles of Incorporation, the Bylaws, the terms and conditions contained in this Declaration, all amendments to any of the foregoing, and any and all Rules and Regulations adopted by the Association pursuant to any of the foregoing documents.

7.3 -- Membership in Association

Each and every owner of a Sublot shall be a Member of the Association. The Members shall have the sole and exclusive right to vote for members of the Board of Trustees. Where the Owner of a Sublot consists of more than one (1) Member, the vote of each Member shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Members constituting the particular Owner of said Sublot. The Members shall have such other rights and privileges as are set forth in the Documents.

7.4 -- Board of Trustees

The Board of Trustees shall have the sole and absolute authority for the purpose of governing and controlling the day-to-day business and affairs of the Association and for doing and performing any and all acts necessary thereto, provided however, that the Board of Trustees shall have the right to elect officers of the Association (as provided in the Articles and the Bylaws) and delegate the

obligation to perform any of its duties to those officers, except where the Documents specifically provide that such performance is a nondelegable obligation. The Board of Trustees shall have sole, exclusive and nondelegable power and authority to do the following:

- a. Borrow. The Board of Trustees shall have the power to borrow money from time to time for the purpose of maintaining and/or improving the Easement Areas and Common Areas. Any such loans shall be on such terms and conditions and evidenced by such documents as the Board of Trustees shall deem reasonable and appropriate.
- b. Levy Assessments. The Board of Trustees shall have the right to levy the Assessments referred to in Section 8 below, and further, to treat any and all expenditures necessary for the enhancement, improvement or maintenance of the Easement Areas and Common Areas as Assessments.
- c. Grant Easements. The Board of Trustees shall have the right to grant such easements and/or rights-of-way for the purpose of constructing any Improvements upon the Easement Areas or Common Areas or for the purpose of constructing, extending, installing or maintaining any utility services or facilities over, on, or under the Easement Areas or Common Areas.
- d. Other Powers. The Board of Trustees shall have the further right and power to do and perform any and all acts and things which maybe necessary and proper for the enhancement, management, preservation and protection of the Association and the Subdivision.

7.5 -- Voting

Each and every owner of each and every Sublot shall be entitled to one (1) vote, except where the Owner of a Sublot is one of the Developers, in which case the owner shall be entitled to four (4) votes for each and every Sublot owned by the Developer. Except where the Documents otherwise specifically provide, all decisions concerning the business and affairs of the Association and all issues brought before it shall be decided on the basis of any affirmative vote by a majority of the Owners present at a meeting held for such purpose.

SECTION 8 -- ASSESSMENTS

8.1 -- Insurance

- a. Right to Insure. The Association shall have the right to purchase such policies of insurance for

the purpose of protecting the Association against such risks and liabilities as the Board of Trustees shall deem necessary. All such insurance contracts shall be purchased from such insurance companies insuring such risks and liabilities and containing such limits of coverage and other terms and conditions as the Board of Trustees shall deem reasonable and appropriate.

b. **Assessment of Costs.** The right of the Association to purchase insurance policies as referred to in this Section 8.1 shall be expressly conditioned upon the Association having sufficient funds with which to pay any and all charges, costs, expenses and fees which may be incurred in connection therewith (hereinafter collectively referred to as the "Insurance Costs"). The Association shall have the right to declare any and all Insurance Costs to be an Assessment, which Assessment shall be levied equally upon each and every Sublot. The Association shall also have the right to make a good faith estimate as to the total annual Insurance Costs which might reasonably be expected to be incurred by the Association and the same shall, if the Association so elects, become an Assessment and charged equally to each Sublot on a periodic basis. Further, should the Association determine that it expects to incur unusually large Insurance Costs, the Association shall have the right to adjust the amount of the Assessment so as to collect a sufficient amount of funds with which to pay the same.

8.2 -- Maintenance

a. **Easement Areas and Common Areas.** It shall be the sole and exclusive duty, obligation and responsibility of the association to cause the Easement Areas and Common Areas and any Improvements located therein or thereon to be maintained in a clean, safe, neat, healthy and workable condition and good state of repair and promptly cause to be made all necessary repairs and replacements, both structural and nonstructural, ordinary as well as extraordinary, subject only to the provisions of the Documents. The Association, acting by and through its Board of Trustees, shall have the right to contract with others for the performance of any and all necessary maintenance and service functions which are the responsibility of the Association pursuant to the Documents. All such contacts shall be with such parties, for such amounts and upon such terms and conditions as the Board of Trustees shall deem reasonable and appropriate.

b. **Assessment of Costs.** The obligation of the Association to perform the maintenance functions referred to in this Section 8.2 shall be expressly conditioned upon the Association having sufficient funds with which to pay any and all charges, costs, expenses, fees, fines, levies and penalties which may be incurred in connection therewith (hereinafter collectively referred to as the "Maintenance Charges"). The Association shall have the right to declare any and all Maintenance Charges to be an Assessment, which Assessment levied equally upon each and every Sublot. The Association shall also have the right to make a good faith estimate as to the total annual Maintenance Charges which might reasonably be expected to be incurred by the Association and the same shall, if the Association so elects, become an Assessment and charged equally to each Sublot on a periodic bases. Further, should the Association determine that it expects to incur unusually large Maintenance charges, the Association shall have the right to adjust the amount of the Assessment so as to collect a sufficient amount of funds with which to pay the same.

8.3 -- Taxes

The Association shall have the obligation to pay any and all forms of taxes, including any fines, interest or penalties due thereon, levied or assessed against the Association (hereinafter collectively referred to as the "Taxes"). The obligation of the Association to pay the Taxes as aforesaid shall be expressly conditioned upon the Association having sufficient funds with which to pay the Taxes. The Association shall have the right to declare any and all Taxes to be an Assessment, which Assessment shall be levied equally upon each and every Sublot. The Association shall also have the right to make a good faith estimate as to the total annual Taxes which might reasonably be expected to be incurred by the Association and the same shall, if the Association so elects, become an Assessment and charged equally to each Sublot on a periodic basis. Further, should the Association determine that it expects to incur unusually large Taxes, the Association shall have the right to adjust the amount of the Assessment so as to collect a sufficient amount of funds with which to pay the same.

8.4 -- Utilities

a. Easement Areas and Common Areas. The Association shall cause any and all utilities consumed for the use or enhancement of the Easement Areas and Common Areas to be maintained in the name of the Association. The Association shall timely pay any and all charges, costs, expenses, fees, fines, levies and penalties which may be incurred in connection with said utilities (hereinafter collectively referred to as the "Utilities Charges"). The obligation of the Association to pay such Utilities Charges as aforesaid shall be expressly conditioned upon the Association having sufficient funds with which to pay such charges, and The Association shall have the right to declare any part of or all Utilities Charges to be an Assessment, which Assessment shall be levied equally upon each and every Sublot. The Association also shall have the right to make a good faith estimate as to the total annual Utilities Charges which might reasonably be expected to be incurred by the Association and the same, if the Association so elects, shall become an Assessment and be charged equally to each Sublot on a periodic basis. Further, should the Association determine that it expects to incur unusually large Utilities Charges, the Association shall have the right to adjust the amount of the Assessment so as to collect a sufficient amount of funds with which to pay the same.

b. Phase I Water System. Pursuant to the Declaration of Covenants, Easements, and Restrictions recorded at Vol. 954, Page 822, Geauga County Recorder's Office, the Association has the obligation and responsibility to operate and maintain a water system installed for the benefit of the Sublots in Phase I, and any and all charges, costs, expenses, fees, fines, levies and penalties which may be incurred in connection with such operation and maintenance (therein collectively referred to as "Water Charges") are to be paid by the Association, provided, however, that the Association has the the right to declare any part of or all Water Charges to be an Assessment, which Assessment is to be levied upon the owners of the Sublots. Notwithstanding any provision to the contrary set forth in the Declaration of Covenants, Easements, and Restrictions recorded at Vol. 954, Page 822, Geauga County Recorder's Office, no Sublot or owner of any Sublot in Phase II shall be responsible or liable in any manner for such Water Charges, and any Assessment or portion of any Assessment

for such Water Charges shall only be levied against the owners of the Sublots in Phase I.

c. Phase II Water Wells. Each owner of a Sublot in Phase II shall be responsible for the drilling, installation, maintenance, repair, replacement and inspection of a water well on such owner's Sublot at the owner's sole cost and expense. Such drilling, installation, maintenance, repair, replacement and inspection shall be performed in accordance with all applicable governmental rules and regulations including, without limitation, the Geauga County Health Department.

8.5 -- Payment of Assessments

a. Sublot Owners' Obligation. Except as otherwise specifically provided in the Documents, Assessments shall be levied equally upon each and every Sublot and the amount so levied against each Sublot shall become the financial obligation of the Owner of said Sublot. Should the owner of any specific Sublot include more than one (1) person or party, all such persons or parties shall be jointly and severally liable for the payment of said Assessment. Each and every Owner of a Sublot hereby covenant and agrees, by the act of accepting an instrument conveying any ownership interest in the Sublot, to pay to the Association on or before the due date for payment thereof all Assessments in accordance with the terms and conditions of the Declaration, regardless of whether or not this obligation shall be specifically expressed in any such instrument of conveyance.

b. Notification of Assessment Amount. The Association shall have the obligation to provide the Owner of each and every Sublot with written notice as to the amount of the Assessment in effect with respect to said Sublot at the time the Owner notifies the Association that such owner has acquired an ownership interest in said Sublot. Said written notice shall set forth the amount of the periodic installment of Assessments and the dates on which the same are due and payable. Assessments shall be paid no more frequently than monthly and no less frequently than annually. Thereafter, the Association shall be obligated to provide written notice of the periodic installment of Assessments only when the amount or payment date thereof changes. All such notices shall be effective as of the date set forth therein and may be delivered to the Owner personally, sent to the address of the Sublot via ordinary United States mail or conspicuously posted at the Sublot. The Owner shall have the duty and obligation to pay the full amount of the periodic installment of Assessments on each and every due date of said installment as set forth in the most recent notice given by the Association as provided in this Section 8.5 (b).

c. Default and Remedies. An owner shall be deemed to be in default with respect to the payment of Assessments if the full amount of any periodic installment thereof shall not be paid within one (1) month after the same is due and payable. The Association, acting by and through its Board of Trustees, shall have the right to employ and utilize any and all remedies available to it, at law or in equity, for the purpose of enforcing the payment of said Assessments. The delinquent Owner shall reimburse the Association, immediately upon demand, for any and all charges, costs, damages, expenses and fees (including the Association's legal fees, if any) incurred by the Association in attempting to enforce payment of the Assessments (hereinafter collectively referred to as the "Collection Costs"). The amount of any installments of Assessments in default, together with

Collection Costs, shall bear Interest from the date when due up to the date of payment, computed on a daily basis at the maximum interest rate permitted by law. Should the full amount of any periodic installment of Assessments not be paid within two (2) months after the same is due and payable or the full amount of any Collection Costs not be paid within one (1) month after the same is due and payable, the Association, acting by and through its Board of Trustees, shall have the right to declare all installments of Assessments otherwise due during the next twelve (12) months immediately due and payable, and further, have the right to file a lien against the Sublot as hereinafter provided. Notification of such declaration shall be given in accordance with any of the methods prescribed in Section 8.5 (b) above for the giving of notification as to changes in the amount of the periodic installment of Assessments.

d. Lien. Should the Board of Trustees elect to file a lien against a Sublot as set forth in Section 8.5 (c) above, such lien shall be perfected by the preparation of a certificate of lien and the filing thereof with the Geauga County Recorder for recording. The certificate of lien shall be in such form as is prescribed bylaw and shall contain the name of the Owner; a legal description of the Sublot; the entire amount claimed to be due and owing, including the Collection Costs and interest thereon; and a statement referring to the provisions of this Declaration authorizing the filing thereof. Each and every owner of each and every Sublot hereby specifically acknowledges and agrees by acceptance of an instrument of conveyance of an ownership interest in a Sublot that the Association shall have the authority, power and right to file such lien and grants the Association the right to foreclose the lien, regardless of whether or not such right is specifically granted in any instrument of conveyance given to such Owner. A lien filed pursuant to this Section 8.5 (d) shall be inferior and subordinate to statutory liens for real estate taxes and assessments, and such agreements, conditions, covenants, easements, liens, mortgages, reservations, restrictions and other matters of record filed prior in time to it. The lien shall continue in full force and effect until such time as the entire amount claimed therein has been paid and satisfied, whereupon the Association shall promptly cause the same to be released and discharged of record.

SECTION 9 -- MISCELLANEOUS

9.1 -- Amendment

The terms and conditions set forth in this Declaration shall not be amended or repealed except by a written instrument signed by all the then Owners of each and every Sublot, provided however, that the Declarant shall have the right to amend this Declaration unilaterally during the one (1) year period immediately following its recording.

9.2 -- Enforcement

The Declarant and/or any Owner(s) shall have the right to compel the enforcement of the terms and conditions contained in this Declaration by any proceeding at law or in equity against any person or persons violating or attempting to violate any term or condition herein contained. Such enforcement may seek to restrain any such violation and/or may seek to recover damages as a

consequence thereof. The failure of the Association (or any other party permitted by this Declaration to enforce the terms and conditions hereof) shall in no manner or event be deemed to constitute a waiver of the right to do so in the event of a continuing violation or successive occurrences of a violation or violations.

9.3 -- Binding Effect

All of the terms and conditions contained in this Declaration are and shall be deemed to be covenants running with the land and shall be forever binding upon each and every subsequent transferee of any legal or equitable interest in the Sublots to the full extent as set forth herein. Each transferee accepting any interest in the subdivision, or any part or portion thereof, whether freehold, leasehold or otherwise (whether oral or written) specifically acquires such interest subject to the terms and conditions set forth in this Declaration whether or not such instrument of conveyance contained those terms and conditions or refers to this Declaration. Every Owner hereby covenants for his or herself and his or her heirs, administrators, executors, personal representatives, successors and assigns, to observe, perform, and be bound by all of the terms and conditions set forth in this Declaration and to incorporate the same by reference to this Declaration and its volume and page of recording in any instrument or document conveying any interest in the Subdivision or any part or portion thereof.

9.4 -- Governing Law and Severability

This Declaration is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations of the State of Ohio. If any term or provision of this Declaration or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, but rather shall be forced to the fullest extent permitted by law.

9.5 -- Construction of Terms

The section headings contained herein are for convenience only and do not construe, define or limit the contents of such sections. The use herein of this singular number shall be deemed to mean the plural and vice versa, And the masculine gender shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this Declaration so requires.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Covenants, Easements and Restrictions for Hawksmoor Subdivision, Phase II, Bainbridge Township, Ohio, effective as of the month, day and year first above written.

THE HAWKSMOOR ASSOCIATION

BY Christopher Muzzin
CHRISTOPHER MUZZIN, VICE PRESIDENT

BY David Kampinski
DAVID KAMPINSKI, SECRETARY

BAINBRIDGE PARTNERS, LTD.

BY David Kampinski
DAVID KAMPINSKI, MEMBER

BY Christopher Muzzin
CHRISTOPHER MUZZIN, MEMBER

State of Ohio)
County of Cuyahoga) ss.

EXECUTED BEFORE ME, a Notary Public, in and for said County and State, by the above-named THE HAWKSMOOR ASSOCIATION by CHRISTOPHER MUZZIN, its Vice President, and DAVID KAMPINSKI, its Secretary, who, under penalty of perjury in violation of Section 2921.11 of the Revised Code, represented to me to be said persons and acknowledged that they did sign the foregoing instrument and that the same is their free act and deed personally and as such officers.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my official seal at South Euclid, OH this 5 day of April, 2003.

State of Ohio)
County of Cuyahoga) ss.

William D. Warner
NOTARY PUBLIC

EXECUTED BEFORE ME, a Notary Public, in and for said County and State, by the above-named BAINBRIDGE PARTNERS, LTD. by CHRISTOPHER MUZZIN, its Member, and DAVID KAMPINSKI, its Member, who, under penalty of perjury in violation of Section 2921.11 of the Revised Code, represented to me to be said persons and acknowledged that they did sign the foregoing instrument and that the same is their free act and deed personally and as such members.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my official seal at South Euclid, OH this 5 day of April, 2003.

William D. Warner
NOTARY PUBLIC

William D. Warner
Notary Public, State of Ohio
Commission Expires April 25, 2006
(Recorded in Cuyahoga County)

LEGAL DESCRIPTION

OF

HAWKSMOOR SUBDIVISION PHASE II

Situated in the Township of Bainbridge, County of Geauga and State of Ohio and known as being part of Lots Nos. One (1), Two (2), and Twenty-seven (27) and the whole of Lot No. Twenty-eight (28) in Tract No. Two (2) in said Township and constituting one entire tract and bounded and described as follows: Beginning in the West line of said Township and in the center of the highway; thence South along the West line of said Township to the South line of Lot No. Twenty-eight (28) which is also the South line of the Tract; thence East along the South line of Lots Nos. twenty-eight (28) and Twenty-seven (27) to the West line of land in Lot No. 27 now owned by M.L. Miner; thence North along the west line of land in Lot No. Twenty-seven (27) now owned by M.L. Miner, to the center of the said road; thence Westerly along the center of said highway to the place of beginning, being the same more or less; but subject to all legal highways.

EXCEPTING THEREFROM the parcel of land conveyed to Hawksmoor Development Inc. by deed dated September 1, 1993 and recorded in Volume 957, Page 998 of Geauga County Records,

EXHIBIT "A"