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PORTAGE CO. RECORDER

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AMENDMENT NO. 1 TO DECLARATION OF COVENANTS
AND RESTRICTIONS FOR
HAWTHORN OF AURORA PLANNED UNIT DEVELOPMENT

AURORA, OHIO

AMENDMENT NO. 1 TO
DECLARATION OF COVENANTS AND RESTRICTIONS
APPLICABLE TO ALL SINGLE FAMILY AND CLUSTER SITES

WHEREAS, on or around June 14, 1990, Hawthorn of Aurora Limited Partnership (hereinafter "Developer") and Hawthorn of Aurora Homeowners Association, Inc. (hereinafter referred to as the "Association") filed for record the Declaration of Covenants and Restrictions Applicable to All Single Family Lots and Cluster Sites (hereinafter the "Declaration") with Drawings incorporated by reference therein, with the Portage County Recorder being recorded in Volume 1096, Pages 1031 to 1050 as Instrument No. 87709 of the Portage County Records; and

WHEREAS, the Declaration originally declared the property consisting of a Fifty-Two and Nine Tenths (52.9) acre parcel known and identified on Exhibit "A" attached hereto as Phase I and an Eighty-Six and Six Tenths (86.6) acre parcel known and identified as Phase II on Exhibit "B" attached hereto (hereinafter collectively referred to as the "Excluded Land"); and

WHEREAS, Developer desires to transfer the Excluded Land and other undeveloped land to the Trust for Public Land or other such organization (hereinafter the "Trust") who intends to maintain, or cause the Excluded Land or other such undeveloped land to be maintained in its present and undeveloped state; and

WHEREAS, in order to comply with Chapter 1175 of the Codified Ordinances of the City of Aurora, entitled Comprehensive Storm Water Management, the Association is required to enter into an Inspection & Maintenance Agreement with the City of Aurora; and

WHEREAS, Article XIII, Section 15 of the Declaration prohibited the use or installation of any satellite device on a Living Unit; and

WHEREAS, under Article IX, Section 6 of the Declaration, said Declaration may be modified and amended through an affirmative vote of members of the Association entitled to exercise Two-Thirds (2/3) of the voting power of the Association; and

WHEREAS, on or around the 16 day of July, 2009, the Association and the Developer provided written notice of a meeting of the Association designed to consider and discuss an Amendment to the Declaration disclaiming and un-declaring the Excluded Land, permitting the transfer of other undeveloped land, and amending the satellite restriction; and

WHEREAS, on or around the 18th day of August, 2009, the Developer and the Association conducted a meeting discussing the proposed amendment to the Declaration and pursuant to Article IX, Section 6 of the Declaration conducted a vote of the Members; and

WHEREAS, an affirmative vote of Two-Thirds (2/3) of the Members of the Association have approved the transfer of the Excluded Land and have approved and ratified the proposal to undeclare the Excluded Land; and

WHEREAS, the Developer and the Association desire to amend the Declaration to memorialize the affirmative vote of the Association to Amend the Declaration; and

NOW, THEREFORE, pursuant to the authority of Article IX, Section 6 of the Declaration Developer and the Association hereby declare that the Declaration be and hereby is amended as follows:

1. **Exclusion of Property from Declaration.** Section 1 of the Declaration and Exhibit "A" attached thereto sets forth the real property subject to the Declaration. The Developer and the Association hereby agree and stipulate that the Excluded Land shall be un-declared and therefore not be subject to the Declaration nor any rights, privileges or duties of the Declaration. The owners of the Excluded Land and its heirs, successors, assigns, and invitees shall not be charged any Association fees and shall not have any privileges associated with membership of the Association, including but not limited to the right to enter and/or use the Common Properties and Facilities as defined by Section 2 of the Declaration.

2. **Unilateral Right to Amend Declaration to Add Additional Property.** Developer retains the right (in the exercise of its sole discretion) to add additional property the "Properties" previously identified in and by Article II, Section 1 of the Declaration, as amended, thereby changing the percentage interests of the owners of the Lots or Living Units, at any time. Such additions, if made, shall be accomplished by the Developer executing and filing for record an amendment to the Declaration that contains information, drawings, and plans with respect to the Additional Property and improvements. The amendment shall allocate and reallocate undivided interests in the Common Properties appertaining to each Lot and/or Living Unit of the Property. The execution and filing for record of an amendment submitting Additional Property to the provisions of the Declaration is an effective amendment of this Declaration without a vote of the Owners, the Association, mortgage holders, or any other entity.

3. **Unilateral Right to Amend Declaration to Remove and Transfer Undeveloped Property.** Developer retains the right (in the exercise of its sole discretion) to remove, transfer and undeclare any and all undeveloped portions of the "Properties" previously identified in and by Article II, Section 1 of the Declaration, and amended. Such removal if made, shall be accomplished by the Developer executing and filing for record an amendment to the Declaration that identifies those portions of the Property which have been undeclared and which are no longer subject to the resections and covenants set forth in the Declaration. The execution and filing for record of an amendment removing, transferring or undeclaring property is an effective amendment of the Declaration without a vote of the Owners, the Association, mortgage holders, or any other entity. The owners of any land removed from the Declaration and its heirs, successors, assigns, and invitees shall not be charged any Association fees and shall not have any privileges associated with membership of the Association, including but not limited to the right to enter and/or use the Common Properties and Facilities as defined by Section 2 of the Declaration.

4. **Voting Rights of the Developer.** Developer shall retain the voting rights for all undeveloped land, parcels or sublots until any such property is removed, transferred or undeclared pursuant to Section 3 of this Amendment.

5. Inspection and Maintenance Plans for Storm Water Management. ARTICLE IX shall include a new Section 9 titled "Storm Water Management Practices". Such section shall state as follows:

The Association is hereby authorized to enter into an Inspection & Maintenance Agreement for Storm Water Management Practices. Such agreement shall comply with the Codified Ordinances of the City of Aurora pertaining to storm water management practices; as such ordinance may be amended from time to time. The Association is authorized to enter into, amend, or replace an Inspection & Maintenance Agreement without further vote of the members of the Association. Any fee, cost or expense associated with the operation, modification, maintenance, repair, or replacement of any facility or capital improvements required to be constructed shall be allocated to each Phase of the Development that derives a direct or indirect benefit from such improvement. The Board of Trustees of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit as provided in ARTICLE XI.

6. Removal of Satellite-Dish Restriction. Article XIII, Section 15 of the Declaration prohibiting the use of satellite dishes on any subplot or Living Unit is hereby amended to provide as follows:

To the extent required by the Telecommunications Act of 1996, a satellite dish, one meter or less in diameter, may be attached to a subplot or Living Unit, so long as the installation conforms in all respects to the design, construction, installation, location, maintenance, and any other reasonable criteria established by the Association. The criteria shall not cause the subplot or Living Unit Owner to incur unreasonable installation, maintenance or usage costs, nor shall the criteria cause unreasonable interference with the broadcast signal.

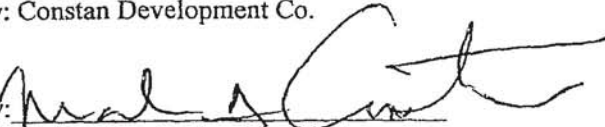
7. Any and all provisions of the Declaration not directly addressed or modified herein shall remain in full force and effect.

DEVELOPER:

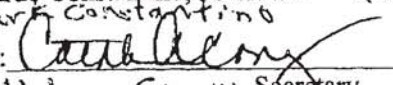
Hawthorn of Aurora Limited Partnership

By: Constan Development Co.

By:


Ricardo Constantino, President
Mark Constantino

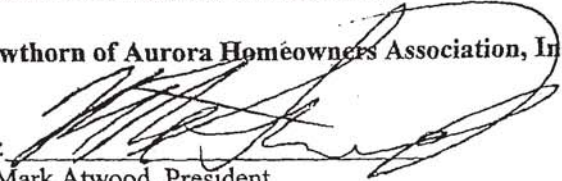
and by:


Cathleen Conway, Secretary

AUTHORIZED AGENT

HOME OWNERS ASSOCIATION:

Hawthorn of Aurora Homeowners Association, Inc.

By: 
Mark Atwood, President

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

Authorized Agent, Mark

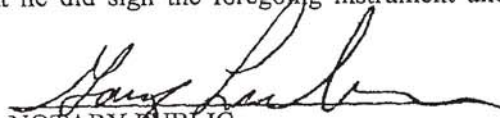
Before me, a Notary Public in and for said County and State, personally appeared Constan Development Co., through its ~~President Rinaldo Constantino~~, as the managing partner of Hawthorn of Aurora Limited Partnership, on this 18 day of August, 2009, and acknowledged that he did sign the foregoing instrument and that same is his free act and deed.


NOTARY PUBLIC

GARY LIEBERMAN, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R. C.

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

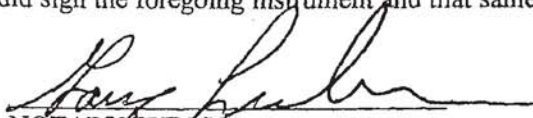
Before me, a Notary Public in and for said County and State, personally appeared Cathleen Conroy, as Secretary of Hawthorn of Aurora Limited Partnership, on this 18 day of August, 2009, and acknowledged that he did sign the foregoing instrument and that same is his free act and deed.


NOTARY PUBLIC

GARY LIEBERMAN, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R. C.

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

Before me, a Notary Public in and for said County and State, personally appeared Mark Atwood, as President of the Hawthorn of Aurora Homeowners Association, on this 18 day of August, 2009, and acknowledged that he did sign the foregoing instrument and that same is his free act and deed.


NOTARY PUBLIC

GARY LIEBERMAN, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R. C.

This Instrument Prepared By:
Gary L. Lieberman, Esq.
30195 Chagrin Blvd., Suite #300
Pepper Pike, Ohio 44124
(216) 292-7776
LawyerLieberman@aol.com

Exhibit A
Consolidation of
Hawthorn of Aurora Lot Split
Volume 1048, Page 5 P.C.D.R. Parcel B
and Sublot 28 in Aurora Hill Colony No. 1

Situated in the City of Aurora, County of Portage and State of Ohio an being part of Original Aurora Township Lot 3 and bounded and described as follows:

Beginning at the intersection of the westerly line of said Original Lot 3 and the northerly line of Aurora Hill Colony No. 1 as recorded by Plat Volume 16, Page 20 Portage County Map Records from which point a 1 1/4" iron pipe found bears South 01 degree 14 minutes 09 seconds West, 0.14 feet;

Thence North 01 degree 14 minutes 09 seconds East along the westerly line of said Original Lot 3, 1840.74 feet to a 5/8 inch iron pin with cap set therein;

Thence South 65 degrees 03 minutes 14 seconds East, 194.76 feet to a 5/8 inch iron pin with cap set;

Thence North 00 degrees 19 minutes 47 seconds East, 200.82 feet passing over a 5/8 inch iron pin with cap set, a total distance of 256.52 feet to an angle point in the southerly line of Parcel "L1" as recorded by Plat Volume 2000, Page 21 Portage County Map Records;

Thence easterly, southerly and easterly along the southerly line of said Parcel "L1" the following courses:

North 59 degrees 34 minutes 47 seconds East, 273.40 feet;

South 69 degrees 06 minutes 32 seconds East, 484.47 feet;

South 42 degrees 12 minutes 39 seconds East, 597.49 feet;

South 00 degrees 36 minutes 35 seconds East, 103.40 feet;

South 55 degrees 43 minutes 00 seconds West, 991.13 feet;

South 06 degrees 04 minutes 37 seconds East, 640.03 feet;

North 72 degrees 56 minutes 28 seconds East, 1765.22 feet;

North 37 degrees 28 minutes 44 seconds East, 587.46 feet;

Thence South 56 degrees 43 minutes 54 seconds East, 264.78 feet to an angle point in the northerly line of said Aurora Hill Colony No. 1 from which point a 1 inch iron pipe found bears South 02 degrees 09 minutes 28 seconds East, 0.74 feet;

Thence westerly along the northerly line of said Aurora Hill Colony No. 1 the following courses:

South 39 degrees 27 minutes 44 seconds West, 700.00 feet to an angle point therein from which point a 1 inch iron pipe found bears North 39 degrees 27 minutes 44 seconds East, 0.22 feet and South 50 degrees 32 minutes 16 seconds East, 0.45 feet;

South 75 degrees 01 minutes 44 seconds West, 1000.00 feet to a 1/2 inch iron pin found at an angle point therein;

South 54 degrees 45 minutes 18 seconds West, 160.10 feet to a 5/8 inch iron pin with cap set at the Northeast corner of said Sublot 28;

Thence South 01 degrees 56 minutes 01 seconds West along the easterly line of said Sublot 28, 585.70 feet to a 5/8 inch iron pin found at the Southeast corner of said Sublot 28 and also being in the northerly line of Aurora Hill Drive, 60.00 feet wide;

Thence North 85 degrees 21 minutes 36 seconds West along the northerly line of said Aurora Hill Drive, 125.02 feet to a 5/8 inch iron pin with cap set at the Southwest corner of said Sublot 28;

Thence North 02 degree 19 minutes 25 seconds East along the westerly line of said Sublot 28, 487.61 feet to a 5/8 inch iron pin with cap set at the Northwest corner of said Sublot 28;

Thence westerly along the northerly line of said Aurora Hill Colony No. 1 the following courses:

South 54 degrees 45 minutes 18 seconds West, 231.07 feet to a 1/2 inch iron pipe found at an angle point therein;

Thence North 87 degrees 59 minutes 10 seconds West, 969.47 feet to the place of beginning of the parcel herein described and containing 2,307,083 square feet or 52.9633 acres of land according to a survey by John M. Zaranec, Jr. P.S. 7126 for Zaranec Surveying Company dated March 30, 2009.

Bearings are based on said Plat Volume 2000, Page 21 Portage County Map Records.

Exhibit B
Hawthorn of Aurora Lot Split
Volume 1048, Page 5 P.C.D.R. Parcel C

Situated in the City of Aurora, County of Portage and State of Ohio an being part of Original Aurora Township Lots 2 and 3 and bounded and described as follows:

Beginning at the intersection of the easterly line of said Original Lot 3 and the northerly line of a parcel of land conveyed to David T. and Judith A. Horvath by Document 200817164 Official Records Portage County from which point a 5/8 inch iron pin set bears North 87 degrees 40 minutes 26 seconds West, 30.00 feet;

Thence North 87 degrees 40 minutes 26 seconds West along the northerly line of said parcel of land conveyed to David T. and Judith A. Horvath, 1162.63 feet to a 5/8 inch iron pin with cap set at its intersection with the northerly line of Aurora Hill Colony No. 1 as recorded by Plat Volume 16, Page 20 Portage County Map Records;

Thence South 87 degrees 50 minutes 32 seconds West along the northerly line of said Aurora Hill Colony No. 1, 380.79 feet to an angle point therein from which point a 1 inch iron pipe found bears South 02 degrees 09 minutes 28 seconds East, 0.74 feet;

Thence North 56 degrees 43 minutes 54 seconds West, 264.78 feet to an angle point in the easterly line of Parcel "L1" as recorded by Plat Volume 2000, Page 21 Portage County Map Records;

Thence northerly and easterly along said easterly line of Parcel "L1" the following courses:

North 00 degrees 39 minutes 24 seconds East, 341.15 feet;

North 35 degrees 34 minutes 01 seconds West, 567.93 feet;

North 01 degrees 30 minutes 22 seconds East, 594.14 feet;

North 46 degrees 23 minutes 42 seconds West, 481.73 feet;

North 30 degrees 25 minutes 08 seconds East, 873.38 feet;

South 55 degrees 29 minutes 28 seconds East, 553.38 feet;

Thence southerly and easterly along the following courses:

South 00 degrees 06 minutes 02 seconds West, 154.59 feet;

South 58 degrees 29 minutes 41 seconds West, 48.93 feet;

South 09 degrees 45 minutes 02 seconds West, 243.34 feet;

South 19 degrees 28 minutes 29 seconds East, 420.28 feet;

South 66 degrees 16 minutes 01 seconds East, 139.39 feet;

North 42 degrees 58 minutes 46 seconds East, 201.25 feet;

North 30 degrees 13 minutes 33 seconds East, 219.96 feet;

North 34 degrees 00 minutes 40 seconds East, 110.03 feet;

North 31 degrees 26 minutes 25 seconds East, 209.53 feet;

South 58 degrees 46 minutes 58 seconds East, 186.45 feet;

South 75 degrees 25 minutes 41 seconds East, 83.73 feet;

Thence northerly 128.89 feet along the arc of a curve deflecting to the left and being the prolongation southerly of the westerly line of Nancy Drive, 60.00 feet wide, of Hawthorn Subdivision Phase 3 as recorded by Plat Volume 98, Page 61 Portage County Map Records, said curve having a radius of 630.00 feet and a chord which bears North 27 degrees 51 minutes 39 seconds East, 128.66 feet to a 5/8 inch iron pin with cap set in the southerly line of said Hawthorn Subdivision Phase 3;

Thence South 68 degrees 00 minutes 00 seconds East along the southerly line of said Hawthorn Subdivision Phase 3, 357.04 feet to its intersection with the northerly line of said Original Lot 3 from which point a "Alban" iron pin found bears North 68 degrees 00 minutes 00 seconds West, 2.24 feet and North 22 degrees 00 minutes 00 seconds East, 0.09 feet;

Thence South 89 degrees 14 minutes 11 seconds East along the northerly line of said Original Lot 3, 359.52 feet to the Northeast corner of said Original Lot 3 from which point a 5/8 inch iron pin found bears North 02 degrees 03 minutes 02 seconds East, 1.47 feet;

Thence South 02 degrees 03 minutes 02 seconds West along the easterly line of said Original Lot 3, 1940.71 feet to the place of beginning of the parcel herein described.

Excepting therefrom the following described Parcel:

Situated in the City of Aurora, County of Portage and State of Ohio an being part of Original Aurora Township Lot 3 and bounded and described as follows:

Beginning at the Northeast corner of said Original Lot 3 from which point a 5/8 inch iron pin found bears North 02 degrees 03 minutes 02 seconds East, 1.47 feet;

Thence South 02 degrees 03 minutes 02 seconds West along the easterly line of said Original Lot 3, 366.97 feet to a point therein;

Thence North 88 degrees 53 minutes 58 seconds West, 230.00 feet to the principal place of beginning of the parcel herein described and being the Northeast corner of a parcel of land conveyed to City of Aurora by Volume 829, Page 447 Portage County Deed Records from which point a 5/8 inch iron pin found bears South 02 degrees 03 minutes 02 seconds West, 7.01 feet and South 87 degrees 56 minutes 58 seconds East, 2.03 feet;

Thence South 02 degrees 03 minutes 02 seconds West along the easterly line of said parcel of land conveyed to City of Aurora, 800.00 feet to the Southeast corner thereof from which point a 5/8 inch iron pin found bears South 02 degrees 03 minutes 02 seconds West, 6.76 feet and South 87 degrees 56 minutes 58 seconds East, 8.10 feet;

Thence North 88 degrees 53 minutes 58 seconds West along the southerly line of said parcel of land conveyed to City of Aurora, 470.00 feet to the Southwest corner thereof from which point a 5/8 inch iron pin found bears South 02 degrees 03 minutes 02 seconds West, 10.33 feet and South 87 degrees 56 minutes 58 seconds East, 8.26 feet;

Thence North 02 degrees 03 minutes 02 seconds East along the westerly line of said parcel of land conveyed to City of Aurora, 800.00 feet to a 5/8 inch iron pin with cap set at the Northwest corner thereof;

Thence South 88 degrees 53 minutes 58 seconds East along the northerly line of said parcel of land conveyed to City of Aurora, 470.00 feet to the principal place of beginning of the parcel herein described and containing 375,948 square feet or 8.6306 acres of land according to a survey by John M. Zaranec, Jr. P.S. 7126 for Zaranec Surveying Company dated March 30, 2009.

Containing 3,770,723 square feet or 86.5639 acres of land according to a survey by John M. Zaranec, Jr. P.S. 7126 for Zaranec Surveying Company dated March 30, 2009.

Bearings are based on said Plat Volume 2000, Page 21 Portage County Map Records.