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Montgomery County, OH
Willis E. Blackshear County Recorder
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NO TRANSFER
02:54pm JUNE 09, 2016
KARL L. KEITH, COUNTY AUDITOR

FIFTH AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF
EASEMENTS FOR SOMERSET OWNERS ASSOCIATION 8

THIS FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SOMERSET OWNERS ASSOCIATION (this "Fifth Amendment") is made as of this 31st day of May, 2016, by OBERER LAND DEVELOPERS, LTD., an Ohio limited liability company, successor by merger to Somerset Developers, Ltd. ("Developer"), and SOMERSET OWNERS ASSOCIATION, an Ohio non-profit corporation (the "Association"), under the following circumstances:

A. By Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Somerset Owners Association recorded as SP-I-02-073150 of the Records of Montgomery County, Ohio (the "Original Declaration"), as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Somerset Owners Association recorded as SP-I-05-104598 of the Records of Montgomery County, Ohio (the "First Amendment"), as further amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Somerset Owners Association recorded as Instrument Number 2012-00027147 of the Records of Montgomery County, Ohio (the "Second Amendment"), as further amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Somerset Owners Association recorded as Instrument Number 2015-00038826 of the Records of Montgomery County, Ohio (the "Third Amendment"), and as further amended by Fourth Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Somerset Owners Association recorded as Instrument Number 2015-00039214 of the Records of Montgomery County, Ohio (the "Fourth Amendment"; the Original Declaration, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment collectively, the "Declaration"), Developer subjected certain property located in the Washington Township, Montgomery County, Ohio, more particularly described in the Original Declaration, to various easements and restrictions.

11 B. Pursuant to Section 12.2 of the Declaration, during the Development Period, the Declaration may be amended by a recorded instrument executed by Developer and approved by Developer and the Owners representing at least 75% of the total votes of the Association.

C. The Development Period has not yet expired.

D. The Association has submitted this Fifth Amendment to approval by the vote of the Owners, and has obtained the approval of the Owners representing not less than 75% of the total votes of the Association, as required by Section 12.2 of the Declaration. Developer, for itself as Developer and as a Member of the Association, and the Association, on behalf of the Owners, wish to amend the Declaration as set forth in this Fifth Amendment.

NOW, THEREFORE, Developer and the Association hereby declare as follows:

1. Definitions. All terms used in this Fifth Amendment which are defined in the Declaration shall have the same meanings given to them in the Declaration unless a different definition is set forth in this Fifth Amendment.

2. Solar Equipment. The Original Declaration is hereby modified to insert the following paragraph as Section 4.1.26:

“4.1.26 Solar Equipment. No solar heating equipment, panels or devices (collectively, the “Solar Equipment”) are permitted outside of any enclosed structure on any Lot except to the extent that the installation and use of such Solar Equipment is (x) protected by applicable law or (y) otherwise approved pursuant to this Section 4.1.26. To the extent permissible by applicable law, an application for the installation and maintenance of any Solar Equipment on a Lot must be submitted to the Architectural Review Committee for approval prior to installation. The exact design and location of the Solar Equipment shall be determined by the Architectural Review Committee in its sole discretion. Approval will be granted by the Architectural Review Committee only if: (i) the Solar Equipment is designed for minimal visual intrusion when installed (as an illustration, but not as a limitation, is located in a manner which minimizes visibility from the street or any adjacent Lot), and (ii) the Solar Equipment is architecturally harmonious with the existing improvements on the Property.

Except to the extent same is protected by applicable law, an Owner may install Solar Equipment on its Lot only after its receipt of written approval of same by the Architectural Review Committee. Installation shall be performed by the Owner or its duly-licensed contractor (x) in a good and workmanlike manner using new materials, (y) in conformity with the application approved by the Architectural Review Committee (or such modifications thereto required by the Architectural Review Committee as a condition to Owner’s installation and maintenance of the Solar Equipment), and (z) in accordance with all applicable laws, rules, codes, ordinances, regulations and requirements and all terms and conditions set forth in this Declaration.

The Lot Owner shall pay for all costs and expenses to install, repair and maintain the Solar Equipment on Owner’s Lot. In the event that Owner (1) installs any Solar Equipment without the prior written approval of the Architectural Committee (except to the extent same is protected by applicable law), or (2) otherwise violates any terms or conditions set forth in this Section 4.1.26, Developer and the Association shall

each have the right to immediately remove and dispose of the Solar Equipment installed in violation of this Section 4.1.26 and all costs incurred thereby shall be paid by the Owner within thirty (30) days after receipt of an invoice therefor.”

3. Joinder by Association. The Association joins in the execution of this Fifth Amendment for the purpose of verifying that, based on the total number of votes of the Association as established in the Code of Regulations, this Fifth Amendment was approved by Members representing not less than 75% of the total votes of the Association.

4. Ratification. Except as modified hereby, the Declaration is ratified and confirmed and remains in full force and effect. The terms and provisions of this Fifth Amendment shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Developer and the Association have caused this Fifth Amendment to be executed this 31st day of MAY, 2016.

DEVELOPER:

OBERER LAND DEVELOPERS, LTD., an
Ohio limited liability company, successor by
merger to Somerset Developers Ltd.

By: George R. Oberer, Jr.
George R. Oberer, Jr., Manager

SOMERSET OWNERS ASSOCIATION, an
Ohio non-profit corporation

By: George R. Oberer, Jr.
George R. Oberer, Jr., Manager

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 31st day of MAY, 2016, by George R. Oberer, Jr., Manager of Oberer Land Developers, Ltd., an Ohio limited liability company, on behalf of the company.



SUSAN A. FAVALORO, Notary Public
In and for the State of Ohio
My Commission Expires Sept. 27, 2019

Susan A. Favaloro
Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 31st day of MAY, 2016, by George R. Oberer, Jr., Manager of Somerset Owners Association, an Ohio non-profit corporation, on behalf of the corporation.



SUSAN A. FAVALORO, Notary Public
In and for the State of Ohio
My Commission Expires Sept. 27, 2019

Susan A. Favaloro
Notary Public

This Instrument Prepared By: Robert M. Curry, Esq., Thompson Hine LLP, 10050 Innovation Drive, Suite 400, Dayton, Ohio 45342

Exhibit A-1

DESCRIPTION: Somerset Section One

CONTAINS: 10.1424 acres

DATE: April 12, 2002

Situated in Section 34, Town 3, Range 5, ^{M. R.S.} Washington Township, Montgomery County, State of Ohio, and being part of a 40.882 acres tract conveyed to Somerset Developers, LTD. in Deed Microfiche #01-0562 A12 in the Deed Records of said Montgomery County, and being more particularly described as follows:

Commencing at the southwest corner of a tract known and recorded as Sheehan Road Estates Section Two in Plat Book 98, Page 12 of the plat records of said Montgomery County, said point also being on the center line of Sheehan Road and also being the northwest corner of said Somerset Developers tract;

thence with said Sheehan Road centerline and the west line of said Somerset Developers tract, South 35° 53' 51" West for 294.92 feet to a point on said centerline and west line and being the True Point of Beginning of this description;

thence with a new division line through said Somerset Developers tract for the next twelve courses, South 54° 06' 09" East for 193.30 feet to a point;

thence South 29° 16' 43" East for 36.11 feet to a point;

thence South 01° 00' 00" East for 107.80 feet to a point;

thence South 89° 00' 00" West for 41.90 feet to a point;

thence South 50° 19' 11" West for 71.79 feet to a point;

thence South 11° 33' 36" West for 71.00 feet to a point;

thence South 39° 33' 36" West for 125.50 feet to a point;

thence South 50° 26' 24" East for 362.15 feet to a point;

thence North 89° 00' 00" East for 204.85 feet to a point;

thence South 01° 00' 00" East for 140.00 feet to a point;

thence North 89° 00' 00" East for 19.05 feet to a point;

thence South 01° 00' 00" East for 213.54 feet to a point on the common line between said Somerset Developers tract and a tract conveyed to Yankee Development Group in Deed Microfiche #90-384 B10 in said Montgomery County deed records;

thence with said common line between said Somerset Developers tract and the Yankee Development Group tract and its continuance, South $85^{\circ} 30' 43''$ West for 423.16 feet to a point being the northwest corner of a tract conveyed to the Board of County Commissioners in Deed Microfiche #95-772 C01 and also being the northeast corner of a tract conveyed to the Centerville Board of Education in Deed Microfiche #74-128 E05, both in said Montgomery County deed records;

thence with the common line between said Somerset Developers tract and said Centerville Board of Education tract, North $50^{\circ} 21' 27''$ West for 104.74 feet to a point being the southeast corner of a tract conveyed to Russell and Lori Banks in Deed Microfiche #81-378 D08 in said Montgomery County deed records;

thence with the common line between said Somerset Developers tract and said Banks tract for the next two courses, North $15^{\circ} 17' 44''$ East for 84.24 feet to a point being the northeast corner of said Banks tract;

thence North $50^{\circ} 24' 52''$ West for 558.06 feet to a point being the northwest corner of said Banks tract, the southwest corner of said Somerset Developers tract and also being on said Sheehan Road centerline;

thence with said Sheehan Road centerline and the west line of said Somerset Developers tract, North $35^{\circ} 53' 51''$ East for 710.00 feet to the True Point of Beginning of this description.

Contains 10.1424 acres, be it the same more or less, subject however to all legal highways, easements and restrictions of record.



Van Atta
Engineering
Inc.

Exhibit A-2

Engineering & Surveying

245 W. Elmwood Drive Suite 202
Cincinnati, Ohio 45229
Phone: (513) 416-5630
Fax: (513) 416-5645

SHEEHAN ROAD ALTA
40.8822 ACRES

LOCATED IN SECTION 34, TOWN 3, RANGE 5, ^{M. 85}WASHINGTON TOWNSHIP, MONTGOMERY COUNTY, STATE OF OHIO AND BEING ALL OF THAT 41.85 ACRE TRACT OF LAND AS CONVEYED TO LINDA TROESTER, KAREN MAHAN & STEVEN B. ANDRASIK BY THE DEED RECORDED ON MF #92-310 C07, ALL OF THAT 0.9183 ACRE TRACT OF LAND AS CONVEYED TO LINDA TROESTER, KAREN MAHAN & STEVEN B. ANDRASIK BY THE DEED RECORDED ON MF #92-310 C11 AND ALL OF THAT 0.968 ACRE TRACT OF LAND AS CONVEYED TO KAREN MAHAN, BY THE DEED RECORDED IN DEED BOOK 2243, PAGE 739 ALL OF THE DEED RECORDS OF SAID COUNTY AND BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SHEEHAN ROAD ESTATES SECTION TWO AS RECORDED IN PLAT BOOK 98, PAGE 12 OF THE PLAT RECORDS OF SAID COUNTY, SAID POINT ALSO LYING ON THE CENTERLINE OF SHEEHAN ROAD AND BEING THE NORTHWEST CORNER OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND;

THENCE LEAVING THE CENTERLINE OF SHEEHAN ROAD WITH THE NORTH LINE OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND, WITH THE SOUTH LINE OF SAID SHEEHAN ESTATES SECTION TWO NORTH 84°29'48" EAST, 1042.85 FEET TO AN EXISTING 1" IRON PIPE FOUND AT THE NORTHEAST CORNER OF SAID SECTION 34, THE NORTHEAST CORNER OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND, THE SOUTHWEST CORNER OF WREN CROSS SECTION TWO AS RECORDED IN PLAT BOOK 103, PAGE 31 AND THE NORTHWEST CORNER OF WALNUT GROVE PLAT AS RECORDED IN PLAT BOOK 102, PAGE 61 BOTH OF THE PLAT RECORDS OF SAID COUNTY;

THENCE WITH THE EAST LINE OF SAID SECTION 34, THE EAST LINE OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND AND THE WEST LINE OF SAID WALNUT GROVE PLAT AND ITS EXTENSION BEING THE WEST LINE OF THAT LAND AS CONVEYED TO LORETTO HORST BY THE DEED RECORDED ON MF #89-043 C07 AND THE WEST LINE OF THAT LAND AS CONVEYED TO ETHEL WINTERHALTER BY THE DEED RECORDED IN DEED BOOK 1283, PAGE 95 BOTH OF THE DEED RECORDS OF SAID COUNTY SOUTH 01°01'35" EAST, 1326.73 FEET TO AN EXISTING 5/8" IRON PIN FOUND AT THE SOUTHEAST CORNER OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND AND A NORTHEAST CORNER OF THAT LAND AS CONVEYED TO YANKEE DEVELOPMENT BY THE DEED RECORDED ON MF #90-384 B10 OF THE DEED RECORDS OF SAID COUNTY;

THENCE WITH THE SOUTH LINE OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND AND THE NORTH LINE OF SAID YANKEE DEVELOPMENT LAND AND ITS EXTENSION BEING A NORTH LINE OF THAT LAND AS CONVEYED TO "OF BD" BY THE DEED RECORDED ON MF #95-772 C01 IN THE DEED RECORDS OF SAID COUNTY SOUTH 85°30'43" WEST, 1166.09 FEET TO A 5/8" IRON PIN FOUND AT THE NORTHWEST CORNER OF SAID "OF BD" LAND AND AN ANGLE POINT AT ACRE 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND, SAID POINT ALSO BEING A NORTHEAST CORNER OF THAT LAND AS CONVEYED TO "OF BD" BY THE DEED RECORDED ON MF #94-128 E05 OF THE DEED RECORDS OF SAID COUNTY;

THENCE WITH A SOUTHWESTERLY LINE OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND AND A NORTH LINE OF SAID "OF BY" LAND AS RECORDED ON MF #94-128 E05 NORTH 30°21'27" WEST, 104.74 FEET TO A 5/8" IRON PIN SET CAPPED VAN ATTA #7354, SAID POINT ALSO BEING AT THE SOUTHERN MOST POINT OF THAT LAND AS CONVEYED TO RUSSELL AND LORI BANKS BY THE DEED RECORDED ON MF #81-378 D06 OF THE DEED RECORDS OF SAID COUNTY;

THENCE WITH THE SOUTHWESTERLY LINE OF SAID ACRE 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND AND A SOUTHERLY LINE OF SAID BANKS LAND NORTH 15°17'44" EAST, 84.24 FEET TO AN EXISTING STONE FOUND;

THENCE CONTINUING WITH THE NORTHEASTERLY LINE OF SAID BANKS LAND, A SOUTHWESTERLY LINE OF SAID 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND AND ITS EXTENSION BEING THE SOUTH LINE OF SAID MAHAN LAND NORTH 30°24'52" WEST, 558.06 FEET TO A RAILROAD SPIKE SET AT THE NORTHWEST CORNER OF SAID MAHAN LAND AND A POINT IN THE CENTERLINE OF SHEEHAN ROAD;

THENCE WITH THE CENTERLINE OF SHEEHAN ROAD AND THE NORTHWESTERLY LINE OF SAID MAHAN LAND AND ITS EXTENSION BEING THE NORTHWESTERLY LINE OF SAID 0.9183 ACRE TROESTER, MAHAN & ANDRASIK LAND AND THE NORTHWEST LINE OF 41.85 ACRE TROESTER, MAHAN & ANDRASIK LAND NORTH 35°53'51" EAST, 804.92 FEET TO THE POINT OF BEGINNING CONTAINING 40.8822 ACRES, MORE OR LESS, SUBJECT HOWEVER TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

NOTE: THIS DESCRIPTION IS THE RESULT OF A FIELD SURVEY PREPARED BY VAN ATTA ENGINEERING, INC., UNDER THE DIRECTION OF JEFFREY A. VAN ATTA, SURVEYOR #7354.

NOTE: BASIS OF BEARINGS: SOUTHEAST LINE OF 0.9183 ACRE TRACT AS CONVEYED TO LINDA TROESTER, KAREN MAHAN & STEVEN B. ANDRASIK BY THE DEED RECORDED ON MF #92-310 C11 (SOUTH 39°05'00" WEST).

NOTE: LINES OF OCCUPATION AGREE IN GENERAL WITH THE BOUNDARY HEREIN DESCRIBED.

Jeffrey A. Van Atta, PS #7354

Date