

Type: DEE
Kind: SPECIAL INSTRUMENT (DEED)
Recorded: 01/17/2019 02:27:28 PM
Fee Amt: \$60.00 Page 1 of 6
Montgomery County, OH
Brandon C. McClain County Recorder
File# 2019-00003159

NO TRANSFER
02:19pm JANUARY 17, 2019
KARL L. KEITH, COUNTY AUDITOR

**FIRST AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
WASHINGTON TRACE COMMUNITY ASSOCIATION
BY
DIVIDED RIDGE ASSOCIATES, LTD.
an Ohio limited liability company
3445 Newmark Drive
Miamisburg, Ohio 45342
DEVELOPER**



FIRST AMENDMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (this "First Amendment") is made this 31st day of December, 2018 by DIVIDED RIDGE ASSOCIATES, LTD., an Ohio limited liability company ("Developer"), whose address is 3445 Newmark Drive, Miamisburg, Ohio 45342, under the following circumstances:

A. Developer is the owner of certain real property located in Washington Township, Montgomery County, Ohio, commonly known as Washington Trace (the "Development") and as more particularly described on Exhibit A attached to this First Amendment, which is subject to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements dated November 27, 2013 and recorded January 21, 2014 at Instrument Number 2014-0003365 of the Official Records of Montgomery County, Ohio (the "Declaration").

B. Pursuant to Section 12.2 of the Declaration, the Declaration may be amended in whole or in part by a recorded instrument approved by Members representing at least 75% of the total votes of the Washington Trace Community Association, an Ohio nonprofit corporation (the "Community Association") and Developer, so long as Developer is the Owner of at least one Lot.

C. Developer intends to develop patio homes (the "Patio Homes") within the portion of the Development described on Exhibit B attached (the "Patio Homes Area").

D. The Members of the Community Association, by the requisite number of votes, have approved resolutions authorizing Developer to enter in to and record this First Amendment to establish a Designated Area for the Patio Homes, to provide for the allocation of landscaping and snow removal costs for such Designated Area, and to make other amendments to the terms and conditions of the Declaration.

NOW THEREFORE, for the purpose of amending the Declaration, Developer declares as follows:

1. Annual Assessments and Area Assessments. Section 3.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

Annual Assessments and Area Assessments. The Community Association shall be entitled to collect from all Owners an annual assessment for Common Expenses and other purposes described in Section 3.4 ("Annual Assessments"). In addition, the Community Association may from time to time determine that a group of Lots (a) is primarily served by certain elements of the Common Property, or (b) receives additional services (including "lifestyle services") from the Community Association beyond those normally received by other Lots from the Community Association, whether pursuant to this Declaration or separate

written agreement, such that, in the opinion of the Board, the Common Expenses pertaining to those elements of Common Property or additional services should be charged only to the Owners of that group of Lots. If the Board makes this determination, it shall declare that group of Lots a "Designated Area" under this Declaration, and shall identify which Common Expenses shall be charged only to the Owners of Lots in that Designated Area. The Assessments attributable to those identified Common Expenses shall be considered Area Assessments for purposes of this Declaration.

Following the Board's establishment of a Designated Area, the Board shall have the right to (i) add additional Lots to the Designated Area, and (ii) identify additional Common Expenses chargeable to the Owners of Lots within such Designated Area. Notwithstanding the foregoing, the Board shall not have the power to (a) revoke the designation of an area as a Designated Area or (b) to remove any Lot or Lots from the Designated Area, except in each case by resolution of the Board approved by not less than sixty-seven percent (67%) of the Owners of Lots within the applicable Designated Area."

2. Patio Homes Area as a Designated Area. Pursuant to Section 3.2 of the Declaration (as amended herein), the Board has determined that the Patio Homes receive or will receive additional services from the Community Association beyond those normally received by other Lots from the Community Association and the allocation of the Common Expenses therefor should be charged only to the Owners of the Lots within the Patio Homes Area. The Board has therefore declared that the Patio Homes Area is a Designated Area under the Declaration, and the costs of the Patio Homes Services, as defined below, shall be assessed as an Area Assessment to the Owners of Lots within the Designated Area for Patio Homes.

3. Community Association Provision of Lifestyle Services to the Patio Homes Area. The Community Association shall be responsible for providing certain lifestyle services to the Patio Homes Area, including, without limitation, lawn mowing, snow removal, maintenance of front yard mulch beds and fertilizing lawns (collectively, the "Patio Homes Services"). The Board shall have the power to add additional services to the Patio Home Services; however, any material reduction in the Patio Home Services will require the approval of not less than 67% of Owners of Lots in the Patio Homes Area.

4. Development Period. Section 1.14 of the Declaration is hereby deleted in its entirety and replaced with the following:

"Development Period" means the period commencing on the date the Initial Declaration was first recorded and terminating on the date which is the earliest of (a) the date 20 years after the date of recordation of this Amended and Restated Declaration (i.e. January 21, 2034), (b) the date when Developer has sold and conveyed 100% of the total number of Lots that may be created within both the Property and the Additional Property, or (c) the date Developer voluntarily relinquishes control of the Board of Directors by allowing

the election of a majority of the Board of Directors by Owners other than Developer, as opposed to Directors appointed by Developer.”

5. Miscellaneous. The foregoing recitals are hereby incorporated herein as if fully restated within. Capitalized terms used in this First Amendment not otherwise defined herein shall have the meanings given them in the Declaration. Except as expressly set forth herein, the terms and conditions of the Declaration remain in full force and effect. In case of a conflict between the provisions of the Declaration and this First Amendment, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, Developer has executed this First Amendment as of the date first written above.

DEVELOPER:

DIVIDED RIDGE ASSOCIATES, LTD.,
an Ohio limited liability company

By: Oberer Land Developers, Ltd.,
an Ohio limited liability company, its manager

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 31 day of December, 2018, by George R. Oberer, Jr., Manager of Oberer Land Developer, Ltd., an Ohio limited liability company, Manager of Divided Ridge Associates, Ltd., an Ohio limited liability company, on behalf of the company.

Patricia L. Marsh
NOTARY PUBLIC

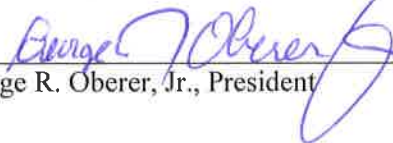


Patricia L Marsh, Notary Public
In and for the State of Ohio
My Commission Expires May 20, 2022

This instrument drafted by:
Brian R. Tracy, Esq.
Thompson Hine LLP
10050 Innovation Drive, Suite 400
Miamisburg, Ohio 45342
(937) 443-6953

I HEREBY CERTIFY THAT THIS FIRST AMENDMENT WAS APPROVED BY MEMBERS REPRESENTING 75% OR MORE OF THE VOTING POWER OF THE COMMUNITY ASSOCIATION.

WASHINGTON TRACE COMMUNITY
ASSOCIATION, an Ohio nonprofit corporation

By: 
George R. Oberer, Jr., President

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 31 day of December, 2018, by George R. Oberer, Jr., President of Washington Trace Community Association, an Ohio nonprofit corporation, on behalf of the association.


NOTARY PUBLIC



Patricia L. Marsh, Notary Public
In and for the State of Ohio
My Commission Expires May 20, 2022

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Situated in Section 34, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of a plat known and recorded as Washington Trace Section One in Plat Cabinet Volume 196, Page 20 of the Plat Records of Montgomery County, Ohio

Situated in Section 34, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of a plat known and recorded as Washington Trace Section Two in Plat Cabinet Volume 197, Page 36 of the Plat Records of Montgomery County, Ohio.

Situated in Section 34, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96 of a plat known and recorded as Washington Trace Section Three in Plat Cabinet Volume 204, Page 30 of the Plat Records of Montgomery County, Ohio.

Situated in Section 34, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134 and 135 of a plat known and recorded as Washington Trace Section Four in Plat Cabinet Volume 205, Page 5 of the Plat Records of Montgomery County, Ohio.

Situated in Section 34, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187 and 188 of a plat known and recorded as Washington Trace Section Five in Plat Cabinet Volume 206 Page 12 of the Plat Records of Montgomery County, Ohio.

Situated in Sections 34, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219 and 220 of a plat known and recorded as Washington Trace Section Seven in Plat Cabinet Volume 222 Page 45 of the Plat Records of Montgomery County, Ohio.

Situated in Sections 28, Town 3, Range 5 MRS, Washington Township, Montgomery County, State of Ohio, and being all of Lots Numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of a plat known and recorded as Washington Trace Annex in Plat Cabinet Volume 220, Pages 22 and 22A of the Plat Records of Montgomery County, Ohio.