

**THIRD AMENDMENT TO DECLARATION OF  
RESTRICTIVE COVENANTS FOR  
BRANDY MILL ESTATES SUBDIVISION**

THIS THIRD AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR BRANDY MILL ESTATES SUBDIVISION (the "Third Amendment") has been adopted as of the 4th day of October, 2007, by Maronda Homes, Inc. of Ohio, an Ohio corporation, as Declarant.

**RECITALS**

- A. Declarant is the developer of the Brandy Mill Estates Subdivision (the "Subdivision") consisting of that certain real property located in Etna Township, Licking County, Ohio, which includes the real estate described on attached Exhibit A.
- B. Declarant subjected the Subdivision to the Declaration of Restrictive Covenants by instrument recorded on April 3, 2003, Instrument Number 200304030014623 of the Licking County, Ohio Recorder's Records (the "Original Declaration").
- C. Declarant amended the Original Declaration by the First Amendment, recorded on April 5, 2005, Instrument Number 200504050009718 of the Licking County, Ohio Recorder's Records (the "First Amendment").
- D. Declarant further amended the Original Declaration by the First Amendment, recorded on July 18, 2005, Instrument Number 200507180021632 of the Licking County, Ohio Recorder's Records, which appears to be identical to the First Amendment excepting the execution and notary of the same (the "Second First Amendment").
- E. Declarant further amended the Original Declaration by the Second Amendment, recorded on May 25, 2006, Instrument Number 200605250014994 of the Licking County, Ohio Recorder's Records (the "Second Amendment"). The Original Declaration, as amendment by the First Amendment, Second First Amendment and Second Amendment, shall hereinafter be referred to as the "Declaration."
- F. Pursuant to Article III, Section 3.19 of the Declaration, Declarant may amend the Declaration so long as Declarant owns at least one (1) Lot within the Subdivision.
- G. Declarant still owns more than one Lot in the Subdivision and desires to exercise its right to amend the Declaration with this Third Amendment.

NOW, THEREFORE, Declarant amends the Declaration as follows:

1. Lots Use. Section 3.01 of the Declaration is hereby deleted in its entirety and replaced by the following Section 3.01:

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3.01 Lot Use. No more than one (1) single-family residence (a "House") will be constructed on each Lot within the Subdivision. Except for Declarant and any other Builder, each Owner shall use his/her Lot only for single-family residential purposes. All Houses built on a Lot shall be of new construction and shall not to exceed two and one half (2 ½) stories in height.

2. Architectural Control. Section 3.02 of the Declaration is hereby deleted in its entirety and replaced by the following Section 3.02:

3.02 Architectural Control.

A. Approval of Plans. At any time that Declarant owns at least one Lot within the Subdivision, no building shall be erected, placed or altered on any Lot until the construction plans have been approved in writing by Declarant. Declarant may specify requirements for the construction plans, including without limitation, any of the following: minimum setbacks, driveway access to adjacent street, the location, materials, height and extent of fences, walls or other screening devices, garage access and the orientation and placement of structures with respect to streets, walks and structures on adjacent land. If Declarant shall fail to approve or disapprove any proposed construction plans within thirty (30) days after the same shall have been submitted to it for approval, such construction plans shall be deemed to have received the disapproval of Declarant. Declarant shall not be obligated under any circumstances to approve any construction plans if it determines, in its sole discretion, the same would detract from the overall character and aesthetics of the Subdivision. At any time that Declarant does not own a Lot within the Subdivision, the Board of Trustees (the "Board") shall have the authority to adopt such rules, regulations and policies as the Board deems appropriate with respect to the architectural controls of the Subdivision. Nothing contained herein shall be construed to limit the right of an Owner to remodel or decorate the interior of a building or House or to paint the interior of a building or House any color.

B. No Liability. Declarant shall not be liable in damages to anyone submitting construction plans for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any construction plans, including specifically, but without limitation, consequences of any defect in any construction plans. The approval of construction plans shall not be deemed or construed to be an opinion, warranty, representation or statement that the construction plans are technically sound, that the improvements described will be habitable or safe or that they comply with building, zoning, fire or other codes, statutes, ordinances, rules or regulations. Every party which submits construction plans to Declarant for approval agrees, by submission of such construction plans, and every Owner agrees, that he she or it will not bring action or suit against Declarant to recover any damages arising from or related to the construction plans. In the event any party or Owner violates this restriction, then such party or Owner shall be responsible for all fees and expenses (including attorneys fees) incurred by Declarant in connection with the same.



C. Variance, Modification, and Waiver of Construction Standards. As necessary to account for any hardship from the strict application of any of the design and construction standards imposed by Declarant, or to account for issues such as topography, natural obstructions, aesthetic or environmental considerations or any other basis, Declarant, in Declarant's sole discretion, may vary, waive or amend design and construction standards established by Declarant. Declarant's decision on a requested variance, waiver or amendment shall be final, conclusive and binding. Any variance, waiver or amendment must be in writing. If a variance, waiver or amendment is granted, no violation of the conditions, covenants, restrictions or easements contained in the Declaration shall be deemed to have occurred with respect to the same. The granting of such a variance, waiver or amendment shall not operate to waive any of the terms and provisions of the Declaration for any purpose except as to the particular provision hereof covered by the variance, waiver or amendment (and shall apply only to the particular Lot in question), nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations.

3. Temporary Structures. Section 3.05 of the Declaration is hereby deleted in its entirety and replaced by the following Section 3.05:

3.05 Accessory Structures. As of the recording date of the Third Amendment, all accessory structures including, but not limited, sheds and pole barns, that are located on any Lot in a location other than the front yard or the side yard (hereinafter the "Existing Accessory Structures"), shall be deemed to be approved by the Association and shall not violate the terms and conditions of the Declaration or restrictions set forth on any plat of the Subdivision. Other than the Existing Accessory Structures, an accessory structure only may be built, constructed and maintained within the rear yard and shall not violate any setback lines. In addition, any such new accessory structure shall not be erected or maintained without advance approval, which shall be obtained in accordance with the procedure set forth in Section 3.02. Any new accessory structures that have been so duly approved shall be constructed of similar materials and display similar colors as used on the exterior of the House located on the Lot where the same shall be constructed. No Existing Accessory Structure or new accessory structure shall at any time be used as a residence, either temporarily or permanently.

4. Assessments. Article V of the Declaration is hereby deleted in its entirety and replaced by the following Article V:

#### **ARTICLE V – Assessments and Liens**

5.01 Definition of Assessments. The term "Assessments" as used herein means any and all assessments, fees and costs that are levied pursuant to any provisions of Sections 5.02, 5.03 and 5.04 of this Declaration.

5.02 General Assessments. Each year, the Association, or Declarant, if Declarant owns a Lot in the Subdivision and has yet to relinquish its rights and responsibilities in connection with the Association, will establish the amount of the

general assessment. The Association shall levy and collect the same. General assessments may be billed on a monthly, quarterly, semi-annual or annual basis, as determined by the Association or Declarant, and shall be due and payable to the Association from the Owner of each Lot as and when directed by the Association. The amount of the general assessments will be that amount that is sufficient to discharge anticipated costs and expenses of the maintenance, operation, and management associated with the Subdivision and the Association during the year as reasonably determined by the Association or Declarant plus a reserve amount not to exceed twenty-five percent (25%) of the amount as determined by Board.

5.03 Special Assessments. The Board may establish, levy, and collect special assessments at any time for the purpose of defraying, in whole or in part, the cost of any construction, renovation, repair, replacement, or addition of any improvements located in any common areas and common easements in the Development, which cost has not otherwise been provided for in the general assessments and provided that special assessments are approved by a two-thirds (2/3) of the Members of the Association.

5.04 Individual Lot Assessments. The Board may levy one or more individual lot assessments against a Lot and the Owner of the same to reimburse the Association for costs and expenses incurred by the Association arising from or related to the failure of the Owner and/or any of the Owner's family members, guests and/or invitees to comply with any of the terms and conditions of this Declaration, the Code of Regulations and/or the rules and regulations, including, but not limited to, costs associated with making repairs that are the responsibility of the Owner, costs of enforcement (including reasonably attorneys' fees) of the terms and conditions of this Declaration, the Code of Regulations, the rules and regulations and costs of additional insurance premiums, and/or costs and fines against an Owner and/or the Lot set forth in any other provision of this Declaration, along with a penalty assessment to prevent future violation by the Owner and/or any of the Owner's family members, invitees and guests, as reasonably determined by the Board. Upon the Board's determination to levy any individual lot assessment, the Board shall give the affected Owner written notice and the right to be heard by the Board or an appointed committee at least ten (10) days prior to the effective date of an individual lot assessment.

5.05 Non-Payment of Assessments and Penalty Assessments. Any Assessments levied pursuant to this Declaration, which are not paid on the date when due shall be delinquent and shall, together with interest thereon at the rate of ten percent (10.0%) per annum compound on a monthly basis and the cost of the collection thereof including, but not limited to, reasonable attorneys' fees.

5.06 Liens. Any delinquent Assessments and interest due thereon shall automatically be a lien upon the applicable Lot or said Owner (including improvements thereon). If any Assessments remain unpaid for thirty (30) days after they becomes due and payable, the Association may file a certificate of lien, signed by a member of the Board or a manager, with the Licking County, Ohio Recorder's Office pursuant to the authorization given by the Board. A certificate of lien shall contain a description of the



Lot, the name or names of the Owner(s) and the amount of the unpaid portion of the Assessments and late charges accrued as of the date of the certificate. Any lien shall remain valid for a period of five (5) years and any renewals thereof, from the time of the filing thereof, unless sooner released or satisfied in the manner allowed by law for the release and satisfaction of mortgages in real property or discharged by the final judgment or order of a court of competent jurisdiction. If the Association employs counsel to collect any lien or to otherwise collect any Assessments, the Owner or Lots shall pay all costs incurred in connection with the same, including a reasonable fee for counsel. Notwithstanding the foregoing, any lien by the Association upon a Lot shall be subordinate to the first mortgage on said property. Sale or transfer of any Lot shall not affect the attachment of the lien to the Lot.

5.07 Personal Liability. In addition, each Owner shall be personally liable for all amounts due under the provisions of this Article V for any Lot(s) owned by said Owner while an Owner.

5.08 Properties Exempt from Assessments. Assessments and any other fees of the Association shall only be assessed against Owners on which Houses are fully constructed and initially occupied for residential purposes. The Association shall not assess or collect Assessments or fees from Declarant or any other Builder during such period as Declarant or any other Builder owns any Lot within the Subdivision that has not been fully completed or occupied.

5.09 Declarant's Payment of Assessments. Declarant may elect to pay some or none of the "deficit", which is the difference between the amount of Assessments assessed and the amount of actual expenditures of the Association during the fiscal year. Declarant shall have no obligation to pay or fund any deficit of or to subsidize the Association. Declarant's subsidy to the Association may be made in the form of cash and/or "in kind" contributions of services or materials, or a combination of these. Those amounts paid or contributed by Declarant to subsidize the Association shall be credited first against current assessments owed by Declarant, if any, and then toward future Assessments that become owed by Declarant to the Association. This Section 5.09 shall not be subject to amendment during any period when Declarant owns a Lot in the Subdivision.

5. Conflict. In the case of any conflict between the Declaration with this Third Amendment, this Third Amendment shall control.

6. Capitalized Terms. All of the terms used herein which are defined in the Declaration shall be interpreted to have the same meaning as defined therein unless otherwise specifically defined in this Third Amendment.

7. Severability. Invalidity of any one or more of these covenants, conditions, restrictions and provisions shall have no effect on the other covenants, conditions, restrictions and provisions contained herein in this Third Amendment.

EXECUTED by Declarant to be effective as of the date set forth above.

DECLARANT:

MARONDA HOMES, INC. OF OHIO,  
an Ohio corporation

By: John Oberlin  
Its: Vice President

STATE OF OHIO )  
COUNTY OF Franklin ) SS:

On this 4<sup>th</sup> day of October 2007, before me, a notary public, in and for said state, personally appeared John Oberlin, the Vice President of MARONDA HOMES, INC., OF OHIO, an Ohio corporation, as Declarant of the Association, on behalf of the corporation.



KELLY J. BEATTY  
Notary Public, State of Ohio  
Pickaway County  
My Commission Expires 8/22/10

Kelly J. Beatty  
Notary Public  
My Commission Expires: 8/22/10

This instrument was prepared by:

Isaac T. Heintz, Esq.  
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TRANSFER NOT NECESSARY  
Date October 16, 2007  
[Signature]  
Licking County Auditor