

**IN THE COURT OF COMMON PLEAS OF FAIRFIELD COUNTY, OHIO**

<b>TED STACY, et al.,</b>	:	
	:	<b>CASE NO. 2006 CV 1263</b>
<b>Plaintiffs,</b>	:	
	:	
<b>Vs.</b>	:	<b>JUDGE BERENS</b>
	:	
<b>WILL SNELL, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

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**DEFENDANT, CHEVINGTON WOODS CIVIC ASSOCIATION, INC.'S  
ANSWER AND COUNTERCLAIM**

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Now comes Defendant, Chevington Woods Civic Association, Inc. ("CWCA"), by and through undersigned counsel, and hereby answers Plaintiffs' Complaint as follows:

1. Defendant admits that the Chevington Woods Neighborhood is a group of subdivisions located in Violet Township, Fairfield County, Ohio. Further responding, Defendant denies for lack of sufficient knowledge or information the remaining allegations contained in paragraph 1 of Plaintiffs' Complaint.

2. Defendant denies for lack of sufficient knowledge or information the allegations contained in paragraphs 2, 4, 5, 7, 8, 10, 11, 41 and 53 of Plaintiffs' Complaint.

3. As to the allegations contained in paragraph 3 of Plaintiffs' Complaint, Defendant admits the exhibit appears to be authentic records from the Fairfield County Recorder's office and that the deed was recorded as alleged. Further responding, Defendant lacks knowledge at this time that these are the only amendments and notes that Plaintiffs have listed the document as Exhibit A, but in the exhibits, they are listed as Exhibit 1.

4. As to the allegations contained in paragraph 6 of Plaintiffs' Complaint, Defendant admits the exhibit appears to be authentic records from the Fairfield County Recorder's office showing a deed which has been recorded. Further responding, Defendant lacks knowledge at this time as to whether there is more than one amendment and notes that Plaintiffs have listed the document as Exhibit B, but in the exhibits, the document is listed as Exhibit 2.

5. As to the allegations contained in paragraph 9 of Plaintiffs' Complaint, Defendant admits the exhibit appears to be authentic deeds recorded in the Fairfield County Recorder's office. Further responding, Defendant notes that Plaintiffs have listed the document as Exhibit C, but in the exhibits, the document is listed as Exhibit 3.

6. As to paragraph 12 of Plaintiffs' Complaint, Defendant admits that all lot owners in Chevington Woods South are bound by the modifications and restrictions recorded on March 20, 1973 and that the quote provided by Plaintiffs' counsel is a portion of that agreement. Further responding, the document attached as Exhibit D, but actually listed as Exhibit 4, appears to be a fair and accurate copy of the Code of Regulations, Constitution and Bylaws.

7. As to paragraph 13 of Plaintiffs' Complaint, Defendant admits that all members of Chevington Woods North lot owners are bound by the modifications and restrictions recorded on March 20, 1973 and that the quotation provided is a fair and accurate reproduction of one part of that modification.

8. Defendant admits the allegations contained in paragraphs 14 and 15 of Plaintiffs' Complaint.

9. As to paragraph 16 of Plaintiffs' Complaint, Defendant admits that an application for reinstatement of the Articles of Incorporation was filed in November 2002. Further responding, Defendant denies the remaining allegations contained in paragraph 16 of Plaintiffs' Complaint.

10. As to paragraph 17 of Plaintiffs' Complaint, Defendant admits that all lot owners of Chevington Woods North, Section No. 2, are bound by the deed recorded on December 12, 1972 and that the provision cited by Plaintiffs is a fair and accurate reproduction of one part of that deed.

11. Defendant denies the allegations contained in paragraphs 18, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 42, 44, 45, 46, 47, 48, 49, 50, 56, 57, 58, 59, 60, 61, 62 and 63 of Plaintiffs' Complaint.

12. As to paragraph 19 of Plaintiffs' Complaint, Defendant admits that the individually named defendants have been acting collectively in their official capacity as the Chevington Woods Civic Association's board of trustees. Further responding, Defendant admits the remaining allegations contained in paragraph 19 of Plaintiffs' Complaint.

13. As to paragraphs 20, 22, 38 and 51 of Plaintiffs' Complaint, Defendant states the paragraphs are merely transitional and that no response is required. Further answering, to the extent a response is required, Defendant denies the same.

14. As to paragraph 23 of Plaintiffs' Complaint, Defendant admits that the quote cited by Plaintiffs is an accurate copy of a portion of the Bylaws, but is not a complete and accurate copy of all the Bylaws.

15. As to paragraph 24 of Plaintiffs' Complaint, Defendant admits that there are 15 areas among the three subdivisions. Further responding, Defendant denies the remaining allegations contained in paragraph 24 of Plaintiffs' Complaint.

16. As to paragraph 40 of Plaintiffs' Complaint, Defendant admits that there was a provision for an architectural control committee for oversight of newly constructed homes that existed as a result of the deeds. However, the provision cited is merely one part of that deed and does not accurately reflect the entire scope of that provision. Further answering, Defendant denies the remaining allegations contained in paragraph 40 of Plaintiffs' Complaint.

17. Defendant denies the allegations contained in paragraph 43 of Plaintiffs' Complaint and specifically denies that waiver has occurred with respect to enforcement of covenants.

18. Defendant denies for lack of sufficient knowledge or information the allegations contained in paragraph 52 of Plaintiffs' Complaint. Further answering, Defendant asserts, as is plainly set forth in the Code of Regulations, that there is a distinction between being a member and being a member in good standing.

19. As to paragraph 54 of Plaintiffs' Complaint, Defendant denies that most Plaintiffs have attended meetings, that Plaintiffs reviewed financial information, that Plaintiffs have engaged in speaking with a number of the members who are not plaintiffs, that Plaintiffs have tried to become trustees, and that Plaintiffs fairly and accurately represent the members of the Chevington Woods Civic Association as there are 390 lot owners and only

16 plaintiffs. Further answering, Defendant denies for lack of sufficient knowledge or information the remaining allegations contained in paragraph 54 of Plaintiffs' Complaint.

20. As to paragraph 55 of Plaintiffs' Complaint, Defendant admits that Plaintiff Gina Stacy stated at a meeting on October 16, 2006 that if the trustees did not resign she would sue them personally, but specifically denies that the remaining Plaintiffs have requested that they relinquish their positions. Further, Defendant denies that it has failed to adequately respond to Plaintiffs' request. Defendant denies the remaining allegations contained in paragraph 55 of Plaintiffs' Complaint.

21. Defendant denies any and all other allegations contained in Plaintiffs' Complaint not specifically admitted to herein.

#### **AFFIRMATIVE DEFENSES**

22. Plaintiffs' Complaint fails to state claims for which relief may be granted.

23. Plaintiffs may have failed to join necessary and/or indispensable parties.

24. Plaintiffs' claims are barred due to waiver under the rights set forth in the bylaws.

25. Plaintiffs' claims that no equitable relief is available and that, therefore, Plaintiffs are entitled to relief under Civ. R. 65 and O.R.C. § 2727.01 are baseless. Any relief or basis for Plaintiffs' claims is provided by the deeds themselves.

26. Defendant requests reimbursement for its costs, pursuant to O.R.C. § 2721.11, associated with Plaintiffs' claim for a declaratory action proceeding.

27. Defendant requests equitable relief for any and all costs associated with defending against Plaintiffs' claims as they are baseless and without merit.

28. Plaintiffs' claims may be barred by the equitable doctrines of estoppel, laches, waiver, release, accord and satisfaction, and/or unclean hands.

29. Plaintiffs may have failed to mitigate damages.

30. Defendant reserves the right to assert additional defenses as may become available during discovery proceedings in this case.

**WHEREFORE**, Defendant, Chevington Woods Civic Association, Inc., hereby requests this Court to dismiss Plaintiffs' Complaint and award Defendant costs, expenses, including attorney's fees, and any other legal and/or equitable relief the Court deems appropriate herein.

### **COUNTERCLAIM**

For its counterclaim, Defendant, Chevington Woods Civic Association, Inc. ("CWCA"), hereby alleges against the Plaintiffs as follows:

31. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 30 as if fully rewritten herein.

32. CWCA is an Ohio non-profit corporation whose principal place of business is located in Fairfield County, Ohio.

33. Plaintiffs, Eugene Bednarski, Richard and Merri Biggs, Robert and Paula Coccia, Glenn and Brenda Davis, Elizabeth Hamilton, Alex Manukian, Donald and Vicki McMillen, Vic and Cindy Miller, Richard and Elizabeth Moore, Clark and Estalene Newell, Nick & Lois Popa, Oron Schuss, Ted and Gina Stacy, James Vohwinkel and Hallie C. Carroll, and Gary and Janet Workman, are individual lot owners within the Chevington Woods

Subdivision, the Chevington Woods North Subdivision, or the Chevington Woods North, Section No. 2 Subdivision ("Chevington Woods Neighborhoods").

34. CWCA, through its duly elected Board of Trustees, is responsible for encouraging and promoting the general welfare of the Chevington Woods Neighborhoods.

35. The CWCA was created and established via recorded deeds (and various amendments and modifications thereto) in the Fairfield County, Ohio Recorder's Office, including:

- a. Quit-Claim Deed dated June 25, 1968 (recorded in Volume 366, Page 649) which incorporates all lots contained within the Chevington Woods Subdivision (a true and accurate copy of which is incorporated herein and attached hereto as Exhibit A);
- b. Quit-Claim Deed dated March 1, 1972 (recorded in Volume 406, Page 213) which incorporates all lots contained within the Chevington Woods North Subdivision (a true and accurate copy of which is incorporated herein and attached hereto as Exhibit B); and
- c. Warranty Deed dated December 7, 1972 (recorded in Volume 417, Page 562) which incorporates all lots contained within the Chevington Woods North, Section No. 2 (a true and accurate copy of which is incorporated herein and attached hereto as Exhibit C).

36. These deeds expressly provide that all owners of property in the Chevington Woods Neighborhoods shall be members of the CWCA and subject to all by-laws and/or

regulations of the CWCA (a true and accurate copy of the Code of Regulations, Constitution and Bylaws ("Code of Regulations") is incorporated herein and attached hereto as Exhibit D).

37. These deeds also contain various specific deed restrictions which control the condition and/or use of all properties in the Chevington Woods Neighborhoods.

38. The CWCA, through its Code of Regulations and the above deed restrictions, is empowered to enforce violations of the deed restrictions by any owners within the Chevington Woods Neighborhoods.

39. The CWCA, through its Bylaws and the above deed restrictions, is also empowered to collect annual membership dues from all lot owners within the Chevington Woods Neighborhoods.

40. Upon acquiring Property in the Chevington Woods Neighborhoods, each Plaintiff became subjected to and required to adhere to a number of deed restrictions, which deeds are referenced in their deed of transfer.

41. Presently, Plaintiffs are in violation of a variety of Chevington Woods deed restrictions.

42. The CWCA has requested that the Plaintiffs correct their perspective deed restriction violations; However, Plaintiffs' have refused without justification to comply with the CWCA's requests.

43. The Plaintiffs' continued deed restriction violations constitute irreparable harm for which no legal relief is available for the CWCA and its members, thereby entitling CWCA to injunctive relief.



44. Plaintiffs have also failed to remit mandatory annual membership dues for the years 2004, 2005, 2006, or 2007 (true and accurate copies of CWCA Past Due Statements sent to Plaintiffs are attached hereto as Exhibit E).

45. The CWCA has requested that the Plaintiffs pay their past and present membership dues; However, Plaintiffs have refused without justification to pay the past due amounts.

46. In addition, Plaintiffs have recently registered, without any authority from the CWCA, the domain name *www.chevingtonwoods.com* in order to direct users to Plaintiffs' website which contains false, misleading, and disparaging remarks regarding CWCA and the Chevington Woods Neighborhoods.

47. CWCA, as the sole representative of the Chevington Woods Neighborhoods, uses the distinctive trade or commercial name "Chevington Woods" to identify the Association, its business and the Chevington Woods Neighborhoods.

48. As such, Defendant possesses intellectual property rights in the trade or commercial name "Chevington Woods" and any of its derivatives.

49. Plaintiffs' use of the trade name "Chevington Woods" in connection with the domain name, Plaintiffs' website, or in any other manner, is a direct infringement of CWCA's intellectual property rights and is in violation of state and federal law.

50. CWCA has demanded that Plaintiffs' immediately cease and desist from any further use of the domain name *www.chevingtonwoods.com* and the trade name "Chevington Woods" and has demanded that Plaintiffs transfer the domain name to CWCA;

However, Plaintiffs have refused without justification to cease using the above domain name and trade name.

**COUNT ONE**  
***(Declaratory Judgment - Biggs)***

51. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 50 as if fully rewritten herein.

52. Plaintiffs, Richard and Merri Biggs, have failed to maintain in good repair and working condition an outside yard light which fails to emit adequate light during the entire period from one-half hour after sunset until one-half hour before sunrise, in violation of Section 26 of the Chevington Woods North Subdivision deed restrictions.

53. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ. R. 57 and Ohio Rev. Code §§2721.01, *et. seq.*, that Plaintiffs, Richard and Merri Biggs, are in violation of Section No. 26.

**COUNT TWO**  
***(Account and Breach of Contract - Biggs)***

54. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 53 as if fully rewritten herein.

55. Plaintiffs, Richard and Merri Biggs, owe Defendant the amount of Thirty and 00/100 Dollars (\$30.00) on account for overdue membership dues, plus statutory interest.

56. Plaintiffs, Richard and Merri Biggs' failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

57. As a result, Defendant has been damaged in the amount of Thirty and 00/100 Dollars (\$30.00) plus statutory interest.

**COUNT THREE**  
***(Declaratory Judgment – Bednarski)***

58. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 57 as if fully rewritten herein.

59. Plaintiff, Eugene Bednarski, has parked or stored a boat on his lot in violation of Section Nos. 15 and 24 of the Chevington Woods North, Section No. 2 Subdivision deed restrictions.

60. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ. R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiff, Eugene Bednarski, is in violation of Section Nos. 15 and 24.

**COUNT FOUR**  
***(Declaratory Judgment – Coccia)***

61. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 60 as if fully rewritten herein.

62. Plaintiffs, Robert and Paula Coccia, have parked or stored a boat on their lot in violation of Section Nos. 15 and 24 of the Chevington Woods North, Section No. 2 Subdivision deed restrictions.

63. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ.

R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiffs, Robert and Paula Coccia, are in violation of Section Nos. 15 and 24.

**COUNT FIVE**  
***(Account and Breach of Contract – Coccia)***

64. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 63 as if fully rewritten herein.

65. Plaintiffs, Robert and Paula Coccia, owe Defendant the amount of Thirty and 00/100 Dollars (\$30.00) on account for overdue membership dues, plus statutory interest.

66. Plaintiffs, Robert and Paula Coccia's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

67. As a result, Defendant has been damaged in the amount of Thirty and 00/100 Dollars (\$30.00) plus statutory interest.

**COUNT SIX**  
***(Account and Breach of Contract – Davis)***

68. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 67 as if fully rewritten herein.

69. Plaintiffs, Glenn and Brenda Davis, owe Defendant the amount of Sixty and 00/100 Dollars (\$60.00) on account for overdue membership dues, plus statutory interest.

70. Plaintiffs, Glenn and Brenda Davis' failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

71. As a result, Defendant has been damaged in the amount of Sixty and 00/100 Dollars (\$60.00) plus statutory interest.

**COUNT SEVEN**  
***(Account and Breach of Contract – Hamilton)***

72. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 71 as if fully rewritten herein.

73. Plaintiff, Elizabeth Hamilton, owes Defendant the amount of Thirty and 00/100 Dollars (\$30.00) on account for overdue membership dues, plus statutory interest.

74. Plaintiff, Elizabeth Hamilton's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

75. As a result, Defendant has been damaged in the amount of Thirty and 00/100 Dollars (\$30.00) plus statutory interest.

**COUNT EIGHT**  
***(Declaratory Judgment – Manukian)***

76. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 75 as if fully rewritten herein.

77. Plaintiff, V. Alex Manukian, has parked or stored a boat on his lot in violation of Section Nos. 15 and 24 of the Chevington Woods North, Section No. 2 Subdivision deed restrictions.

78. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ.

R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiff, V. Alex Manukian, is in violation of Section Nos. 15 and 24.

**COUNT NINE**  
***(Account and Breach of Contract – Manukian)***

79. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 78 as if fully rewritten herein.

80. Plaintiff, V. Alex Manukian, owes Defendant the amount of One Hundred Twenty and 00/100 Dollars (\$120.00) on account for overdue membership dues, plus statutory interest.

81. Plaintiff, V. Alex Manukian's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

82. As a result, Defendant has been damaged in the amount of One Hundred Twenty and 00/100 Dollars (\$120.00) plus statutory interest.

**COUNT TEN**  
***(Declaratory Judgment – McMillen)***

83. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 82 as if fully rewritten herein.

84. Plaintiffs, Donald and Vicki McMillen, have parked or stored a boat on their lot in violation of Section Nos. 15 and 24 of the Chevington Woods North, Section No. 2 Subdivision deed restrictions.

85. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ.

R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiffs, Donald and Vicki McMillen, are in violation of Section Nos. 15 and 24.

**COUNT ELEVEN**  
***(Account and Breach of Contract – McMillen)***

86. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 95 as if fully rewritten herein.

87. Plaintiffs, Don and Vicki McMillen, owe Defendant the amount of Sixty and 00/100 Dollars (\$60.00) on account for overdue membership dues, plus statutory interest.

88. Plaintiffs, Don and Vicki McMillen's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

89. As a result, Defendant has been damaged in the amount of Sixty and 00/100 Dollars (\$60.00) plus statutory interest.

**COUNT TWELVE**  
***(Declaratory Judgment – Moore)***

90. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 89 as if fully rewritten herein.

91. Plaintiffs, Richard and Elizabeth Moore, have parked and/or stored a boat on their lot in violation of Section Nos. 15 and 24 of the Chevington Woods North, Section No. 2 Subdivision deed restrictions.

92. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ.

R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiffs, Richard and Elizabeth Moore, are in violation of Section Nos. 15 and 24.

**COUNT THIRTEEN**  
***(Account and Breach of Contract – Moore)***

93. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 92 as if fully rewritten herein.

94. Plaintiffs, Richard and Elizabeth Moore, owe Defendant the amount of One Hundred Twenty and 00/100 Dollars (\$120.00) on account for overdue membership dues, plus statutory interest.

95. Plaintiffs, Richard and Elizabeth Moore's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

96. As a result, Defendant has been damaged in the amount of One Hundred Twenty and 00/100 Dollars (\$120.00) plus statutory interest.

**COUNT FOURTEEN**  
***(Declaratory Judgment – Newell)***

97. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 96 as if fully rewritten herein.

98. Plaintiffs, Clark and Estalene Newell, have parked or stored recreational vehicles and mobile trailers on their lot in violation of Section No. 15 and Modification No. 1 of the Chevington Woods Subdivision deed restrictions.

99. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ.



R. 57 and Ohio Rev. Code §§2721.01, *et. seq.*, that Plaintiffs, Clark and Estalene Newell, are in violation of Section No. 15 and Modification No. 1.

**COUNT FIFTEEN**  
***(Account and Breach of Contract – Newell)***

100. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 99 as if fully rewritten herein.

101. Plaintiffs, Clark and Estalene Newell, owe Defendant the amount of Ninety and 00/100 Dollars (\$90.00) on account for overdue membership dues, plus statutory interest.

102. Plaintiffs, Clark and Estalene Newell's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

103. As a result, Defendant has been damaged in the amount of Ninety and 00/100 Dollars (\$90.00) plus statutory interest.

**COUNT SIXTEEN**  
***(Account and Breach of Contract – Schuss)***

104. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 103 as if fully rewritten herein.

105. Plaintiff, Oron Schuss, owes Defendant the amount of Thirty and 00/100 Dollars (\$30.00) on account for overdue membership dues, plus statutory interest.

106. Plaintiff, Oron Schuss' failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

107. As a result, Defendant has been damaged in the amount of Thirty and 00/100 Dollars (\$30.00) plus statutory interest.

**COUNT SEVENTEEN**  
***(Declaratory Judgment – Stacy)***

108. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 107 as if fully rewritten herein.

109. Plaintiffs, Ted and Gina Stacy, have parked or stored a boat on their lot in violation of Section Nos. 15 and 24 of the Chevington Woods North, Section No. 2 Subdivision deed restrictions.

110. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ. R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiffs, Ted and Gina Stacy, are in violation of Section Nos. 15 and 24.

**COUNT EIGHTEEN**  
***(Account and Breach of Contract – Stacy)***

111. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 110 as if fully rewritten herein.

112. Plaintiffs, Ted and Gina Stacy, owe Defendant the amount of Thirty and 00/100 Dollars (\$30.00) on account for overdue membership dues, plus statutory interest.

113. Plaintiffs, Ted and Gina Stacy's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

114. As a result, Defendant has been damaged in the amount of Thirty and 00/100 Dollars (\$30.00) plus statutory interest.

**COUNT NINETEEN**  
***(Declaratory Judgment – Vohwinkel and Carroll)***

115. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 114 as if fully rewritten herein.

116. Plaintiffs, James Vohwinkel and Hallie C. Carroll, have failed to maintain in good repair and working condition an outside yard light which fails to emit adequate light during the entire period from one-half hour after sunset until one-half hour before sunrise, in violation of Modification No. 2 of the Chevington Woods Subdivision deed restrictions.

117. Plaintiff, James Vohwinkel and Hallie C. Carroll, have parked or stored commercial vehicles and on their lot and have conducted a commercial business from their residence in violation of Section No. 5 and Modification No. 1 of the Chevington Woods Subdivision deed restrictions.

118. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ. R. 57 and Ohio Rev. Code §§2721.01, *et. seq.*, that Plaintiffs, James Vohwinkel and Hallie C. Carroll, are in violation of Section No. 5 and Modification Nos. 1 and 2.

**COUNT TWENTY**  
***(Account and Breach of Contract – Vohwinkel and Carroll)***

119. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 118 as if fully rewritten herein.

120. Plaintiffs, James Vohwinkel and Hallie C. Carroll, owe Defendant the amount of Sixty and 00/100 Dollars (\$60.00) on account for overdue membership dues, plus statutory interest.

121. Plaintiffs, James Vohwinkel's and Hallie C. Carroll's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

122. As a result, Defendant has been damaged in the amount of Sixty and 00/100 Dollars (\$60.00) plus statutory interest.

**COUNT TWENTY-ONE**  
***(Declaratory Judgment - Workman)***

123. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 122 as if fully rewritten herein.

124. Plaintiffs, Gary and Janet Workman, have failed to maintain in good repair and working condition an outside yard light which fails to emit adequate light during the entire period from one-half hour after sunset until one-half hour before sunrise, in violation of Section 26 of the Chevington Woods North Subdivision deed restrictions.

125. Pursuant to the above recorded deed restrictions, Code of Regulations and deed restriction violations, the CWCA is entitled to a declaratory judgment, pursuant to Civ. R. 57 and Ohio Rev. Code §§2721.01, et. seq., that Plaintiffs, Gary and Janet Workman, are in violation of Section No. 26.

**COUNT TWENTY-TWO**  
***(Account and Breach of Contract – Workman)***

126. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 125 as if fully rewritten herein.

127. Plaintiffs, Gary and Janet Workman, owe Defendant the amount of Sixty and 00/100 Dollars (\$60.00) on account for overdue membership dues, plus statutory interest.

128. Plaintiffs, Gary and Janet Workman's failure to make full payment to Defendant for the mandatory annual membership dues, pursuant to recorded deeds and the Code of Regulations, constitutes a breach of the Contract.

129. As a result, Defendant has been damaged in the amount of Sixty and 00/100 Dollars (\$60.00) plus statutory interest.

**COUNT TWENTY-THREE**  
***(Injunctive Relief)***

130. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 129 as if fully rewritten herein.

131. Defendant is entitled to a preliminary and permanent injunction against the above named Plaintiffs, pursuant to the deed restriction violations cited above and Civ. R. 65, including:

- a. ordering and enjoining the Plaintiffs from maintaining the above deed restriction violations; and
- b. ordering the Plaintiffs to immediately correct the above deed restriction violations.

**COUNT TWENTY-FOUR**  
***(15 U.S.C.S. § 1125 – Anticybersquatting Consumer Protection Act)***

132. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 131 as if fully rewritten herein.

133. “Chevington Woods” is a distinctive trade or commercial name used by Defendant to identify the Association, its business and the Chevington Woods Neighborhoods.

134. Plaintiffs have misappropriated the trade name “Chevington Woods” by registering the domain name *www.chevingtonwoods.com* and operating a website entitled “Chevington Woods.”

135. Plaintiffs’ use the above domain name and website to assert Plaintiffs’ baseless claims, attack Defendant, and disparage the Chevington Woods Neighborhoods.

136. Plaintiffs’ use of the trade name “Chevington Woods” has harmed Defendant’s good will and misrepresents the nature, characteristics, and qualities of Defendant’s services and commercial activities.

137. Plaintiffs intended to divert Chevington Woods residents, potential residents, and other third parties from the official Chevington Wood’s website, operated by Defendant’s, to *www.chevingtonwoods.com* and Plaintiffs’ “Chevington Woods” website for commercial gain or with the intent to tarnish or disparage the Defendant’s trade name, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

138. Plaintiffs' use of the trade name "Chevington Woods" has in fact caused confusion and mistake by deceiving an unknown number of Chevington Woods residents, potential residents, and innocent third parties.

139. Plaintiffs' use of the trade name "Chevington Woods" has caused confusion and mistake, and is likely to continue to cause confusion and mistake, as to the affiliation, connection, or association of *www.chevingtonwoods.com* and the Chevington Woods Neighborhoods.

140. As a direct and proximate result of the Plaintiffs' actions, Defendant is entitled to a preliminary and permanent injunction, pursuant to 15 U.S.C.S. § 1125, including:

- a. ordering and enjoining the Plaintiffs to cease and desist all further use of the domain name *www.chevingtonwoods.com*;
- b. ordering and enjoining the Plaintiffs to immediately cease the connection of the domain name *www.chevingtonwoods.com* to Plaintiffs' website;
- c. ordering and enjoining the Plaintiffs to immediately cease and desist from any future use of the domain name *www.chevingtonwoods.com* or any other illegal uses of the trade name "Chevington Woods" or any derivatives; and
- d. ordering and enjoining the Plaintiffs to immediately forfeit or cancel the domain name *www.chevingtonwoods.com* or transfer the domain name *www.chevingtonwoods.com* to the Defendant.

141. As a direct and proximate result of the Plaintiffs' actions, Defendant is entitled to recover Plaintiffs' profits from the website, compensatory damages, attorney fees and its costs and expenses incurred herein.

**COUNT TWENTY-FIVE**  
***(O.R.C. § 4165.01, et seq. – Deceptive Trade Practices)***

142. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 141 as if fully rewritten herein.

143. Plaintiffs' use of the trade name "Chevington Woods" in connection with the domain name *www.chevingtonwoods.com* and Plaintiffs' website has caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

144. Plaintiffs' use of the trade name "Chevington Woods" in connection with the domain name *www.chevingtonwoods.com* and Plaintiffs' website has caused confusion or misunderstanding as to affiliation, connection, or association with, or certification by Defendant.

145. Plaintiffs have made numerous false representations of fact concerning Defendant and the Chevington Woods Neighborhoods through their use of the trade name "Chevington Woods," the domain name *www.chevingtonwoods.com*, and Plaintiffs' website.

146. Plaintiffs' false representations of fact have disparaged the goods, services, and business of Defendant.

147. Plaintiffs' actions constitute a deceptive trade practice as they were preformed in the course of Plaintiffs' business, vocation, or occupation.

148. Plaintiffs maliciously and willingly engaged in the above trade practice knowing it to be deceptive.



149. As a direct and proximate result of the Plaintiffs' actions, Defendant is entitled to a preliminary and permanent injunction, pursuant to O.R.C. § 4165.03(A)(1), including:

- a. ordering and enjoining the Plaintiffs to cease and desist all further use of the domain name *www.chevingtonwoods.com*;
- b. ordering and enjoining the Plaintiffs to immediately cease the connection of the domain name *www.chevingtonwoods.com* to Plaintiffs' website;
- c. ordering and enjoining the Plaintiffs to immediately cease and desist from any future use of the domain name *www.chevingtonwoods.com* or any other illegal uses of the trade name "Chevington Woods" or any derivatives; and
- d. ordering and enjoining the Plaintiffs to immediately forfeit or cancel the domain name *www.chevingtonwoods.com* or transfer the domain name *www.chevingtonwoods.com* to the Defendant.

150. As a direct and proximate result of the Plaintiffs' actions, Defendant is entitled to recover Plaintiffs' compensatory damages, punitive damages, attorney fees and its costs and expenses incurred herein.

**COUNT TWENTY-SIX**  
***(O.R.C. § 1333.61, et seq. – Uniform Trade Secrets Act)***

151. Defendant hereby adopts and incorporates all of the answers, averments and defenses set forth above in paragraphs 1 through 150 as if fully rewritten herein.

152. Defendant maintains certain trade secrets related to the Chevington Woods Neighborhood and its business interests, including the trade or commercial name "Chevington Woods."

153. Plaintiffs disclosed or used Defendant's trade secrets related to the Chevington Woods Neighborhood without the express or implied consent of Defendant.

154. Plaintiffs used improper means to acquire knowledge of Defendant's trade secrets, or, at the time of the disclosure or use, Plaintiffs knew or had reason to know that the trade secrets were acquired by improper means, knew or had reason to know that the trade secrets were acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or knew or had reason to know that the trade secrets were derived from or through a person who owed a duty to Defendant to maintain its secrecy or limit its use.

155. Plaintiffs' disclosure or use of Defendant's trade secrets was done willfully and maliciously.

156. As a direct and proximate result of the Plaintiffs' actions, Defendant is entitled to a preliminary and permanent injunction, pursuant to O.R.C. § 1333.62(A), including:

- a. ordering and enjoining the Plaintiffs to immediately cease and desist any and all disclosures or uses of Defendant's trade secrets; and
- b. ordering and enjoining the Plaintiffs to immediately cease and desist from any future disclosure or use of Defendant's trade secrets.

157. As a direct and proximate result of the Plaintiffs' actions, Defendant is entitled to recover compensatory damages, punitive damages, attorney fees and its costs and expenses incurred herein.

**WHEREFORE**, Defendant, Chevington Woods Civic Association, Inc., respectfully requests this Court to enter judgment in its favor on its Counterclaim against Plaintiffs and award it the following relief:

- A. As to Counts One, Three, Four, Eight, Ten, Twelve, Fourteen, Seventeen, Nineteen, and Twenty-One, declaratory judgment, pursuant to the above deed restrictions, Code of Regulations, Civ. R. 57 and Ohio Rev. Code §§2721.01, *et. seq.*, declaring that each respective Plaintiff is in violation of the above cited Chevington Woods deed restrictions;
- B. As to Counts Two, Five, Six, Seven, Nine, Eleven, Thirteen, Fifteen, Sixteen, Eighteen, Twenty, and Twenty-Two, compensatory damages, plus interest, costs and expenses;
- C. As to Count Twenty-Three, preliminary and permanent injunction against the above named Plaintiffs, pursuant to the Chevington Woods deed restriction violations cited above and Civ. R. 65, in accordance with the injunctive relief requested in ¶ 131 above;
- D. As to Count Twenty-Four:
  - 1. Preliminary and permanent injunction, pursuant to 15 U.S.C.S. § 1125, in accordance with the injunctive relief requested in ¶ 140 above;
  - 2. Recovery of Plaintiffs' profits from the website, compensatory damages, attorney fees and its costs and expenses incurred herein;
- E. As to Count Twenty-Five:
  - 1. Preliminary and permanent injunction, pursuant to O.R.C. § 4165.03(A)(1), in accordance with the injunctive relief requested in ¶ 149 above;
  - 2. Compensatory damages, punitive damages, attorney fees and its costs and expenses incurred herein;

- F. As to County Twenty-Six:
1. Preliminary and permanent injunction, pursuant to O.R.C. § 1333.62(A), in accordance with the injunctive relief requested in ¶ 156 above;
  2. Compensatory damages, punitive damages, attorney fees and its costs and expenses incurred herein;
- G. The costs, expenses and attorney fees incurred by the CWCA herein; and
- H. Any other legal and/or equitable relief deemed justified.

Respectfully submitted,

**ONDA, LaBUHN, RANKIN & BOGGS CO., LPA**

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Civic Association, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document has been served by regular U.S. Mail, postage prepaid on this \_\_\_\_ day of June, 2007 upon:

Melissa R. Lipchak, Esq.  
7333 East Livingston Avenue  
Reynoldsburg, Ohio 43068  
*Counsel for Plaintiffs*

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Craig J. Spadafore, Esq.