

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

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR BRANDY MILL ESTATES SUBDIVISION ("First Amendment") is executed this 4th day of April, 2005, by MARONDA HOMES, INC. OF OHIO, an Ohio corporation, hereinafter referred to as "Declarant."

RECITALS

A. A certain 20.519 acre tract of real property located in the Township of Etna, Licking County, Ohio, inclusive of Brandy Mill Estates Subdivision, Section 1, as the same is delineated upon the recorded plat thereof, of record in Plat Book 17, Pages 184 and 185, Recorder's Office, Licking County, Ohio (the "Property"), was submitted to the application of that certain Declaration of Restrictive Covenants for Brandy Mill Estates Subdivision (the "Declaration").

B. The Declaration was filed on April 3, 2003 in at Instrument Number 200304030014623 of the Official Records of Licking County, Ohio.

C. The Declaration requires the Owners of Lots whose properties include landscape buffers to maintain those buffers and the Plat identifies a 50 foot buffer conservation easement that was required pursuant to the subdivision regulations of Licking County.

D. Declarant desires to further clarify the existence of the conservation easement and the extent of the Owners' responsibilities with respect to the conservation easement areas identified on the Plat in order to advance the objectives of the Licking County and the Township of Etna with respect to the Property.

E. Pursuant to the Declaration, the Brandy Mill Estates Homeowners' Association, Inc. is authorized and obligated to levy and collect assessments from the Owners (defined herein) of Lots and enforce payment of such assessments and to enforce the covenants and restrictions contained in the Declaration.

F. Declarant desires to amend the Declaration to state with more specificity, the rights, obligations and remedies of the Association and the Owners with respect to assessments due thereunder and violations of the Declaration or the Rules or Association Documents (as defined or described in the Declaration).

G. Section 3.18 of the Declaration provides that the Declarant may subject additional property to the operation of the Declaration.

H. Section 3.19 of the Declaration provides that the Declarant may amend the Declaration so long as Declarant owns at least one (1) Lot within the Property.

NOW, THEREFORE, Declarant hereby declares that:

1. All of the terms used herein which are defined in the Declaration shall be interpreted to have the same meaning as defined in the Declaration unless specifically hereinafter amended.

2. Section 3.21 of the Declaration is hereby amended to add the following paragraph to the end of Section 3.21;

“Declarant hereby declares and grants to and for the benefit of itself, the Association, and every Owner, 50-foot wide buffer and conservation easements over and upon the areas designated on the Plat for such purposes (collectively, the “Conservation Easements”), which Conservation Easements shall run with the land. Owners of Lots upon which a Conservation Easement is located, as shown on the Plat, shall maintain such Conservation Easements in good condition and shall not disturb or remove landscaping, trees or other vegetation from such areas other than removal of noxious weeds or other than pursuant to a plan approved by the Association, which plan must preserve and encourage the buffer and conservation objectives of the area. Lots subject to a Conservation Easement created hereby shall be subject to such rules and regulations as may be adopted from time to time by the Association with respect to the care, maintenance and use of the Conservation Easements. No Owner may construct, install, or cause or permit to exist any improvement or other structure within the Conservation Easements.

3. Section 3.22 of the Declaration is hereby deleted in its entirety.

4. The following language is hereby added to the end of Section 3.16 of the Declaration:

“In addition, the duly authorized agents, officers, contractors, and employees of the Association (if formed) shall have a right of entry and access to the Property, including without limitation the Lots, for the purpose of performing the Association’s rights or obligations set forth in this Declaration. The Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Area or areas within the Conservation Easements, but only during reasonable hours and after providing seventy-two (20) hours advance notice to the Owner, except in cases of emergency.”

5. The following language is hereby added to the Declaration as Article V thereof:

ARTICLE V - Assessments and Liens

5.01 Operating Fund; Liens. The Board shall establish an Operating Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Area. The Declarant, for each Lot owned, covenants and agrees, and each Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the assessments due hereunder or assessed from time to time by the Board (“Assessments”), including: (i) any annual or monthly Assessments charged to pay for common expenses; (ii) any special Assessments to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the reserve fund (provided, however,

that capital expenditures in excess of \$5,000.00 shall be approved by at least two-thirds of the Members); and (iii) any individual Lot Assessment ("Lot Assessment") against any individual Lot(s) and the Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of enforcement (including court costs and the Association's legal fees, if applicable) relative to any deed restriction violation which exists on such Lot(s) (as more particularly described below); costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. The Board also may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Owner who violates the Rules adopted by the Board, the Association Documents or any provision of this Declaration, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules, the Association Documents, or provisions of this Declaration. Upon its determination to levy an individual Lot Assessment, the Board shall give the affected Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, 10 days prior to the effective date of the levy of any Lot Assessment.

5.02 Interest: Late Charge. If any Assessment remains unpaid for 10 days after all or any part thereof shall become due and payable, the Board may charge interest at the lesser of the rate of twelve percent (12%) per annum or the highest rate permitted by law, and the Board, or the Manager, if applicable, may collect an administrative collection charge in an amount to be established from time to time by the Board.

5.03 Liability for Unpaid Assessments. Each Assessment or installment of an Assessment, together with interest thereon and any costs of collection, including reasonable attorneys' fees shall become the personal obligation of the Owner(s) beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute an action at law on behalf of the Association against the Owner(s) personally obligated to pay any delinquent Assessment. An Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable and both such Owner and his/her successor in title shall be jointly and severally liable therefore. Except as otherwise provided herein, the transfer of an interest in a Lot shall neither impair the Association's lien against that Lot for any delinquent Assessment nor prohibit the Association from foreclosing that lien.

5.04 Liens. All unpaid Assessments, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment remains unpaid for ten (10) days after it is due, then the Board may authorize any officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and costs with the appropriate governmental office containing a description of the Lot which the lien encumbers, the name(s) of the Owner(s) of that Lot, the amount of the unpaid portion of the Assessment, and such other information as the laws of the State may require. The certificate may be signed by any officer, authorized agent or Manager of the Association. Upon the filing of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall

remain valid for a period of five (5) years from the date such certificate is duly filed, and may thereafter be renewed for like consecutive terms, until and unless the lien is released earlier or satisfied in the same manner provided by the law of the State for the release and satisfaction of mortgages on real property, or unless the lien is discharged by the final judgment or order of any court having jurisdiction. Notwithstanding the foregoing, the lien for Assessments provided for in this Section shall be subordinate to the lien of any bona fide first mortgage on a Lot.

5.05 Vote on Association Matters: Use of Common Area. If any Assessment remains unpaid for thirty (30) days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Area, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.

6. Except as specifically hereinabove amended, all of the Provisions of the Declaration shall be and hereby are declared to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment effective this 4th day of April, 2005.

MARONDA HOMES, INC. OF OHIO,
an Ohio corporation

By Lawrence A. Augustine Jr.
Print Lawrence A. Augustine Jr.
Title V.P.

MONTGOMERY
STATE OF OHIO, COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this 4th day of April, 2005, by Lawrence A. Augustine, Jr., V.P. of Maronda Homes, Inc. of Ohio, an Ohio corporation, on behalf of the corporation.

Melinda S. Grady
Notary Public

This instrument prepared by:
M. Shannon Martin, Esq.
33 West First Street, Suite 600
Dayton, Ohio 45402

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MELINDA S. GRADY, Notary Public
In and for the State of Ohio
My Commission Expires June 29, 2009