

*September 17, 2010*

## **HIGHGATE ON THE LAKE**

### **AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

#### **Recitals**

This Amendment to Declaration of Covenants, Conditions and Restrictions is made on the 17th day of September, 2010 by Highgate on the Lake Association, the Michigan nonprofit corporation designated to administer Highgate on the Lake, a residential subdivision of a part of the Southwest ¼ of Section 28, Town 2 North, Range 8 East, located in the City of Wixom, County of Oakland, and State of Michigan as recorded in Liber 144, Pages 1 and 2.

WHEREAS, Open Space Communities, Inc., as Declarant, recorded a Declaration of Covenants, Conditions and Restrictions in Liber 6390 at Pages 195 through 211, Oakland County Records in November 1974; and,

WHEREAS, Open Space Communities, Inc., as Declarant, recorded an Amendment to said Declaration of Covenants, Conditions and Restrictions in Liber 6458 at Pages 425 through 428, Oakland County Records in April 1975; and,

WHEREAS, Open Space Communities, Inc., as Declarant, recorded a Second Amendment to said Declaration of Covenants, Conditions and Restrictions in Liber 6506 at Pages 788 through 790, Oakland County Records in July 1975; and,

WHEREAS, Highgate on the Lake Association recorded an Amendment to said Declaration of Covenants, Conditions and Restrictions in Liber 15973 at Pages 570 through 593, Oakland County Records in January 1996; and,

WHEREAS, Highgate on the Lake Association recorded an Amendment to said Declaration of Covenants, Conditions and Restrictions in Liber 16582 at Pages 242 through 255, Oakland County Records in September 1996; and,

WHEREAS, Highgate on the Lake Association recorded an Amendment to said Declaration of Covenants, Conditions and Restrictions in Liber 37476 at Pages 575 through 576, Oakland County Records in April 2006; and,

WHEREAS, the Membership voted on September 1, 2010 to approve additional amendments to the Declaration in accordance with the procedures set forth therein.

NOW THEREFORTH, the Association, acting as the assignee and successor to the Declarant, does hereby declare that all of the properties described in the attached legal description shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. The Declaration is hereby amended as set forth below and the following text shall supercede and replace the original text of the Declaration of Covenants, Conditions and Restrictions and its previous amendments.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.** “Association” shall mean and refer to Highgate on the Lake Association, a Michigan non-profit corporation, its successors and assigns.

**Section 2.** “Properties” shall mean and refer to that certain real property described on the attached legal description.

**Section 3.** “Common Areas” shall mean the Beach Area, islands within the courts, Park South and Park North, Highgate on the Lake Subdivision.

**Section 4.** “Lot” shall mean and refer to any plot of land shown upon the recorded subdivision map of properties with the exception of the Common Area.

**Section 5.** “Member” shall mean and refer to every person or entity that holds Membership in the Association.

## **ARTICLE II**

### **MEMBERSHIP**

Membership in the Association shall be automatic for each Lot owner. A Lot owner shall be defined as every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot included within the purview of this Association, but not including any owner who has sold their interest under an executory land contract. Persons and entities who are renting shall not be Members. During such time as such land contract is in force, the land contract vendee shall be considered to be the Member of the Association; nevertheless both the land contract vendor and the vendee shall remain liable, jointly and severally for all assessments and other charges. Membership shall be appurtenant to and may not be separated from ownership on any Lot which is subject to assessment by the Association. Ownership of such a Lot, as defined herein, shall be the sole qualification for Membership.

### ARTICLE III

#### VOTING RIGHTS

Members, as defined in the preceding Article II, shall be entitled to one vote for each Lot in which they hold the interest required for Membership by Article II; provided however, that in the event any person or entity owns a residence situated on two Lots, they shall only have one vote. When more than one person and/or entity holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Such joint owners shall designate their representative for voting purposes via a written instrument signed by each of them which they may revise at any time by further written notice to the Association.

### ARTICLE IV

#### PROPERTY RIGHTS

**Section 1. Members' Easement of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to:

(a) The right of the Association to make and enforce reasonable regulations pertaining to the use and maintenance of the Common Area, which regulations shall be binding upon the Members.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 90 days from and after each and any infraction of its published rules and regulations or until resolution of the infraction.

(c) The right of the Association to dedicate or transfer all of any part of a Common Area to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the Membership. No such dedication or transfer shall be effective unless approved by the affirmative vote of the Members entitled to cast two-thirds (2/3) of the votes of the Association. In the event of a proposed dedication or transfer, the Board of Directors shall convene a meeting of the Membership for discussion of the proposal and for conducting any voting on such proposal(s).

**Section 2. Use of the Common Area.** All residents of the Properties and guests accompanying said residents shall have equal access to the Common Area.

(a) All motorized vehicles, including motorcycles, snowmobiles, motorized bicycles, go-carts, mini-bikes, cars, trucks, and the like are restricted from the 'Highgate on the Lake Commons area' with the following exceptions: maintenance vehicles required to support park maintenance. The bike path located between Chantclair Circle and the beach may be used by

snowmobiles only at speeds not to exceed 5 miles per hour for access to the lake via the boat ramp.

(b) No boats powered by motors shall be allowed on the lake. No privately owned boats shall be left overnight at any common area.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Each owner of any Lot, by acceptance of a deed, other conveyance or land contract vendee's interest therein, whether or not it shall be so expressed in any such deed, land contract or other conveyance, is deemed to covenant and agree to pay to the Association the annual maintenance assessment provided for herein. The annual maintenance assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the Lots against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person(s) who was/were the Owner of such Lot(s) at the time when the assessment fell due. The personal obligation shall pass to successors in title. Both a land contract vendor and the vendee shall remain liable, jointly and severally for all assessments and other charges. In the event that any person or entity shall own a residence situated on two Lots they shall only be liable for one annual maintenance assessment; the Association's lien shall however apply to all lots owned by such person or entity.

**Section 2. Apportionment of Assessments.** All assessments levied against the Members to cover expenses of administration shall be equally apportioned amongst the Lots, and shall be due and payable on April 1<sup>st</sup> in each year and shall be paid annually in advance. Amount of assessment shall be established and may be adjusted from year to year by the Association as the needs of the property may in their judgment require, but in no event shall such charge exceed \$250.00 per lot except said maximum charge may be increased at any Annual meeting or special meeting called for such purpose by a vote of not less than 51% of the members of the Association, which members may vote in person or by proxy upon said question; provided further that notice of the proposed increase shall have been given to the members with the notice of the meeting as required by the By-Laws of the Association. Approval and consent of such additional assessment shall thereafter be binding upon all of the members. One such share shall be assessed against the Owner of each such Lot, provided however, that in the event any person or entity owns a residence situated on two Lots, they shall only be liable for one annual maintenance assessment. Assessments shall be due and payable commencing with acceptance of a deed to, or a land contract vendee's interest in, a Lot, or with the acquisition of fee simple title to a Lot by any other means. In the event that an Owner sells his Lot or in the event of a mortgagee foreclosure on a Lot, the Owner's assessment for that year shall be prorated from the date of the new Owner's acquisition of title, and the prorated assessment to the end of that calendar year shall be paid in advance by the new Owner simultaneously with the consummation of the acquisition as part of the purchase price at closing.

**Section 3. Penalty for Default.** The payment of the assessment shall be in default if such assessment, or any part thereof, is not paid to the Association in full on or before the end of the month in which such assessment falls due. Members in default as of May 1<sup>st</sup> will receive a late dues notice and a \$50 late fee will be added to their assessment for that year. Assessments in default shall bear simple annual interest from their due date at the rate of seven percent (7%). Each Member shall be, and remain, personally liable for the payment of all assessments pertinent to his or her lot which may be levied while such Member is the owner thereof. All payments shall be applied first against any outstanding administrative fees, late fees, interest and costs of collection and thereafter against assessments in order of greatest delinquency.

**Section 4. Waiver of Use or Abandonment of Lot.** No Member may exempt himself or herself from liability for his or her contribution toward the expenses of administration by waiver of the use or enjoyment of any common area or areas, or by abandonment of his or her lot.

**Section 5. Enforcement.** If any assessment is not paid by May 1<sup>st</sup> in the year in which it becomes due, the Treasurer shall notify the delinquent Member of such delinquency. If such assessment is not duly paid on or before June 15<sup>th</sup> in the year in which it became due, the Treasurer of the Association may cause a lien for the delinquent assessment to be recorded in the office of the Register of Deeds for Oakland County, Michigan, against the lot on which the assessment was levied. The Association may enforce collection of delinquent assessments by suit at law for a money judgment against the title holder or the land contract vendee of a lot, and/or by foreclosure of the lien securing payment in the same manner that real estate mortgages may be foreclosed by action under Michigan law. In an action for foreclosure a receiver may be appointed to collect reasonable rental for the residence on the lot from the Owner thereof or any persons claiming under him or her. The expenses incurred in collecting unpaid assessments including interest, late charges, costs and attorneys' fees and advances for taxes or other liens paid by the Association to protest its lien, shall be chargeable to the Member in default, and shall be secured by the lien on his or her lot. A Member in default shall not be entitled to vote at any meeting of the Association so long as such default continues and shall not be eligible to serve on the Board of Directors.

**Section 6. Purposes of Assessments.** The annual maintenance assessment shall be used for such of the following purposes as the Board shall determine necessary and/or advisable:

- (a) Improving and maintaining Common Areas and property of the Association, and entrance-ways of the Highgate of the Lake Subdivision;
- (b) Planting trees, shrubbery and the care thereof;
- (c) Collection and disposing of garbage, trash, recyclables and rubbish;
- (d) Removing and/or cutting grass or weeds;
- (e) Constructing, purchasing, maintaining, and/or operating any community service;

(f) Doing any other thing necessary or advisable in the opinion of the Board of Directors for the general welfare of the Members, including but not limited to expenses incident to the examination of plans as herein provided and to the enforcement of the restrictions, conditions, obligations, reservations, rights, powers and collection of all assessments. Specifically, the maintenance of the retention basin at the north end of the subdivision shall be the responsibility of the Association.

**Section 7. Uniform Rate.** Annual assessments must be fixed at a uniform rate for all Lots, subject to the above described exception in the event that any person or entity shall own a residence situated on two Lots.

**Section 8. Date of Commencement of Annual Assessment; Due Dates.** The annual assessment provided for herein shall commence as to Lots in each subdivision on the first date of the month of April following the recording of the Plat. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed by an Officer of the Association, setting forth whether the assessments on the specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of any payment of any assessment therein stated to have been paid.

**Section 9. Subordination of the Lien to Mortgages.** The Lien of the Association for the assessments and other charges provided for herein shall be subordinate to the lien of any first mortgagee only, provided that such first mortgage was recorded prior to the date of the recording of the Association's lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VI**

### **RESTRICTIONS ON USES OF LOTS**

**Section 1. Residential Use.** Lots shall be used for residence purposes only and no building of any kind whatsoever shall be erected, re-erected, moved or maintained except private dwellings. Such dwellings shall be designed and erected for occupation by one single family. A private attached garage for the sole use of the Owner or occupant may be provided. No Lot shall be used for any commercial, manufacturing, industrial or business purposes that create any nuisances or liability exposures, such as, but not limited to, customer/client/patient visits, noise, traffic or parking congestion, odors, vibrations or anything else that might detract from the peaceful and residential character of Highgate on the Lake.

**Section 2. Vehicles; Trailers.** Campers, motor homes, boats, jet skis, all-terrain vehicles, recreation vehicles, snowmobiles, trailers of any kind and commercial vehicles (except while making normal deliveries) shall not be stored or parked on any Lot except within a private attached garage or other attached structure as approved by the Board of Directors. “Commercial vehicle” shall mean and include any vehicle with a commercial license plate and/or commercial signage and/or over 8,000 pounds gross vehicle weight. Unless such structure is a permanent building such approval shall run for a maximum of one year. None of the following shall be stored in a driveway: boats, jet skis, all-terrain vehicles, recreation vehicles, personal watercraft, boat trailers, campers, motor homes, snowmobiles, snowmobile trailers, all terrain vehicles, all other trailers, and commercial vehicles.

**Section 3. Lot Splits/Divisions.** No Lot shall be split or divided.

**Section 4. Signs.** No signs or billboards shall be placed or maintained on any Lot except those in compliance with the following restrictions and specifications: no sign shall be permitted if larger than 24” x 30” in surface area; the top of a sign shall not be more than five feet above the ground immediately below it; “For Sale” signs shall be removed within one week after closing of the sale; all garage sale signs and signs advertising a product or company which may actually be doing work at a Lot shall be removed not later than one week after being placed.

**Section 5. Nuisances.** No refuse pile or other unsightly or objectionable materials shall be allowed on any Lot unless the same shall be properly concealed. Refuse, ashes, building materials, garbage and debris of any kind shall be cared for in such a manner as not to be offensive to neighboring property owners. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**Section 6. Fences; Walls and Ornamental Structures.** The following restrictions and specifications shall apply. No approval shall be granted by the Board of Directors for any fence not meeting these conditions. Fences, garden walls and similar improvements may be constructed or erected only after the plans and specifications of such proposed fence, wall or other device shall have first been submitted in writing to the Board of Directors and approved in writing by it. A fence will be permitted to be erected around any privately owned swimming pool as a safety precaution or in accordance with ordinances regulating the construction and use of swimming pools as per City of Wixom ordinances and/or codes. Furthermore:

**(a) Front Yards.** Fences, garden walls and other structures are prohibited. Ornamental fences that are no higher than 36 inches above the ground may be allowed only after plans and specifications of the proposed structure have been submitted in writing to and approved in writing by the Board of Directors.

**(b) Rear Yards.** Fences, garden walls and/or other structures are prohibited on Lots 1 thru 49 inclusive, and on Lots 61, 74, 75, 86 and 87. Rear yard fences, garden walls and/or other structures are allowed and may be constructed on the remaining Lots ONLY after plans and specifications of such proposed fence, wall or

other structure have been submitted to AND approved, in writing, by the Board of Directors.

**(c) Side Yards.** No fence, wall or other structure shall extend on either side of any Lot, toward the front of said Lot, further than the rear corner of the building closest to that side Lot line with the exception of an ornamental fence not exceeding 36 inches (3 feet) in total height. No approval shall be granted by the Board of Directors for any fence not meeting these conditions.

**(d) Patio Fences.** Patio fences which do not exceed 3 feet in height and which are located not further than 3 feet from the edge of the concrete patio surface and which do not exceed 60 lineal feet are permitted.

**(e) Shrubs, Trees, Plant Materials Excepted.** The above fence restrictions shall not prohibit shrubs, trees or plant material on any Lot in any location.

**(f) Invisible Electronic Fences.** Invisible or electronic fences, for the control of pets only, are allowed provided that such fence is constructed in accordance with the ordinances and rules as set forth by the City of Wixom.

**Section 7. Detached Garages.** Anything to the contrary notwithstanding, detached garages are specifically prohibited on all Lots.

**Section 8. Storage Buildings/Sheds.** Storage buildings and sheds are prohibited on any Lot unless they are attached to and finished in an exterior treatment similar to the existing home on such Lot. Storage buildings and sheds shall not be placed, erected or installed unless the plans, specifications and plat plan are approved in writing by the Association's Board of Directors.

**Section 9. Animals.** Lot owners must comply with City of Wixom ordinances regarding number of animals allowed to be kept and types of animals allowed. No animal may be kept or bred for any commercial purpose. All animals shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No animal may be permitted to run loose at any time and all dogs shall at all times be leashed and attended by some responsible person while outside the owner's Lot.

No savage or dangerous animal shall be kept and any Lot owner who causes or permits any animal to be brought or kept upon the premises of the subdivision shall indemnify and hold the Association harmless for any loss, damage or liability (including costs and attorney fees) which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Board of Directors has given its permission therefore, and the Association may assess and collect from the responsible owner such losses and/or damages in the manner provided for collection of the annual assessment.



Each Lot owner shall be responsible for collection and disposition of all fecal matter deposited by any pet maintained by such owner. No animal which can be heard on any frequent or continuing basis shall be kept.

**Section 10. Above Ground Pools.** The future erection of above ground pools is prohibited in the Highgate on the Lake subdivision.

## ARTICLE VII

### ARCHITECTURAL CONTROL

**Section 1. Plan Submission & Approval.** No building or other structure shall be commenced, erected or maintained, nor shall any addition to or change or alteration to any structure be made except interior alterations, until the plans and specifications, prepared by a competent architect showing the nature, kind, shape, height, and materials, color scheme, location within a Lot, and approximate cost of such structure and the grading plan of the Lot to be built upon shall have been submitted to and approved in writing by the Board of Directors and a copy of said plans and specifications as finally approved, lodged permanently with the Association.

**Section 2. Fences and Walls.** Fences, garden walls and similar improvements shall be subject to all of the restrictions and requirements as detailed in Article VI Section 6 above. Fences, garden walls and similar improvements may be constructed or erected only after the plans and specifications of such proposed fence, wall or other device shall have first been submitted in writing to the Board of Directors and approved in writing by it. In any event, no fence, other than ornamental fence not exceeding 3 ft. in height, shall extend on either side of the Lot toward the front of the Lot further than the rear corner of the building closest to the side Lot line. A fence will be permitted to be erected around any privately owned swimming pool as a safety precaution or in accordance with ordinances regulating the construction and use of swimming pools as per City of Wixom ordinances and/or codes.

**Section 3. Aesthetic Standards for Review.** The Board of Directors shall have the right to refuse to approve any such plans or specifications or grading plans which are not suitable or desirable in its opinion for aesthetic or other reasons. In so passing upon such plans, specifications and grading, it shall have the right to take into consideration the suitability of the proposed building or other structure to be built upon the site which it is proposed to erect the same, and the harmony as planned in view of the outlook from the adjacent or neighboring properties. It is understood and agreed that the purpose of this paragraph is to cause the platted land to develop into a beautiful, harmonious private residence section, and if a disagreement on the points set forth in this paragraph should arise, the decision of the Board of Directors shall be final.

**Section 4. Review Deadline.** In the event the Board of Directors shall have failed to approve or disapprove such plans and location within forty-five (45) days after the same have been delivered to the Association, then such approval will not be required provided the plans and

location on the Lots conform to, or are in harmony with existing structures in the subdivision, these restrictions, and any zoning law applicable thereto.

**Section 5. Minimum Living Area Required; Maximum Square Footage Permitted.**

In any case, with or without the approval of the Association, no dwelling shall be permitted on any Lot in the subdivision, or on any Lot that is proposed to become a part of this subdivision, such as, but not limited to, the property known as the “Old Well Site” located at the South Eastern corner of the subdivision, [T2N,R8E,SEC 28 PART OF E ½ OF SW ¼ BEG AT PT DIST N 00-08-30 E 636.98 FT FROM S ¼ COR, TH N 00-08-30 E 270 FT, TH N 89-51-27 W 185.31 FT, TH S 21-29-00 W 223.20 FT TO CEN LI OF LOON LAKE RD, TH ELY ALG SD CEN LINE TO BEG 1.20 A] unless the following is complied with:

One Story Single Family Home

Minimum Square Footage Requirement is 1200 square feet  
Maximum Square Footage Requirement is 2500 square feet

One and One Half Story Single Family Home

Minimum Square Footage Requirement is 1200 square feet  
Maximum Square Footage Requirement is 2500 square feet

Two Story Single Family Home

Minimum Square Footage Requirement is 1500 square feet  
Maximum Square Footage Requirement is 3000 square feet

All design and aesthetic elements proposed for the outside of any dwelling must be pre-approved, in writing, by the Board of Directors prior to construction. All building must comply with all City of Wixom ordinances and requirements. Should the Association and the City ordinances and requirements differ, the more restrictive rule shall apply.

**Section 6. Setback Requirements.** All building must comply with all City of Wixom ordinances and requirements. Should the Association and the City ordinances and requirements differ, the more restrictive rule shall apply.

**ARTICLE VIII**

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT**

**RESTRICTIONS**

Any building being used or capable of being used for residential purposes and occupancy within or affected by the flood plain shall be subject to the following restrictions as per Section (c) through (g) of R560.304 of the laws of the State of Michigan which restrictions shall be observed in perpetuity and not subject to amendment, being specifically excluded from any time limitations:

(c) Lower floors, excluding basements, shall be a minimum of (1) one foot higher than the elevation of the contour defining the flood plain limits.

(d) Openings into the basement shall not be lower than the elevation of the contour defining the flood plain limits.

(e) Basement walls and floors below the elevation of the contour defining the flood plain limits shall be watertight and reinforced to withstand hydrostatic pressure from a water level equal to the elevation of the contour defining the flood plain limits.

(f) A positive means of preventing sewer back-up from the sewer lines and drains which serve a building are required for all buildings.

(g) Anchors shall be installed in all buildings in such a manner as to prevent flotations.

No part of the flood plain area within the subdivision shall be altered and no structure shall be built thereon without the approval of the Michigan Department of Natural Resources and Environment.

## **ARTICLE IX**

### **EASEMENTS**

Easements and rights-of-way are hereby reserved as shown on the recorded plat. In addition to the above, easements and rights-of-ways are reserved in and over a strip of land six feet in width along all rear and side Lot lines wherever it may be deemed necessary for the installation or maintenance of telephone or electrical poles, lines, or conduits, or sewer, gas lines, or water mains, for drainage purposes, or for the use of any other public utility deemed necessary or advisable (originally by Declarant and currently by the Board of Directors). The use of all of part of such easements and rights-of-way may be granted or assigned at any time hereafter by the Association to any person, firm, governmental unit or agency or corporation furnishing any such services.

## **ARTICLE X**

### **VIOLATIONS**

**Section 1. Remedies.** Violations of any restrictions or conditions or breach of any covenant or agreement herein contained shall give the Association in addition to all other remedies provided by law, the right to enter upon the land as to which such violation or breach exists, and summarily to abate or remove, at the expense of the owner thereof, any erection, sign, thing or condition that may be or exist contrary to the intent and meaning of the provision hereof, and the Association shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. The Association and any Member shall also have the right to an injunction to enforce any restrictions herein. The Board may also levy monetary fines for any violation of any restriction in accordance with the following:

(a) **Procedures.** Upon any violation being alleged by the Association, a written notice shall be sent to the offending Member describing the facts constituting the alleged violation, the specific restriction alleged to have been violated and the notice shall set forth the date (no less than seven (7) days from the date of the notice), time and place for a hearing before the Board of Directors, at which the Member shall have the right to appear before the Board and offer evidence in defense of the alleged violation. The Board shall issue a written notice of its determination within ten (10) days after the hearing and, upon finding that a violation has occurred, the Board of Directors may levy a reasonable fine.

**Section 2. Non-waiver of Right.** The failure of the Association or of any Member to enforce any right, provision, covenant or condition which may be granted by the Declaration as amended shall not constitute a waiver of the right of the Association or of any such Member to enforce such right, provision, covenant or condition in the future.

**Section 3. Cumulative Rights, Remedies and Privileges.** All rights, remedies and privileges granted to the Association or any Member pursuant to any terms, provisions, covenants or conditions of the Declaration as amended shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

## **ARTICLE XI**

### **TERM OF RESTRICTIONS – AMENDMENT**

The covenants and restriction of this Third Amendment to Declaration of Covenants, Conditions and Restrictions shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Third Amendment to Declaration of Covenants, Conditions and Restrictions, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Third Amendment to Declaration of Covenants, Conditions and Restrictions is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Third Amendment to Declaration of Covenants, Conditions and Restrictions may be amended during or after the first twenty (20) year period by affirmative vote of not less than two thirds of the of the Lot owners who are eligible to vote.

## **ARTICLE XII**

### **SEVERABILITY**

In the event that any of the terms, provisions, or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.