

AMENDED AND RESTATED 107  
DECLARATION OF CONDOMINIUM PROPERTY  
FOR  
THE RESERVE AT THE FAIRWAYS CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF CONDOMINIUM PROPERTY FOR THE RESERVE AT THE FAIRWAYS CONDOMINIUM RECORDED AT COND-05-035105 OF THE MONTGOMERY COUNTY RECORDS.

PLAT MAPS RECORDED AT PLAT BOOK 199, PAGES 6-6d, PLAT BOOK 200, PAGES 13-13F, PLAT BOOK 200, PAGES 14-14E, PLAT BOOK 204, PAGES 1-1E, PLAT BOOK 205, PAGES 36-36C, PLAT BOOK 207, PAGES 33-33C, OF THE MONTGOMERY COUNTY RECORDS.

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**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM PROPERTY**  
**FOR**  
**THE RESERVE AT THE FAIRWAYS CONDOMINIUM**

**RECITALS**

A. The Declaration of Condominium Property for The Reserve at the Fairways Condominium ("Original Declaration") and Bylaws of The Reserve at the Fairways, Section One Condominium Association, Inc., Exhibit "C" to the Declaration ("Original Bylaws") were recorded on April 18, 2005, at COND-05-035105 of the Montgomery County Records.

B. The Reserve at the Fairways, Section One Condominium Association, Inc. (the "Association") is a corporation consisting of all Unit Owners in Reserve at the Fairways Condominium and as such is the representative of all Unit Owners.

C. Declaration Article XVII, Section 17.01 authorizes amendments to the Declaration and Bylaws Article X, Section 10.06 authorizes amendments to the Bylaws.

D. Unit Owners representing at least 75 percent of the Association's current voting power have executed instruments in writing setting forth specifically the matter to be modified (the "Amendments").

E. As of February 8, 2021, Unit Owners representing 100 percent of the Association's voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendments A and E and authorizing the Association's officers to execute Amendments A and E on their behalf, as documented in the Association's records. These two Amendments read:

**AMENDMENT A**

INSERT a new DECLARATION ARTICLE XIII, SECTION 13.14 entitled, **"Occupancy Restriction."** Said new addition, to be added to Page 16 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**13.14 Occupancy Restriction.** A Person who is classified as a sex offender/child-victim offender and for whom the County sheriff or other government entity must provide community notice of the sex offender's

residential address, is prohibited from residing in or occupying a Unit and from remaining in or on the Condominium Property for any length of time. The classification of a sex offender/child-victim offender and the determination of whether notice is required is made by a court of law in accordance with the Ohio Sex Offenders Act, or similar statute from another jurisdiction as either may be amended or renamed from time to time. The Association is not liable to any Unit Owner, Occupant, or visitor of any Unit Owner, or of the Association, as a result of the Association's alleged failure, whether negligent, intentional, or otherwise, to enforce any provision of this Occupancy Restriction.

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this restriction on the occupancy of Units. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

#### **AMENDMENT E**

**DELETE BYLAWS ARTICLE I, SECTION 1.05 entitled, "First Meeting." in its entirety.** Said deletion to be taken from Page 1 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

**INSERT a new BYLAWS ARTICLE I, SECTION 1.05 entitled, "Annual Meetings."** Said new addition, to be added to Page 1 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**1.05 Annual Meetings.** For the election of the Board of Directors, the presentation of reports, and the transaction of such other business as is set forth in the meeting notice, the Association's annual meeting will be held at such time, at such place, and on such date during the fourth quarter of each calendar year as the Board of Directors determines and as stated in the meeting notice.

Any conflict between the above provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment clarifying the date for holding the annual meeting. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

F. As of February 8, 2021, Unit Owners representing 86.36 percent of the Association's voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendment B and authorizing the Association's officers to execute Amendment B on their behalf, as documented in the Association's records. This Amendment reads:

#### **AMENDMENT B**

**DELETE DECLARATION ARTICLE XIII, SECTION 13.11 entitled, "Renting and Leasing," in its entirety.** Said deletion to be taken from Pages 15 and 16 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

**INSERT a new DECLARATION ARTICLE XIII, SECTION 13.11 entitled, "Renting and Leasing."** Said new addition, to be added to Page 15 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**13.11 Renting and Leasing.** To create a community of resident Unit Owners and to remain within mortgagee Unit Owner-occupancy limitations, no Unit can be leased, let, or rented, whether for monetary compensation or not, by a Unit Owner to others for business, speculative, investment, or any other purpose, subject to the following:

(a) The above prohibition does not apply to:

(i) Units that are occupied by the parent(s) or child(ren) of the Unit Owner; or,

Units that are leased or rented to a third party by the Unit Owner of the Unit as of the date this amendment is recorded with the Montgomery

County Recorder's Office, and which the Unit Owner has registered with the Association as a "leased Unit" (referred to as "Grandfathered Units") within 90 days of the recording of this amendment; a Grandfathered Unit may continue to be leased until titled Unit Ownership of the Unit is transferred to a subsequent Unit Owner; upon the date of title transfer, the Unit is no longer a Grandfathered Unit and is no longer excepted from this lease prohibition; or,

(ii) Units that meet a special situation and to avoid a practical difficulty or other undue hardship, each Unit Owner has the right to lease their Unit to a specified renter/tenant for a one-time period of no more than 24 consecutive calendar months, subject to the restrictions and requirements as identified in subparagraphs (b), (c), and (d) below (referred to as "Hardship Units"). To exercise this right:

(1) The Unit Owner must provide the Board with prior, written notice of the lease at least 10 business days prior to its commencement;

(2) The Unit Owner may not be more than 60 days delinquent in payment of any assessment or other amount due to the Association. If the Unit Owner is more than 60 days past due in any payment, the Unit Owner will request from the Board a one-time hardship exception and will not lease the Unit until the Board approves the request.

(b) Grandfathered Units or Hardship Units are subject to the following conditions and restrictions:

(i) Lease terms must be for 24 full, consecutive calendar months;

(ii) Leases must be provided to the Board at least 10 days prior to the commencement of the lease term;

(iii) No Unit may be leased, let, or rented to any business or corporate entity for the purpose of corporate housing or similar use;

(iv) No Unit may be sub-leased, sublet, or rented by a tenant;

(v) No individual room, part, or sub-part of any Unit may be leased, let, or rented;

(vi) The Association has at all times a limited power-of-attorney from and on behalf of any Unit Owner who is more than 60 days past due in the payment of any assessment or other amounts due to the Association. The limited power-of-attorney permits the Association to collect the lease or rent payments directly from the lessee, tenant, or renter until the amount owed to the Association is paid in full;

(vii) The lessee, tenant, or renter must abide by the terms of the Declaration, Bylaws, and rules and regulations;

(viii) When a Unit Owner leases their Unit, the Unit Owner relinquishes all amenity privileges, but continues to be responsible for all obligations of Unit Ownership of their Unit and is jointly and severally liable with the lessee, tenant, or renter to the Association for the conduct of the lessee, tenant, or renter and any damage to Association property;

(ix) In accordance with Ohio law, the Association may initiate eviction proceedings to evict any lessee, tenant, or renter for violation of the Declaration, Bylaws, rules, or applicable laws, by any occupant of the Unit, or the Unit Owner of

the Unit. The action will be brought by the Association, as the Unit Owner's agent, in the name of the Unit Owner. In addition to any procedures required by State law, the Association will give the Unit Owner at least 10 days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorneys' fees, will be assessed to the Unit Owner and the Unit's account and is a lien against that Unit.

(c) Any land contract must be recorded with the Montgomery County Recorder's Office and a recorded copy of the land contract must be delivered to the Board within 30 days of such recording. Any land contract not meeting the requirements of this subparagraph (c) is an impermissible lease. The buyer of a Unit on a land contract meeting the requirements of this subparagraph (c) is considered the Unit Owner of the Unit for all purposes and obligations under this Declaration, the Bylaws, and the rules, except only and specifically to the extent otherwise provided in the land contract between the buyer and seller.

(d) The Board may adopt and enforce rules and definitions in furtherance, but not in contradiction of the above provisions, including, rules to address and eliminate attempts to circumvent the meaning or intent of this Article XIII, Section 13.11 and in furtherance of the preservation of the Reserve at the Fairways as a Unit Owner-occupied community and against the leasing of Units for investment or other purposes. The Board has full power and authority to deny the occupancy of any Unit by any person or family if the Board, in its sole discretion, determines that the Unit Owner of such Unit is intending or seeking to circumvent the meaning, purpose, or intent of this Article XIII, Section 13.11.

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this restriction on the leasing of Units. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have

standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any contest or other legal challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

G. As of February 8, 2021, Unit Owners representing 93.18 percent of the Association's voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendments C, H, and I and authorizing the Association's officers to execute Amendments C, H, and I on their behalf, as documented in the Association's records. These three Amendments read:

#### **AMENDMENT C**

INSERT a new SENTENCE to the end of DECLARATION ARTICLE I, SECTION 1.45. Said new addition, to be added to Page 6 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

Ballots submitted via mail or by Electronic Voting Technology as defined in Bylaws Article I, Section 1.03, as amended, also will count that Unit towards the quorum.

INSERT a new DECLARATION ARTICLE XXIX, SECTION 29.17 entitled, "Notices and Other Actions and Communications." Said new addition, to be added to Page 46 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

29.17 Notices and Other Actions and Communications. For all notices to be sent to the Association, the Board, or the Unit Owners, the following provisions apply:

(a) Service of Notices on the Association and Board. All notices required or permitted by the Declaration or Bylaws, to the Association or the Board, must be made in writing and sent either:

- (i) by regular U.S. mail, first-class postage prepaid, or
- (ii) delivered in accordance with subparagraph (c) below, to the Board President, to any two other Directors, to the Association at the address of the Condominium Property, to the Association's manager or management company, if any, the Association's statutory agent



registered with the Ohio Secretary of State, or to any other address as the Board may designate by written notice to all Unit Owners.

(b) Service of Notices on Unit Owners. All notices required or permitted by the Declaration or Bylaws to any Unit Owner will be in writing and is deemed effectively given if it has been sent by one of the following methods:

- (i) personally delivered to the Unit Owner;
- (ii) placed under or attached to the front or main entry door of the Unit Owner's Unit;
- (iii) sent by regular U.S. mail, first-class postage prepaid, to the Unit Owner's Unit address or to another address the Unit Owner designates in writing to the Board; or
- (iv) delivered in accordance with subparagraph (c) below. If there is more than one Person owning a single Unit, a notice given to any one of those several Persons is deemed to have been given personally to all of the Persons owning an interest in the Unit.

(c) New Communication Technologies.

(i) Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted or approved by the Board, as well as by Ohio and federal law, now or in the future, in addition to the methods described in subparagraphs (a) and (b) above, the following may be accomplished using electronic mail or other transmission technology available at that time that is a generally accepted business practice:

- (1) any notice required in the Declaration or Bylaws to be sent or received;
- (2) any signature, vote, consent, or approval required to be obtained; and

- (3) any payment required to be made by the Declaration or Bylaws.
- (ii) The use of electronic mail or other transmission technology is subject to the following:

(1) The Association may use electronic mail or other transmission technology to send any required notice only to Unit Owners, individually or collectively, who have given the Association written consent to the use of electronic mail or other transmission technology. Any Unit Owner who has not given the Association written consent to use of electronic mail or other transmission technology will receive notices, including any notice of delinquency of any payment due, by either of the methods identified in subparagraph (b)(i)-(iii) above.

(2) For voting on matters, the Association may provide for voting by electronic mail or other electronic voting technology. However, voting for the election of Directors can be conducted by electronic mail or other electronic voting technology only to the extent, if any, as explicitly permitted and provided for in the Bylaws.

(3) An electronic mail or transmission technology to an Owner is not considered delivered and effective if the Association's transmission to the Unit Owner fails two consecutive times, e.g. the Association receives an "undeliverable" or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or transmission is not delivered or effective, the Association will deliver the notice or other communication to the Unit Owner by either of the methods identified in subparagraph (b)(i)-(iii) above.

**DELETE BYLAWS ARTICLE I, SECTION 1.03 entitled, "Proxies," in its entirety.** Said deletion to be taken from Page 1 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

**INSERT a new BYLAWS ARTICLE I, SECTION 1.03 entitled, "Voting Methods."** Said new addition, to be added to Page 1 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**1.03 Voting Methods.** Prior to sending the notice for any meeting, as required by Bylaws Article I, Section 1.07, as amended, and depending on the conduct of the meeting as determined by the Board in accordance with Bylaws Article I, Section 1.10, as amended, voting will be conducted via one of the following methods:

(a) **Voting in Person or by Proxy.** For meetings that are held in person and provide for physical attendance, Unit Owners may vote in person or by proxy. The person appointed as proxy need not be a member of the Association. Each proxy will be executed in writing by the Unit Owner entitled to vote and must be returned to the Association by regular mail, hand delivery, electronic mail, or other method of delivery provided for or permitted by the Board. Every proxy will automatically cease upon conveyance of the Unit by the Unit Owner.

(b) **Voting by Mail and Electronic Voting Technology.** For meetings that are held via Authorized Communications Equipment, voting will be conducted by mail, through the use of Electronic Voting Technology that is approved by the Board, or both. "Authorized Communications Equipment," as used in these Bylaws, means any communications equipment that is selected by the Board, in its sole discretion, that provides an electronic communication transmission, including but not limited to, by telephone, video conference, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention and participation of the Unit Owner. "Electronic Voting Technology" as used in these Bylaws, means an electronic voting system that accurately and securely records the voting Unit Owner's intent to cast a ballot on a matter in the way identified by the Unit Owner, and provides for the counting of electronic votes

submitted, including by means of internet, application, web, virtual, or other electronic technology.

All matters to be voted on at a meeting utilizing Authorized Communications Equipment must be sent to the Unit Owners no later than the date the meeting notice is sent to the Unit Owners in accordance with Bylaws Article I, Section 1.07 as amended. Voting via mail or by use of Electronic Voting Technology is considered to be voting at the meeting, as if the Unit Owner were physically present.

(c) Voting in Person, by Proxy, by Mail, and by Electronic Voting Technology. For meetings that are held in person and provide for physical attendance, voting may be conducted in person or by proxy, as provided for in this Bylaws Article I, Section 1.03(a) above, and in addition the Board may authorize the Unit Owners to vote by mail or Electronic Voting Technology as provided for in this Bylaws Article I, Section 1.03(b) above.

Any ballots, regardless of method, received subsequent to the date and time the Board sets for ballots to be turned in will be held invalid. Any costs associated with voting, including mailing costs, printing, Authorized Communications Equipment and Electronic Voting Technology costs and subscriptions, are Common Expenses. The Board may adopt any additional regulations, procedures, or rules as may be necessary to effectuate the intent and purpose of this voting provision to provide for the use of the desired voting method.

**DELETE BYLAWS ARTICLE I, SECTION 1.07** entitled, "Notice of Meetings," in its entirety. Said deletion to be taken from Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

**INSERT a new BYLAWS ARTICLE I, SECTION 1.07** entitled, "Notice of Meetings." Said new addition, to be added to Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**1.07 Notice of Meetings.** Written notice of each meeting of the Unit Owners will be given by, or at the direction of, the secretary or person authorized to call the meeting, delivered in accordance with Declaration Article XXIX, Section 29.17, at least fifteen days before the

meeting, to each Unit Owner entitled to vote at the meeting. The notice will specify the place, day and hour of the meeting.

If the meeting is held via Authorized Communications Equipment, the meeting notice must include any applicable links, access codes, password, telephone numbers, and/or other pertinent information that is necessary to allow the Unit Owner to participate at the meeting via the Authorized Communications Equipment. "Authorized Communications Equipment," as used in these Bylaws, means any communications equipment that is selected by the Board, in its sole discretion, that provides an electronic communication transmission, including but not limited to, by telephone, video conference, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention and participation of the Unit Owner.

**DELETE BYLAWS ARTICLE I, SECTION 1.09 entitled, "Action by Unanimous Written Consent," in its entirety.** Said deletion to be taken from Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

**INSERT a new BYLAWS ARTICLE I, SECTION 1.09 entitled, "Action Without a Meeting."** Said new addition, to be added to Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**1.09 Action Without a Meeting.** All actions, except removal of a Director, which may be taken at a meeting of the Association may be taken without a meeting in accordance with the voting methods in Bylaws Article I, Section 1.03, as amended. The voting records will be filed with the Association's records.

**DELETE BYLAWS ARTICLE I, SECTION 1.10 entitled, "Order of Business," in its entirety.** Said deletion to be taken from Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

**INSERT a new BYLAWS ARTICLE I, SECTION 1.10 entitled, "Conduct of Meetings."** Said new addition, to be added to Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

1.10 Conduct of Meetings. Prior to the meeting notice being sent to the Unit Owners in accordance with Bylaws Article I, Section 1.07, as amended, the Board will determine whether the meeting will be conducted physically so that the Unit Owners may attend in person, or by the use of Authorized Communications Equipment. If it is determined that the meeting will be held via Authorized Communications Equipment, the Board may also decide if the owners have the option to attend in person or via Authorized Communications Equipment or both.

If Authorized Communications Equipment is used, the persons utilizing the Authorized Communications Equipment must have the ability to communicate with the other participants to indicate their motion, vote, or statement, provided that the president, chair, or other person designated by the Board moderating the meeting, may silence or mute the Authorized Communications Equipment utilized by Unit Owners to attend the meeting, unless the Unit Owner is voting or has been recognized by the meeting chair or moderator to participate in the meeting. The meeting chair or moderator has the authority to decide and determine all procedural motions or other procedural matters to be decided at the meeting, including points of order and adjournment. The Board's purpose or reason for not conducting an in person meeting and instead having a meeting via Authorized Communications Equipment must be documented in the Board's meeting minutes.

DELETE BYLAWS ARTICLE III, SECTION 3.02 entitled, "Election of Directors." in its entirety. Said deletion to be taken from Page 5 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

INSERT a new BYLAWS ARTICLE III, SECTION 3.02 entitled, "Nominations; Election of Directors." Said new addition, to be added to Page 5 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

3.02 Nominations; Election of Directors. For the nomination and election of Directors, the following apply:

(a) Nominations. Nominations for the election of Directors to be elected by the Unit Owners will be made by a nominating committee appointed by the Board or, if a committee is not appointed, by the Board itself. The nominating committee, or

Board, will make as many nominations for election to the Board as it, in its discretion, determines, but no fewer than the number of vacancies that are to be filled and will verify that the nominees satisfy all qualification requirements of Bylaws Article III, Section 3.01. Prior to the meeting, the nominating committee will establish a process and deadlines by which any Unit Owner may submit their name to the nominating committee as a candidate, and the nominating committee must nominate that Unit Owner if that Unit Owner satisfies all the qualifications to be a Director as further provided for in Bylaws Article III, Section 3.01. If there are fewer nominees than vacancies, the nominating committee must nominate additional Unit Owners(s) to be elected prior to the ballots being sent to the Unit Owners so that there are, at all times, a sufficient number of nominees to fill all Board vacancies that are up for election. Nominations must be made prior to the notice of any meeting where Directors are to be elected is sent in accordance with Bylaws Article I, Section 1.07, as amended, so that the voting information containing all the candidates' names and an informational sheet, within size limitations determined by the Board, containing their biographical information and affirming their candidacy, can be transmitted to the Unit Owners no later than the sending of the meeting notice.

(b) Election of Directors. Unless there are no more nominees than vacancies, election to the Board by the Unit Owners is by secret ballot, submitted either in person, by proxy, by mail, or by Electronic Voting Technology, as determined by the Board pursuant to Bylaws Article I, Section 1.03, as amended. The Association is not required to send ballots to the Unit Owners via any method if there are an equal number of nominations as there are candidates, and the terms for all open positions are equal; in which case the nominated candidates will automatically be elected to the Board of Directors at the election meeting.

Regardless of the voting method, the Board must adopt rules and safeguards to determine a method by which the secrecy of the ballots are maintained for those Unit Owners while also maintaining the integrity of the voting process to ensure each Unit Owner has only exercised their allotted vote once so that any other individuals can only identify that a Unit has voted, and not how a Unit has voted. The ballots, whether electronic or written, will list the number of open seats for Directors up for

election and list the names of all of the nominated candidates.

If voting by mail, ballots must be submitted within dual envelopes. One of the two envelopes must contain the ballot itself, the "Ballot Envelope." The Ballot Envelope need not be signed. The second envelope must contain the Ballot Envelope and the ballot, the "Signature Envelope." The Signature Envelope must be signed by the Unit Owner(s) voting, and will be used as a record of receipt of the Unit Owners' ballot as well as to determine quorum. If the Signature Envelope is not signed by the Unit Owner(s), the ballot in the Ballot Envelope will not be counted.

For the election of Directors, the Unit Owners, or their proxies, may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The persons receiving the largest number of votes will be elected. Ties, including if there are an equal number of nominees as there are positions with different terms, will be determined by lot or flip of a coin by the chair or moderator of the meeting. Cumulative voting is not permitted.

The nominating committee, or if the Board fails to appoint a nominating committee, the Board itself (excluding any incumbent Directors who are running for re-election), is responsible for (i) confirming all nominated candidates meet the qualifications to serve as a Director, (ii) receiving and verifying any ballots that are cast in person or by mail, (iii) receiving and verifying any ballots cast using Electronic Voting Technology, (iv) counting each ballot submitted through any voting method, and (v) verifying the results of the election by providing the ballots and results to the chair or moderator of the meeting.

The chair or moderator will announce the election results at the meeting to be reflected in the meeting minutes and ensuring the election results are provided to all Unit Owners no later than fifteen days after the meeting.

**DELETE BYLAWS ARTICLE X, SECTION 10.02 entitled, "Service of Notices on the Board," in its entirety. Said deletion to be taken from Page 15 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.**



INSERT a new BYLAWS ARTICLE X, SECTION 10.02 entitled, “Notices and Other Actions and Communications.” Said new addition, to be added to Page 15 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

10.02 Notices and Other Actions and Communications. All notices required or permitted under the Declaration or Bylaws, to the Association, the Board, or Unit Owners must be delivered in accordance with Declaration Section 29.17, as amended.

Any conflict between these provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment allowing the Association to use electronic communications to the extent permitted by Ohio and Federal law, establishing a method to use mail-in and electronic ballots for voting purposes, and permitting meetings to be conducted utilizing Authorized Communications Equipment. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

#### AMENDMENT H

DELETE DECLARATION ARTICLE I, SECTION 1.45 entitled, “Quorum,” in its entirety. Said deletion to be taken from Page 6 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

INSERT a new DECLARATION ARTICLE I, SECTION 1.45 entitled, “Quorum.” Said new addition, to be added to Page 6 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

1.45 Quorum is defined in Bylaws, Article I, Section 1.11.

INSERT a new BYLAWS ARTICLE I, SECTION 1.11 entitled, “Quorum.” Said new addition, to be added to Page 2 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

1.11 Quorum. The Unit Owners in good standing who are present, in person or by proxy, constitute a quorum for any Association meeting. For purposes of quorum, a Unit Owner in good standing is defined as being a Unit Owner that is 1) not engaged in litigation with the Association or with any Director in their capacity as a Director and 2) current in payment of any amount owed to the Association as of the date of the meeting.

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment regarding quorum at Association meetings. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any contest or other legal challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

#### AMENDMENT I

MODIFY DECLARATION ARTICLE XIII, SECTION 13.09 entitled, "Prohibited Activities," in its entirety. Said deletion to be taken from Page 15 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

13.09 Prohibited Activities. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property;. ~~nor shall any "For Sale" or "For Rent" No signs, or other~~ window displays or advertising may be maintained or permitted on any part of the Condominium Property without the prior, written consent from the Board of Directors and in accordance with any rules adopted by the Board. ~~The right is reserved by the Declarant or his agent to place "For Sale" or "For Rent" signs on any unsold or unoccupied Unit.~~ In addition, the right is hereby given to the Association or its representatives to place "For Sale" or "For Rent" signs on any Unit or on the Condominium Property for the purpose of facilitating the disposal of Units by any Unit Owner, mortgagee or the Association.

Notwithstanding the foregoing, Unit Owners may place one customary, professionally prepared "For Sale" sign on the inside the Unit's window, provided that such sign does not exceed the width and height

as those customarily used by professional realtors. In addition, Unit Owners are also permitted to place one professionally prepared security system identification sign in the landscape beds adjacent to the Unit.

Any conflict between this provision and any other provisions of the Declaration or Bylaws will be interpreted in favor of this modification regarding signs. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

H. As of February 8, 2021, Unit Owners representing 97.73 percent of the Association's voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendments D, F, and G and authorizing the Association's officers to execute Amendments D, F, and G on their behalf, as documented in the Association's records. These three Amendments read:

#### AMENDMENT D

INSERT a new DECLARATION ARTICLE XVII, SECTION 17.05(d). Said new addition, to be added to Page 23 of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

(d) Obsolete Language. The Board of Directors, without further vote of the Unit Owners, may amend the Declaration and Bylaws to eliminate any provisions that are no longer substantively applicable, such as elimination of provisions that applied to the original development of the Condominium Property, references to the Declarant, the Declarant control period, the Master Association, and to re-number or re-letter sections and paragraphs throughout to account for the eliminated provisions. Any amendment made by the Board pursuant to this section must be recorded with the Montgomery County Recorder's Office to be effective. No amendment made by the Board pursuant to this section may substantively change, alter, delete, or in any way modify any rights, responsibilities, or powers of the Association, the Board of Directors, or the Owners.

Any conflict between these provisions and any other provisions of the Declaration or Bylaws will be interpreted in favor of this amendment deleting certain references to the Declarant and obsolete language. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

#### AMENDMENT F

DELETE BYLAWS ARTICLE III, SECTION 3.01 entitled, "Number and Qualification," in its entirety. Said deletion to be taken from Page 5 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105.

INSERT a new PARAGRAPH to the end of BYLAWS ARTICLE III, SECTION 3.01 entitled, "Number and Qualification." Said new addition, to be added to Page 5 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

**3.01 Number and Qualification.** The affairs of the Association will be governed by a Board consisting of three or five persons, all of whom must be Unit Owners or the spouse of a Unit Owner. If an owner is not an individual, that owner may nominate for the Board of Directors any principal, member of a limited liability company, partner, director, officer, or employee of that owner. No Unit may be represented by more than one Person on the Board at any one time.

Directors must also be in good standing. Good standing requires the Director not be an adverse party in any litigation involving one or more of the following parties: the Association, the Board or any Director (in that member's capacity as a Director). Good standing also requires that the Director not be more than 60 days delinquent in the payment of any fees or assessments owed to the Association. In addition to the provisions of Bylaws Article III, Section 3.05, as amended, a majority of the remaining Directors may remove any Director who ceases to meet such good standing qualifications during their term. Any current Director not in good standing, as defined above, at the time this amendment is recorded with the Montgomery County Recorder, has 60

days to become in good standing, otherwise they may be removed by a majority vote of the remaining Directors.

A majority of the Unit Owners present in person or by proxy at any Association meeting held for the purpose of election of Directors may approve of a motion, made prior to the election of Directors, to either increase or reduce the number of Directors to five or three persons (the number always being an odd number), as the case may be. In the alternative, the Board may submit a written ballot to Unit Owners to vote on the proposed increase or reduction in the number of Directors, in which case a majority of the Association's total voting power must affirmatively consent to approve the proposal. The approval of a motion or consent to the proposal to change the number of Directors will in no event act to decrease the length of the term of any Director whose term is not expiring as of the meeting date at which the motion is approved or approval of the proposal is reached.

At the annual meeting following the passage of this amendment, the Unit Owners will vote for either three or five Directors to be elected. The candidates receiving the greatest number of votes will be elected to serve a two year term. The candidate(s) receiving the least number of votes will be elected to serve a one year term. This is to establish staggered elections with rotating terms. Upon the expiration of the terms of each Director as elected pursuant to this section, a successor, and all future Directors, will be elected for a two year term with staggered elections to facilitate either a 2-1 or 3-2 rotation, depending on the number of Directors.

**INSERT a new PARAGRAPH to the end of BYLAWS ARTICLE III, SECTION 3.05.** Said new addition, to be added to Page 6 of the Bylaws, Exhibit "C" to the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

In addition, the Board, by a majority vote, may remove any individual Director and create a vacancy on the Board, if:

- (a) by order of court, the Director has been found to be of unsound mind,
- (b) the Director files for bankruptcy or has been adjudicated bankrupt,

- (c) the Director is or has been convicted of a felony for theft or other theft related crime, including larceny, forgery, false pretenses, fraud, embezzlement, conversion, or any conspiracy related to any such theft related crime, at any time in the past, or convicted of a felony for any other type of crime within the last 10 years,
- (d) the Director is are no longer a member in good standing as defined in Declaration Article III, Section 3.01, as amended,
- (e) the Director is physically incapacitated in such a manner that prohibits the Director for voting or participating in Board meetings, or
- (f) the Director fails to attend three consecutive meetings.

Any conflict between these provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment regarding the qualifications and removal of Directors. The invalidity of any part of the above provision will not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

#### AMENDMENT G

INSERT a new BYLAWS ARTICLE XI entitled, "INDEMNIFICATION." Said new addition, to be added to Page 15 of the Bylaws, Exhibit "C" of the Declaration, as recorded at Montgomery County Records, Instrument Number COND-05-035105, is as follows:

#### ARTICLE XI INDEMNIFICATION

**11.01 Indemnification of Directors, Officers, and Committee Members.**  
The Association must indemnify and defend (as provided below): (1) any current or former Association Director, (2) any current or former Association officer, (3) any current or former Association committee member, or (4) any of said Director's, officer's, or committee member's respective heirs, executors, and administrators; against reasonable

expenses, including attorneys' fees, judgments, decrees, fines, penalties, or amounts paid in settlement, actually and necessarily incurred by them in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, derivative or third party, to which they are or may be made a party by reason of being or having been such Director, officer, or committee member provided it is determined, in the manner set forth below, that (i) such Director, officer, or committee member was not and is not adjudicated to have been grossly negligent or guilty of misconduct in the performance of their duty(ies) to the Association; (ii) such Director, officer, or committee member acted in good faith in what they reasonably believed to be in, or not opposed to, the Association's best interest; (iii) in any criminal action, suit, or proceeding, such Director, officer, or committee member had no reasonable cause to believe that their conduct was unlawful and is not convicted of theft or other theft related crime including but not limited to larceny, forgery, false pretenses, fraud, embezzlement, conversion, or any conspiracy related to any such theft related crime; and (iv) in case of settlement, the amount paid in the settlement was reasonable.

The above determination required will be made by written opinion of independent legal counsel whom the Board will choose. Notwithstanding the opinion of independent legal counsel, to the extent that a Director, officer, or committee member is successful in defense of any action, suit, or proceeding, or in the defense of any claim, issue, or matter, as the Board so verifies, they must, in that event, be indemnified and reimbursed for any costs and expenses, including legal fees, incurred in such defense. Any defense the Association provides will be by legal counsel the Association's insurance carrier selects or, if not selected by the Association's insurance carrier, a majority of the Directors excluding the accused or threatened Director(s). If a majority of the Directors cannot agree on legal counsel or if all the Directors are accused or threatened in any such action, the Board will appoint a special committee of three Unit Owners to select legal counsel to defend the Directors.

**11.02 Advance of Expenses.** The Association may advance funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding prior to the final disposition upon receipt of a request to repay such amounts.

**11.03 Indemnification Not Exclusive; Insurance.** The indemnification provided for in this Article is not exclusive, but is in addition to any other rights to which any person may be entitled under the Articles of Incorporation, the Declaration, these Bylaws, or rules and regulations of the Association, any agreement, any insurance provided by the Association, the provisions of Ohio Revised Code Section 1702.12(E) and its successor statutes, or otherwise. The Association must purchase and maintain insurance on behalf of any person who is or was a Director, officer, or committee member against any liability asserted against them or incurred by them in such capacity or arising out of their status as a Director, officer, or committee member.

**11.04 Directors, Officers, and Committee Members Liability.** The Association's Directors, officers, and committee members are not personally liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The Association's and owners' indemnification includes, but is not limited to, all contractual liabilities to third parties arising out of contracts made on the Association's behalf, except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or these Bylaws. Every contract or agreement approved by the Board and made by any Director, officer, or committee member is made only in such Director's, officer's, or committee member's capacity as a representative of the Association and has no personal liability under such contract or agreement (except as a Member).

**11.05 Cost of Indemnification.** Any sum paid or advanced by the Association under this Article constitutes a common expense. The Board has the power and the responsibility to raise, by special assessment or otherwise, any sums required to discharge the Association's obligations under this Article; provided, however, that the liability of any Unit Owners arising out of the contract made by any Director, officer, or committee member or out of the aforesaid indemnity in favor of such Director, officer, or committee member is limited to such proportion of the total liability as said Unit Owner's pro rata share bears to the total percentage interest of all the Unit Owners as Association Unit Owners.

Any conflict between this provision and any other provisions of the Declaration and Bylaws are to be interpreted in favor of this amendment for the indemnification of the Association's Directors, officers, and committee members. The invalidity of any part of the above provision does not impair or affect in any manner the validity or



enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

I. This Amended Restated Declaration of Condominium Property for The Reserve at the Fairways Condominium ("Amended and Restated Declaration") incorporates the Original Declaration, the 1<sup>st</sup> Amendment to the Original Declaration recorded on July 29, 2005 at Cond 05-073929, the 2<sup>nd</sup> Amendment to the Original Declaration recorded on July 29, 2005 at Cond 05-073934, the 3<sup>rd</sup> Amendment to the Original Declaration recorded on July 10, 2006 at Cond 06-062465, the 4<sup>th</sup> Amendment to the Original Declaration recorded on January 8, 2007 at Cond 07-001968, the 5<sup>th</sup> Amendment to the Original Declaration recorded on July 25, 2007 at Cond 07-063030, the 6<sup>th</sup> Amendment to the Original Declaration recorded on May 5, 2020 at File 2020-00025575 of the Montgomery County Recorder's Records (all the foregoing amendments are collectively referred to as the "Amendments"). The result is a single text that is written as if the text of the above-referenced Amendments had been included in the Original Declaration.

J. The Association has complied with the proceedings necessary to amend the Original Declaration and Original Bylaws, as required by the Original Declaration and Original Bylaws, in all material respects.

K. These Amended and Restated Declaration and Bylaws has been prepared at the direction of The Reserve at the Fairways, Section One Condominium Association, Inc. ("Association") for the convenience of the Unit Owners as well as for prospective purchasers of Units within The Reserve at the Fairways Condominium.

L. With the exception of the removal of obsolete references to the Declarant, Unit Owners and prospective Unit Owners are reminded that this Amended and Restated Declaration does *not* materially amend the Original Declaration nor the Amendments. The Original Declaration and the Amendments are available for review at the Montgomery County Recorder's Office. Any inconsistency between the Original Declaration and Amendments, and this Amended and Restated Declaration will be resolved in favor of the Original Declaration and Amendments.

NOW, THEREFORE, in accordance with Original Declaration Article XVI, Section 16.12(d) and Original Bylaws Article VII, Section 6, the Original Declaration and Original Bylaws are Amended and Restated as set forth on the attached document, which incorporate the 1<sup>st</sup> Amendment to the Original Declaration

recorded on December 21, 2018 at Instrument No. 201800944204 and the Amendments as set forth in the Recitals above.

The Reserve at the Fairways, Section One Condominium Association, Inc. has caused the execution of this instrument this 22nd day of October, 2021.

**THE RESERVE AT THE FAIRWAYS, SECTION ONE CONDOMINIUM  
ASSOCIATION, INC.**

By: John J. Moore  
**JOHN J. MOORE, President**

By: Jennifer A. Threm  
**JENNIFER A. THREM, Secretary**

STATE OF OHIO )  
COUNTY OF Montgomery ) SS

**BEFORE ME**, a Notary Public, in and for said County, personally appeared the above-named The Reserve at the Fairways, Section One Condominium Association, Inc., by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 26 of 27, and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

I have set my hand and official seal this 22 day of October, 2021.

Mindy Marcum  
NOTARY PUBLIC

Place notary stamp/seal here:



This instrument prepared by:  
KAMAN & CUSIMANO, LLC  
Attorneys at Law  
11311 Cornell Park Drive, Suite 220  
Cincinnati, Ohio 45242  
(513) 878-1771  
condolaw.com

*me*