

200000006135  
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DELAWARE COUNTY, OHIO  
KAY E. CONKLIN  
On 03-02-2000 At 01:28 pm.  
RESTRICT 40.00  
OR book 23 Page 1076 - 1083

DECLARATION OF

200000006135  
STEWART TITLE

CAB 2 SL 333

SUBDIVISION RESTRICTIVE COVENANTS

The undersigned, (the "Declarant") being the owner of the following described property (the "Property"):

Situated in Liberty Township, Delaware County, and being lots numbered 3502 through 3547 in Liberty Lakes, Section 3, Subdivision as the same are numbered and delineated upon the recorded plat thereof, and Record in Cabinet 2 Slides 333 and 333A Recorder's office, Delaware County, Ohio.

does hereby make, declare, impose and adopt the following covenants, restrictions and limitations upon the uses of the Property in furtherance of the following purposes:

- (a) The compliance with all zoning and similar governmental regulations.
- (b) The promotion of health, safety and welfare of all present and future owners and residents of the Property.
- (c) The preservation, beautification and maintenance of the Property and all structures thereon.
- (d) The preservation and promotion of environmental qualities.
- (e) The establishment, for development of the Property, of requirements relating to land use, architectural features and site planning.

The restrictions and covenants are hereby declared to inure to the benefit of the Declarant, its successors and assigns, and all future owners of any lot and all others claiming under or through them ("Owners"). These restrictions shall remain in force and effect until December 31, 2019. Thereafter, the restrictions shall be automatically renewed for successive periods of ten years each unless amended or terminated as provided herein. Any or all of these restrictions may be amended in whole or in part or terminated by a written instrument executed by at least 75% of the then current Owners of record title to the Property.

The determination by a court of competent jurisdiction that any provision, covenant, restriction or limitation of use of the Property or any lot therein is invalid for any reason shall not affect the validity of any other provision hereof.

Provisions contained in any deed or other instrument for the conveyance of a dwelling which restrict the use, rental or use of the property because of race or color are invalid under federal law and are unenforceable.

Stewart Title Ann. 3 dci

It is hereby declared that irreparable harm will result to the Declarant and other beneficiaries of these restrictive covenants by reason of violation of the provisions hereof or default in the observance thereof and therefore each beneficiary shall be entitled to relief by way of injunction, damages or specific performance to enforce the provisions of these restrictive covenants as well as any other relief available at law or in equity.

The following restrictions are hereby created, declared and established:

1. **Land Use:** All of the platted lots in Liberty Lakes shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any lot that would exceed two and one-half stories in height, and in no event shall any building be erected to a height exceeding thirty-five (35) feet from the finish grade of the building, together with necessary accessory buildings, including garage.

2. **Lot Split:** Except as a developer may find necessary, no lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise so as to create a new lot within the subdivision.

3. **Trade or Commercial Activity Barred:** No trade or commercial activity shall be conducted upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to any of the owners of any lot in Liberty Lakes, provided, however, during the initial construction sales period, the owner of any lot who is a developer or a new home builder may conduct lot and home sales activities from a trailer, garage, or other structure. Notwithstanding the foregoing, such sales office must be previously approved by Declarant.

4. **Plan Approval:** For the purpose of maintaining specific architectural guidelines and standards for the development of all lots within Liberty Lakes, each owner of a lot shall be required to submit one (1) set of complete building and site plans with specifications for the buildings intended to be erected thereon to the Declarant, setting forth the general arrangements of the exterior of the structure, including the color and texture of the building materials, the type and character of all windows, doors, exterior light fixtures and appurtenant elements such as decorative walls, fences, chimneys, satellite dishes (24 inches in diameter or smaller), driveways and walkways and detailing the location of the structure on the lot, including setbacks, driveway locations, garage openings, orientation of the structure to the topography and conformance with the grading and drainage plan. Each owner covenants that no excavation shall be made, no building shall be erected, no fences installed, and no materials shall be stored upon the premises by said owner or his agents, heirs, successors or assigns until the Declarant shall have approved said plans and specifications in writing. If the Declarant fails within thirty (30) days after receipt of said plans and specifications, they shall be deemed to have been approved and the requirements herein fulfilled. If the Declarant disapproves said plans and specifications, the owner may revise and resubmit said plans and specifications until approval is received.

Each lot owner further acknowledges that the Declarant shall not be responsible or liable to said owner or to any other owner of lots in the subdivision by reason of the exercise of its judgment in approving or disapproving plans submitted, nor shall it be liable for any expenses entailed to any lot owner in the preparation, submission and, if necessary, re-submission of proposed plans and specifications.

Within the easement areas designated on the recorded plat of Liberty Lakes, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or the direction of the flow of the drainage channels or water over said easement areas. The easement area of each lot and all surface improvements thereon shall be maintained continuously by the owner of said lot, except for those improvements for which a public authority or public utility company is responsible.

5. **Building Location:** No building shall be located on any lot nearer to the lot lines than the minimum building front, rear and side lines as shown on the recorded plat. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of the building on a lot to encroach upon any other lot. No portion of any lot nearer to any street than the building setback lines shall be used for any purposes other than that of a lawn, nor shall any fence or wall of any kind, for any purpose, be erected, placed or suffered to remain on any lot nearer to any street now existing, or any hereafter created, than the front building lines of the building thereon, excepting ornamental railings, or fences not exceeding three (3) feet in height located on or adjacent to entrance platforms or steps.

6. **Temporary Residence:** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

7. **Miscellaneous Structures:** No building, trailer, garage, or any other type of structure shall be placed upon any lot for storage or other purposes without the express written consent of Declarant, provided, however, for the purpose of a sales office for the sale of lots and new homes, Declarant may permit a temporary structure during the initial construction sales period.

8. **Animals:** No animals, birds, insects, livestock or poultry of any kind shall be raised, bred or kept on any lot except dogs, cats and other household pets which are kept for domestic purposes only, and are not kept, bred or maintained for any commercial purpose. No kennels or other structure for animals or pets shall be erected or maintained on any lot.

9. **Waste Disposal:** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and removed from view from the street and abutting properties.

10. **Soils:** No soil shall be removed for any commercial purpose.

11. **Vehicles Not In Use:** No automobile or motor driven vehicle shall be left upon any lot for a period longer than seven (7) days in a condition wherein it is not able to be operated upon the public highway. After such 7 day period, the vehicle shall be considered a nuisance and detrimental to the welfare of the above described real estate and shall be removed therefrom.

12. **Hobbies:** Hobbies or other activities which tend to detract from the aesthetic character of the subdivision, and any improvements used in connection with such hobbies or activities shall not be permitted unless carried out or conducted within the building erected upon the lot and not visible from either the street or adjoining properties. This restriction refers specifically but not exclusively to such activities as automobile, bicycle, moped, motorboat and sailboat repair.

13. **Vehicles, Trailers, Boats, Commercial Vehicles and Motor Homes:** No automobile may be left upon any Lot for a period longer than forty-eight (48) hours in a condition such that it is incapable of being operated upon the public highways, after which time the vehicle shall be considered as a nuisance and detrimental to the welfare of the neighborhood and must be removed from the Lot. Any towed vehicle, trailer, boat, commercial vehicle or motor home regularly stored upon any portion of the Subdivision, or temporarily kept thereon for periods longer than twenty-four (24) hours, shall be considered a nuisance and must be removed from the Subdivision. The foregoing however, does not apply to such boats or other vehicles, whether motor-driven or towed, as are stored wholly within private garages. No commercial vehicles may be parked, stored or temporarily kept on any Lot, except when there temporarily to service existing improvements or to be used in connection with the construction of improvements in the Subdivision. Only cars and authorized trucks may be parked on the driveway; all other vehicles, including but not limited to, recreational vehicles, scooters, mopeds, tractors, mowers, and non-authorized trucks, and all boats, trailers and campers, must be stored in garages. An authorized truck is a truck manufactured primarily for the purpose of carrying passengers, is fully enclosed at the time of manufacture, is of one ton capacity or less, and exhibits no external evidence of commercial use. Notwithstanding the foregoing, the Environment Committee shall have the right, in its sole discretion to determine whether or not a vehicle is authorized.

14. **Above Ground Swimming Pools:** No above ground swimming pool shall be permitted on any lot.

15. **Garage:** No dwelling may be constructed on any lot unless an enclosed garage for at least two automobiles is also constructed thereon.

16. **Signs:** No signs of any kind shall be displayed to the public view on any lot, except one temporary sign of not more than twelve (12) square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during the construction sales period.

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17. **Antennas:** Television and radio antennas, whether rooftop or ground mounted, including those of the "dish" type, shall be prohibited on the exterior of any house or lot. Only satellite dishes smaller than 24 inches in diameter are permitted, the location, design, and screening of which must be approved pursuant to the provisions of Article 4 herein.

18. **Clotheslines:** No clotheslines of any kind shall be permitted on any lot.

19. **Mailboxes:** All mailboxes shall be of the same design and specifications as determined by the Declarant at the time of subdivision approval.

20. **Grading and Drainage:** No construction, grading or other improvements shall be made to any lot if such improvement would interfere with or otherwise alter the general grading and draining plan of the subdivision or any existing swales, floodways or other drainage configurations.

21. **Fencing:** Notwithstanding any other provision hereof, no chain link or plastic fencing shall be permitted upon any portion of the lots or reserves in Liberty Lakes. No fence shall be erected on any lot until the plans for such fence have been approved by Declarant pursuant to the provisions of Article 4 herein.

22. **Violation:** Violation or breach of any covenant or restriction herein contained shall give to Declarant, and its successors and assigns, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these restrictions to enjoin or prevent them from so doing and/or to cause said violation to be remedied, or to recover damages for said violation or violations.

23. **Homeowner's Association:** Previously hereto and as hereinafter referred to there has been created an Ohio Corporation not for profit, the name of which is LIBERTY LAKES HOMEOWNER'S ASSOCIATION. The said association shall be charged with the responsibility to care for and maintain the areas designated as commonly owned tracts/parcels within the planned unit development and all entry and landscape features for the subdivision. Said responsibility shall include but not be limited to maintaining in an attractive manner the landscaping in the area, seeding and mowing when needed, mulching, keeping the signage and the electrical lighting involved with the signage in an attractive and operative state of repair and to do those things which in the opinion of the Association will beautify and enhance the entrance way into the Subdivision.

The Association shall have all the rights, powers, and duties established, invested or imposed pursuant hereto, by its Articles of Incorporation, Code of Regulations, its duly adopted rules and regulations, and the laws of the State of Ohio applicable with respect to Ohio corporations not-for-profit. Among other things, the Association shall have the power to borrow funds, pledge assets and receivables, arbitrate disputes, levy and collect assessments, maintain reserves, enter into contracts with the Declarant, or an entity related to it, and make

such other actions as the trustees deem appropriate in fulfilling its other purposes.

24. **ASSESSMENTS:**

(1) Establishment of assessment: For the purpose of providing funds for maintenance, repair, operation, and improvement of the areas designated as commonly owned tracts/parcels, entranceway and electrical systems, and other expenses and costs incurred by the Association, the trustees of the Association shall, prior to January 1 of each year, determine an estimated budget for the following calendar year, or in the case of the first year, if only a part of a calendar year, for the remainder of that calendar year, and establish an equal annual assessment as to each lot. These assessments shall be payable in advance, annually, or in such periodic installments (monthly, quarterly, etc.) and shall have such due dates, as the trustees from time to time determine, provided that if any installment of any assessment is not paid within ten (10) days after the same has become due, the trustees may, at their option, without notice or demand (i) declare the entire balance of the assessment immediately due and payable, (ii) charge interest on the entire unpaid balance due and payable, at the highest rate of interest then permitted by law, or at such lower rate as the trustees may from time to time determine, and (iii) charge a reasonable, uniform, late fee, as determined from time to time by the trustees. Notwithstanding the foregoing, Declarant shall pay all regular costs of operating the Association and there shall be no assessments levied upon the lots pursuant to the provisions of this item, until on or after January 1, 1997. For the first year for which assessments are levied, said levy shall be One Hundred and Fifty dollars (\$150.00) per lot, per year (or a proportionate part thereof, if only a part year), provided that each year after the first full calendar year for which assessments are levied the annual assessment (i) shall be in the amount as recommended by the trustees, and (ii) may be increased by lot owners exercising no less than two-thirds of the voting powers of lot owners, voting, in person or by proxy, at a meeting called for this purpose. Further, the trustees may fix the annual assessment at an amount so long as the same is not in excess of the amount of the previous years assessment. In order to build a start up fund for the Association, each Buyer of a residence shall pay, at the time of closing, an initial contribution of \$150.00.

(2) Establishment of lien: If any lot owner shall fail to pay any installment within ten (10) days after due, the Association shall be entitled to a valid lien for that installment or the unpaid portion of that year's assessment, if the trustees so elect, together with interest, late fees and costs, which lien shall be effective from the date that the Association certifies the lien to the Delaware County Recorder. Additionally, each such assessment together with interest, late charges and costs, shall also be the joint and several personal obligation of the Lot owners who owned the Lot at the time when the assessment fell due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that owner or owner's successors in title unless expressly assumed by the successors, provided, however that the right of the Association to a lien against the Lot, or to foreclose any lien thereon for these delinquent assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer,

but shall continue unaffected thereby. The lien shall be deemed subject and subordinate to any first mortgage lien filed prior to the certification of the Association's lien to the Delaware County Recorder, or prior to the date that the Association obtains a certification of judgment against defaulting owner, whichever is the first to occur.

25. **GENERAL PROVISIONS:**

(1) Enforcement: Except as hereinafter provided, Declarant, Boston Development Co. , each Lot owner, and the Association, jointly and severally, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. Notwithstanding the foregoing, in the event of any dispute between Lot owners or between the Association and any Lot owner or owners as to any matter provided for herein, other than with regard to the obligation for, levy, collection or enforcement of assessments (including, without limiting the generality of the foregoing, the creation, filing and enforcement of liens), the matter shall first be submitted to the Association, by its trustees or their designated representative, for arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the trustees.

(2) Special Assessment Lien: Each Lot owner shall comply, or cause compliance, with all covenants, requirements, and obligations contained herein, and with all rules and regulations promulgated by the Association. Upon the failure of a Lot owner to comply with such covenants, requirements, and obligations, the Association in addition to any other enforcement rights it may have hereunder, may upon action by the trustees, take whatever action they deem appropriate to cause compliance, including, but without limitations, repair, maintenance, and reconstruction activities, and the removal of improvements or any other action required to cause compliance with the covenants, requirements, and obligations contained herein. All costs incurred by the Association in causing such compliance, together with the interest at such lawful rate as the trustees may from time to time establish, shall be immediately due and payable from the Lot owner to the Association, and the Association shall be entitled to a valid lien as security for the payment of such costs incurred, and interest, which lien shall be effective from the date that the Association certifies the lien to the Delaware County Recorder. Any such lien shall be deemed subject and subordinate to any first mortgage lien filed prior to the certification of the Association's lien to the Delaware County Recorder, or prior to the date that the Association obtains a certificate of judgment against such Lot owner, whichever is the first to occur.

(3) Joint and Several Obligations: Each and every obligation with respect to a Lot hereunder shall be the joint and several personal obligation of each owner of a fee simple interest in the Lot at the time the obligation arose, and any demand, notice, hereunder or pursuant hereto or by one of such joint owners shall be deemed given, taken or received by all such joint owners.

(4) Severability: Waiver: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect. Failure by any benefited party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

26. **Acceptance:** By accepting a deed to any of the above described real estate, a grantee accepts the same subject to the foregoing covenants and agrees for himself, his heirs, successors and assigns to be bound by each of such covenants jointly.

IN WITNESS WHEREOF, the Declarant has hereto executed and imposes these restrictive covenants this 24th day of February, ~~199~~ 2000.

Signed and Acknowledged in the presence of:

BOSTON DEVELOPMENT CO.

Rosalinde Childers

By: Davidson Phillips, Inc.  
General Partner

Ann M Dixon

By: [Signature]  
Charles J. Ruma, President

STATE OF OHIO  
FRANKLIN COUNTY, SS:

The foregoing instrument was acknowledged before me, a Notary Public, on this 24th day of February, ~~199~~ 2000.

Rosalinde Childers  
Notary Public

ROSALINDE CHILDERS  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES NOV. 5, 2001

