

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS GOVERNING BLUE HERON SUBDIVISION**

THIS DECLARATION, made this 25 day of August, 2020 by  
Emerald Pointe, Inc, an Ohio Corporation (hereinafter referred to as "Declarant").

**WITNESSETH:**

WHEREAS, Declarant has caused certain real property to be subdivided and platted as the Blue Heron Subdivision (hereinafter referred to as the Subdivision) consisting of 16 sublots, recorded in Volume \_\_\_\_\_ of Maps, Page \_\_\_\_\_, and/or as Instrument No. \_\_\_\_\_ of Lake County Records (the "Plat"); and,

WHEREAS, Declarant desires to create on the Subdivision a residential community with uniformly high standards of development; and,

WHEREAS, in order to provide for the maintenance of the Landscaped Areas as hereinafter defined, the inspection and maintenance of storm-water detention, management and/or drainage facilities in accordance with separate agreement(s) with Lake County, Ohio and/or City of Painesville, Ohio or any other regulatory governmental agency, and,

WHEREAS, in order to enforce the covenants, conditions and restrictions of this Declaration, Declarant has caused the Blue Heron Homeowners' Association to be created as a not for profit corporation under the laws of the State of Ohio.

NOW, THEREFORE, for the purpose of (a) establishing a method for maintaining the landscaping on any Landscaped Area and/or Common Element and any improvements thereon as hereinafter defined, (b) enforcing the covenants, conditions, and restrictions of this Declaration, and (c) establishing a method of collection of "Common Expenses" to pay for the obligations of the Association, the Declarant hereby subjects the Blue Heron Subdivision to the covenants, conditions, and restrictions contained in this Declaration.

Declarant declares that the Subdivision and all of the lots and lands therein except as specifically hereinafter set forth shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, charges, and lien rights contained in this Declaration which shall constitute covenants to run with the land and shall be binding upon all Owners of all or any part of the Subdivision, together with their grantees, successors, heirs, executors, administrators or assigns.

## ARTICLE I

### DEFINITIONS

Section 1. The following words when used in this Declaration shall have the following meanings (unless the context shall prohibit)(this section shall supplement and not be inconsistent to those definitions found in ORC 5312.01):

1. "Association" shall mean the Blue Heron Homeowners' Association, an Ohio corporation not for profit which the Declarant has or will cause(d) to be created.
2. "City" shall mean the political subdivision of The City of Painesville, Lake County, Ohio organized and existing under the constitution and laws of the State of Ohio. Except as specifically provided herein, the City and property owned by the City shall be exempt from the restrictions of this Declaration.
3. "Common Expense" shall mean all of the costs and expenses incurred by the Association in maintaining, repairing, replacing, administering, managing and operating the Landscaped and/or Common Elements; fulfilling its obligations with respect to the inspection and maintenance of the storm-water management and detention systems in the Subdivision; and in otherwise conducting its business on behalf of the Owners.
4. "County" shall mean Lake County, Ohio a political subdivision organized and existing under the constitution and laws of the State of Ohio.
5. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and any supplements or amendments thereto.

6. "Declarant" shall mean and refer to Emerald Pointe, Inc. and any successor designated as such.

7. "Development Period" shall mean the period beginning with the recording of this Declaration and ending when Declarant or its successors and assigns and the County and/or City have issued occupancy permits for approved plans for houses on all of the Lots.

8. "Landscaped Area" shall mean any area covered by any easement granted to and accepted by the Association for the purpose of maintaining common area landscaping, Common Elements, irrigation systems, and signs identifying the Subdivision.

9. "Lot" shall mean and refer to any Lot in the Subdivision as defined and/or delineated on the recorded Subdivision Plat.

10. "Owner" shall mean and refer to the record Owner whether Declarant or one or more persons or entities, of the fee simple title to any Lot or the present life estate, if there be any, in such Lot. A mortgage or lienholder shall not be deemed to be an Owner unless legal title to a Lot is acquired by such mortgagee or lienholder.

## ARTICLE II

### ARCHITECTURE

All structures, landscaping and other improvements shall be subject to Architectural Control as hereinafter provided in Article II, Section 2. Failure and/or refusal of a Lot Owner to comply with a Lot Owner's obligations under these Declarations may result in Declarant or the Association taking actions to bring the Lot in question into compliance, and the cost of doing so, together with the Declarant's or Associations attorney's fees, shall be assessed against such Lot as a special assessment.

#### Section 1. Architectural Standards

1. Fences. No fence of any kind whatsoever shall be erected or placed on any Lot until the construction plans and specifications and a plan showing the location of the fence have been approved by the (a) the Declarant in its sole discretion, or (b) the Association or Architectural Review Committee established by the Association after the Development Period.

2. Houses

- All houses must conform to the State of Ohio, Lake County, and City of Painesville building and/or zoning code(s), as the case may be.

-Houses will be restricted to traditional styles. A variety will be permitted such as Colonial and Georgian, but modern and contemporary houses are prohibited.

-The front elevation(s) shall contain some stone or brick to enhance the visible appearance.

-The main roof must be a minimum of 6/12 pitch.

-Attached garages may face front or side, unless a variance is granted in writing by Declarant or the Architectural review committee.

-The following size restrictions exist for the houses:

\*All homes must have a minimum of 1,700 sq. feet of livable area per City of Painesville code section 1132.04. The maximum height is 35'.

-Each house shall be used solely as a single-family residence.

-The exterior of any approved building or structure in the Blue Heron Subdivision shall not be altered, modified, changed, or redecorated in any way so as to change the appearance or décor or exterior of the structure.

3. Landscaping and Lawn Plans are subject to approval pursuant to Article II, Section 2 and must be implemented within nine (9) months after completion of the house. No fruit or vegetable gardens shall be planted in the front yards of any House. No unsightly growth such as weeds, underbrush, or the like shall be permitted to grow or remain upon any Lot, and no refuse, construction materials, or unsightly objects shall be placed or remain anywhere thereon. The natural wooded and ground cover conditions on portions of a Lot may remain provided that the same are aesthetically pleasing to the appearance of the Blue Heron Subdivision as a whole. In the event any Lot Owner shall fail or refuse to keep his Lot free from weeds, underbrush, refuse or other unsightly growth or objects, Declarant or the Association shall have the right to pursue remedies, including the recovery of attorney's fees, against such Lot Owner pursuant to the provisions contained herein. All ponds, streams, or detention basins, drainage swales, if any within the Blue Heron Subdivision, shall be aesthetic amenities only, and no recreational use thereof, including, without limitation, swimming, boating, playing or use of personal flotation devices, shall be permitted. Declarant shall not be responsible for any loss, damage, or injury to a person or

property arising out of the authorized or unauthorized use of lakes, basins, ponds, drainage swales or streams within the Blue Heron Subdivision.

4. Slope Restriction. No lot owner shall be permitted to alter or affect any existing slope(s) in the subdivision contrary to Painesville zoning restrictions or that may otherwise result in an adverse impact within the development.

5. Outbuildings will be limited to sheds, cabanas, gazebos, etc. which are consistent with the quality of homes being constructed, and provided the Declarant or the Association provides architectural approval as provided herein.

6. Driveways and Sidewalks. Driveways and sidewalks (if any) shall be constructed of concrete and shall be reflected on the House plans for approval pursuant to Article II, Section 2, and must be completed prior to occupancy of the House, unless a variance due to weather and/or extenuating circumstances is granted by Declarant.

7. Mailboxes and Address Plaques. Declarant intends to establish a so-called "gang-mailbox" as a common mail delivery point in the subdivision consistent with United States Post Office guidelines and requirements.

Section 2 Architectural Control pursuant to this Declaration shall be imposed in addition to local zoning, building, maintenance, and similar codes. Approval when necessary shall be sought pursuant to this Declaration before application to the County or City for appropriate permits. No dwelling, building, shed, fence, wall or other structure shall be erected, maintained, placed or altered within the Subdivision until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same and the topography and lighting relating thereto shall have been submitted to and approved in writing by (a) the Declarant in its sole discretion during the Development Period, or (b) the Association, or Architectural Review Committee established by the Association after the Development Period. The foregoing is implemented to assure harmony of external design and location in relation to surrounding structures.

Section 3. Scope of Review. Review and approval of any application pursuant to this Article shall be made on the basis of aesthetic considerations only and neither the Declarant nor the Association or Architectural Review Committee shall bear any responsibility for ensuring the marketability, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements.

Section 4. Retention of Billboard Rights and Leases. Declarant gives notice of its intention to reserve and retain control of and all rights, privileges, and benefits of current or future Billboard Installations and leases associated therewith fronting along Richmond Street. Said retention shall be for a period of fifteen (15) years. Thereafter, those rights shall devolve unto the Association.

### ARTICLE III

#### THE ASSOCIATION

Section 1. Drainage Easement. There is hereby reserved to the Association a non-exclusive easement (the "Storm Drainage Easement Area") in, on, over, and across the areas shown on the Plat for the purpose of implementing and maintaining the drainage functions of the Storm Drainage Easement in accordance with the Inspection and Maintenance Agreement for Stormwater Best Management Practices in the event of default of the Owners.

Section 2. Assessment.

A. Initiation Fee and Annual Assessments. Immediately upon the purchase of a Lot from Declarant, the Lot Owner shall pay a One Hundred Fifty Dollar (\$150.00), non-refundable initiation fee to the Association to defray the time and costs of the Association's review and approval of the Lot Owner's construction plans and other administrative expenses of the Association and the Architectural Review Committee. Each year, the Association shall determine the estimated Common Expenses for the coming year and shall establish the Annual Assessments. The Association shall notify each Owner of the amount of the Annual Assessment on his or her Lot or Lots. Within thirty (30) days after receiving such notice, each Owner shall pay the Annual Assessment to the Association. Common Expenses shall include, without limitation, costs associated with taxes for storm water detention areas as shown on the plat, inspecting, improving, repairing, utilizing and maintaining drainage ways, landscaping, irrigation systems, entry signs and fences, costs of maintaining any water and/or sewer facilities, and other expenses related to promoting the health, safety and welfare of the Owners. By accepting a Deed to one of the Lots, each Owner and subsequent Owner agrees to pay such assessments and charges that may be periodically established by the Association that will constitute a lien on the Lot until paid in full. The Association agrees to subordinate its lien in favor of the mortgage of any bona fide, reasonable third-party mortgagee upon reasonable notice and application. Lots owned by Declarant shall be exempt from any assessments and charges.

B. Special Assessments. If the Association incurs any costs or expenses in performing any repair of upon or with any Storm Drainage Easement Area(s) located upon or along any Lot or Lots; removing any debris or obstructions from any Storm Drainage Easement(s) located upon any Lot or Lots; and/or performing any action(s) required due to the failure or refusal of a Lot Owner, such costs and expenses shall be a Special Assessment. The Association shall inform the Owner of such Lot or Lots and such Owner shall pay such Special Assessment to the Association, together with any attorney's fees associated therewith.

C. If any Owner fails to pay an Annual or Special Assessment within thirty (30) days after notice from the Association, the Association may place a lien on the Lot, file suit against the Owner and/or may foreclose on such Annual or Special Assessment. Failure to construct improvements upon a Lot, or failure to enjoy any benefit(s) from easements, signage, landscaping or other Common Elements and improvements shall not constitute a defense for non-payment of any assessment.

Late Payments – Delinquencies. Payment of Assessments is due within thirty (30) days after notice of the amount of the Assessment is mailed to the Owner by the Association. Each Owner hereby covenants and agrees by acceptance of his Deed, whether or not it shall be so expressed in such deed, to pay to the Association all Assessments levied against such Owner in accordance with the Declaration on or before the due date. If an Owner fails to pay his Assessment when due, the Association may notify him in writing by any commercially reasonable method(s). Failure or refusal of such Owner to claim any notice shall not be a defense to the pursuit of the Association's legal rights against any delinquent Owner. In the event that the Assessment is not paid when due and/or within ten (10) days after notice of delinquency(s), then such Assessment shall be "delinquent" without further notice and the Owner shall pay interest on the delinquent amount at the maximum rate permitted to be charged to individuals in Ohio, from the date said payment was due, together with any attorney fees and costs incurred by the Association with respect to the delinquent assessment.

### Section 3. Maintenance

A. The Association shall inspect, maintain, repair, and replace as necessary the Landscaped Areas, the Storm Drainage and/or Detention Easement(s) and Areas and any structure erected by the Association or which the Association subsequently accepts.

B. The Association shall, upon failure of any Owner to do so, maintain, repair, and keep free of debris or obstructions of the Storm Drainage Easement and/or Area in order to insure is proper functioning. If the Association is required to perform work pursuant to this subsection, it may assess the cost of such work on the Lot(s) upon which such work was performed, lien said Lot(s) for non-payment of said work together with attorney's fees and costs, and/or foreclose on such Assessment.

C. Nothing herein shall alleviate the obligation of the Association to properly maintain and regulate the drainage ways and easements contained within the Subdivision. The Association reserves the right to charge the entire amount of the cost to correct maintenance to drainage ways and easements to the Owner of the Lot(s) in question or against Owners of all Lots, pro rata. In such event, the entire cost shall be fully paid to the Association within thirty (30) days of the Association delivering a statement to such Owner or Owners, as the case may be.

Section 5. Standard of Maintenance and Repair. All maintenance, repair and replacement required to be performed by the Association under this Declaration shall be

done in a good and workmanlike manner and in accordance with all federal, state and local laws, statute, ordinances, codes and regulations. Any replacements required shall be to the extent reasonably practical of the same quality, kind and type as the item being replaced. All repairs and maintenance shall be done promptly to maintain the values of the property within the Subdivision.

Section 6. Insurance. The Association shall maintain such insurance as the Association deems appropriate, but in any event, the Association shall, to the extent reasonably practical and financially feasible, obtain public liability insurance covering claims for bodily injury or death occurring upon, in or about the Landscaped Areas and any other property which may be owned by the Association, with limits determined by commercially reasonable analysis covering bodily injury or death, and damage to property. The insurance shall name the Declarant as an additional insured and, if possible without materially increasing the cost of said policy, shall name all other Owners as additional insured(s).

Section 7. Membership and Voting Rights. The Declarant shall be the Class B Member of the Association. Each Owner other than the Declarant shall automatically become a Class A Member of the Association upon becoming an Owner. Such membership shall terminate upon the conveyance of record, together with the payment of all outstanding general and/or special assessments, by such Owner of his Lot, at which time the new Owner shall automatically become a Member of the Association.

Each Class A Member shall be entitled to exercise one (1) vote for each Lot owned by such Member.

The Class B member shall be entitled to exercise three (3) votes for each lot owned by such Member.

Notwithstanding the foregoing, The Declarant reserves the right during the Development Period to control the owner's association. Specifically, during the time of declarant control, the declarant or the declarant's designee may appoint and remove the members of the board. The period of declarant control shall terminate not later than the time at which all of the lots have been transferred to owners.

Section 8. Rights of the Association. The Association shall have the right to:

- A. Enforce the provisions of this Declaration.
- B. Suspend the voting rights of any Member during any period that the Member's Assessment remains unpaid for a period of thirty (30) days or more.
- C. Adopt reasonable rules.
- D. Contract for services on behalf of Owners.



E. Take any action authorized by the laws of Ohio to collect any delinquent Assessment including, but not limited to, placing a lien upon any Lot to which the delinquent Assessment attributable. It may to the extent not prohibited by law collect interest on the unpaid amount together with its costs of collection including attorney's fees in any such proceeding.

#### ARTICLE IV

#### OWNERS' OBLIGATIONS

Section 1. Maintenance. The Owner of any Lot on which any portion of the Storm Drainage Easement is located shall keep such portion of the Storm Drainage Easement free of debris or obstructions which might prevent its proper drainage function. Each open storm water drainage swale, waterway, creek, or pond on any Lot or parcel shall be maintained by the Owner thereof in good condition and repair so that there will be no interference with the normal flow of water therein, nor shall any swale be replaced with pipe without the prior written consent of the Association. Catch basins and drainage areas are for the purpose of storm water only. No obstructions, including, without limitation, trees, shrubs, gardens, flower beds, compost piles, fences, objects or debris shall be placed in these areas. No person (other than Declarant with approval by the County or City) may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Entire Blue Heron Subdivision for the purpose of managing and controlling drainage and water flow. This Easement runs to the benefit of Declarant and the Association.

The Lot Owner shall be responsible to repair such Lot's mailbox, as necessary, maintain such Lot's landscaping (which shall include replacement of dead or diseased plants and trees), mowing lawns and keeping beds mulched and free of excessive weed growth. Lot Owners shall further maintain and repair their homes and any improvements to their Lots in an aesthetically pleasing manner.

## ARTICLE V

### RESTRICTIONS

Section 1. Animals. No animals other than common domestic pets shall be kept or permitted to be kept on any Lot within the Subdivision. Lot Owners shall keep such pets under control at all times.

Section 2. Oil and Gas Wells. No oil or gas well shall be drilled or permitted to be drilled on any Lot within the Subdivision.

Section 3. Subdivision of Lots. No Lot shall be subdivided or re-subdivided without the consent of (a) the Declarant during the Development Period or (b) after the Development Period, without the written approval of the Association.

Section 4. Use of Lots. No dwelling or Lot shall be used for other than residential purposes and only one single family dwelling may be erected on each Lot except that (a) this restriction shall not apply to dwellings used as model homes or administrative offices on Lots by Declarant, or as a model home on lots by builders, and developers; (b) an Owner may use a portion of his residence for an office or studio, provided such use does not become a nuisance to neighbors or change the essential character of the use of the residence to the extent that it becomes principally an office or studio. No portion of the Blue Heron Subdivision shall be used, in whole or in part, for the storage of property or thing(s) that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Blue Heron Subdivision that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No so-called hazardous or toxic wastes or substances (as defined by any federal or state statute or law) shall be brought upon Blue Heron Subdivision or disposed of except in strict compliance with the legal requirements. No noxious or offensive activity shall be carried on upon any portion of the Blue Heron Subdivision, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Blue Heron Subdivision. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the value of the Lots or the use and enjoyment of the Blue Heron Subdivision.

Section 5. Vehicles. Vehicles may be kept within the Blue Heron Subdivision only when contained within an enclosed garage. Vehicles include, but are not limited to, motorcycles, trail bikes, trailers, tractors, boats, jet-skis, four wheelers, Razors and other similar "all terrain vehicles", tractors, golf-carts, snowmobiles, and recreational vehicles

(including but not limited to campers and/or pop-ups) of all kinds. Parking vehicles off any paved area within the Blue Heron Subdivision is prohibited.

Section 6. Open Burning. Open burning shall not be permitted within the Blue Heron Subdivision pursuant to The City of Painesville Fire Department rules and regulations.

Section 7. Documents. A copy of this Declaration of Covenants and Restrictions shall be furnished to the purchaser of each Lot prior to the purchase of such Lot by the Lot Owner. However, provided that these covenants and restrictions have been duly filed with the Lake County Recorder, failure to actually furnish, deliver or receive same shall not, in any way, negate constructive notice of same or effect the enforcement of these covenants and restrictions.

Section 8. Radio and Television Antennae, including satellite dishes, for transmission or reception of radio and/or television signals will not be permitted; provided, however, that the satellite dishes not exceeding eighteen inches in diameter for television reception and mounted on roofs, chimneys, or in rear yards are permitted, provided that they are not visible from the street.

Section 9. No machinery shall be placed or operated upon any Lot except such machinery as is commonly used in the maintenance of a private residence.

Section 10. No Lot or part thereof shall be used for a street except by Declarant or with Declarant's written approval.

Section 11. Construction trailers utilized by builders shall be placed as far off public and private rights-of-way and shall be concealed from view as much as possible. Disturbed areas adjacent to public or private rights-of-way shall be graded and seeded as soon as possible by the Owner or his home-builder. Every reasonable effort shall be made by the Owner and home-builder to keep the sites clear of debris. Owners shall not damage any streets or permit any of its contractors or materialmen to damage the street or curbs and such Owner shall be personally liable for the cost of repairing the same, and shall indemnify and hold Declarant and the Association and its other Owners and agents harmless from any claims or damages related to the same.

It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot.

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Blue Heron Subdivision.

Section 12. No above ground swimming pools are permitted in the Blue Heron Subdivision or any portion thereof. No in-ground swimming pool, wading pool, bathing pool, or similar structure which contains water or other liquid shall be erected, placed, or altered on any Sublot until the construction plans and specifications and a plan showing the location of the structure have been approved by (a) the Declarant in its sole discretion during the Development Period, or (b) the Association or Architectural Review Committee established by the Association after the Development Period, as to quality, or workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Any such improvement shall likewise conform to all local and state building and zoning codes.

Section 13. No sign or other advertising device of any nature shall be placed upon any Lot except for signs placed by Declarant or by builders and approved by Declarant promoting development and providing information to Owners and prospective purchasers. However, Owners in the process of re-selling their improved lots, may request permission from the Declarant or Association to place a "for sale" upon the lot for a period not to exceed ninety (90) days per approval period.

Section 14. No clothing or any other household fabric shall be hung outside in the front yard of any House.

Section 15. No dumping is permitted on any part of the Subdivision unless necessary for construction or improvements and authorized by (a) the Declarant in its sole discretion during the Development Period, or (b) the Association after the Development Period. No Lot shall be used or maintained as a dumping ground. Trash, garbage, or other waste shall not be kept on a Lot except in a sanitary container. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All trash cans, garbage cans, and waste and refuse containers must be kept inside Houses or garages and further, may only be deposited at the street for collection on the morning of or evening prior to the scheduled collection. Such container must thereafter be collected and properly re-stored within 12 hours of pick-up. Each Lot must be kept and maintained in good visual order, with no debris or unsightly refuse permitted to accumulate by the Owner.

Section 16. Unless written approval of (a) the Declarant in its sole discretion during the Development Period, or (b) the Association after the Development Period, is given, there will be no discharge of firearms, ammunition, explosives, or fireworks. The term "firearms" included "B-B" guns, pellet guns, and other firearms of all types, regardless of size. No poisoning of wildlife is permitted, except for rodent control, or except upon prior written approval of (a) the Declarant in its sole discretion during the Development Period, or (b) the Association after the Development Period. No fishing or hunting is permitted.

Section 17. No mail box and/or mail box post, mail box mount or support, no newspaper or magazine box or receptacle mount or support shall be erected, placed, or altered on any Sublot until the plans and specifications have been approved by (a) the

Declarant in its sole discretion during the Development Period or (b) the Association or Architectural Review Committee established by the Association after the Development Period, as to quality of workmanship and materials, harmony of design with the existing structures, and as to location.

Section 18. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Blue Heron Subdivision, except for temporary lines as required during construction and high voltage lines of required by law or for safety purposes and approved by Declarant.

Section 19. Air Conditioning Units. Except as may be permitted by the Declarant, no window air conditioning units may be installed in any residence.

Section 20. Lighting, Monuments, Displays and Banners. Except for seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved by Declarant. Owners shall not erect any monuments, sculptures, displays or banners without the prior written consent of Declarant.

Section 21. Playgrounds. No playground equipment shall be located in the front yard of any Lot. Any playground or other play areas or equipment erected within the Blue Heron Subdivision shall be used at the risk of the user, and Declarant shall not be held liable to any person for any claim, damage, or injury occurring thereon or related to the use thereof. All such equipment must be maintained in visually appealing and structurally sound condition.

Section 22. Repair or Removal of Damaged Property. In the event that any improvement, building or structure within the Blue Heron Subdivision shall be damaged or destroyed by any fire or other casualty or otherwise fall into disrepair, the Owner shall promptly either (a) immediately commence the repair or rebuilding of said improvements following such disrepair, damage or destruction and thereafter diligently and continuously complete the same, or (b) raze said improvement, building or structure as soon as possible in the circumstances, but in any event the improvement, building or structure shall be safe, sightly and in an aesthetic condition so as not to detract from the appearance of the Blue Heron Subdivision.

Section 23. Violation of Covenants and Restrictions. If any person required to comply with the foregoing covenants, conditions, and restrictions shall violate any one or more of the same, the Declarant, or, after the Development Period, the Association shall have the right to give written notice to such person to terminate, remove or alleviate such violation. Such notice shall expressly set forth the facts constituting such violation.

If within fifteen (15) days after the giving of such written notice of violation reasonable steps shall not have been taken toward the removal, alleviation, resolution, compliance, maintenance, or termination of same, or if such remedial action is not

prosecuted with due diligence until satisfactory completion of the same, the Declarant or, after the Development Period, the Association shall have the right, but not the obligation, through their respective agents and employees, to enter upon (which entry shall be deemed to be an access and work easement herein granted) that portion of a Lot where the violation exists and to summarily terminate, remove, repair, install, bring into compliance, maintain, or extinguish, as the case may be, the same using such force as may be required. Such entry shall not be deemed to be an unauthorized entry or trespass. In addition to the foregoing, the Declarant or, after the Development Period, the Association shall have the right to obtain an injunction or other equitable relief from any court having jurisdiction for the cessation of such violation. The rights and remedies of the Declarant and the Association, as the case may be, shall be nonexclusive and in addition to any other rights or remedies available at law or in equity and may be exercised at one time or separately.

The Declarant or, after the Development Period, the Association, shall notify in writing the person in violation of the provisions contained herein of all the costs incurred to remedy same (including 15% for administrative overhead, coordination, supervision) attorney's fees, and any other damages to which Declarant or the Association, as the case may be, may be entitled. If such amounts are not paid within ten (10) days following said notification, the Declarant or the Association, as the case may be, shall have the right to levy an assessment and may perfect a lien upon the Lot owned by such person. In addition, the Owner of any Lot of the Blue Heron Subdivision in violation of the provisions contained herein shall be liable, jointly and severally, for any violation of an occupant of Owner's property.

Section 25. Conflict with Federal, State and Local Laws/Severability. Nothing contained in this declaration shall be construed to contradict, nullify or supersede any federal, state or local laws or regulations. To the extent that any provision contained herein is found to conflict with any federal, state or local law or regulation, such provisions shall be deemed to be rewritten to permit the maximum effect of such provisions within the bounds of applicable laws or regulations. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

Section 26. Special Landscaping and Sign Easements. Declarant may provide sign(s) and landscaping within the area(s) described herein (the "Landscape and Sign Area Easements") and the Association shall maintain such sign(s) and landscaping within the Landscape and Sign Area Easements. In no event shall the Owner of any Lots alter, relocate, or modify such signage or the landscaping without the Association's written consent.

The Landscape and Sign Area Easements are located on as designated in the recorded plat or accompanying drawings.

## ARTICLE VI

## **GENERAL PROVISIONS**

**Section 1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant and any Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date of this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate said covenants and restrictions; provided, however, that no such agreement to terminate shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

**Section 2. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or person violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages. Enforcement may be by any Owner, or Declarant, whether or not Declarant is an Owner, Lake County, or The City of Painesville, regarding any failure to maintain or repair the drainage facilities or easements at the cost of the Association or of the lot owner or owners involved. Failure by any Owner, Declarant, or The City of Painesville to enforce any covenant or restriction herein contained shall in no event, be deemed a waiver of the right to do so thereafter.

**Section 3. Binding Effect.** Each grantee accepting a deed, lease or other instrument conveying any interests in a Lot, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration.

**Section 4. Assignment.** Declarant, its successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all of its rights, title and interest under this Declaration.

**Section 5. Amendments.** The terms and conditions of this Declaration may be amended, annulled, or waived by an instrument in writing recorded in the public records of Lake County, Ohio, in the following manner and subject to the following conditions:

- A. During the Development Period, Declarant shall have the sole right and power of granting waivers to provisions of this Declaration and amending this Declaration provided no such amendment shall materially and adversely affect the value of existing dwellings or shall prevent a dwelling from being used by the Owner in the same manner that it was being used prior to the adoption of such amendment. In furtherance of the foregoing and limited thereof, a power coupled with an interest is hereby reserved and granted to Declarant to make a Special

Amendment on behalf of each Owner, as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting the Subdivision and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Declarant to vote in favor of or make a record Special Amendments.

- B. After the Development Period, the then Owners of two-thirds (2/3) of the Lots may amend, annul or waive any provision hereof in an instrument signed by such Owners.
- C. Notwithstanding anything to the contrary contained herein, no provision of any sewer and/or storm drainage easement or agreement may be amended, annulled or waived without the prior written approval of The City of Painesville and/or Lake County Ohio.

Section 6. Severability. These restrictions are in addition to those granted by ORC 5312.01 et seq and are to be interpreted and enforced accordingly to Ohio law, Lake County Court(s). Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Miscellaneous. The headings to each Section are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of the Declaration nor in any way affect this Declaration. The singular of any word shall also include the plural of such word, and the masculine gender shall also include the neuter and feminine. The provisions of this Declaration shall be liberally construed under the laws of the State of Ohio to effectuate its purpose of creating a uniform environment within the Blue Heron Subdivision as a first class neighborhood.

Section 8. Owner's Acknowledgment. Each prospective purchaser who desires to purchase a Lot and construct a residence may be required to execute a Purchaser's Acknowledgement Agreement, under which any prospective purchaser of a Lot for construction of a residence shall unconditionally accept all of the restrictions and covenants contained in this Declaration. Moreover, any subsequent sales or transfers of any Lot shall be made subject to this Declaration, and the Owner of the Lot to be sold or transferred shall ensure that reference is made in the deed to this Declaration and the instrument number of the County Records at which this Declaration has been recorded. An omission by a purchaser in signing any acknowledgement agreement shall not operate to relieve said purchaser from constructive notice of the restrictions contained herein.



## ARTICLE VI

### RESERVATIONS UNTO THE DECLARANT, EASEMENTS, TIMES WITHIN WHICH TO COMPLETE CONSTRUCTION OF HOMES

**Record/Fact:** The Development and Lots therein are subject to various easements, encumbrances and/or rights-of-way of record on the Effective Date. Moreover, Declarant hereby establishes and creates (and reserves) easements and rights-of-way relative to and for all purposes (including installation, inspection, maintenance, repair and/or replacement) of any and all gas pipelines, electrical/cable and/or telephone lines, water or sewer lines and/or any other utility lines, structures and/or improvements which are presently situated anywhere at or upon the Development and/or Lots therein servicing/benefiting any structures/improvements situated thereon on the Effective Date and/or which may be set forth upon any Plat.

**Reservations:** Declarant reserves the sole and absolute right to:

(a) grant plat easements and/or rights-of-way within the front twenty (20') of each Lot for the construction of public or private utility facilities, electric light, telephone and telegraph poles and conduits, cable television lines, security systems, gas pipes, sewer and water lines in, over, under and upon any and all highways or roadways now existing or hereafter established within the Development upon which any portion of any Lot may now or hereafter front or abut and/or within ten (10) feet of the side or rear boundary line(s) of any Lots.

(b) grant or plat consents, rights, easements and rights-of-way for the construction, maintenance and operation of public utility facilities, electric, gas, geothermal loops/improvements, telephone and telegraph lines, conduits for gas, water, sanitary and storm sewer pipes, mains, connections, downspouts, and other lines, together with cable television and other communication lines and/or cables, and for any other public and/or quasi-public facility, service or function, whether the same are above ground, underground and/or in, or upon any and all highways, streets, dedicated or otherwise, now existing or hereafter established upon any portion of the Development and/or Lots therein; and/or,

(c) grant consents, easements and rights-of-way and/or to petition the gas, electric, telephone, water, sewer and cable television companies or authorities for the extension of their respective service mains, connections, lines or cables, which in Declarant's opinion may be necessary to further service any part(s) or all of the Development, any Lot(s) and/or the Roadways.

When Declarant no longer owns any Lot or any portion of the Development, then Declarant's rights reserved herein (excepting rights to the Billboard Leases) shall be automatically conveyed, without grant or instrument, to the Association to be exercised by the Board thereof.

**Oil/Gas/Mineral Rights:** Declarant shall and does hereby reserve unto Declarant and Declarant's successor(s)/assign(s) any and all oil, gas and mineral rights, deposits and entitlements; including, without limitation, any and all domestic gas line rights and all royalties (present and/or future).

**Association Easement:** Declarant grants to the Association and the Association shall have a mutual and perpetual easement, ("Association Easement"), to, over and across all Lots, the Roadways, the Sidewalks, the Recreation Parcel, the Pond, the Entrance Features, any other Association Property and/or any part(s) of the Property upon which there is and/or may be any swales and/or drainage improvements at or for the Development which shall provide complete and unrestricted access to the Association as and when such access shall become necessary to enable the Association to fulfill all Association responsibilities, functions, obligations and duties consistent with this Declaration and for all purposes thereof.

The Association may utilize and benefit from the Association Easement for the care, maintenance, repair, replacement and upkeep of the Lots, Roadways, sanitary sewer improvements/structures, storm water management improvements/structures, the Sidewalks, the Entrance Features, all other Association Property and to perform any and all Association duties and functions (inclusive of the Association's provision of any and all Exclusive Services). Declarant additionally grants the Association Easement and/or extends the same to Lake County and the City of Painesville to enable the County or City full and complete access to and/or across the Association Property if and as necessary to enable the County or City to repair/maintain any of the same if the Association fails to do so.

**Safety and Health Forces – Easement:** Notwithstanding any conditions/ restrictions in this Declaration to the contrary, the Safety and Health Forces shall at all times have full and complete access to the Development and Declarant hereby grants to the Safety and Health Forces an easement over/across the Lots, Roadways, each driveway and the Sidewalks for ingress and egress purposes.

In witness whereof, Declarant has hereunto set its hand at Painesville,  
Ohio this 25 day of August, 2020.

Emerald Pointe, Inc. – Declarant

Matt Malkamaki

By: Matt Malkamaki, President

Notary page to follow:

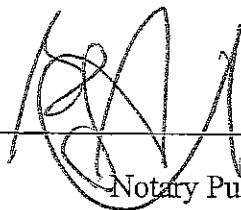
STATE OF OHIO     )

)     ss.

LAKE COUNTY     )

Before me, a notary public, in and for said County and State, personally appeared the above-named **Matt Malkamaki, President of Emerald Pointe, Inc.** who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of the Company and himself individually.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Painesville Ohio, this 25 day of August 2020.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



**BENJAMIN L. AVENI, Attorney at Law**  
**Notary Public - State of Ohio**  
**My Commission has no expiration date**  
**Sec. 147.03 R.C.**

Prepared by:

Benjamin L. Aveni, Esq.  
CANNON & AVENI CO., L.P.A.  
41 E. Erie Street, Painesville, OH 44077  
(440) 357-5537 ext. 3021     baveni@csalawgroup.com

**Exhibit A**

Legal Description – Blue Heron Subdivision

Situated in the City of Painesville, County of Lake and State of Ohio and known as being part of Samuel Fowler Lot, in Tract 4 and being further bounded and described as follows:

Beginning at a 5/8" capped (Alban) iron pin monument found at an angle point on the original west line of Richmond Street (a.k.a. High Street, Fairport Road and S.R. 535), 60 feet wide, recorded plat, Volume F, Page 33;

Thence S 37°52'11" E, 70.37 feet along said original west line of Richmond Street to a point;

Thence N 89°17'12" E, 87.65 feet along the projection and the south line of a parcel of land owned by the City of Painesville (P.P. No. 15-D-021-B-00-039-0), record deed, Volume 203, Page 259, Lake County Record of Deeds, to a capped 5/8" iron pin set at the principal place of beginning;

Thence N 28°38'54" W, 459.52 feet along said City of Painesville's east line to a capped (4594) 5/8" iron pin found at the southwest corner of Windjammer Court Condominium, recorded plats, Volume 46, Page 31 (Phase 1), Volume 47, Page 4 (Phase 2), Volume 48, Page 12 (Phase 3), and Volume 50, Page 17 (Phase 4), Lake County Records of Plats;

Thence N 14°24'19" E, 91.31 feet along the south line of said Windjammer Court Condominium to a capped 5/8" iron pin set;

Thence N 89°38'30" E, 611.34 feet continuing along the south line of said Windjammer Court Condominium to a capped 5/8" iron pin set at the northwest corner of a parcel of land owned by Diana R. Hoggia (P.P. No. 15-D-021-B-00-044-0), recorded deed, Volume 597, Page 273, Lake County Record of Deeds;

Thence S 00°45'18" E, (passing through a bent 3/4" iron pipe found at 109.77 feet) 150.10 feet along said Hoggia's west line and the west line of a parcel of land Diana R. Hoggia (P.P. No. 15-D-021-B-00-045-0), recorded deed, Volume 597, Page 273, Lake County Record of Deeds to a capped 5/8" iron pin set;

Thence N 89°17'00" E, 37.85 feet along said Hoggia's south line (P.P. No. 15-D-021-B-00-045-0) to a 1/2" iron pipe found (South 0.09 feet, West 0.22 feet) at the northwest corner of a parcel of land owned by Victor K. Dickey (15-D-021-B-00-020-0), recorded deed, Document No. 2003R023824, Lake County Record of Deeds;

Thence S 00°43'13" E, 117.43 feet long said Victor's (15-D-021-B-00-020-0) west line to a 1 1/2" iron pipe found (South 0.47 feet, East 0.02 feet) at said Victor's (15-D-021-B-00-020-0) southwest corner;

Thence N 89°17'00" E, 100.00 feet along said Victor's (15-D-021-B-00-020-0) south line to a 1 1/2" iron pipe found (South 0.01 feet) at the northwest corner of a parcel of land owned by Victor K. Dickey (15-D-021-B-00-027-0), recorded deed, Document No. 2003R023824, Lake County Record of Deeds;

Thence S 00°43'13" E, 12.68 feet along said Victor's (15-D-021-B-00-027-0) west line to a capped 5/8" iron pin set on the north line of a parcel of land owned by Michael L. and Lori Ann Dinallo (15-D-021-B-00-028-0), recorded deed, Volume 558, page 713, Lake County Record of Deeds;

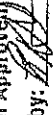
Thence S 89°17'00" W, 307.18 feet along said Dinallo's north line to a capped 5/8" iron pin set;

Thence S 18°35'42" W, (passing through a 2 1/2" iron pipe found at 10.90 feet) 222.64 feet to a 3/4" iron pipe found (North 2.65 feet, East 0.90 feet) on the north line of a parcel of land owned by George W. III and Bruce A. Maki (P.P. No. 15-D-021-B-00-036-0), recorded deed, Document No. 990018067, Lake County Record of Deeds;

Thence S 89°17'12" W, (passing through a 1" iron pipe found at 137.10 feet) 177.05 feet along said Maki's north line and the north line of a parcel of land owned by the City of Painesville (15-D-021-B-00-038-0), recorded deed, Volume 203, Page 154, Lake County Record of Deeds to the principal place of beginning;

and containing 5.2998 acres of land be the same more or less but subject to all legal highways, and easements of record as surveyed and described July, 2007 by David W. Novak, P.S. No. 7507. Bearings used herein are to denote angular relationship only and do not represent true north.

Permanent Parcel No.: 15D-021B-00-040-0

Description Approved  
Reviewed by:  Date 11-9-2015  
Lake County Engineer's Tax Map Office