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January 4, 2017

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Board of Directors  
University Estates Homeowners Association  
c/o John Wharton, President  
Via email to: [jwharton@ohio-realty.com](mailto:jwharton@ohio-realty.com)

RE: Legal analysis regarding the Association's validity  
University Estates Homeowners Association  
MGS&S File No. 13934.001

Dear Board Members:

Pursuant to your request, we have analyzed the history of the University Estates Homeowners Association in light of the applicable law. Based on our research and analysis, it is our conclusion that the Association is valid both under the recorded Declaration of Covenants, Conditions, and Restrictions for the University Estates development and under applicable Ohio law. Accordingly, the Association, acting through its Board of Directors, has authority to manage the Association's affairs and to enforce the provisions of the Declaration, including the Association's Bylaws.

Under the Declaration, and primarily the provisions of Article III, the Association's existence requires only two things: corporate status and lot owners, who comprise the Association's membership. Both requirements have been continuously satisfied since the Declaration was filed.

The Association was formed as a corporate entity in 2002, when Dr. Richard Conard formed University Estates Homeowners Association, Inc. Although the original Articles of Incorporation state the Association is a for-profit entity (presumably due to a clerical error) while the Declaration requires the Association to be a nonprofit corporation, this discrepancy was corrected in 2007 when Dr. Conard amended the Articles of Incorporation to convert the Association from a for-profit corporation to a not-for-profit corporation. This amendment and conversion to a nonprofit was authorized by both the provisions of the Declaration and by Ohio statutory corporate law.

University Estates Homeowners Association has existed as an Ohio corporation continuously since its formation in 2002. Even though the Association has experienced periods of inactivity, this is not sufficient to disrupt its corporate status. Ohio statutory law provides

specific methods and conditions for dissolving a corporation, both voluntarily and by judicial decree. Under these statutes, corporate inactivity, by itself, is not sufficient to dissolve a corporation. Further, dissolving a corporation requires an overt, intentional act of dissolution by either the corporation or a court of competent jurisdiction. As there has been no act of dissolution here, the Association's status as an Ohio nonprofit corporation remains valid.

Also, as the Declaration specifies that the Association's membership consists of all owners of single-family residential lots (including, at the appropriate time in the development's past, University Estates, Inc. as the Developer), the Association has never been without members. Because the Association had a corporate legal existence and the lots were owned by Dr. Conard's company, University Estates, Inc., when the Declaration was recorded, the Association's existence and authority, along with the Developer's membership status and its voting status as Developer Member, were automatic upon the recording of the Declaration. Following this, pursuant to Section 3.02 of the Declaration, each lot owner became a member of the Association automatically upon acquiring ownership of a lot. Each owner's membership was also automatically accompanied by the owner's right to participate in the affairs of the Association to the full extent provided by the Declaration.

The manner of Dr. Conard's exit from the development and from the Association does not affect the validity of the Association or the authority of its members to act collectively through the Association. Section 3.03 provides for termination of Developer Membership upon written surrender of Developer Membership by the Developer or at such earlier date as may be required by law. Upon termination of Developer Membership, and the Developer's right to three votes for every single-family residential lot in University Estates, effective control of the Association transfers automatically to the Regular Membership (all lot owners other than the Developer). Here, because University Estates, Inc. never named a successor Developer (as provided for in Section 8.13) and its membership in the Association depended on its ownership of lots, its Developer Membership terminated upon the transfer of the last lot out of University Estates, Inc.'s legal ownership under the provision for such earlier date as may be required by law. After Developer Membership terminated, it appears that the meeting called for in Section 3.03 was never held. However, because the purpose of this meeting was simply to give notice to the lot owners of the termination of Developer Membership, the failure of the Developer to hold this meeting has no effect on the members' authority over the Association or the Association's ongoing validity.

Under Ohio law, the primary source of authority for a homeowners association is the recorded declaration for the development. Beyond ensuring the requirements of a development's declaration are satisfied, Ohio law has little to say about the validity of a homeowners association. Ohio does have a statutory scheme, contained in Revised Code Chapter 5312, that directly addresses planned communities and their owners associations, which includes University Estates and the Association. However, these statutes were enacted in 2010, after University Estates and the Association were formed, and the statutes expressly do not invalidate or displace any declaration or owners association already in existence.

In summary, the Association became the valid governing entity of University Estates immediately upon the filing of the Declaration because the two requirements for the Association,

corporate status and lot owners, were already satisfied. Because the Association has not experienced any interruption in its legal status as a corporation or in the existence of lot owners, the Association remains valid under the Declaration. Also, because Ohio law determines the validity of an owners association by examining whether the provisions of the declaration have been satisfied, the Association is valid under Ohio law. Accordingly, all lot owners are entitled to participate in the Association's affairs as provided by the Declaration and Bylaws, and the Association, through its Board of Directors, has full legal authority to manage its affairs and enforce the Declaration.

Very truly yours,



David J. Mott