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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THE VILLAGE AT ARMSTRONG FARMS**

**CLARK COUNTY, INDIANA**

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February 13, 2004

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE VILLAGE AT ARMSTRONG FARMS  
CLARK COUNTY, INDIANA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGE AT ARMSTRONG FARMS (the "Declaration") is made, entered into and effective as of February 13, 2004, by DOMINION HOMES OF KENTUCKY, LTD., a Kentucky limited partnership, having an address at 1219 South Hurstbourne Parkway, Louisville, Jefferson County, Kentucky 40222 ("Developer").

**RECITALS:**

A. Developer is the owner of certain real property in Clark County, Indiana, as hereinafter described, which Developer intends to develop as a residential subdivision to be subdivided into lots (individually, a "Lot," and collectively, the "Lots"), which residential subdivision shall be known as *The Village at Armstrong Farms*.

B. Developer desires to develop the real property in accordance with the provisions of this Declaration.

**AGREEMENT:**

NOW, THEREFORE, Developer hereby declares that all of the property described in this Declaration (collectively, the "Property"), shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property, which easements, restrictions, covenants and conditions shall bind and inure to the benefit of the parties hereto and their heirs, successors and assigns, and shall be deemed to run with the Property:

**1. PROPERTY SUBJECT TO THIS DECLARATION.**

*1.1 Phase I.* The real property which is initially subject to this Declaration is located in Clark County, Indiana, and is more particularly described as follows:

Armstrong Tracts

**PARCEL I**

Being a part of Survey No. 22, Survey No. 34, and Survey No. 35 of the Illinois Grant to Clark County, Indiana, Jeffersonville Township, and being more particularly described as follows:

Commencing at a set 5/8-inch steel pin with cap "Marshall" (hereinafter referred to as "set steel pin") at the south corner of said Survey No. 35; thence along the dividing line between Survey No. 35 and Survey No. 22, North 54° 48' 58" East (Grid North), 255.55 feet to a set

MAG nail in Charlestown-Jeffersonville Pike, being the True Place of Beginning of the herein described tract;

Thence North  $46^{\circ} 43' 14''$  West 13.16 feet a found steel pin with cap "Primavera" (hereinafter referred to as "found steel pin"); thence North  $39^{\circ} 11' 41''$  West, 280.41 feet to a set steel pin; thence South  $59^{\circ} 58' 57''$  West, extending into said Survey No. 34 and passing a set MAG nail in the top of a concrete headwall at 815.90 feet, a total distance of 828.24 feet to a point on the northeasterly right-of-way of Armstrong Road (100 foot right-of-way) as conveyed to the City of Jeffersonville, Indiana by instrument 3217178; thence along said right-of-way the following four (4) courses:

(1) on a curve to the right, said curve having a central angle of  $33^{\circ} 20' 21''$ , a radius of 410.00 feet, and a chord which bears North  $02^{\circ} 58' 10''$  West, 235.22 feet to a found steel pin; thence

(2) North  $13^{\circ} 42' 00''$  East, 266.72 feet to a found steel pin; thence

(3) on a curve to the left, said curve having a central angle of  $59^{\circ} 38' 48''$ , a radius of 670.00 feet, and a chord which bears North  $16^{\circ} 07' 25''$  West, 666.42 feet to a found steel pin; thence

(4) North  $45^{\circ} 56' 50''$  West, 80.20 feet to a set steel pin on the southeast line of a tract conveyed to Jeffersonville, Ltd. by Deed Drawer 20, Instrument 14176;

thence along the southeast line of said Jeffersonville, Ltd. tract, North  $44^{\circ} 09' 22''$  East, 70.44 feet to a set steel pin on the line dividing said Survey No. 34 and Survey No. 35; thence along said dividing line, South  $34^{\circ} 55' 27''$  East, 116.32 feet to a point; thence North  $55^{\circ} 00' 10''$  East, 1185.21 feet to a set steel pin; thence South  $36^{\circ} 17' 27''$  East, 494.40 feet to a point; thence South  $53^{\circ} 42' 33''$  West, 151.40 feet to a point; thence South  $36^{\circ} 17' 27''$  East, 362.40 feet to a point in the center of the Charlestown-Jeffersonville Pike (40 foot right-of-way); thence along the center of said right-of-way the following three (3) courses:

(1) South  $06^{\circ} 35' 16''$  West, 339.31 feet to a set MAG nail; thence

(2) On a curve to the right, said curve having a central angle of  $36^{\circ} 40' 00''$ , a radius of 600.00 feet, and a chord which bears South  $24^{\circ} 55' 16''$  West, 377.45 feet to a set MAG nail; thence

(3) South  $43^{\circ} 15' 16''$  West, and extending into Survey No. 22, a distance of 251.15 feet to a found MAG nail; thence

North  $46^{\circ} 43' 14''$  West, 8.12 feet to the true place of beginning.

Containing 35.4811 acres and being subject to the right of way of Charlestown-Jeffersonville Pike and all other easements and rights-of-ways of record.

## PARCEL II

Being a part of Survey No. 35 of the Illinois Grant to Clark County, Indiana, Jeffersonville Township, and being more particularly described as follows:

Commencing at a set 5/8-inch steel pin with cap "Marshall" (hereinafter referred to as "set steel pin") at the south corner of said Survey No. 35; thence along the dividing line between Survey No. 35 and Survey No. 34; North  $34^{\circ} 55' 27''$  West (Grid North), 1347.00 feet to a

point; thence North 55° 00' 10" East 1185.21 feet a set steel pin; thence South 36° 17' 27" East, 494.40 feet to a point, being the True Place of Beginning of the herein described tract;

Thence continuing South 36° 17' 27" East, 200.00 feet to a set MAG nail in the center of the Charlestown-Jeffersonville Pike (40 foot right-of-way); thence along the center of said right-of-way, South 06° 42' 05" West, 222.03 feet to a point; thence North 36° 17' 27" West, 362.40 feet to a point; thence North 53° 42' 33" East, 151.40 feet to the true place of beginning.

Containing 0.9774 of an acre of land and being subject to the right of way of Charlestown-Jeffersonville Pike and all other easements and rights-of-ways of record.

The descriptions for Parcels I and II is based on a survey of the subject property by Stephen L. Marshall, PLS No. 20000204, of John G. Brinkworth, Inc., File No. 11863, Dated December 12, 2003, recorded as Instrument No. 200402232 in the Clark County Recorder's Office.

#### D & D Tree Movers Tracts

##### TRACT NO. 1:

Being a part of Survey No. 35 of the Illinois Grant to Clark County, Indiana, Jeffersonville Township, and being more particularly described as follows:

Commencing at a set 5/8-inch steel pin with cap "Marshall" (hereinafter referred to as "set steel pin") at the south corner of said Survey No. 35; thence along the dividing line between Survey No. 35 and Survey No. 34, North 34°55'27" West (Grid North), 1347.00 feet to a point; thence North 55°00'10" East 1324.64 feet to a set steel pin being the True Place of Beginning of the herein described tract;

Thence North 34°42'50" East, 89.59 feet to a point; thence South 36°17'27" East, 482.66 feet to a point in the center of the Charlestown-Jeffersonville Pike (40 foot right-of-way); thence along the center of said right-of-way, South 06°11'24" West, 125.43 feet to a set MAG nail; thence North 36°17'27" West, 546.00 feet to the true place of beginning.

Containing 1.0002 acres and being subject to the right of way of Charlestown-Jeffersonville Pike and all other easements and rights-of-ways of record.

Being Tract 1 of the same property conveyed to D & D Tree Movers, Inc. by Deed Drawer 30, Instrument 13889. (All deed documents referenced herein are on file at the Clark County, Indiana Recorder's Office).

##### TRACT NO. 2:

Being a part of Survey No. 35 of the Illinois Grant to Clark County, Indiana, Jeffersonville Township, and being more particularly described as follows:

Commencing at a set 5/8-inch steel pin with cap "Marshall" (hereinafter referred to as "set steel pin") at the south corner of said Survey No. 35; thence along the dividing line between Survey No. 35 and Survey No. 34, North 34°55'27" West (Grid North), 1347.00 feet to the True Place of Beginning of the herein described tract;

Thence continuing along said dividing line, North 34°55'27" West, 126.50 feet to a found 1-inch pipe on the southeast line of a tract conveyed to Jeffersonville, Ltd. by Deed Drawer 20, Instrument 14176; thence along said southeast line, North 44°09'22" East, 1434.91 feet to a point, being the west corner of a tract conveyed to Gary L. Morrison by Deed Drawer 15, Instrument 9926; thence along the southwest line of said Morrison tract and a southwest line of a tract conveyed to Timothy E. Mitchell by Instrument 200310160, South 51°14'48" East, 343.36 feet to a set steel pin; thence South 34°42'50" West, 192.84 feet to a set steel pin; thence South 55°00'10" West 1324.64 feet to the true place of beginning.

Containing 8.8329 acres and being subject to all easements and rights-of-ways of record. Being Tract 2 of the same property conveyed to D & D Tree Movers, Inc. by Deed Drawer 30, Instrument 13889. (All deed documents referenced herein are on file at the Clark County, Indiana Recorder's office).

#### TRACT NO. 3:

Being a part of Survey No. 35 of the Illinois Grant to Clark County, Indiana, Jeffersonville Township, and being more particularly described as follows:

Commencing at a set 5/8-inch steel pin with cap "Marshall" (hereinafter referred to as "set steel pin") at the south corner of said Survey No. 35; thence along the dividing line between Survey No. 35 and Survey No. 34, North 34°55'27" West (Grid North), 1347.00 feet to a point; thence North 55°00'10" East 1324.64 feet to a set steel pin; thence North 34°42'50" East, 89.59 feet to a point being the True Place of Beginning of the herein described tract;

Thence continuing North 34°42'50" East, 103.25 feet to a set steel pin at a corner common with a tract conveyed to Timothy E. Mitchell by Instrument 200310160; thence along a southwest line of said Mitchell tract, South 36°17'27" East, 409.65 feet to a found metal reading at the location of a deed referenced railroad spike in the center of the Charlestown-Jeffersonville Pike (40 foot right-of-way); thence along the center of said right-of-way, South 06°11'24" West, 144.56 feet to a point; thence North 36°17'27" West, 482.66 feet to the true place of beginning.

Containing 0.9999 of an acre of land and being subject to the right of way of Charlestown-Jeffersonville Pike and all other easements and rights-of-ways of record.

Being the same property acquired by D & D Tree Movers, Inc. by Deed dated June 30, 1998, of record in Deed Drawer 30, Instrument No. 13889, in the Office of the Recorder of Clark County, Indiana.

All of the above property also being shown on survey prepared by Stephen L. Marshall, PLS No. 20000204, of John G. Brinkworth, Inc., File No. 11863, dated December 12, 2003, recorded as Instrument No. 200402232 in the Clark County Recorder's Office.

Norris Tract

Being part of survey No. 35 of the Illinois Grant of Clark County, Indiana, to-wit: Beginning at the south corner of Survey No. 35 of the Illinois Grant, near the center of the Charlestown and Jeffersonville Turnpike road; thence with the center of said turnpike in a northeasterly direction one hundred (100) poles, more or less, to a stake, where the line of Lawrence's land and said Turnpike Road intersect THE TRUE PLACE OF BEGINNING. Thence N. 41 deg. West and with Lawrence's line 33.08 poles to a stone; thence S. 49 deg. West and with Lawrence's Line 4.45 poles; thence S. 36 deg. 20' W. 38 poles to the center of aforesaid turnpike; thence N. 6 deg. 20' W., seven (7) poles to the True Place of Beginning, containing one (1) acre, more or less.

Hay Tract

A tract of land in Survey No. 35 of the Illinois Grant: Being at a stone near the center of the Charlestown and Jeffersonville Turnpike CJ&T, running thence North 6 degrees 20 minutes East 5.76 rods to a stake; thence North 36 degrees 20 minutes West 38 rods to Lawrence's line; thence southwardly and along Lawrence's line 4 rods to a stake; thence South 36 degrees 20 minutes East 42.24 rods to the place of beginning containing one acre.

The real property which is subject to this Declaration is also shown on survey prepared by Stephen L. Marshall, PLS No. 20000204, of John G. Brinkworth, Inc., File No. 11863, dated December 12, 2003, recorded as Instrument No. 200402232 in the Clark County Recorder's Office.

**1.2 Additional Phases.** Additional real property, whether owned by Developer or others, which is not presently a part of the Property, may be hereafter annexed to *The Village at Armstrong Farms* by Developer in its sole discretion and made subject to this Declaration. All such additions to *The Village at Armstrong Farms* shall be made by filing an Amendment to this Declaration in the Clark County Recorder's Office with respect to such additional real property, which Amendment shall declare the annexation and addition of such real property to *The Village at Armstrong Farms* and shall extend the scheme of this Declaration to such annexed real property. Upon the filing of any such Amendment, the term "Property," as used in this Declaration shall automatically be deemed modified to include and be a reference to such additional real property, unless otherwise specified therein. Any such Amendment may contain additions and modifications of the provisions of this Declaration as Developer may elect and/or as may be necessary to reflect the different character, if any, of the additional annexed real property.

**1.3 Supplemental Declarations.** Developer may, from time to time, elect in its discretion, and without need for the consent of any other person or entity, to record with respect to any one or more Phases of the Property, a Supplemental Declaration of Covenants, Conditions and Restrictions (a "Supplemental Declaration") in the aforesaid Clerk's office, pursuant to which Supplemental

Declaration Developer may impose on such Phase(s) certain rights, privileges, covenants, conditions, restrictions, limitations, reservations, exceptions, easements, assessments, charges and liens, and provisions other than those set forth in this Declaration, which may be more or less restrictive than those set forth in this Declaration as Developer may elect in its sole discretion. Further, any such Supplemental Declaration may otherwise supplement the provisions of this Declaration with respect to the particular Phase subject thereto, and may otherwise contain such additional information, specifications and other matters with respect to such Phase(s) subject thereto as is contemplated by this Declaration. A Supplemental Declaration may further provide for a "Subassociation" for such Phase(s) and for the right of such Subassociation to assess Lot owners within such Phase and to place liens upon the Lots therein for the purposes described in such Supplemental Declaration. Upon filing of a Supplemental Declaration in the aforesaid Clerk's office, the Phase(s) subject thereto shall be subject to all of the rights, privileges, covenants, conditions, restrictions, limitations, reservations, exceptions, easements, assessments, charges and liens, and other provisions set forth in this Declaration, except to the extent, if any, specifically stated in the Supplemental Declaration. For purposes of this Declaration, the term, "Subassociation," shall mean any Kentucky non-profit corporation, and the successors and assigns of the same, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations, to benefit the Lot owners within Phase(s) burdened by the applicable Supplemental Declaration.

## **2. DEFINITIONS.**

**2.1 Annual Assessment.** Amount to be paid to the Association by each Owner annually.

**2.2 Assessments.** Collectively referring to Annual Assessments, Lot Assessments, and Special Assessments.

**2.3 Association.** The Village at Armstrong Farms Homeowners Association, Inc., an Indiana non-profit corporation to be formed by the Developer before the Turnover Date, its successors and assigns.

**2.4 Association Governing Documents.** This Declaration, the articles of incorporation, code of regulations, by-laws and any and all procedures, rules, regulations or policies adopted by the Association or its Board.

**2.5 Board.** The Directors of the Association.

**2.6 Common Expenses.** Expenses incurred in owning, maintaining, or improving the Common Property or in operating the Association pursuant to the Association Governing Documents.

**2.7 Common Property.** All real and personal property now or hereafter acquired, pursuant to this Declaration or otherwise, and owned by the Association for the common use and the enjoyment of the Owners, or for the operation of the Association.

**2.8 Developer.** Dominion Homes of Kentucky, Ltd., and any officer, successor or assign thereof to which the Developer specifically assigns any of its rights under this Declaration by a written instrument.

**2.9 Improvements.** All buildings, outbuildings, garages and structures, overhead, aboveground and underground installations, including, without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools; tennis and all other types of permanently installed recreational courts, fixtures and facilities; slope and drainage alterations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches; and all other structures of every type.

**2.10 Lot.** A discrete parcel of real property identified upon the recorded subdivision plat of the Property, or recorded re-subdivision thereof and any other discrete parcel of real property designated as a Lot by the Developer, excluding the Common Property and any portion of the Property dedicated for public use.

**2.11 Lot Assessment.** An assessment that the Board may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), or the owners or occupants thereof, including, without limitation, costs associated with making repairs that are the responsibility of the Owner of those Lots; costs of additional insurance premiums reasonably allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Lot Assessment by the Board.

**2.12 Manager.** The person or entity retained by the Board to assist in the management of the Association as set forth in Section 5.6.

**2.13 Member.** Any person or entity entitled to membership in the Association, as provided for in Section 4.1.

**2.14 Owner.** The record owner, whether one or more persons or entities of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for performance of an obligation, and also excluding the Developer.

**2.15 Property.** The premises described in Section 1 and such additional property as may be annexed by amendment to this Declaration, or that is owned in fee simple by the Association, together with all easements and appurtenances.

**2.16 Reserve Fund.** The fund that may be established pursuant to Section 6.1.

**2.17 Rules.** The rules and regulations governing use of the Property and the Common Property, as may be established by the Board from time to time pursuant to Section 5.4.

**2.18 Special Assessment.** An assessment levied by the Association through its Board, against all Lots pursuant to Section 6.4, to pay for capital expenditures, interest expense on indebtedness

incurred for the purpose of making capital expenditures, unanticipated operating deficiencies, or any other purpose determined appropriate by the Board in furtherance of its functions hereunder.

**2.19 State.** The State of Indiana.

**2.20 Turnover Date.** The date on which the Developer relinquishes its exclusive right to appoint all members of the Board, which date shall be no later than the date the Developer closes on the sale of the last Lot it owns in the subdivision, as it may be ultimately enlarged by the annexation of additional phases.

**3. GOALS.** The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes.

- (a) Compliance with all zoning and similar governmental regulations;
- (b) Promotion of the health, safety and welfare of all Owners and residents of the Property;
- (c) Preservation, beautification and maintenance of the Property and all improvements; and
- (d) Establishment of requirements for the development and use of the Property.

**4. MEMBERSHIP AND VOTING RIGHTS.**

**4.1 Membership.** Every Owner shall be deemed to have a membership in the Association. Membership is a right appurtenant to and inseparable from an Owner's fee simple title in a Lot, and such right of membership shall automatically transfer to any transferee of fee simple title to a Lot at the time such title is conveyed or at such time as a land installment contract is entered and recorded for the conveyance of fee simple title. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest or mortgage shall not terminate an Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event an Owner consists of more than one person, such persons shall have one membership in the Association as tenants in common.

**4.2 Governance.** Voting and all other matters regarding the governance and operation of the Association shall be set forth in the Association Governing Documents.

**5. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.**

**5.1 Common Property.**

(a) The Developer may, from time to time, at Developer's option, convey to the Association for the use and benefit of the Association and the Members, real or personal property, or any interest therein, as part of the Common Property in the nature of an easement appurtenant to

the Property, The Association shall accept title to any interest in any real or personal property transferred to it by the Developer. The Association, subject to the rights of the Owners set forth in this Declaration and the Association Governing Documents, and subject also to budget limitations and the business judgment rule, shall be responsible for the exclusive management and control of the Common Property, if any, and all improvements thereon, and shall keep that property in good, clean, attractive, and sanitary condition, order and repair.

(b) Subject only to budgetary limitations and the Board's right to exercise its reasonable judgment, the Association shall operate, maintain, repair and replace feature(s) in and on all Common Property, and shall keep the Common Property in good, clean and attractive condition, order and repair. The Association, by its Board, shall have the right to establish and enforce rules and regulations pertaining to the operation, maintenance and use of the Common Property.

(c) All Common Property, including open space, private roads, islands in the right-of-way, and signature entrances, shall not be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the Clark County Planning Commission. The Association cannot amend this restriction without approval from the Clark County Planning Commission.

(d) Anything to the contrary herein notwithstanding, the Association and the Owners shall be responsible for the maintenance of all Common Property, including open space, private roads, islands in the right-of-way, and signature entrances, so long as the Property is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended.

**5.2 Personal Property and Real Property for Common Use.** The Association may acquire, hold, manage, operate, maintain, improve, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by the Developer.

**5.3 Cost-Sharing Agreements.** The Association may enter into cost-sharing agreements with other home owners' associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, landscaping, storm water retention facilities, mounding, fencing and any other improvements that benefit the Property or the members of the Association.

**5.4 Rules and Regulations.** The Association may make and enforce reasonable rules and regulations (hereinafter "the Rules") governing the use of the Property, which shall be consistent with this Declaration and the Association Governing Documents. The Association shall have the power to impose sanctions on Owners, including, without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments; (ii) suspension of the right to vote as a Member of the Association; and (iii) suspension of the right to use the Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing any provision of these Restrictions, any other Association Document, or any Rules, against any Owner, tenant, guest or invitee of any Owner, the amount so expended shall be due and payable by such Owner, and shall be a Lot Assessment against such Owner's Lot.

**5.5 Implied Rights.** The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration, and every other right or privilege reasonably implied from the existence of any right or privilege granted in this Declaration, or reasonably necessary to effect any such right or privilege.

**5.6 Managing Agent.** The Board may retain and employ on behalf of the Association a Manager, which may be the Developer, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manger shall be a Common Expense. The term of any management agreement shall not exceed three years and shall allow for termination by either party, without cause, and without penalty, upon no more than ninety (90) days' prior written notice.

**5.7 Insurance.**

(a) The Association shall obtain and maintain a comprehensive policy of public liability insurance insuring the Association, and the Owners and occupants, with such coverage and limits as the trustees may determine, covering claims for personal injury and/or property damage arising by reason of acts or omissions by or on behalf of the Association or otherwise.

(b) The Association may, in the Board's discretion, obtain and maintain the following insurance: (a) fidelity bond coverage and workers' compensation insurance for all officers, directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers' and trustees' liability insurance to fund the obligations of the Association under Section 12.4, (d) additional insurance against such other hazards and casualties as is required by law, and (e) any other insurance the Association deems necessary.

(c) In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Board may levy a Special Assessment pursuant to Section 6.4 to cover the additional costs.

**5.8 Condemnation.** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property, or any portion thereof. Each Owner hereby irrevocably appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held and used for the benefit of the Owners, as determined by the Board.

**5.9 Books; Records.** Upon reasonable request of any Member, the Association shall be required to make reasonably available for inspection by any Member all books, records and financial statements of the Association.

**6. ASSESSMENTS.**

**6.1 Reserve Fund.** The Board, at its discretion, may establish and maintain a Reserve Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association, and/or repairing and maintaining Common Property or components thereof.

**6.2 Types of Assessments.** The Grantor, for each Lot owned, covenants and agrees, and each Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the following assessments: (i) Annual Assessments; (ii) Special Assessments; and (iii) Lot Assessments. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Property or by abandoning his/her Lot. Annual and Special Assessments shall be fixed at a uniform rate for all Lots.

**6.3 Annual Assessments.** The Board shall annually estimate the Common Expenses and the expenses, if any, it expects the Association to incur in the Association's next ensuing fiscal year for the maintenance, operation and management of the Association, (which may include amounts, if any, for the Reserve Fund — as may be determined by the Board) and shall assess each Owner of a Lot an Annual Assessment equal to such estimated expenses divided by the total number of Lots. The Annual Assessments shall be paid in accordance with the procedures set forth in the Association Governing Documents and the Rules. Notwithstanding the foregoing to the contrary: (i) prior to December 31, 2004, in no event shall the Annual Assessments for each Lot exceed \$700 per year; and (ii) prior to the date that the Developer relinquishes its right to appoint members of the Board as set forth in the Association Governing Documents (the "Turnover Date"), in no event shall the Annual Assessments for each Lot increase by more than twenty-five percent (25%) per year, and the Developer may elect to pay the Annual, Special or Lot Assessments applicable to Lots owned by the Developer, or in lieu thereof, not pay such annual Assessments, and to instead pay any deficit incurred in operating the Association, determined annually.

**6.4 Special Assessments.** The Board may levy against all Lot(s) and the Owners a Special Assessment to pay for capital expenditures, interest expense on indebtedness incurred for the purpose of making capital expenditures and not to be paid out of the Reserve Fund; unanticipated operating deficiencies; or any other purpose determined appropriate by the Board in furtherance of its functions hereunder.

**6.5 Lot Assessments.** The Board may levy a Lot Assessment against any Lot(s) and the Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), or as a consequence of any act or omission by any Owner, occupant, or invitee, including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. Upon its determination to levy a Lot Assessment, the Board shall give the affected Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, ten (10) days prior to the effective date of the levy of any Lot Assessment. The Board may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Owner who violates the Rules, or any provision of the Association Governing Documents, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules or any provision of the Association Governing Documents, including this Declaration.

## **7. REMEDIES.**

**7.1 Late Charge.** If any Assessment remains unpaid for ten (10) days after all or any part thereof shall become due and payable, the Board may charge interest from and after that date at the lesser of the rate of twelve percent (12%) per annum or the highest rate permitted by law, together with an administrative collection charge of Twenty-Five Dollars (\$25.00).

**7.2 Liability for Unpaid Assessments.** Each Assessment or installment of an Assessment, together with interest thereon and any costs of collection, including reasonable attorneys' fees, shall become the personal obligation of the Owner(s) beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute an action at law on behalf of the Association against the Owner(s) personally obligated to pay any delinquent assessment. Except upon the commencement of a foreclosure by a bona fide first-mortgage lender, an Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable, and both such Owner and his/her successor in title shall be jointly and severally liable therefor. Except as otherwise provided herein, the transfer of an interest in a Lot other than by foreclosure by a holder of a bona fide first-mortgage lender shall neither impair the Association's lien against that Lot for any delinquent Assessment nor prohibit the Association from foreclosing the lien.

**7.3 Liens.** All unpaid Assessments, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment remains unpaid for ten (10) days after it is due, then the Board may authorize any officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and collection costs, including attorneys' fees, with the appropriate governmental office. The certificate shall contain a description of the Lot which the lien encumbers, the name(s) of the Owner(s) of that Lot, and the amount of the unpaid portion of the Assessment. The certificate may be signed by any officer, authorized agent or Manager of the Association. Upon the filing of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall remain valid for a period of five years from the date such certificate is duly filed, unless the lien is released earlier or satisfied in the same manner provided by the law of the State for the release and satisfaction of mortgages on real property, or until the lien is discharged by the final judgment or order of any court having jurisdiction. Notwithstanding the foregoing, the lien for Assessments provided for in this Section shall be subordinate to the lien of any bona fide first mortgage on a Lot that is recorded before the recording of a certificate of lien by the Association.

**7.4 Vote on Association Matters; Use of Common Property.** If any Assessment remains unpaid for thirty (30) days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Property, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.

## **8. MAINTENANCE.**

**8.1 Maintenance by Association.** Subject only to budgetary limitations and the right of the Board to exercise reasonable business judgments, the Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures, and improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property, and all necessary snow removal. The Association shall also mow and fertilize the front and back lawns of all Lots, and maintain, repair and replace the landscaping of all Lots.

**8.2 Maintenance by Owner.** Each Owner or occupant shall repair, replace, and maintain in good order and condition, at his/her expense, structures on his/her Lot. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at his/her own expense all maintenance, repairs and replacements within such Lot that, if omitted, would adversely affect the safety and usefulness of the Common Property. Each Owner shall maintain those portions of his/her Lot that are adjacent to any portion of the Common Property in accordance with the Rules and the requirements set forth in this Declaration.

**8.3 Right of Association to Repair Lot.** If any Owner fails to maintain his/her Lot in the manner required herein and the Lot remains in a state of disrepair for a period of thirty (30) days following written notification by Developer or the Association to such Owner, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Property by the Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of this Declaration, then the Board may authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred.

**8.4 Damage to Common Property by Owner or Occupant.** If the Common Property is damaged by any Owner or occupant, his/her family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

**9. ARCHITECTURAL STANDARDS.** All Property at any time subject to these Restrictions shall be governed and controlled by the provision of this Section.

**9.1 Design Review Board.** The Design Review Board shall be a board consisting of three (3) persons. Until the Turnover Date, the Developer shall have the sole and exclusive right to appoint and remove all three members of the Design Review Board at will. After the Turnover Date, the Board shall have the right to appoint all three members to the Design Review Board at will. The Design Review Board shall have the exclusive authority, by action of two or more of the members thereof, at a private or public meeting to determine the architectural standards which shall govern the construction of Improvements on the Property. Each Owner covenants and agrees by acceptance of a deed to a Lot to comply with, and to cause his/her Lot and any occupant thereof to comply with

the standards adopted by the Design Review Board. No Improvement shall be placed, erected or installed on the Property, and no construction (which term shall include in its definition staking, clearing, excavation, grading and other site work) shall be commenced or continued until and unless the Owner first obtains the written approval thereof of the Design Review Board and otherwise complies with all provisions of this Declaration.

**9.2 Modifications.** Except as otherwise provided in this Declaration, the Design Review Board shall have jurisdiction over all construction, modifications, additions or alterations of Improvements on or to the Property. No person shall construct any improvement on any Lot, including, without limitation, alter surfaces of existing Improvements, change paint colors or roofing materials, construct or modify fencing, or install any recreational device, without the prior written consent of the Design Review Board. The Owners shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of Improvements and alterations to the Design Review Board for its approval. Nothing contained herein shall be construed to limit the right of an Owner to remodel or decorate the interior of his/her residence.

**9.3 Variances.** To avoid unnecessary hardship and/or overcome practical difficulties in the application of the provisions of this Declaration, the Design Review Board shall have the authority to grant reasonable variances from the provisions of this Declaration, provided that the activity or condition is not prohibited by applicable law, and provided further that, in their judgment, the variance is in the best interest of the community and is within the spirit of the standards of the Design Review Board. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Declaration as applied to any other person or any other part of the Property.

**9.4 Improvements by Developer.** Notwithstanding the foregoing to the contrary, all Improvements and landscaping constructed by the Developer or its partners, members or shareholders shall be deemed to comply in all respects with the requirements of the Design Review Board.

**10. USE RESTRICTIONS.** The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Developer and every Owner or occupant, their heirs, successors and assigns, as well as their family members, guests, and invitees:

**10.1 Use of Lots.** No Lot shall be used except for residential purposes, provided, however, that the foregoing shall not prohibit the operation of builders' model homes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height, and each such dwelling shall have a two-car attached garage. 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.

**10.2 Minimum Finished Floor Areas.** The following shall be the minimum finished floor areas for homes to be constructed on any Lot:

(a) **One-Story.** The total floor areas of a one-story residence shall be a minimum of 900 finished and habitable square feet, exclusive of the garage and basement.

**(b) One and One-Half and Two-Story.** The total floor area of a one and one-half and two-story residence shall be a minimum of 1,100 finished and habitable square feet, exclusive of the garage and basement.

**10.3 Use of Common Property.** The Common Property may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the residential use of the Property. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Owners and occupants, and shall comply with the provisions of this Declaration, all other Association Governing Documents, the laws of the State, and the Rules.

**10.4 Hazardous Actions or Materials.** Nothing shall be done or kept in any Lot or in or on any portion of the Common Property that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Property, or that might or that does unreasonably disturb the quiet occupancy of any person residing on any other Lot. This paragraph shall not be construed so as to prohibit the Developer or any other builder in the subdivision from construction activities consistent with reasonable residential construction practices.

**10.5 Signs.** No signs of any character shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by the Developer while marketing the Lots and residences for sale; (ii) street and identification signs installed by the Association or the Developer; and (iii) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is for sale.

**10.6 Animals.** No person may keep, breed, board or raise any animal, livestock, reptile, or poultry of any kind for breeding or other commercial purpose on any Lot, or in or upon any part of the Common Property, unless expressly permitted by the Rules.

**10.7 Nuisances.** No noxious or offensive trade shall be permitted on the Property or within any dwelling located on the Property. No soil shall be removed for any commercial purpose.

**10.8 Business.** No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on the Property, without the prior written approval of the Board.

**10.9 Storage Buildings.** No storage buildings, barns or sheds of any kind are permitted on any Lot, and no open storage shall be permitted.

**10.10 Hotel/Transient Uses; Leases.** No Lot may be used for hotel or transient uses, including, without limitation, uses in which the occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to this Declaration, the other Association Governing Documents, and the Rules.

**10.11 Vehicles.** The Board is hereby granted the power and the authority to create and enforce reasonable rules concerning placement and the parking of any vehicle permitted on the Property, so long as those rules are consistent with, and do not amend, any of the terms of the restriction that

follows. In addition to its authority to levy Lot Assessments as penalties for the violation of such rules, the Board shall be authorized to cause the removal of any vehicle violating such rules.

Except as specified below, no trucks, no prohibited commercial vehicles, no boats, no trailers, no campers and no mobile homes shall be parked or stored on any street in the Subdivision, or on any Lot in the Subdivision (except in an enclosed structure shielded from view) for any time period longer than forty-eight (48) hours in any thirty (30) day period, provided, however, that nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during construction of residences on the Lots.

For the purpose of this section, the terms "truck" and "prohibited commercial vehicle" shall include all vehicles that weigh, fully loaded, more than 6000 pounds; all vehicles that have a length of more than 21 feet; all vehicles that include any open exterior storage of tools or materials except no more than two (2) visible ladders. Dump trucks, tow trucks, flat bed car hauling trucks, panel trucks and "step vans" larger than one-ton capacity full size cargo vans, pickup trucks larger than one ton capacity pickup trucks, and semi type tractors and trailers shall all be considered in every instance to be a prohibited truck and/or a prohibited commercial vehicle. For the purpose of this section, the word "trailer" shall include landscaping trailer, open bed trailer, trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of personal property, whether resting on wheels, jacks, tires or other foundation.

**10.12 Trash.** Except for the reasonably necessary activities of the Developer during the original development of the Property, no burning or storage of trash of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers, and screened from view.

**10.13 Antennae.** No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be installed or maintained on the Property except for satellite receiving dishes 24" in diameter or smaller which cannot be seen from any street.

**10.14 Utility Lines.** Except for such portions of utility lines as are presently situated above ground on the Property, and except for above ground electricity to the pump station serving the Property, all utility lines on the Property shall be underground, subject only to the requirements of governmental authorities having jurisdiction and utility companies.

**10.15 Tanks.** No tanks for the storage of propane gas, fuel oil or any other combustible substance shall be permitted to be located above or beneath the ground of any Lot except that propane gas grills are permitted.

**10.16 Street Trees.** The Developer will designate trees as deemed necessary along the street in front of each Lot. If the Developer determines to designate street tree(s), then the Association will maintain such uniform street trees.

**10.17 Mailbox.** The Developer may designate and require a curb side mailbox for each Lot, with a design and composition that will provide uniformity to the subdivision. Each mailbox shall have the street numbers for the Lot on each side of such mailbox. If the mailbox is damaged, destroyed or deteriorates, then each Owner, at such Owner's expense, shall repair or replace such mailbox with another of an exact kind, design, pattern and color as the initial mailbox.

**10.18 Yard Lights and Lamp Posts.** All yard lights and lamp posts shall conform to the standards set forth by the Architectural Review Committee.

**10.19 Fencing.** No fence or wall shall be constructed or placed on any of the Lots.

**10.20 Swimming Pools.** No above-ground swimming pool extending twelve (12) inches or more above the finished grade of the Lot shall be permitted upon any Lot, except that this Section 10.20 shall not be intended to prohibit the installation of a hot tub or sauna.

**10.21 Miscellaneous.** The following structures and improvements shall not be permitted on any Lot in the subdivision: (i) outdoor clotheslines, and (ii) window air conditioning units on any window facing the street.

## **11. EASEMENTS AND LICENSES.**

**11.1 Easement of Access and Enjoyment over Common Property.** Every Owner shall have a right and easement (in common with all other Owners) of enjoyment in over and upon the Common Property, and a right of access to and from his/her Lot, which rights shall be appurtenant to, and shall pass with the title to, his/her Lot, subject to the terms and limitations set forth in this Declaration, and to the Rules. An Owner may delegate his/her rights of access and enjoyment to family members, occupants, guests and invitees.

**11.2 Right of Entry for Repair.** The duly authorized agents, officers, contractors and employees of the Association shall have a right of entry and access to the Property, including without limitation, the Lots, for the purpose of performing the Association's rights or obligations set forth in this Declaration. The Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Property, but only during reasonable hours and after providing seventy-two (72) hours advance notice to the Owner, except in cases of emergency.

**11.3 Easement for Utilities and Other Purposes.** The Board or the Developer may convey easements over the Common Property to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, ducts, cables, and other equipment necessary to furnish electrical, gas, sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Property and to any entity for such other purposes as the Board or the Developer deems appropriate, provided that such equipment or the exercise of such easement rights shall not unreasonably interfere with the Owners' use and enjoyment of the Property. The Board or the Developer may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board or the Developer deems

appropriate, provided that the grant of such easements imposes no undue, unreasonable, or material burden or cost upon the Property; and further provided that the Board or the Developer may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably delayed or withheld).

**11.4 Easement for Services.** A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage removal personnel, and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Common Property to perform their duties.

**11.5 Open Space.** An easement is hereby reserved in favor of the Developer and the Association over, under and upon the area shown on the Plat as the "Open Space" to construct, repair, reconstruct and maintain an entry feature(s), landscaping (including fencing installed by the Developer) and other improvements. The easement shall run with the land and shall be binding on all future Owners of Lots except as hereinafter set forth. Notwithstanding anything herein to the contrary, the Open Space shall not be subject to the Easement of Access to Common Property granted to individual Lot Owners under Section 11.1 above.

## **12. MISCELLANEOUS.**

**12.1 Term.** This Declaration shall bind and run with the land for a term of thirty (30) years from and after the date that this Declaration is filed for recording with the Clark County, Indiana Recorder's Office, and thereafter shall automatically renew forever for successive periods of ten (10) years each, unless earlier terminated by the vote of a majority of all of the Members, at a meeting scheduled and conducted for that purpose.

**12.2 Enforcement.** This Declaration may be enforced by any proceeding at law or in equity by the Developer, any Owner, the Association, the Design Review Board, and each of their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant, restriction, or rule to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees) in connection with any violation. The failure or forbearance to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of these rights.

**12.3 Amendments.** Until the Turnover Date, the Developer may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants, conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, the Developer may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) necessary to conform to the requirements of United States Federal Housing Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not

materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of the Developer without the written consent of the Developer or the assignee of such right or privilege. The Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. An amendment to these Restrictions made by the Developer shall not require the joinder or consent of the Association, other Owners, mortgages or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by the Developer, to reflect and address the different character or intended development of any such additional property.

In addition, this Declaration may be amended or modified after the Turnover Date with the approval of Owners holding not less than two-thirds (2/3) of the voting power of all Owners in the Association, provided that the consent of all owners shall be required for any amendment which effects a change in the voting power of any Owner, the method of allocating Common Expenses among Owners, or the fundamental purpose for which the Association is organized. Any amendment to this Declaration adopted with the aforesaid consent shall be executed with the same formalities as to execution as observed in this Declaration by the president and the secretary of the Association, and shall contain their certifications that the amendment was duly adopted in accordance with the requirements of this paragraph. Any amendment so adopted and executed shall be effective upon the filing of the same with the Recorder of Jefferson County, Kentucky.

**12.4 Developer's Right to Complete Development.** The Developer shall have the right to (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter improvements on any property owned by the Developer, (c) construct and maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by the Developer or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, the Developer shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of the Developer or require the Developer to obtain approval to: (i) excavate, cut, fill or grade any property owned by the Developer or to construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by the Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (ii) require the Developer to seek or obtain the approval of the Association or the Design Review Board for any such activity or Improvement on any Common Property or any property owned by the Developer. Nothing in this Section shall limit or impair the reserved rights of the Developer as elsewhere provided in this Declaration.

**12.5 Mortgagee Rights.** A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

(a) Any proposed amendment of this Declaration;

(b) Any proposed termination of the Association; and

(c) Any default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon written request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

**12.6 Indemnifications.** The Association shall indemnify every officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The officers and trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The officers and trustees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any officer or trustee, or former officer or trustee, may be entitled.

**12.7 Severability.** If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law, or unenforceable, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void of such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

**12.8 Enforcement; Waiver.** Failure of the Developer, the Association or any Owner to enforce any provision of these Restrictions or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement by the Association of this Declaration or the Rules.

**12.9 Captions.** The caption of each article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.

**12.10 Notices.** Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States



This instrument was prepared by:

*Tandy C. Patrick*

Tandy C. Patrick, Esq.  
Greenebaum Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202-3197  
(502) 589-4200

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