

CAMBRIDGE COMMONS SUBDIVISION

OK. DWP  
6/5/98

DECLARATION OF RIGHTS AND RESTRICTIONS

THIS DECLARATION, made this 2 day of June, 1998, by Landvest, LLC, a limited liability company of Louisville, Jefferson County, Kentucky.

WITNESSETH:

WHEREAS, Landvest, LLC is the owner of the property shown on the plat of Cambridge Commons (the "Property"), a subdivision in Jefferson County, Kentucky, filed of record on \_\_\_\_\_, 1998, in the office of the County Court Clerk of Jefferson County, Kentucky, and recorded in Plat and Subdivision Book 44 at Page 47; and

113843  
7-27-98

WHEREAS, Landvest, LLC is now developing Cambridge Commons as an outstanding and prestigious residential area.

NOW, THEREFORE, to provide the means necessary to achieve such purpose and to enhance and protect the value and attractiveness of said area, Landvest, LLC does now and hereby subjects the Property, as shown on the aforesaid plat, to the covenants, conditions, easements, restrictions, charges and assessments (collectively referred to as "Restrictions") set forth, contained and provided for in this Declaration, such Restrictions to be covenants running with the land which shall be binding upon and inure to the benefit of all parties having any interest in the Property.

DEFINITIONS OF TERMS USED

(1) "Association" shall mean the not-for-profit corporation, known as the Cambridge Commons Patio Homes, Inc., incorporated under the laws of Kentucky for the purpose of taking the fee simple title to the Common Areas and managing, maintaining and controlling the Common Areas and Maintenance Easement Areas in accordance with the provisions hereof.

(2) "Cambridge Commons" shall mean the real estate development located in Jefferson County, Kentucky, the plat of which is recorded in Plat and Subdivision Book 44 at Page 47 filed of record on \_\_\_\_\_, 1998 in the Office of the County Court Clerk of Jefferson County, Kentucky.

113843  
7-27-98

(3) "Common Areas" shall mean the areas dedicated to non-exclusive common use and benefit of the Owners, their tenants, licensees and invitees, including, but not by way of limitations, club house, private streets, service drives, driveways, open parking areas, landscaped areas, walks, curbs, lawns, gardens, open areas, recreational facilities and all necessary appurtenances to each such item and so designated by the Association from time to time, and shall include the areas so designated on the plat.

RECEIVED

JUN 05 1998

LOUISVILLE & JEFFERSON COUNTY  
PLANNING COMMISSION

(4) "Developer" shall mean Landvest, LLC, a limited liability company, its successors and assigns.

(5) "Lot" shall mean each single family residential lot which comprises a part of the Property as shown on the recorded subdivision plat.

(6) "Maintenance Easement Area" shall mean that portion of each Lot which is to be maintained by the Association as described in Section 7.4 hereof, which portion excludes the Residence Site.

(7) "Owner" shall mean the record owner, whether one or more persons or other legal entities, of fee simple title to any Lot in Cambridge Commons, but excluding a mortgagee having merely a security interest.

(8) "Private Streets" shall mean the streets in Cambridge Commons not dedicated to public use.

(9) "Residence Site" means that portion of each Lot on which the Owner's residence, garage and patio are located, which portion will be designated when the Lot is conveyed to the Owner by Developer contemporaneously with the conveyance by the Owner to the Association of easements dedicating the remainder of the Lot to be part of the Maintenance Easement Area, all pursuant to the provisions of Section 7.4 hereof.

## ARTICLE I

### **MEMBERSHIP IN ASSOCIATION**

Until the Developer has sold the last Lot in Cambridge Commons, including lots owned by Developer with regard to additions to the land subject to this Declaration as provided by Article III of this Declaration, or such earlier date as the Developer may determine, Developer shall exercise all voting rights in the Association. Subject to the foregoing:

Section 1.1 Each Owner shall be a member of the Association and shall be entitled to the benefits and subject to the obligations of membership, but the Owners, if more than one, of each Lot, shall be entitled to only one vote. Membership in the Association shall be mandatory for the Owner or Owners of each Lot and no Owner shall be permitted or allowed to disclaim said membership and the duties, obligations and benefits thereof nor withdraw from the Association for any reason.

Section 1.2 The membership and right to vote of any Owner who is delinquent in the payment of any assessment or charge duly imposed by the Association shall be suspended until such delinquency has been cured and any penalties reasonably imposed have been paid.

Section 1.3 The Association shall be the sole judge of the qualifications of its members and of their right to participate in the vote at its meeting and proceedings in accordance with its Articles of Incorporation and By-Laws. The exercise of voting rights, whether in person or by proxy, shall be governed by the By-laws of the Association.

**ARTICLE II**

**LAND ENTITLED TO BENEFITS**

No land shall be entitled to any of the benefits, improvements or services provided by the Association unless subjected to the terms and conditions of this Declaration and to the assessments herein provided for; provided, however, that nothing in this Declaration shall be construed as dedicating any land for any purpose, including but not limited to the private streets and other ways or means of access to, ingress or egress from Cambridge Commons, to the public, except those specifically so dedicated of record, if any.

**ARTICLE III**

**ADDITIONS TO LAND**

Developer may from time to time add to the land subject to this Declaration such other land owned by it, as it in its discretion may determine, which additional land shall be entitled to all of the benefits of the land initially subject hereto, including access to and use of the Common Areas and utility easements; provided, however, that (1) any such additional land shall be subject to and bound by all of the terms and conditions of this Declaration and any future modifications thereof, and (2) any such additional land must be adjacent to the Property. Particularly, but not by way of limitation, Developer owns additional land adjacent to the aforescribed record plat having been conveyed to Developer by deed dated January 7, 1998 of record in Deed Book 6984 at Page 34 in the Office of the County Court Clerk of Jefferson County, Kentucky and with respect thereto the Developer may from time to time develop an additional section or sections to be added to the land subject to this Declaration, which additional Section or Sections shall be entitled to all the benefits of the land initially subject hereto, including access to and use of the Common Areas and utility easements, same being subject to and bound by all of the terms and conditions of this Declaration and any modifications thereof.

**ARTICLE IV**

**POWERS AND DUTIES OF THE ASSOCIATION**

Section 4.1. Duties.

The Association shall have the following duties:

- a. To inspect, maintain and repair the Common Areas and Maintenance Easement Areas, and to replace items therein when necessary, all of which includes but is not limited to grass areas, flower gardens, shrubs, trees, plants, landscaping, curbs, driveways, walkways, fences, drainage and lighting facilities, parking areas, recreational facilities, club house, and other parts and accessories thereof.
- b. To inspect, maintain, repair, correct and paint the exterior of Residence Sites, same to include, but not limited to, roof maintenance, repair, and replacement. Window glass shall be the responsibility of the lot owner.
- c. To pay all real estate taxes and special assessments levied against the Common Areas.
- d. To obtain and provide public liability insurance with respect to the Association's activities and the Common Areas, as set forth herein in Article VI.
- e. To do such other matters as may from time to time be necessary to maintain the quality and appearance of the Residence Sites, Common Areas, and Maintenance Easement Areas.
- f. To do such other matters as may from time to time be necessary to maintain the quality and appearance of the exterior of the Residence Sites, including, but not limited to, approval of exterior doors, storm doors, screens, security doors, window treatments, and security treatments for windows.

Section 4.2. Powers.

The Association shall have the following powers:

- a. To fix, levy and collect assessments, both general and special, as Common Areas costs, Residence Site costs and maintenance area costs, or otherwise, against each Owner and his respective Lot and Residence Site as hereinafter set forth in order to perform its duty to maintain and repair the Common Areas, Maintenance Easement Areas and the exterior of the Residence Sites and to replace items therein when necessary pursuant to this Declaration and might be provided in the Bylaws of the Association.
- b. To collect and pay as a Common Areas costs such real estate taxes and special assessments as are levied against the Common Areas, as herein provided in this Declaration and might be provided in the Bylaws of the Association.
- c. To collect as a Common Areas costs and pay the premiums for such public liability or other insurance deemed necessary by the Association, as provided in this Declaration and might be provided in the Bylaws of the Association.

d. To employ a Management Company to carry out in whole or in part the duties or powers of the Association as set forth herein and as might be set forth in the Bylaws of the Association.

e. To provide and maintain such on-site security measures, if any, as may be deemed necessary or appropriate by the Association, including but not limited to burglar and fire alarms, fences, intercom system, guards, and any other security measures, facilities and personnel deemed necessary or appropriate by the Association; and to fix, levy and collect as a Common Areas cost the cost of maintaining the aforementioned security measures, facilities and personnel, if and when installed or utilized, but the Association shall not be liable for the failure to install or utilize any such measure, facility or personnel or for any alleged act or omission in connection with any measure, facility or personnel which may be installed or utilized.

f. To establish and publish By-Laws and such rules and regulations from time to time which it deems necessary or appropriate in its sole and absolute discretion for the enjoyment by the Owners and for the protection of the Residence Sites, Common Areas and the Maintenance Easement Areas, and to amend said By-Laws and rules and regulations as it deems necessary or appropriate.

g. To contract for garbage and trash removal for all Lots and Residence Sites.

h. To establish a Capital Replacement Fund and pay into same from month to month that portion of assessment collections from Lot owners for capital replacement reserves. Payment to said fund shall be at the sole and absolute discretion and determination of the Association and, particularly, the Developer shall be under no obligation to establish such fund so long as Developer exercises all voting rights in this Association.

i. To limit the number of Lots and Residence Sites owned by one (1) person or organization for the purpose of rental.

j. To perform, install and maintain any and all other functions, measures and items deemed necessary by the Association for the convenience, benefit and enjoyment of the Owners, and to fix, levy and collect as a Common Areas costs, Residence Site costs, Maintenance Easement costs, or otherwise any assessments necessary to pay the cost of any of the foregoing.

## ARTICLE V

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

#### Section 5.1 Creation of the Lien and Personal Obligation for Assessments.

Each Owner, by acceptance of the deed for his respective Lot in Cambridge Commons, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant

and agree to pay to the Association assessments or charges to be fixed, established, levied and collected at the time and in the amounts determined by the Association, which assessments shall include but not be limited to the Common Areas costs, Maintenance Easement Areas costs and Residence Site costs pursuant to this Declaration or the Bylaws of this Association and other items necessary for the maintenance, repair or replacement of the Common Areas, Maintenance Easement Areas, and Residence Sites, and any other expense of the Association in carrying out its duties, powers and purposes. If there is more than one Owner of a particular Lot, each such Owner shall be jointly and severally liable to the Association for all assessments or charges against that particular Lot. The assessments, both general and special, together with such late charge thereon and such costs of collection thereof as may be necessary, as hereinafter provided, shall be a charge on the land and any improvements thereon and shall be a continuing lien upon the property against which each such assessment is made.

Section 5.2 Payment of Assessments.

The assessment for each Lot shall be established by the Association on the basis that the assessments shall be borne equally by each Lot, provided that so long as a Lot has not been transferred from the Developer no assessment shall be paid by the Developer. Assessments shall be due on the first day of each calendar month (or such other date as may be designated by the Association in the notice of assessment) and shall be deemed delinquent after the fifteenth day following such due date. All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted accounting practices and, as part of the Common Areas cost, the Association shall prepare, or cause to be prepared, a written report of its operations for each calendar year and a copy of such written report shall be given to the Owner of each Lot.

Section 5.3 Late Charge.

If an assessment or special assessment is not paid before becoming delinquent, the Association may exact a late charge in such amount as may from time to time be established by the Association's Board of Directors and such late charge shall become a lien on a defaulting Residence Site as any other assessment until paid. Late charges, when collected, shall be credited to the Common Area fund.

Section 5.4 Foreclosure of Lien.

If any assessment made pursuant to the provisions hereof by the Association remains unpaid for thirty (30) days after the date upon which it is due, it may be foreclosed by suit by the Association in a like manner as a mortgage of real property. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey any property acquired as a result of a successful bid. Suit to recover money charged for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same. The Association shall be entitled to collect its reasonable attorney's fees incurred in any such suit.

Section 5.5 Waiver of Use.

No Owner may except himself or his property from liability for his assessment by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his property.

Section 5.6 Lien Statement.

The purchaser of a Lot subject to any lien arising under this Declaration prior to the date of his purchase and the recording of his deed shall take title to the Lot subject to the lien; provided, however, that any such purchaser may request a written statement from the Association as to whether a lien exists against such Lot and such written statement, executed by any two of the President, Secretary or Treasurer of the Association, shall be conclusive as to the facts stated therein as against the Association and may be relied on by the purchaser and the mortgagee or assignee of a mortgage upon that Lot.

Section 5.7 Priority of Lien.

The lien created by Section 5.1 hereof shall be subordinate to (1) all ad valorem taxes on the respective Lot and (2) the lien of a recorded first mortgage on such Lot. The sale or transfer of any Lot pursuant to foreclosure of a recorded first mortgage, or voluntary conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, but the Association shall have a lien upon the proceeds from such foreclosure or sale junior only to said recorded first mortgage. No such sale or transfer shall relieve the Lot from assessments thereafter becoming due.

**ARTICLE VI****INSURANCE**

The Association shall obtain public liability insurance covering all of the Common Areas and insuring the Association and the Owners in such amounts as the Association may determine from time to time. The Association may obtain such other insurance as it deems desirable. Premiums for the payment of all such insurance shall be chargeable as a Common Areas cost to be assessed against and paid by the Owners, as provided herein. Each Owner shall be responsible for obtaining and paying for his personal liability insurance and any insurance against fire and other perils to his residence, contents and automobiles.

**ARTICLE VII****EASEMENTS AND RESTRICTIONS**

Section 7.1 Each Lot in Cambridge Commons shall be used only for single family residential purposes, shall not be further subdivided, and shall be subject to such limitations and conditions as may be contained herein or in the Association's By-Laws. Notwithstanding this

residential restriction, the Developer shall be permitted to use unsold Residences and Club House as sales models and sales offices.

Section 7.2 The exterior of each residence shall be maintained by the Owner in an attractive and well-kept manner. No alteration in the exterior appearance of any residence may be made without the prior written consent of the Association.

Section 7.4 It is contemplated that at the time of sale of each Lot by the Developer to an Owner, a portion of the Lot will be designated as "Residence Site" and another portion as "Maintenance Easement Area." The portion to be designated "Residence Site" will consist of the ground upon which the Owner's residence, including garage and patio, are to be constructed. The other portion, to be designated "Maintenance Easement Area," will consist of the remainder of such Lot. There will be conveyed by the Owner to the Association a maintenance easement granting the exclusive right to landscape and maintain the Maintenance Easement Area, and to prescribe rules limiting the Owner's rights to use the Maintenance Easement Area in any manner so as to interfere with the performance by the Association of such duties and powers. In addition there will be conveyed by the Owner to the Association an appropriate utility easement in order to accomplish the intent and purposes of Section 7.10 of this Declaration.

Section 7.5 Every Owner, his tenants, licensees and invitees, shall have in common with all Owners, their tenants, licensees and invitees, the non-exclusive right and easement of passage over the Private Streets for entrance and egress to such Owner's Residence Site and the enjoyment of other Common Areas, all subject to such reasonable rules and restrictions as the Association may impose. The roads in Cambridge Commons shall not be dedicated to or maintained by the public except by agreement of all Owners and approval by the Louisville and Jefferson County Planning Commission after finding that the roads meet all standards required for a newly created public road.

Section 7.6 Every Owner shall have a non-exclusive right and easement of enjoyment in and of the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and which is subject to the provisions of this Declaration and subject to the Association's Articles, By-Laws and rules and regulations. Said right and easement of enjoyment may be exercised by members of the Owner's family. An Owner may, with the approval of the Association, delegate his right of enjoyment in the Common Areas to his tenants who occupy his Residence Site.

Section 7.7 No Lot or Common Area shall be used in any manner or for any purpose in violation of such rules and regulations which may be in effect from time to time, as adopted by the Association. The Association shall have the power to establish rules and regulations concerning the use of Lots and Common Areas, and to amend such from time to time. Such rules and regulations may include, but shall not be limited to, the following subjects: signs; appearance of exterior of any improvements and alterations thereto; radio, television or other antennae; animals; activities or items visible from the exterior of any Residence Site; limitation of such activities as yard sales, garage sales or auctions; parking; traffic; storage of boats, trailers,

trucks, other vehicles or objects; mailboxes; garbage and refuse containers and disposal; conditions under which snow or ice removal will be conducted; noise; exterior lighting fixtures; fences.

Section 7.8 For the purpose of providing easements for utilities and various services to Residence Sites, Maintenance Easement Areas, and Common Areas, Developer shall have and does hereby reserve unto itself, its successors and assigns in title (which shall be the Association after the Developer's voting rights have transferred to the Owners), the right to grant easements to locate, construct, maintain and use, and to authorize the location, construction, maintenance and use on, such portions of the Common Areas, as it may designate for drains, sanitary and storm sewers, gas and water mains and lines, electrical and telephone lines, cable television conduits and line, community television antenna lines, fire warning and security systems, and other utility lines and conduits for any and all purposes.

Section 7.9 Service lines from any utility easement to particular Lots are to be maintained by and at the cost of the Owners of the lots so serviced on a pro rata basis.

Section 7.10 It is understood that private single-family dwellings shall be constructed upon lots as provided herein and that utilities and cable television lines, and the installations or the like (hereafter referred to as "utilities") servicing such dwellings may encroach upon and run through or around adjacent lots and dwellings. Each lot owner grants herein to all other lot owners an easement to allow utilities and cable television lines to be constructed across and through their property, including, but not by way of limitation, their lot and residence site in the most convenient manner so as to serve all lot owners; and to allow and provide for the inspection, maintenance, repair, replacement or relocation thereof. The sole cost for the inspection, maintenance, repair, replacement or relocation of a utility shall be the responsibility of the lot owner or owners being serviced by the utility and the cost shall be shared on a pro rata basis. Should relocation of such a utility be necessary to assure its continued efficient use or reliability then an appropriate easement is hereby granted and dedicated in order to afford such relocation. The Association or their authorized agents are granted the right at reasonable times to enter upon the premises of a serviced dwelling in order to inspect, maintain, repair, replace or relocate a utility.

Section 7.11 A party wall easement is hereby established over that part of any Lot on which any part of a common wall between improvements on adjoining Lots is constructed, together with the right to maintain and restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits and fireplace flues, serving improvements using such party wall. Said party wall easement shall be a cross-easement in favor of each Lot involved with such common walls.

## ARTICLE VIII

INCURRENCE AND RETIREMENT OF INDEBTEDNESS

The Association acting by unanimous vote of its Board of Directors, may borrow money from time to time for the following purposes:

Section 8.1 To cover any budgetary deficit for operational expenses, so long as such loan can be repaid within six (6) months from anticipated assessment income not needed for ongoing operations.

Section 8.2 To pay cost of reconstruction, major repair, replacement or alteration of the Common Areas, Maintenance Easements, Exterior Residence Sites and roofs thereof, or otherwise where the Board of Directors might deem appropriate pursuant to this Declaration or the Bylaws of the Association (to the extent not covered by insurance proceeds), provided that the repayment of such loan can be amortized over a period of not more than fifteen (15) years and will not require a monthly payment in excess of one/one-hundredth of one percent (.01%) of the total fair market value of all the Lots, said fair market value to be determined by use of the values (based upon 100% assessment value) placed on the lots and Residence Sites by the Jefferson County Property Valuation Administrator or such other governmental officer as may succeed to his duties as they exist, on January 1<sup>st</sup> of the initial loan year and shall not take into consideration any loss of value arising out of destruction to property being restored from the proceeds of the loan. There shall be no more than one authorized loan outstanding at any one time. When it is necessary to effect such a loan, the Association acting through its Board of Directors, may pledge, as security thereon, its rights to receive that part of the monthly assessment income that is necessary to amortize the payoff of the loan.

## ARTICLE IX

ENFORCEMENT

Developer, the Association, and also any Owner or Owners shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the provisions set forth above, in addition to any ordinary legal action for damages, and failure of Developer, the Association, or any Owner or Owners, to enforce any of the provisions set forth herein at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so thereafter.

## ARTICLE X

**BINDING EFFECT; RELEASE OR MODIFICATION OR AMENDMENT**

The Restrictions contained herein are and shall be deemed to be covenants running with the land and shall be binding on all parties having any interest in any portion of the Property and all successors in title thereto, together with their heirs, administrators, executors, successors or assigns. Provided, however, at any time whatsoever this Declaration or any provisions hereof may be modified, altered, amended, or terminated upon the written consent of Owners of two-thirds (2/3rds) or more of the Lots or Developer (so long as Developer continues to be a Lot Owner and exercise all voting rights in the Association as provided by Article I of this Declaration). It is understood that Sections 12.1 and 12.2 hereof may be amended only with the approval and consent of the Louisville and Jefferson County Planning Commission. Any such agreement modifying, altering, terminating, or amending these Restrictions shall be recorded in the Office of the Clerk of Jefferson County, Kentucky, which recorded instrument may be executed by the Association on behalf of all consenting Owners.

## ARTICLE XI

**SEPARABILITY**

Invalidation of any provision set forth herein or any part thereof by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or any part thereof as set forth herein, but they shall remain in full force and effect.

## ARTICLE XII

**MISCELLANEOUS**

Section 12.1 Common areas, 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 Louisville and Jefferson County Planning Commission. The Association cannot amend this restriction without approval from the Louisville and Jefferson County Planning Commission.

Section 12.2 Anything to the contrary herein notwithstanding, the Association and the lot owners shall be responsible for the maintenance of all common open space, private roads, islands in the right-of-way, and signature entrances, so long as the subdivision is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended.

IN WITNESS WHEREOF, Landvest, LLC, has by authority of its Members, caused this instrument to be executed by its President, the date first above written.

