

DB 0980160418

10

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

GLENMARY SPRINGS PATIO HOMES SUBDIVISION

Plat and Subdivision Book 54, Page 4  
Jefferson County, Kentucky

**- THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLENMARY SPRINGS PATIO HOMES SUBDIVISION ("DECLARATION")** is made, imposed and declared on this 7<sup>th</sup> day of November, 2011, by **GSD 2010, LLC**, a Kentucky limited liability company, having a mailing address of P.O. Box 189, 1854 Midland Trail Shelbyville, Kentucky 40066 ("Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property in Jefferson County, Kentucky, more particularly described on Exhibit A attached hereto, which is part of a certain residential subdivision known as "Glenmary Springs Patio Homes Subdivision" or "Subdivision"; and

**WHEREAS**, it is the desire and intention of Declarant to develop the real property herein or hereafter made subject to this Declaration in accordance with the provisions of this Declaration and both the Planned Residential District ("PRD") and Subdivision Regulations of the Louisville Metro Land Development Code and to subject and impose upon such real property certain rights, privileges, covenants, conditions and restrictions, and to reserve and/or dedicate certain easements, and to impose certain assessments, charges and liens, under a general and common plan and scheme of subdivision development and improvement for the benefit of such real property and for the benefit of Declarant, its successors and assigns, and purchasers of portions of such real property in Glenmary Springs Patio Homes Subdivision, and it is further intended that said rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, as applicable, and the other provisions of this Declaration, bind and benefit not only said persons and entities, but also their respective heirs, personal representatives, successors and assigns, as applicable, and that all such real property should be owned, held, used, leased, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges and liens set forth in, and the other provisions of, this Declaration; and

**WHEREAS**, while it is the desire and intention of Declarant to also construct the residences on the lots of the Subdivision, this Declaration contains provisions for the approval by the Declarant or its assignee of certain construction in order to provide protection to future lot owners in the event that Declarant sells any lots in the Subdivision without a residence located thereon or assigns its interest in the Subdivision and the development thereof; and

**WHEREAS**, pursuant to such general and common plan and scheme of subdivision development and improvement for the Subdivision, Declarant desires to ensure the best use and improvement of each section of the real property subject hereto and each residential lot developed thereon in an attempt to guard against erection of poorly designed or built structures, to provide further maintenance of various improvements and areas, and generally to enhance and protect the value, desirability and attractiveness of the real property made subject hereto and all portions thereof conveyed to others to their mutual benefit by subjecting such real property to the rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens set forth in, and the other provisions of, this Declaration;

**NOW, THEREFORE**, in accordance with the foregoing preambles, which are hereby incorporated herein subject to the following terms hereof, Declarant hereby declares that the real property ("Property"), more fully described below and on Exhibit A attached hereto and made a part hereof, shall be owned, held, used, leased, sold, conveyed, and occupied subject to the rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens set forth in, and other provisions of, this Declaration, all of which are declared and agreed to be in furtherance of a common plan and scheme for the Subdivision, and the development, sale and improvement of the Property made subject hereto, and which are for the purpose of protecting the value, desirability and attractiveness of such Property and portions thereof hereafter conveyed to others. The rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens set forth in, and other provisions of, this Declaration shall run with the Property made subject hereto and be binding upon and inure to the benefit of all parties having any right, title or interest therein, their respective heirs, personal representatives, successors and assigns.

## ARTICLE I

## PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS

Section 1.01 Existing Property. The Property which is subject to this Declaration is located in Jefferson County, Kentucky and is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

Section 1.02 Additions to Existing Property. Additional residential property and common areas may become subject to this Declaration, or may be annexed to the Property subject to this Declaration, developed in accordance with plans approved by the Louisville Metro Planning Commission. All additions shall be made by the Declarant or its assignee filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplemental or Amended Declaration of Covenants, Conditions and Restrictions ("Supplemental Declaration") with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The Supplemental Declarations may contain additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

Section 1.03 Open Space Lots. Any open space lots shown on the plat of the Subdivision referenced hereinabove and thus covered by this Declaration shall inure to the benefit of the owners of the lots referenced hereinabove and covered by this Declaration as well as the owners of any new lots within the Subdivision which may become subjected to this Declaration or a similar set of covenants, conditions and restrictions, pursuant to the procedure set forth hereinabove (provided any open space lot may be further subdivided or developed for any other use only with the approval of the Directors of the Association and the Louisville Metro Planning Commission). Open space lots allocable to the owners of lots in the Subdivision recorded at any time shall be enjoyed by the owners of all lots, irrespective of when those lots are recorded, each to have and to hold the same as if each new lot had been developed and subjected to this Declaration simultaneously. Such open space lots, 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 without approval of the Louisville Metro Planning Commission; provided, the lot owner's easements of ingress and egress and any public utility easements previously established shall not be affected. Anything to the contrary herein notwithstanding, Glenmary Springs Homeowners Association, Inc., (the "Association") hereinafter described shall be responsible for the maintenance of all open space lots, 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. The Association shall be responsible for maintenance and repair of all common drainage swales, ditches, and pipes not placed in MSD easements. The Association shall be responsible for maintenance and repair of all property service connections outside of MSD easements and for any private sewers not placed in MSD easements. Declarant may dedicate utility service or drainage easements upon, through or under same at its sole discretion so long as there is in existence the Class B membership in accordance with Article VII, Section 7.02. When Class B membership ceases, this right of Declarant shall automatically pass to the Board of Directors of the Association. The restriction contained in this Section 1.03 shall not be amended without approval from the Louisville Metro Planning Commission.

## ARTICLE II -- RESTRICTIONS ON USE

Section 2.01 Single Family Use. Except as otherwise-expressly provided in this Declaration, no building site shall be used except for private single-family residential purposes and except for "home occupations" as such term is strictly construed under the zoning district regulations for Metro Louisville and except that new houses may be used by the builder thereof as a model home for display or for the builder's own office, provided the use terminates within ten (10) years from completion of the house.

Section 2.02 Nuisances. No noxious or offensive trade or activity nor anything that may become a nuisance or annoyance to the neighborhood shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 2.03 Use of Other Structures and Vehicles.

(a) Unless approved by Declarant in writing, no structure of a temporary character or otherwise including, without limitation, any outbuilding, trailer, tent, shack, garage, barn or structure other than the main residence erected on a lot shall be permitted on any lot

except temporary sheds or field offices used by a builder or Declarant, which shall be approved in writing by Declarant and removed when construction or development is completed, and no such structure shall at any time be used as a residence, temporarily or permanently. This restriction shall not affect structures existing on the date of this instrument.

(b) No bus, mobile home, motor home, trailer, camper trailer, camping unit, camping vehicle or boat shall be parked or kept on any lot or on any street in the Subdivision except within a garage for any period in excess of seven (7) days in any 365-day period (any portion of a day constitutes a day).

(c) No vehicle, motorized or otherwise, including but not limited to, those set forth in subsection (b) above, shall be parked on any street or right-of-way of the Subdivision. Further, no such vehicle shall be parked except in a designated parking space, on a legal driveway or in a garage. Notwithstanding the foregoing, vehicles of residents, of friends or family members of residents or of caregivers of residents shall not be parked overnight except in a garage for greater than 90 days within a 365 day period, unless that time is extended in writing, in advance, by Declarant or its assignee at its sole discretion.

(d) No vehicle determined to be objectionable or unsightly by Declarant or its successors or assigns, including the Association, and no vehicle which is inoperable, shall be parked at any time on any street or any portion of a lot except in a garage.

(e) There shall be no habitation of any vehicle parked anywhere in the Subdivision.

Section 2.04 Animals. No animals, including reptiles, livestock or poultry of any kind, shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning, domestic pets traditionally recognized as household pets in this geographic area) may be kept provided that they are not kept, bred or maintained for any commercial or breeding purposes, and then only in the residence and neither overnight nor for extended periods out-of-doors, provided further that they are restrained on the owner's lot such that they are not allowed to wander onto other lots or onto the property of adjoining landowners. No dog or other pet runs are permitted on any lot, except for those the design, placement and landscaping of which have been approved in writing by Declarant in its sole discretion. The lot owner keeping any such pets shall keep the lot free of pet waste and feces, and any person in charge of a dog, cat or other pet in the common areas shall dispose of any feces dropped by the pet, in a prompt and sanitary manner; provided that the foregoing shall not be construed to permit any person in charge of a pet or other animal to take the pet or animal on private property without the consent of the property owner. In addition to such other remedies as may be available, violation of this Section 2.04 by any lot owner or resident of the Property may result in the suspension of the voting rights of a lot owner in the Association and suspension of other rights set forth in this Declaration

All household pets, including dogs and cats, shall be kept in a manner so as to keep them from being an annoyance or nuisance to the other lot owners and residents.

Section 2.05 Clotheslines; Awnings; Fences and Walls; Tennis Courts; Swimming Pools; Antennae and Receivers/Transmitters.

(a) No outside clotheslines shall be erected or placed on any lot.

(b) No awnings or other similar exterior window coverings shall be installed on a residence unless approved in writing, in advance of installation, by Declarant or its assignee in its sole discretion.

(c) No fence or wall of any nature, erected with the express written permission of the Declarant or its assignee, may be extended toward the front or street side property line beyond the front or side wall of the residence. All fences which are approved by the Declarant or its assignee shall have a 48-inch wide gate to allow power lawn mower access. The design, placement and materials of any fence shall be approved in writing, to the extent they are approved, in advance of construction, by Declarant or its assignee in its sole discretion.

(d) No swimming pools or tennis courts shall be erected or placed on any lot. However, water features, hot tubs and spas may be permitted if design and placement thereof are approved in writing, in advance of construction, by Declarant or its assignee in its sole discretion.

(e) No antennae nor microwave nor other receiver and transmitter (including those currently called "satellite dishes") shall be erected or placed on any lot unless its design and placement are approved in writing, in advance of installation, by Declarant or its assignee in its sole discretion.

(f) No exterior play equipment, including basketball goals, shall be located on any lot, unless approved in writing, in advance of installation, by Declarant or its assignee in its sole discretion.

Section 2.06 Signs. No signs for advertising or for any other purposes shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale thereof, which signs shall not be greater in area than that permitted by the zoning district regulations of Metro Louisville. Declarant shall have the right to erect larger signs than the lot owners when advertising the Subdivision, which signs shall not be greater in area than that permitted by the zoning district regulations of Metro Louisville. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by the applicable zoning district regulations.

Section 2.07 Disposal of Trash. No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash or garbage or other waste shall not be kept except in sanitary roll out trash containers. Such sanitary containers shall be kept out of view from the street or from neighbors except on the day of trash collection. If trash is placed on a lot, owner must remove same within seven (7) days, or earlier if the rubbish, trash or garbage becomes a nuisance or annoyance to the neighborhood. This restriction shall not apply during the period of construction of a residence on the lot, provided such lot owner makes provision to retain all rubbish, trash and garbage on that particular lot.

If municipal trash collection is, or becomes, unavailable, then trash collection shall be solely at the direction and approval of Declarant or its assignee, in which case there shall be only one sanitation company approved for collecting garbage from each lot. The cost of said collection service shall be included in the Association monthly assessment described below.

Section 2.08 Drains. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewer system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

Section 2.09 Easements. Easements are reserved as shown on a recorded Plat for various utility installations and maintenance and for other purposes shown on such Plat. No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any portion of the Subdivision which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

Section 2.10 Yard Sales. No yard sales or garage sales of any kind shall be conducted on any lot unless approved in writing, in advance of said event, by the Declarant or its assignee in its sole discretion.

Section 2.11 Garage Doors Kept Closed. Garage doors shall be kept closed at all times, except as automobiles are entering or exiting.

### ARTICLE III – IMPROVEMENTS TO PROPERTY

Section 3.01 Lot Improvements. No building, fence, wall, structure or other improvement shall be erected, placed or altered on any lot unless the construction plans, specifications and a plan showing the grade elevation (including front, rear and side elevations), the location of structures, fences, walls or other improvements, the type of exterior building materials, the type and surface material of any driveway and the initial landscaping shall have been approved in writing by Declarant or its assignee. Declarant or its assignee may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.

Section 3.02 Building Materials. The exterior building materials of all structures shall be mostly brick except for dormers and gables, and except accents of maintenance free materials such as stone, brick veneer, stone veneer, wood, or concrete siding or aluminum or vinyl trim, or a combination of same. Exterior building finishes shall extend to within six (6) inches of the

finished landscape and sod elevation. The use of other building materials shall not be permitted unless approved in writing in advance by Declarant or its assignee. Exterior colors shall be limited to the colors approved in writing, in advance of painting, by Declarant or its assignee in its sole discretion.

Section 3.03 Roof Pitch. The primary roof pitch of any residential structure shall not be less than seven (7) inches vertical for every twelve (12) inches of horizontal. Lower roof pitches may be approved in writing, in advance of construction, by Declarant or its assignee in its sole discretion.

Section 3.04 Setbacks. Unless greater restrictions are imposed by the applicable zoning regulations, no structure shall be located on any lot nearer to the front lot line or the side street line than the front lot setback distance shown on the recorded plat.

Section 3.05 Minimum Floor Areas.

- (a) The total floor area of any one (1) story home shall be a minimum of one thousand (1,000) square feet.
- (b) The total floor area of any one and one-half (1 1/2) story home shall be a minimum of one thousand (1,000) square feet.
- (c) The total floor area of any two (2) story home shall be a minimum of one thousand (1,000) square feet.
- (d) Finished basement areas, garages and open porches are not included in computing floor area.

Section 3.06 Garages, Carports and Driveways. All lots shall have either a one or two car attached garage, being either front or side entry, unless otherwise approved in writing, in advance of construction, by Declarant or its assignee in its sole discretion.

Section 3.07 Mail and Paper Boxes. No other mailbox or newspaper holder, except those selected by Declarant or its assignee, shall be placed on or in the right-of-way fronting any lot, and they shall be paid for by the lot owners as a charge assessed by the Declarant or its assignee.

Section 3.08 Drainage. Drainage on each lot shall conform to the general drainage plans of Declarant for the Subdivision. Each lot owner shall ensure that the grading of his or her lot shall comply with the drainage plans. If drainage is blocked or altered by a lot owner, the lot owner shall correct the problem, immediately upon notice from Declarant or its assignee, at the owner's expense, or Declarant or its assignee may correct the problem and bill the lot owner for the cost to correct the problem.

Section 3.09 Landscaping, Irrigation, Sidewalks, Driveways and Doors.

(a) Grading and Sodding. All yards shall be graded and sodded upon completion of construction of a residence. All finished grades must be in accordance with construction plans approved by and on file with the Metro Department of Public Works.

(b) Trees, Shrubs and Landscaping. The trees, shrubs, and landscaping in the yard of every lot shall comply with Declarant's or its assignee's comprehensive plan for the Subdivision. No artificial grass, plants or other artificial vegetation shall be placed or maintained on any lot. Weeds and other unsightly vegetation on all lots not owned by Declarant shall be kept under control by the Association. A lot owner shall be entitled to plant his/her own trees and landscape, only to the extent the same is approved, in writing, in advance of planting, by the Declarant or its assignee in its sole discretion. The Association shall not be responsible for the maintenance of any additional landscaping except as agreed to in writing by the Declarant or its assignee, and only on the condition such maintenance is paid for by the lot owner by special assessment.

(c) Driveways. Each lot owner shall install and finish a driveway of such surface and finish as agreed to, in writing, in advance of construction, by Declarant or its assignee in its sole discretion. Lot owners shall not alter or change the driveway in any manner without the prior written approval of the Association. The Association shall be responsible for all maintenance, replacement, and repair of the driveways with the cost thereof to be funded through general

and/or special assessments as determined by the Board of Directors of the Association in its sole discretion.

(d) Sidewalks. Sidewalks, if applicable, shall be installed as set forth on the development plan and record plat of the Subdivision in accordance with the Louisville Metro Land Development Code. Sidewalks, if applicable, shall be maintained thereafter by the Association unless otherwise maintained by local government or municipality.

(e) Decks. All decks shall be maintained by the Association in such a manner as determined by the Association, cost of same to be paid by the lot owner as a general or special assessment.

(f) Yard Maintenance and Easement in Gross. Every owner of record of a lot in this Subdivision shall also be obligated to participate in the regular yard maintenance program of the Association, for cutting the grass on all portions of every lot, for maintaining shrubbery, grass and controlling weeds on every part of every lot (except that landscaping not within the comprehensive plan which is approved by the Declarant and installed by the lot owner, shall be the responsibility of individual lot owners). Any landscaping installed by the lot owner and not adequately maintained, as determined by the Association, can be maintained by the Association, the cost of same to be paid for by the lot owner as a special assessment. Yard maintenance (plus driveway, sidewalk exterior building, and deck maintenance as further set forth herein) shall be managed by the Association, which initially is the Declarant or its assignee, and part of the Association dues collected shall be used for this purpose and disbursed in accordance with the purposes generally described herein. In furtherance of these maintenance obligations of both the Association to perform these functions and of the lot owners to permit the Association to do so, the Association, and until such time as the Association is given the authority by the Declarant to perform these maintenance and other functions, the Declarant or its assign shall have an easement in gross over the entirety of the Subdivision, including each and every individual lot, for the purposes of carrying out these maintenance obligations. By acceptance of a deed in this Subdivision, lot owners acknowledge this responsibility of the Declarant and its assignee, including the Association, and the reciprocal responsibility on its part to abide by these provisions and to do no such thing as would in any way interfere with the obligations and responsibilities of the Declarant and its assignee, including the Association to carry out these maintenance functions. Entering onto a lot owner's lot shall not be deemed a trespass for the purpose of fulfilling the responsibilities of these maintenance functions. As with all other provisions of this Declaration, a lot owner's failure to abide by these provisions shall also entitle the Declarant and its assignee, including the Association, to enforce these provisions by fine, levied by the Board of Directors of the Association, which fine shall constitute a new fine for each day of violation. Fines shall bear interest and be enforced in the manner provided elsewhere in this Declaration.

(g) Enforcement. Upon a lot owner's failure to abide by or comply with the provisions of this Section 3.09, Declarant or its assignee may take such action as necessary to enforce a lot owner's obligations and compliance therewith. A lot owner shall immediately, upon demand, reimburse Declarant or, at Declarant's direction, other performing party, for all expenses incurred in so doing, together with allowable statutory interest. Declarant shall have a lien on that lot and the improvements thereof to secure repayment of such amounts. Such lien may be enforced in the same manner and with the same priority that the lien for annual and special assessments may be enforced.

### Section 3.10 Utilities

(a) Each property owner's utility service lines shall be underground throughout the length of service line from the utility's point of delivery to a customer's building. Title to the portion of the service lines not located within a public utility easement, and up to the point the service line enters the building, shall be with the Association, and the maintenance responsibility thereof shall be borne by the Association. Appropriate easements are hereby dedicated and reserved to each property owner and the Association, as applicable, together with ingress and egress over abutting lots, buildings or properties to install, operate and maintain utility service lines to the utility's termination points. If a utility service line owned by the Association causes needed repairs inside a property owner's building, the Association shall be responsible for such repairs as well as any resulting damage to the building or property caused by the service line owned by the Association, including, but not limited to, damage to drywall, flooring, subflooring, etc. Provided, however, a property owner shall be responsible for any repairs which take place inside a neighboring property owner's building if caused by the negligence attributable to the responsible property owner, as well as any damage to the building or property, including, but not

limited to, damage to drywall, flooring, subflooring, etc. The decision of the Association as to whether the needed repairs and damage are the responsibility of the property owner, the Association, or a negligent neighboring property owner shall be final and binding on the issue. Such damage shall be repaired as soon as reasonably practical following the repair to the utility service line. Utility service lines, as installed, shall determine the exact location of said easements. Utility easements shown on the plat shall be maintained and preserved in their present condition, and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or lot owner without the express written consent of utility service providers and their respective successors and assigns.

(b) Easements for overhead and underground transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces outlined by dashed lines on the Development Plan and designated for underground and overhead facilities. Aboveground utility transformers and pedestals may be installed at appropriate points in applicable utility easements. In consideration of bringing utility service to the lots shown on this plat, each utility is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

(c) The utility easements hereby specified above and/or dedicated and reserved to the Association, as shown on the recorded plat of this subdivision, shall include easements for the installation, operation and maintenance of water and sanitary sewer service plus electric, gas, telephone and cable television service to the lot owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission media.

(d) The lot owners shall be responsible for payment of all utility service to the lot other than the water service for the irrigation system, if applicable, which shall be paid by the Association and funded through the general assessments of all lot owners.

#### Section 3.11 Preservation of Trees, Landscape Buffer.

Woodland Protection Areas (WPAs), Tree Protection Areas (TPAs) and Tree Canopy Protection Area (TCPAs), if any, identified on a plat or Metro Planning Commission approved plan of the Subdivision represent individual trees and/or portions of the site designated to meet requirements of the Louisville Metro Planning Commission or Land Development Code and are to be permanently protected in accordance with provisions thereof. All clearing, grading and fill activity in these areas must be in keeping with the Land Development Code and/or with Planning Commission restrictions established at the time of plan approval. As trees within these areas are lost through natural causes, new trees shall be planted by the Association in accordance with these requirements, if any, in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan. Removal of vegetation within these areas may be necessary for the purpose of installing infrastructure that MSD, any governmental agency, or utility may require.

Any Landscape Buffer Area shown on a Metro Planning Commission approved plat or plan of the Subdivision as "LBA" or "Landscape Buffer Area" may depict the type, number and location of plants to be planted and maintained in the LBA. No party, including any lot owner, the Declarant or its assignee (including the Association) may remove or destroy plantings within the LBA, and the LBA must be maintained in accordance with the approved landscape plan and provisions of the Metro Land Development Code by the Declarant or its assignee.

Any tree or shrub removed in violation of this Declaration shall be replaced by the person who removed the tree or shrub within thirty (30) days of demand by the Declarant or its assignee, or said tree or shrub shall be replaced by the Declarant or its assignee, and the cost of same shall be assessed to the lot owner. Trees planted to replace a tree that is improperly removed at Declarant's or its assignee's sole discretion, may be required to equal the diameter of the removed tree (that is, one tree of the same diameter or multiple trees together equaling the same diameter of the removed tree) and shrubs and under story vegetation shall be replaced using native species.

The restrictions in this Section 3.11 may be amended or released only with the prior approval of the Louisville Metro Planning Commission.

Section 3.12. Private Streets. The streets, roads, and cul-de-sacs in the Subdivision that are not dedicated to Louisville Metro, or other municipality or political subdivision thereof, shall be deemed to be a private street (the "Private Streets"). The Private Streets are reserved and granted for the common use of the owners of the lots, their families, guests, and invitees, by commercial vehicles authorized to make pick-ups and deliveries, by public and private utilities' personnel, trucks and equipment, by postal authorities and mail carriers, by emergency personnel and vehicles such as police, fire and ambulance, and by such other persons or classes of persons authorized by the directors of the Association, as a means of ingress and egress, and for such other uses as may be authorized from time to time by said board of the Association. Such Private Streets may also include mains, sewers or other facilities to transmit and carry storm water drainage. Except as provided in this Declaration, no acts shall be taken or things done by an owner or the Association which are inconsistent with the reservation and grant of use and enjoyment hereinabove provided. The repair and maintenance of the Private Streets shall be an obligation of the Association. The Association shall create a separate and segregated Private Streets Fund to be used solely to pay for the costs and expenses of maintenance of the Private Streets to the standard established by the directors of the Association (the "Private Streets Fund"). The costs and expenses of maintenance and repair of the Private Streets shall be paid by the Association from the funds in the Private Streets Fund, which shall be funded through the annual assessments of the lot owners as set forth in Article VIII hereof.

All Private Streets shall be marked with a street sign designating the name of the street in compliance with all local municipal rules and regulations. All Private Streets shall have a separate sign, located on the same pole as the street sign, having letters large enough to be seen at street level, designating that the street is "Private Streets Owned/Maintained by the HOA."

Section 3.13 Decks and Patios. Lot owners shall not alter or change the decks or patios in any manner without the prior written approval of the Association. The Association shall be responsible for maintaining the decks and patios. All replacements and major repairs shall be the responsibility of the Association and shall be charged to the lot owner as a special assessment.

#### ARTICLE IV--- OWNERS OBLIGATIONS

Section 4.01. Association Obligation of Maintenance and Repair: It shall be the responsibility of the Association to maintain, repair, and paint, as applicable, at the expense of the Association, the building exteriors, roofs, gutters, siding, brick, interior patio fences, streets and walkways of the property. The building exteriors shall specifically include window and door caulking and painting. The Association shall be responsible for the maintenance, replacement and repair of all retaining walls in the Subdivision, whether the retaining wall is located on a lot or in the common areas of the Subdivision, with the cost to be funded through general and/or special assessments as determined by the Board of Directors of the Association in its sole discretion. Subject to the Association's maintenance responsibility set forth herein, it shall be the duty of each lot owner to keep his/her home, building, and lot clean, neat and attractive in appearance. Should any lot owner fail to do so, then Declarant or its assignee may take such action as it deems appropriate in order to make the building or lot clean, neat and attractive, and the lot owner shall upon demand reimburse Declarant or other performing party for the expense incurred in so doing. Declarant or other performing party shall have a lien on that lot and the improvements thereon equal in priority to the lien for assessments. Such lien may be enforced by foreclosure.

Section 4.02. Owner Obligation of Maintenance and Repair. It shall be the responsibility of each lot owner with respect to the lot owned by such owner:

- (1) To maintain, repair, and replace at the expense of such lot owner all portions of the building on the lot except the portions to be maintained, repaired, and replaced by the Association, including all decorating and redecorating, painting, tiling, carpeting, waxing, papering, plastering, or varnishing which may be necessary to maintain the good appearance and condition of the interior of the residence, as well as the replacement of doors and windows whether or not these doors and windows lead to the exterior of the property. Such maintenance, repair, and replacement shall not change the appearance of any portion of the exterior of the building or unit without prior approval of the Board of Directors.
- (2) To maintain, repair, and replace at the expense of each lot owner the appliances and fixtures located in the residence and the appliances and fixtures located outside the residence benefitting the residence to the exclusion of any other residence, including, but not limited to, any plumbing fixtures, water heaters, heating and air conditioning



equipment, interior and exterior lighting fixtures, refrigerators, dishwashers, disposals, ranges, microwaves, hoods and fans, sinks, lamps, doors, telephones or any electric, gas or water pipes or lines or wires or conduits or ducts serving any such appliances and fixtures.

- (3) To maintain, repair, and replace at the expense of each lot owner all interior and exterior electric outlets and gas and electric meters located outside the unit benefiting the residence to the exclusion of any other residence.
- (4) To maintain any additional landscaping, flowers, or fences installed by the lot owner as approved in writing by the Declarant or its assignee. Any landscaping, flowers, or fencing installed by the lot owner and not adequately maintained, as determined by the Association, can be maintained by the Association, the cost of same to be paid for by the lot owner as a special assessment.

Section 4.03 Party Walls. The obligations of each owner with respect to party walls shall be as follows:

- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the building and placed on the dividing line between the lots and buildings thereon shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law of the Commonwealth of Kentucky regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No electronic equipment that may cause undue vibration in an adjoining property may be connected to any party wall. No penetration of a party wall that may damage a fire wall between the lots shall be permitted.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.
- (c) Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it. If the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, subject to the right of any such owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provisions of this Section, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right to Contribute Runs with Land. The right of any owner to a contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors in title.
- (f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, the parties shall be obligated to arbitrate the dispute under the applicable rules of the American Arbitration Association. Unless the parties can agree upon one arbitrator as the rules of the American Arbitration Association otherwise require, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision of the arbitrators shall be by a majority of all the arbitrators and shall be binding on the parties to the dispute.

Section 4.04 Obligation to Construct or Reconvey. Within twelve (12) months after the date of conveyance of a lot without a dwelling thereon, if the lot owner has not begun in good faith the construction of a single-family dwelling approved in accordance with Section 3.01 hereof, upon each lot conveyed, Declarant may elect to repurchase any and all lots on which construction has not commenced for the original purchase price in the deed without interest of said lot or lots hereunder, in which event the lot owner shall immediately reconvey and deliver possession of said lot or lots to Declarant by deed of special warranty.

Section 4.05 Insurance Obligations and Requirements. Each lot owner shall maintain insurance coverage upon the improvements upon their lot in accordance with the provisions of this Section:

- (a) Property Insurance Coverage

(i) All buildings, structures, and other improvements upon the lot shall be insured in an amount equal to not less than 100% of the replacement cost of the building, structures, and other improvements located upon the lot, with the insurance policy issued by an insurance company licensed to sell insurance in the Commonwealth of Kentucky, with an A-, A, or A+ rating as rated by the Alfred M. Best Company in the Best Insurance Reports. The insurance policy shall include coverage for any portion of the structure on the lot shared with another owner, including, but not limited to common party walls and shared building features, as well as coverage for any portion of the structure that serves other lots in the building, including but not limited to, conduits, wires, plumbing, and waste service lines (collectively, the "Common Building Features"). Such coverage shall be "all risks" coverage, including fire and other hazards, rather than "stated coverage", and may contain only the following standard exclusions and no others:

- 1) Freezing of pipes in an unoccupied, vacant, or under-construction building;
- 2) Freezing, thawing, pressure, or weight of water or ice to a fence, pavement, patio, or swimming pool;
- 3) Theft from a building that's under construction;
- 4) Vandalism and malicious mischief if the building has been vacant for more than 30 days;
- 5) Wear and tear on the home including deterioration; insect and rodent infestation; settling, cracking, bulging, or expansion of pavement, walls, or foundations; or damage from domestic animals;
- 6) Flooding;
- 7) Earthquake;
- 8) Structures used for a business;
- 9) Intentional damage;
- 10) War;
- 11) Nuclear accident;
- 12) Cars, trucks, vans, motorcycles, aircraft, and boats with anything more than a small motor;
- 13) Property belonging to tenants;
- 14) Animals, birds, and fish; and
- 15) Losses resulting from the failure to protect property after a loss.

(ii) The insurance policy set forth in this Section 4.05 shall have the Association listed as "Servicing Agent" on the policy, or have the Association listed in such other capacity that will confirm the Association receives timely notice of termination of the insurance policy for any reason.

\* (iii) Unit owners may obtain coverage for their personal property at their discretion;

(b) **Property Insurance Reporting Requirement.**

(i) **Policy.** A copy of the paid and issued insurance policy, appropriately authenticated by the insurer, evidencing such insurance and containing the provisions specified in this Section 4.05 (including the designation of the Association as Servicing Agent) shall be delivered to the Association within fifteen (15) days of the purchase of the lot and upon renewals not less than fifteen (15) days after the renewal of such policy. It is the specific responsibility and obligation of the lot owner to insure the Association has a current copy of the policy at all times.

(ii) **Failure to Comply.** In the event the lot owner fails to procure and maintain the insurance required by this Section 4.05, the Association shall have the right, but not the obligation, at any time, and from time to time, and without notice, to procure such insurance and/or pay the premiums for such insurance, in which event the lot owner shall be subject to an automatic special assessment from the Association for all sums so paid by the Association together with interest thereon and any costs or expenses incurred by the Association in connection therewith, the same lien rights for nonpayment as set forth in Section 8.01 hereinbelow. In addition to the above, any lot owner failing to comply with any of the provisions of this Section 4.05, upon ten (10) days written notice thereof from the Association, shall be subject to a minimum monthly charge of \$25.00 for each month the lot owner is not in compliance.

(iii) Insurance Trustee / Insurance Proceeds. Lot owners shall be required to pay all insurance proceeds covering property losses for Common Building Features to the Association, as trustee, or to a bank in Kentucky with trust powers as may be designated as insurance trustee by the Association (the "Insurance Trustee"). The Insurance Trustee shall hold all insurance proceeds in trust for the benefit of the lot owners that share the Common Building Features.

(c) Distribution of proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial lot owners in the following manner:

(i) Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed substantially in accordance with the original plans for the buildings, the remaining proceeds, if any, shall be distributed to the beneficial lot owners, with remittances to lot owners and their mortgagees being payable jointly to them. All mortgages and other liens existing against any lots at the time of damage shall attach to such repaired or reconstructed lots in the same priority as existed prior to such damage. The reconstruction and repair work for the Common Building Features shall be at the direction and overseen by the Association, including, but not limited to, the choice of contractor to perform the work to return the Common Building Feature to its prior condition. The Insurance Trustee shall apply the insurance proceeds to the cost of this reconstruction and repair work with the lot owners responsible for any deficiency in payment, including, but not limited to, cost of deductibles. The Association shall be given the specific authority to allocate, in its sole discretion, the deficiency among the owners of the Common Building Features.

(ii) Certificate. In making distribution to lot owners and/or the mortgagees of the lots, the Insurance Trustee may rely upon a certificate of the Board of Directors of the Association made by its president and secretary as to the names of the lot owners and their respective portion of the distribution, and the Insurance Trustee shall have no liability to the Association or to any lot owner for any distribution made in reliance upon such a certificate.

(iii) Association as agent. The Association is irrevocably appointed for each lot owner and for each holder of a mortgage or other lien upon a lot and for each owner of any other interest to oversee the reconstruction and repair work for any Common Building Features subject to this Section 4.05 and with the Insurance Trustee to coordinate payment thereof.

(d) Reconstruction and Repair after Casualty. If improvements on a lot are damaged or destroyed, the lot owners shall rebuild the improvements substantially in accordance with the original plans and in accordance with Article III hereof. The lot owner shall proceed to rebuild and repair the improvements at the owner's cost and expense (less the Association's responsibility for Common Building Features pursuant to Section 4.05(c)) within 90 days after the occurrence of such damage or destruction and shall thereafter diligently pursue the completion of any such rebuilding or repair.

## ARTICLE V – GENERAL PROVISIONS

Section 5.01 Enforcement. Enforcement of these restrictions shall be by proceeding at law or in equity, brought by any owner, by the Association (as hereinafter defined), or by Declarant against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Failure of any owner, the Association, or Declarant to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

Enforcement of these restrictions may also be by fine, levied by the Board of Directors of the Association. Each lot owner, by accepting a deed for a lot within the subdivision, agrees to accept the judgment of the Board of Directors with regard to any fine levied for violation of these restrictions and further agrees to the same lien rights for nonpayment as set forth in Section 8.01 hereinbelow. Fines shall not be more than \$50 per violation per day, each day being considered a new violation, but such fines up to that amount are entirely within the discretion of the Board of Directors of the Association. Unpaid fines shall bear interest at the same rate as unpaid assessments and shall be collectible in the same method as unpaid assessments.

Section 5.02 Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 5.03 Restrictions Run With Land. Unless canceled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of all lots subject to this Declaration has been recorded agreeing to change these restrictions and covenants in whole or in part. So long as Class B membership exists pursuant to Section 8.02, the Declarant shall have the unilateral right, without the consent of the other lot owners or any other party, to alter or amend this Declaration and the terms thereof. These restrictions may be canceled, altered or amended at any time by a written instrument signed by the owners of the lots with ninety percent (90%) of the votes in the Association and recorded in the Jefferson County Clerk's office. No amendment shall be effective to release the Association from its responsibility to maintain walkways, open areas and medians, located in publicly dedicated rights-of-way or to maintain other areas dedicated to the public, unless a successor is appointed and accepts such responsibilities.

Section 5.04 Amendments to Articles and Bylaws. Nothing in this Declaration shall limit the right of the Association to amend, from time to time, its Articles of Incorporation and Bylaws. So long as Declarant owns any part of the real property described herein, the Articles shall not be amended without his written consent.

Section 5.05 Non-Liability of the Directors and Officers. Neither Declarant nor the directors nor officers of the Association shall be personally liable to the owners for any mistake or judgment for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The owners shall indemnify and hold harmless each of the directors and officers and their respective heirs, executors, administrators, successors and assigns in accordance with the Bylaws. This indemnification shall include, without limitation, indemnification against all costs and expenses (including attorney fees, amounts of judgments paid and amounts paid in settlement) incurred in connection with any claim, action, suit or proceeding, whether civil, criminal, administrative or other.

Section 5.06 Declarant's Board's Determination Binding. In the event of any dispute or disagreement between any owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Declarant and thereafter, or as applicable, Board of Directors of the Association shall be final and binding on each and all such owners.

Section 5.07 Compliance with Other Laws. Nothing herein shall limit application of any zoning, regulation or any ordinance and where such regulation or ordinance conflicts with this Declaration, the more restrictive shall prevail. Except to the extent Declarant is the builder or contractor or hired or paid by the builder or contractor, no approval given by Declarant shall be deemed a representation by Declarant that the matter approved complies with any law, ordinance or regulation of any governmental entity having jurisdiction.

Section 5.08. Assignee of Declarant. As the term "assignee" is utilized herein, it shall mean the Association in accordance with the provisions of Article VII hereof but, prior thereto, any entity which legally succeeds to the rights of the Declarant named herein as a consequence of a legal assignment of said named Declarant's rights as "Declarant" as set forth herein.

## ARTICLE VI -- PROPERTY RIGHTS

Section 6.01 Owners' Easement of Enjoyment; Exceptions. Every owner shall have a right and easement of enjoyment including, without limitation, the right of vehicular and pedestrian ingress and egress, in and to the common areas which shall be appurtenant to and shall pass with the title to every lot. The right and easement shall also be deemed granted to the Association and the lot owners' families, guests, invitees, servants, employees, tenants and contract purchasers. The term "common areas" means and refers to areas shown as common area or open space on a plat of any section of the Subdivision, or otherwise designated common areas by Declarant, including, but not limited to, lakes, ponds, retention/detention basins, non-buildable open space lots, entranceways, undedicated streets, medians, and other improvements thereto), if applicable. Declarant releases and quitclaims to the Association its right and title to

the common areas. The right of enjoyment is subject to the right of the Association to adopt rules for the common areas and to suspend the voting rights of any owner for any period during which any assessments against his lot remains unpaid, and for a period of time for any infraction of its published rules and regulations.

Section 6.02 Association's Right of Entry. The authorized representative of the Association or its Board of Directors shall be entitled to reasonable access to the individual lots as may be required in connection with the preservation of property on an individual lot in the event of an emergency or in connection with the maintenance of, repairs or replacements within the common areas and the areas described in Section 6.04 below, or any equipment, facilities or fixtures affecting or serving other lots or the common areas or to make any alteration required by any governmental authority; provided, after any such entry the Association shall restore such lot to its former condition.

Section 6.03 No Partition. Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of the open space lots or any part thereof, nor shall any person acquiring any interest in the Property have the right of judicial partition. This Section does not prohibit the Board of Directors of the Association from allowing a partition in exceptional circumstances through acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Section 6.04 Association Easements in Gross. The Association shall have a right and easement, including without limitation the right of vehicular and pedestrian ingress and egress over, under and across the entirety of the Subdivision to perform its obligations pursuant to this Declaration. The Association, and until such time as the Association is given the authority by the Declarant to perform these maintenance and other functions, the Declarant or its assign shall have an easement in gross over the entirety of the Subdivision, including each and every individual lot, for the purposes of carrying out its obligations pursuant to this Declaration, including, but not limited to, its maintenance and utility service obligations. By acceptance of a deed in this Subdivision, lot owners acknowledge this responsibility of the Declarant and its assignee, including the Association, and the reciprocal responsibility on its part to abide by these provisions and to do no such thing as would in any way interfere with the obligations and responsibilities of the Declarant and its assignee, including the Association to carry out these functions. Entering onto a lot owner's lot shall not be deemed a trespass for the purpose of fulfilling the responsibilities of the Association pursuant to this Declaration. As with all other provisions of this Declaration, a lot owner's failure to abide by these provisions shall also entitle the Declarant and its assignee, including the Association, to enforce these provisions by fine, levied by the Board of Directors of the Association, which fine shall constitute a new fine for each day of violation. Fines shall bear interest and be enforced in the manner provided elsewhere in this Declaration.

Section 6.05 Reservation of Side Yard Construction and Maintenance Easement. Each lot on which there is to be located a residential structure ("dominant lot") shall be entitled to, and shall benefit from, an easement of access on, over and through so much of the adjoining side yard of any lots adjoining said lot ("servient lot" or "lots" as the case may be) for the purpose of constructing and maintaining a residential structure. This easement of access shall be for construction and maintenance purposes only and shall be limited in duration to the time that it takes to construct and maintain the residential structure on said dominant lot. If any of the adjoining side yard or other property of a servient lot is damaged or disturbed by any person or entity engaged in construction or maintenance on the dominant lot entitled to the easement, then the owner of the dominant lot entitled to the easement shall be responsible for that damage and by acceptance of a deed of ownership of said dominant lot agrees to indemnify and hold harmless the owners of all adjoining servient lots to the extent that said adjoining servient lots are disturbed or damaged as a result of said dominant lot owner's use and enjoyment of the referenced easement.

## ARTICLE VII -- HOMEOWNERS ASSOCIATION

Section 7.01 Membership. Declarant and every owner of a lot which is subject to an assessment shall be a member of the Association. Such owner and member shall abide by the Association's Bylaws, Articles of Incorporation, rules and regulations, shall pay the assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's Board of Directors. Conveyance of a lot (except a conveyance to a mortgagee) automatically

transfers membership in the Association without necessity of further documentation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 7.02 Classes of Membership. The Association shall have two classes of voting membership. Membership in the Association shall be as set forth in the Articles of Incorporation of the Association which shall be as follows:

(a) Class A. Class A members shall be all owners of lots within the Subdivision, with the exception of Declarant.

(b) Class B. The Class B member in the Association shall be the Declarant. The Class B membership of Declarant shall cease and be converted to Class A membership (at which time the Class B members, through their Association, shall automatically be viewed as the "assignee" of Declarant) on the happening of any of the events specified in paragraph (c) below, whichever occurs earlier.

(c) Each member shall have one vote with respect to each lot owned by such member, but Class A members shall not be entitled to exercise any vote until the earlier of

(i) When, in its discretion, the Declarant member(s) so determine(s);

(ii) Within 180 days following the date when 100 percent (100%) of the lots which may be developed in this Subdivision have been sold by the Declarant; or

(iii) January 1, 2030.

Section 7.03 Rights and Obligations of the Association. The Association shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency, authority or utility having jurisdiction thereof, those items specifically set forth in Article III and Article IV, the common areas, including, without limitation, any open spaces, walkways, entranceways, streets, medians (even where located in publicly dedicated rights-of-way), sidewalks, crosswalks, storm drains, common drainage swales, basins, recreational facilities, if any, pipes not in MSD easements, and landscaping located therein. The Association shall also maintain those items set forth in Articles III and IV hereof. Until release of the drainage bond on the subdivision, the Declarant and/or Association, as the case may be, shall be responsible for maintenance of all drainage facilities and both undeveloped lots and common area so as to ensure the prevention of mosquito breeding, and after the drainage bond is released, the Association shall assure mosquito abatement in common area, and, to that extent, accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department, which larvacides shall be administered in accordance with the product's labeling. The Association shall also perform the other duties prescribed by this instrument or the Association's rules and regulations, which duties may include, among other things, collection of garbage (if not collected by a municipality). All rights reserved by Declarant in this Declaration shall automatically pass to the Association when Class B membership ceases pursuant to Section 7.02 above, and thereafter any reference to Declarant shall be construed to mean the Association. Prior to the Class B membership interests ceasing pursuant to Section 7.02 above, the Declarant shall ensure that all road, drainage, sanitary sewer, water service, required landscaping, and other required infrastructure are installed by the Declarant.

Section 7.04 Minimum Balance in Fund. At the time that the Subdivision is turned over to the Association by the Declarant, there shall be a minimum cash balance of \$3,000 in the fund of the Association.

Section 7.05 Future Extension of Public Right of Way. The Association shall install signs, approved by the Metro Public Works Department, which indicates the future extensions of the public right of way for streets in the Subdivision. Such signs shall be installed prior to release of any bonds for the installation of the street infrastructure.

Section 7.06 Mosquito Abatement. After release of the drainage bond for the Subdivision, mosquito abatement on open space lots shall be the responsibility of the Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling.

## ARTICLE VIII – INITIATION FEE AND ASSESSMENTS

Section 8.01 Assessments; Creation of the Lien and Personal Obligation. Each lot owner, except Declarant and the Association, by acceptance of a deed for a lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Declarant or its assignee, ultimately the Association, (i) an initiation fee of \$300.00, (ii) monthly, quarterly, or annual assessments or charges as set forth below and (iii) special assessments as set forth elsewhere herein for any improvement set forth in this Declaration and for any other capital improvements determined necessary by this Declaration or by the Declarant or its assignee, such assessments to be established and collected as provided in this Article VIII. Declarant shall be responsible for the maintenance costs specifically relating to the lots that Declarant owns and of the Association as generally incurred over and above assessed amounts payable to the Association by the lot owners, until Class B membership is converted to Class A membership pursuant to Article VII, Section 7.02. When Class B membership in the Association is converted to Class A membership, Declarant shall begin to pay assessments to the Association for each lot Declarant owns in the same manner and amount as every other lot owner pays assessments, but not until that time. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Such lien may be enforced by foreclosure in the manner that mortgages are foreclosed. Each such assessment, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title unless expressly assumed by such successor.

### Section 8.02 Purpose of Assessments.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the lot owners, all of whom are members of the Association, and in particular for the acquisition, improvement and maintenance of the Subdivision lots and Association properties, as well as services and facilities devoted to this purpose, all as described herein and as determined by the Declarant and its assignee, ultimately the Association. Assessments shall also cover the cost of labor, equipment, materials, management and supervision, payment of taxes, if any, assessed against the open space lots, the procurement and maintenance of insurance in accordance with the Bylaws, the maintenance responsibilities of the Association for the items set forth in this Declaration, the employment of attorneys, accountants and other professionals to represent the Association when necessary, the cost of snow removal; the cost of street lighting, and such other needs as may arise.

(b) Until Class B membership ceases and is converted to Class A membership pursuant to Article VII, Section 7.02, Declarant or its nominee shall administer the assessments and receipts therefrom, which may only be used for purposes generally benefiting the Property, as permitted in this Declaration.

### Section 8.03 Monthly Assessment.

Until January 1, 2012, the initial monthly assessment shall be set at a rate not to exceed \$200.00 per month, payable in advance. Thereafter, the Board of Directors of the Association shall fix each monthly assessment and shall determine when the assessments shall be paid.

Section 8.04 Special Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, maintenance, reconstruction, repair or replacement of a capital improvement upon common areas and upon the lots which the Association has the maintenance responsibility, including fixtures and personal property related thereto, including but not limited to those items described in Articles III and IV above. Any such assessment shall have the assent of the members of the Association, in accordance with the Bylaws.

Section 8.05 Uniform Rates of Assessment. The monthly general assessments shall be fixed at uniform rates for all lots, except those owned by Declarant during the period when Class B membership exists in the Association, as provided in Section 8.01 of this Article.

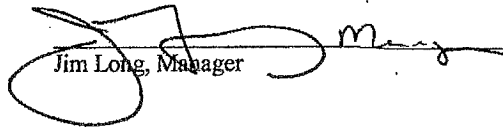
Section 8.06 Date of Commencement of Assessments; Due Dates. The assessments provided for herein shall begin as to any lot subject to the assessment on the day the lot is conveyed to the owner, said assessment to be prorated for the number of days remaining in the period of the closing. The Boards of Directors of the Association shall determine the dates when assessments are due.

Section 8.07 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid by the due date shall be subject to a late charge of ten (10) percent of the amount due for each period a payment is late or as otherwise determined by the Board of Directors of the Association. The Association may bring an action at law against the owner personally obligated to pay an assessment, or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of common areas or abandonment of such owner's lot.

Section 8.08 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first or second mortgage. Sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. However, the sale or transfer of any lot pursuant to a first or second mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such lot owner from liability for any assessments thereafter becoming due or relieve such lot from the lien for any assessments thereafter becoming due.

WITNESS the signature of Declarant by its duly authorized representative as of the day, month, and year first above written.

GSD 2010, LLC, a Kentucky limited liability company

  
Jim Long, Manager

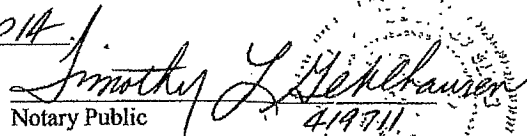
COMMONWEALTH OF KENTUCKY )

) SS:

COUNTY OF JEFFERSON )

The foregoing instrument was subscribed, sworn to, and acknowledged before me by Jim Long as Manager of GSD 2010, LLC, a Kentucky limited liability company, on behalf of the company, this 7<sup>th</sup> day of November, 2011.


My Commission expires: 24 MAY 2014

  
Notary Public  
State at Large, Kentucky

4/19/11



THIS INSTRUMENT PREPARED BY:



---

**BARDENWERPER, TALBOTT & ROBERTS, PLLC**  
8311 Shelbyville Road  
Louisville, Kentucky 40222  
(502) 426-6688 .

**EXHIBIT A**

**LEGAL DESCRIPTION**

**BEING** Lots 1 through 52 and Open Space Lots 1000 and 1001 of that certain record plat for Glenmary Springs Patio Homes approved on Nov 16, 2011, 2011 by the Louisville Metro Planning Commission in Docket No. 15347, of record in Plat Book 54, Page 6 in the Office of the Clerk of Jefferson County, Kentucky.

**BEING** the same property acquired by GSD 2010, LLC, by Deed dated October 27, 2011 and found of record in Deed Book 9791, Page 173 in the Office of the Clerk of Jefferson County, Kentucky.

Document No.: DN2011144524  
Lodged By: glenmary springs patio  
Recorded On: 11/17/2011 11:19:12  
Total Fees: 58.00  
Transfer Tax: .00  
County Clerk: BOBBIE HOLSCLOW-JEFF CO KY  
Deputy Clerk: SHESCH

**Recorded In Plat Book**

**No.** \_\_\_\_\_ **Page** \_\_\_\_\_

**Part No.** \_\_\_\_\_

**END OF DOCUMENT**