

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SUMMIT GARDENS SUBDIVISION**

Plat and Subdivision Book 54, Page 80  
Jefferson County, Kentucky

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMIT GARDENS SUBDIVISION** ("Declaration") is made, imposed and declared on this \_\_\_\_\_ day of September, 2014, by **KITTY DEVELOPER, LLC**, a Kentucky limited liability company, having a mailing address of 16218 Shelbyville Road, Louisville, Kentucky 40245 ("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 "Summit Gardens 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 Summit Gardens 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, Summit Gardens Homeowners Association, Inc., a Kentucky non-profit corporation (the "Association"), which shall be organized with the Kentucky Secretary of State prior to the filing of this Declaration, 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. 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 III -- 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 Louisville Metro Land Development Code 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 15 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, as determined by the Board of Directors of the Association in its sole discretion.

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 trailer, recreational vehicle ("RV"), camper trailer, camping vehicle, boat or junk vehicle shall be parked or kept on any portion of any lot or on any street in the Subdivision for any period in excess of 7 days in any 365 day period (any portion of a day constitutes a day) unless housed in a garage. No commercial vehicle shall be parked or kept on any portion of a lot or any street in the Subdivision in excess of four hours in any 24 hour period or except when used as part of a temporary construction or repair activity or during daylight hours during times of new construction. "Commercial vehicle" is defined as a vehicle meeting any one of the following characteristics: (i) having rear dual wheels; (ii) having a design load carrying capacity of more than one ton; (iii) being designed to carry more than 9 passengers including driver; (iv) being designed to carry business equipment on or in exterior racks or bins,

but not including tool boxes; or (v) advertising a business or containing on its exterior any business information in excess of the business name on the driver's side door of the vehicle.

(c) No vehicle, motorized or otherwise, including but not limited to, those set forth in subsection (b) above, shall be parked at any time in front of a mailbox or between the hours of 4:00 a.m. and 6:00 a.m. on any street or right-of-way of the Subdivision. Further, no such vehicle shall be parked at any time except on a street, 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 the Declarant, 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 Jefferson County, Kentucky) 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 the Declarant in its sole discretion. Electric dog fences shall be allowed with the prior written approval of 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 3.04 by any lot owner or resident of the Subdivision may result in fines and 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 including excessive, loud and prolonged barking, 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) Unless approved in writing, in advance of installation, by the Declarant, no lot owner shall cause or permit awnings or other similar exterior window coverings to be installed

on a building or anything to be hung, displayed or exposed on the exterior of the building on the lot, whether through or upon the windows, doors, or masonry of such building. The prohibition herein includes, without limitation, laundry, clothing, rugs, awnings, canopies, shutters, radio or television antennas, or any other items. Under no circumstances shall any exhaust fan, air conditioning apparatus, television or radio antennas, or other items be installed by the lot owner on the exterior of the buildings. No clothesline, clothes rack, or any other device may be used to hang any items on any window, nor may such devices be used anywhere in the Subdivision except in such areas as may be specifically designated for such use by the Declarant.

All windows shall have proper window coverings (no sheets or other material of a temporary nature) placed over windows within thirty (30) days of occupancy. Without the prior written approval of the Declarant, no aluminum foil, tinted or reflector glass or other tinted or reflective material and no interior window coverings that do not have a white backing shall be installed or maintained on any window.

(c) No fence or wall of any nature, which may only be erected with the express written permission of the Declarant, 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 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 the Declarant in its sole discretion.

(d) Swimming pools, tennis courts, water features, hot tubs and spas may be permitted if design and placement thereof are approved in writing, in advance of construction, by the Declarant 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 it is a receive dish for a direct signal television not to exceed 40 inches in diameter and provided the design and placement are approved in writing, in advance of installation, by the Declarant 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 the Declarant in its sole discretion. Any temporary play equipment, including playpens, bicycles, wagons, toys, benches, chairs, or other articles of personal property shall be stored indoors and shall not be left unattended outside.

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 Louisville Metro Land Development Code and except that Declarant shall have the right to erect larger signs when advertising the Subdivision. In no event will any such sign contain any material considered offensive by the Declarant in its discretion (and any sign in violation hereof shall be forthwith removed upon notice from the Declarant). 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 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.

If municipal trash collection is, or becomes, unavailable, then trash collection shall be solely at the direction and approval of the Declarant, in which case there shall be only one sanitation company approved for collecting garbage in the Subdivision. The cost of said collection service, but not including recyclables collection, shall be included in the Association monthly, quarterly, or annual assessments 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 auction, estate, yard or garage sales of any kind shall be conducted on any lot unless approved in writing, in advance of said event, by the Declarant in its sole discretion.

Section 2.11 Garage Doors Kept Closed. Garage doors and the doors of any other storage rooms or the like shall be maintained in a closed position when not being used for immediate ingress or egress.

Section 2.12 Rental Restrictions. No lot or residence may be leased for a term of less than 1 year. At least 3 business days prior to the commencement date of the lease of any lot or residence, the owners of the lot shall notify the Board of Directors of the Association in writing of the execution of such lease, which notice shall specify in full the names of the lessees' dependents and other family members who will reside at the residence, shall include a copy of the executed lease and shall confirm that such lease incorporates by reference the provisions of this Declaration. Any lease shall prohibit more than 2 persons per bedroom living at the residence. Such lot owners shall be and remain liable for any and all unpaid fees, charges and expenses owed to the Association, by such lessees and/or their dependants, whether in connection with the use of the recreational facilities within the Subdivision or otherwise. Notwithstanding any other provision of this Declaration, so long as Class B membership exists pursuant to Section 7.02, the Declarant shall have the unilateral right, without the consent of the other lot owners or any other party, to alter or amend this Section 2.12 and the terms thereof, and thereafter, this Section 2.12 may only be canceled, altered or amended 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.

Section 2.13 Holiday Decorations. All holiday decorations shall not be installed before the generally recognized beginning of the season and shall be removed after the generally

recognized conclusion of the holiday for which the decorations are placed. Inflatable decorations are prohibited in the Subdivision.

#### ARTICLE IV -- 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. Declarant 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. Exterior colors shall be limited to the colors approved in writing, in advance of painting, by Declarant in its sole discretion.

Section 3.03 Roof Pitch. The primary roof pitch of any residential structure shall not be less than eight (8) 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 sixteen hundred (1,600) square feet.
- (b) The total floor area of any one and one-half (1 1/2) story home shall be a minimum of nineteen hundred (1,900) square feet.

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 a 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, shall be placed on or in the right-of-way fronting any lot, and they shall be paid for by the lot owners.

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, at the owner's expense, or Declarant 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) Irrigation System. All yards shall include an irrigation system which shall receive routine maintenance by the Association. Replacement and major repairs, that are not required as a consequence of lot owner damage or negligence, shall be the responsibility of the Association as well. Any damage caused by lot owner negligence shall be charged to the lot owner as a special assessment. The lot owner is absolutely obligated to utilize the irrigation system on a regular on-going basis such as is necessary to maintain the yard in a green and healthy condition, and the Association shall be authorized to enter upon a lot owner's lot, and is hereby granted an easement in gross, as further defined below, to assure that the system is operating in accordance with Association rules and regulations.

(c) 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 the 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.

(d) Driveways and Patios. Each lot shall have a finished driveway and, if applicable, a patio, comprised of finished concrete or exposed aggregate concrete or pavers. Lot owners shall not alter or change the driveway and/or the patio in any manner without the prior written approval of the Declarant. The lot owner shall be responsible for maintaining the driveways and patios on the lot to the standard set by the Association, cost of same to be paid by the lot owner.

(e) 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. The lot owner shall be responsible for maintaining the sidewalks on the lot, if applicable, to the standard set by the Association, cost of same to be paid by the lot owner

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



(g) 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 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 assignee 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.

(h) 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 feeding multiple lots, and not located within a public utility easement or right of way, shall be with the Association and the installation and maintenance responsibility thereof shall be borne by the Association, with the maintenance to be assessed to the affected lot owners as a special assessment. Title to the portion of the service lines feeding only one lot, and not located within a public utility easement or right of way, shall remain in and the cost of installation and maintenance thereof shall be borne by the respective lot owner whom the service line serves with the utility service. 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. The owner of the service line, being the party served by the service line, shall be responsible for any repairs which take place on a neighboring property owner's building or property and any damage to the building or property resulting from such repairs. 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 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 and designated for underground 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 distribution lines.

(c) The utility easements hereby specified above and dedicated and reserved to each lot owner, 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 Protections Areas (TPAs) and Tree Canopy Protection Area (TCPAs), if any, identified on a plat or Louisville Metro Planning Commission (the "Planning Commission") approved plan of the Subdivision represent individual trees and/or portions of the site designated to meet requirements of the 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 Louisville Metro Land Development Code (the "Land Development Code") and/or with Planning Commission restrictions established at the time of plan approval. The WPAs, TPAs, and TCPAs shall be maintained by the Association. 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 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 Land Development Code by the Declarant or its assignee, or the Association.

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.

#### **ARTICLE IV--- OWNERS OBLIGATIONS**

Section 4.01 Duty to Maintain Building and Lot. Except as otherwise provided for herein with respect to the Association's maintenance responsibility for yard maintenance as set forth in Section 3.09 and for utility maintenance set forth in Section 3.10 for shared utilities, it shall be the duty of each lot owner, at his/her sole cost and expense, 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 Duty to Repair and Rebuild Building and Lot. Except as otherwise provided for herein with respect to the Association's maintenance responsibility for yard maintenance as set forth in Section 3.09 and for utility maintenance set forth in Section 3.10 for shared utilities, each owner of a lot, shall, at his/her sole cost and expense, maintain and repair his/her residence, including but not limited to the exterior of his portion of the building or structure, keeping same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear. If all or any portion of a residence is damaged or destroyed by fire, hail or other casualty, then the owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty.

#### **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, 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 Declarant. Each lot owner, by accepting a deed for a lot within the subdivision, agrees to accept the judgment of the Declarant 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 Declarant. Unpaid fines shall bear interest at the same rate as unpaid assessments and shall be collectible in the same method as unpaid assessments, along with reasonable attorney fees.

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 7.02, 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. Once the Class B Membership terminates, these restrictions may be canceled, altered or amended at any time by a written instrument signed by the owners of the lots with seventy-five percent (75%) of the votes in the Association and recorded in the Jefferson County Clerk's office, provided, however, Section 2.12 hereof may only be canceled, altered or amended 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 its 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 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 upon termination of Class B membership pursuant to Section 7.02 hereof, the 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). 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, and rules and regulations. Each lot owner, other than Declarant, shall pay the assessments provided for in this Declaration, when due. Each lot owner shall comply with decisions of the Association's Board of Directors. Conveyance of a lot

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 Class A membership shall succeed to and be assigned all rights 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, including any property later annexed to the Subdivision, have been sold by the Declarant; or

(iii) January 1, 2040.

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, entranceways, storm drains, common drainage swales, basins, and landscaping located therein. 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 Association, (i) monthly assessments or charges as set forth below and (ii) special assessments as set forth elsewhere herein for any improvement set forth in this Declaration and for any other capital improvements determined necessary by the Declarant or its assignee, the Association, or 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. Declarant shall not be liable for assessments 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. The Declarant may loan funds to the Association to pay any shortfall of the Association for any Association expense per this Declaration or the Bylaws, to be repaid by the Association to the Declarant through normal monthly assessments or special assessment of the lot owners.

### 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 Association obligations under this Declaration. 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, 2015, the initial monthly assessment shall be set at \$180 dollars per month, payable in advance. Thereafter, Declarant shall fix each monthly assessment and shall determine when the assessments shall be paid. All lot owners are required to participate in a monthly ACH transfer program for the automatic payment of the monthly assessments. No owner is permitted to pay the assessments by cash, check, or through credit card, unless specifically authorized by Declarant.

Section 8.04 Special Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Declarant may levy, on behalf of the Association, 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 Declarant 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 Declarant. 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. Each lot owner shall be responsible for any charges to the Association for an ACH with insufficient funds.

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.

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

KITTY DEVELOPER, LLC, a Kentucky limited liability company

By: Elite Homes, Inc., its Managing Member

By: *Michael E. Pusateri*

Name: MICHAEL E. PUSATERI

Title: VICE PRESIDENT

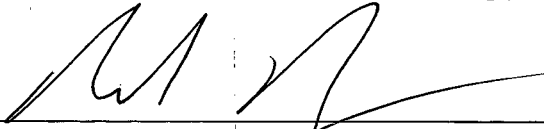
COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_ day of September, 2014, by Michael E. Pusateri as vice president of Elite Homes, Inc., as Managing Member of Kitty Developer, LLC, a Kentucky limited liability company, on behalf of the company.

My Commission expires: 3/22/16

*Jeanette J. Revelle*  
Notary Public  
State at Large, Kentucky

**THIS INSTRUMENT PREPARED BY:**

A handwritten signature in black ink, appearing to be 'M. A. Roberts', written over a horizontal line.

**BARDENWERPER, TALBOTT & ROBERTS, PLLC**

Building Industry Association of Greater Louisville Building, Second Floor

1000 N. Hurstbourne Parkway

Louisville, Kentucky 40223

(502) 426-6688

EXHIBIT A

1000, 1001 & Cell Tower <sup>ACCESS</sup> lot

Being all of Lots 1 through 43, and open space lots v, as shown on the approved Record Plat of Summit Gardens Subdivision prepared by Heritage Engineering, LLC, dated 9/22, 2014, bearing Docket # 14 RECORD PLAT 1005 recorded in Plat and Subdivision Book 54, Page 80, in the Office of the Clerk of Jefferson County, Kentucky.

Being the same property conveyed to Kitty Developer, LLC by deed dated November 14, 2013, recorded in Deed Book 10167, Page 344, in the Office of the Clerk of Jefferson County, Kentucky.

Document No.: DN2014123355  
Lodged By: bardenwerper  
Recorded On: 09/24/2014 02:29:58  
Total Fees: 64.00  
Transfer Tax: .00  
County Clerk: BOBBIE HOLSCAW-JEFF CO KY  
Deputy Clerk: ANASHO