

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SUTHERLAND SUBDIVISION, PHASE I

JEFFERSON COUNTY, KENTUCKY

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Amendment") is made, declared and imposed as of the 31st day of October, 1991, by (i) NTS/SUTHERLAND, INC., a Kentucky corporation f/k/a STM/Sutherland, Inc. (the "Declarant"), with principal office, place of business and mailing address of 10172 Linn Station Road, Suite 200, Louisville, Jefferson County, Kentucky 40223.

WITNESSETH:

WHEREAS, pursuant to that certain Declaration of Covenants, Conditions and Restrictions dated as of December 21, 1990, of record in Deed Book 6034, Page 245, in the office of the Clerk of Jefferson County, Kentucky, (the "Declaration"), Declarant has imposed and established certain covenants, conditions and restrictions for Sutherland Subdivision, Jefferson County, Kentucky, encumbering certain real property more particularly described in the Declaration; and

WHEREAS, Section 3, Article V, of the Declaration charges and empowers Developer with primary responsibility for amending, and/or enlarging the scope of and the area covered by, the Declaration; and

WHEREAS, with such charge and so empowered pursuant to the Declaration, Developer desires to amend certain provisions of the Declaration as set forth below; and

WHEREAS, capitalized terms used in this Amendment as defined terms and not otherwise defined in this Amendment shall have the respective meaning ascribed thereto in the Declaration;

NOW THEREFORE, in accordance with the foregoing preambles, which are incorporated into this Amendment subject to the terms hereof, Declarant hereby amends the Declaration as follows:

1. Section 2(b), Article I. Section 2(b), Article I of the Declaration, entitled "Other Additions" is hereby amended and restated in its entirety as follows:

"(b) Other Additions. Additional real property, whether owned by Declarant or others, which is not presently a part of Declarant's general plan and scheme of development of Sutherland, may be hereafter annexed to Sutherland by Declarant at its sole discretion as residential property and/or common area and made subject to this Declaration, or another Declaration of Covenants, Conditions and Restrictions acceptable to Declarant at its sole discretion. All such additions to Sutherland shall be made by filing a Declaration of Annexation or Supplementary Declaration (as hereinafter defined), with respect to such additional property in the aforesaid Clerk's Office, which shall declare the annexation and addition of such real property to Sutherland, and shall extend the scheme of this Declaration to, or impose a scheme of such other Declaration of Covenants, Conditions and Restrictions acceptable to Declarant on, such annexed real property. Any such Declaration of Annexation or Supplementary Declaration extending the scheme of this Declaration to such annexed real property make contain such conditions and modifications of the provisions of this Declaration as Declarant may elect, and or as may be necessary to reflect the different character, if any, of the annexed real property."

2. Section 2(c), Article I. A new Section 2(c), Article I, is hereby added to the Declaration to read as follows:

"(c) Withdrawal. Declarant may from time to time elect in its discretion not to develop portions of the real property made subject to this Declaration for which a subdivision plat ("Plat") has not been recorded in the aforesaid Clerk's Office, or, if a Plat has been

recorded, in which phase of development for Sutherland evidenced by such Plat ("Phase") no lots are then owned by other than Declarant or any of its affiliates or related entities, as a part of Sutherland, and may withdraw such portions of the real property subject to this Declaration from Sutherland and this Declaration, as applicable. Any such withdrawal shall be accomplished by the filing in the aforesaid Clerk's Office of a Notice of Withdrawal executed by the Declarant, and describing by adequate legal description the portions of the real property thereby withdrawn."

3. **Section 3, Article I.** A new Section 3, Article I, entitled "Supplementary Declarations" is hereby added to the Declaration to read as follows:

"Section 3. Supplementary Declarations.

(a) **Terms.** Declarant may from time to time elect in its discretion, and without need for the consent of any other person or entity, to record with respect to any Phase of Sutherland a Supplementary Declaration of Covenants, Conditions and Restrictions (a "Supplementary Declaration") in the aforesaid Clerk's Office, pursuant to which Supplemental Declaration Declarant may impose on the Phase subject thereto rights, privileges, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, easements, assessments, charges and liens, and provisions other than those set forth in this Declaration, which may be more or less restrictive than those set forth in this Declaration, as Declarant may elect in its sole discretion and which shall at Declarant's election control over the provisions of this Declaration, taking into account the unique and particular aspects of the proposed development of the Phase covered thereby, provided, that, any of the same imposed by such Supplementary Declaration shall not material adversely affect the existing single-family residential nature of the other developed Phases of Sutherland. Further, any such Supplementary Declaration may otherwise supplement the provisions of this Declaration with respect to the Phase subject thereto, and may otherwise contain such additional information, specifications and other matters with respect to the Section subject thereto as is contemplated by this Declaration. A Supplementary Declaration may further provide for a Subassociation (as hereinafter defined) for such Phase and for the right of such Subassociation to assess lot owners within such Phase and to place liens upon the lots therein for the purposes described in such Supplementary Declaration.

(b) **Filing.** Upon filing of a Supplementary Declaration in the aforesaid Clerk's Office, the Phase subject thereto shall be subject to all of the rights, privileges, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, easements, assessments, charges and liens, and other provisions set forth in this Declaration, except to the extent, if any, specifically stated in the Supplementary Declaration. For purposes of this Section 3, the term "Subassociation" shall mean any Kentucky profit or non-profit corporation, or any unincorporated association, and the successors and assigns of any of the same, organized and established or authorized pursuant to, or in connection with, one or more Supplementary Declarations, to benefit the lot owners within Phases burdened by the applicable Supplementary Declarations."

4. **Section 4, Article I.** A new Section 4, Article I, entitled "Cross-Easements" is hereby added to the Declaration to read as follows:

"Section 4. Cross-Easements. Declarant reserves the right to create cross-easements and to restrict all of the property made subject to this Declaration according to the terms of this Declaration. The common area initially covered by this Declaration and hereinafter created pursuant to any Plat, or as otherwise provided herein, shall be subject to the provisions of this Declaration and shall inure to the benefit of the owners of lots within Sutherland which hereafter become subject to this Declaration, or to another Declaration of Covenants,

Conditions and Restrictions as approved by Declarant at its sole discretion which so provides, and the common area allocable to the owners of all such lots within Sutherland shall inure to the benefit of the owners of lots within Sutherland created pursuant to Plats recorded earlier, each to enjoy the common area of the other and to have and to hold the same as if each such lot had been developed and subjected to this Declaration simultaneously."

5. **Section 1, Article II.** Three new paragraphs are hereby added to Section 1, Article II of the Declaration to read as follows:

"Lease Restrictions. No vacant lot may be leased, and no improved lot may be leased for a term of less than six (6) months. At least three (3) business days prior to the commencement of the date of the lease of any improved lot, the owner(s) of such lot shall notify Declarant and the Community Association in writing of the execution of such lease, which notice shall specify in full the names of the lessees thereunder and the names of such lessees' dependents and other family members who will reside at such lot, shall include a copy of the executed lease and shall confirm that such lease incorporates by reference the provisions of this Declaration. Should the lot owner(s) fail to so notify Declarant, such lot owner(s) shall be and remain liable for any and all unpaid fees, charges and expenses owed to Declarant and/or the Community Association by such lessees and/or their dependents, whether in connection with the use of the recreational facilities within Sutherland or otherwise. All such unpaid fees, charges and expenses, and all such fees, charges and expenses incurred by Declarant and/or the Community Association in connection therewith, including, without limitation, reasonable attorney's fees and court costs, shall bear interest at the Reimbursement Rate (as hereinafter defined), rate per annum prescribed and/or permitted pursuant to Section _____ below and all such amounts, plus accrued interest thereon, shall constitute a charge and lien upon the lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV of this Declaration.

No Subdivision. No lot shall be subdivided or its boundary lines changed, except with the prior written approval of the Declarant in its sole discretion, which approval may be arbitrarily and unreasonably withheld. All lot owners are hereby notified that Declarant has the express right, in its sole discretion, to subdivide, re-plat and/or alter the boundary line of any lot or lots owned by Declarant and/or any of its affiliated or related entities. Any such division, boundary line change, or re-platting of any lots shall not be in violation of applicable subdivision and zoning regulations.

No Time-Shares. No lot shall be subjected to any time-share program or any similar division of interest or program whereby the right to use of the lot rotates among members of the program or holders of interests in the lot on a recurring or reservation basis."

6. **Section 3(c), Article II.** Section 3(c), Article II of the Declaration is hereby amended and restated in its entirety as follows:

(c) **Restrictions on Vehicles and Parking.**

(i) No bus, mobile home, motor home, trailer, truck, motorcycle, commercial vehicle, camper trailer, camping unit, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a closed garage or basement, except as otherwise may be acceptable to Declarant in its sole discretion.

(ii) Each lot owner and resident of Sutherland is hereby advised that any vehicle determined to be objectionable or unsightly by Declarant and/or the Board (as hereinafter defined) must upon notice from either

Declarant or the Board, as applicable, be thereafter kept in a closed garage or basement or removed from Sutherland.

(iii) No vehicle which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in Sutherland.

(iv) No trailer, boat, truck, or other vehicle shall be parked on any street in Sutherland for a continuous period in excess of ten (10) hours, or for an aggregate period in excess of twenty-four (24) hours in any one calendar year.

7. **Section 3(d), Article II.** Section 3(d), Article II of the Declaration is hereby amended and restated in its entirety as follows:

(d) **No Street Parking; No Semi-Tractor Trailers.** No motor vehicle or other vehicle shall be continuously or habitually parked on any street or public right-of-way in Sutherland, it being the intent of Declarant and this Declaration that vehicles be kept in driveways and garages. No semi-tractor trailers, or other large trucks, vans or other vehicles as determined by Declarant in its sole discretion, shall be permitted in any Phase or otherwise within Sutherland, except for limited periods as determined by Declarant in its sole discretion for moving vans being utilized by residents for moving in or out of a residence, and except for such construction, delivery or other vehicles as Declarant may permit from time to time in its sole discretion.

8. **Section 4, Article II.** Section 4, Article II of the Declaration entitled "Animals" is hereby amended and restated in its entirety as follows:

4. **Animals.** No animals, including, without limitation, reptiles, livestock or poultry of any kind, shall be raised, bred or kept on any lot, except that a reasonable number of dogs, cats or other traditional household pets (meaning the domestic pets traditionally recognized as household pets in the Louisville, Kentucky vicinity) may be kept in the residence on a lot, provided they are not kept, bred or maintained for any commercial or breeding purposes. 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 area 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 4 by any lot owner or resident of Sutherland may result in the suspension of the voting rights of a lot owner in the Community Association and suspension of the rights to use the recreational facilities and other common amenities of Sutherland.

9. **Section 5(e), Article II.** Section 5(e), Article II of the Declaration is hereby amended and restated in its entirety as follows:

(e) **Antennae.** No antennae or microwave or other receivers and/or transmitters (including, without limitation, those currently referred to as "satellite dishes") shall be erected or placed on any residence or any lot (except for small television antennas or receivers which are concealed and contained wholly within the interior of a residence and which are not viewable outside of such residence through any window or otherwise from any vantage point or elevation as determined by Declarant), unless its design and placement are approved in

(b) Lot Owner's Maintenance. From and after the date construction of a single family residence on a lot is started, it shall be the duty of each lot owner to keep the grass on the lot properly cut, to keep the lot free from weeds, waste and trash, including, without limitation, construction waste, and to keep it otherwise neat and attractive in appearance to the satisfaction of Declarant. Should any lot owner fail to do so, then Declarant may take such action as it deems appropriate, including, without limitation, mowing, in order to make the lot neat and attractive, and the lot owner shall, immediately upon demand, reimburse Declarant or other performing entity for all expenses incurred in so doing, together with interest at the Reimbursement Rate, and Declarant shall have a lien on that lot and the improvements thereon to secure the repayment of such amounts, of equal priority to the lien for assessments provided for in Article IV of this Declaration.

(c) Indemnification By Lot Owner. Each lot owner, by acceptance of a deed for the lot, releases and shall indemnify and hold harmless Declarant from and against all losses or damages which may accrue to such lot owner's lot, and the vegetation thereon, arising from any activities of Declarant and/or the lot owner pursuant to this Section 6.

12. Section 7, Article II. Section 7, Article II of the Declaration entitled "Duty to Repair and Rebuild" is hereby amended and restated in its entirety as follows:

Section 7. Duty to Repair and Rebuild.

(a) Normal Repairs. Each lot owner shall, at its sole cost and expense, repair and maintain the residence and other approved structures on such lot owner's lot, keeping the same in first class condition and repair acceptable to Declarant and the Board, and otherwise in a condition comparable to the condition of such residence at the time of its initial construction consistent with the approved plans therefor. In the event any such residence or other structures on any lot are not so repaired and maintained, the lot owner shall, within thirty (30) days after written notice from Declarant or the Board (or such greater period as Declarant or the Board shall specify in such notice), cause the same to be fully repaired and maintained to the satisfaction of Declarant and the Board, or, if the existing status of the residence or other structures on the lot are such that the same cannot be reasonably repaired and maintained within such thirty (30) day period, the lot owner shall immediately commence and proceed with all due diligence and best efforts toward the completion of such repair and maintenance, which shall in any case be completed within sixty (60) days of such notice from Declarant or the Board, or within such other period as shall be reasonably specified by Declarant or the Board (which specification shall be deemed reasonable if confirmed in writing by at least two (2) Builders). Should such lot owner fail to complete such repairs and maintenance within the applicable period provided above, Declarant or the Board may, in their respective sole discretion, elect to cause such repairs and maintenance to be so completed to their respective satisfaction, and Declarant and/or the Board, and their respective agents, employees and contractors, may enter upon the lot and all improvements thereon during the period from 8:00 A.M. through 6:00 P.M. each weekday (Louisville, Kentucky time) in connection with such repairs and maintenance, and may at all other times store necessary materials on the lot, without liability or obligation of any kind to such lot owner or any resident or lessee of such lot, and the lot owner shall reimburse Declarant or the Board, as applicable, upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and all such costs and expenses shall constitute a charge on the lot, and Declarant or the Board, as applicable, shall have a lien on such lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV below.

(b) Repair of Damage. If all or any portion of a residence or other approved structure is damaged or destroyed by vandalism, fire or other casualty, then the lot owner shall,

with all due diligence, promptly (as acceptable to the Declarant and the Board) rebuild, repair or reconstruct such residence or structure in a manner which will substantially restore it to first class repair and condition consistent with the approved plans therefor. In the event any such residence or other structures on any lot are not so rebuilt, repaired or reconstructed, the lot owner shall within thirty (30) days after written notice from Declarant or the Board (or such greater period as Declarant or the Board shall specify in such notice), cause the same to be fully rebuilt, repaired or reconstructed to the satisfaction of Declarant and the Board, or, if the existing status of the residence or other structures on the lot are such that the same cannot be reasonably rebuilt, repaired or reconstructed within such thirty (30) day period, the lot owner shall immediately commence and proceed with all due diligence and best efforts toward the completion of such residence or other structures, which shall in any case be completed within one hundred twenty (120) days of such notice from Declarant or the Board, or within such other period as shall be reasonably specified by Declarant or the Board (which specification shall be deemed reasonable if confirmed in writing by at least two (2) Builders). Should such lot owner fail to complete such rebuilding, repairs or reconstruction within the applicable period provided above, Declarant or the Board may, in their respective sole discretion, elect to cause such rebuilding, repairs or reconstruction to be completed to their respective satisfaction in accordance with the approved plans for such structure, and Declarant and/or the Board, and their respective agents, employees and contractors, may enter upon the lot and all improvements thereon during the period from 8:00 A.M. through 6:00 P.M. each weekday (Louisville, Kentucky time) in connection with such rebuilding, repairs or reconstruction, and may at all other times store necessary materials on the lot, without liability or obligation of any such kind to such lot owner or any resident or lessee of such lot, and the lot owner shall reimburse Declarant or the Board, as applicable, upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and all such costs and expenses shall constitute a charge on the lot, and Declarant or the Board, as applicable, shall have a lien on such lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV below.

13. **Section 9, Article II.** Section 9, Article II of the Declaration entitled "Signs" is hereby amended and restated in its entirety as follows:

Section 9. Signs.

(a) **Sign Limits.** No sign for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one neat and attractive sign for advertising the sale or lease thereof, which shall not be greater in area than nine square feet and shall be acceptable in condition, format, appearance and content to Declarant.

(b) **Declarant's Signs.** Each lot owner and resident of Sutherland is hereby advised that Declarant may elect from time to time (i) to erect larger signs when advertising Sutherland and its attendant facilities, or upcoming events with respect thereto, (ii) to place signs on lots designating the lot number of the lots, and (iii) following the sale of a lot, to place signs on such lot indicating the name of the purchaser of that lot and/or the fact that it has been sold.

(c) **Street Numbers.** This Section 9 shall not prohibit placement of occupant name signs and lot numbers as allowed by Declarant's guidelines (which may be included in the "Design Guidelines", as such term is hereafter defined, or otherwise) or as are otherwise acceptable to Declarant, and which signs and numbers are in compliance with applicable zoning regulations.

(d) **Uniform Sign Program.** Declarant shall have the unfettered right in its sole discretion to establish from time to time a uniform sales sign program for all lots, whether improved or unimproved, within any Phase and/or to require lot owners to obtain all signs

advertising the sale or lease of a lot, whether improved or unimproved, from Declarant or any of its related entities or from a designated third party.

14. **Section 10, Article II.** Section 10, Article II of the Declaration entitled "Drainage" is hereby amended and restated in its entirety as follows:

Section 10. Drainage.

(a) **Conformance to Plans.** Drainage of each lot shall conform to the general drainage plans of Declarant for Sutherland. No construction upon a lot by those other than Declarant shall cause storm water to drain upon any adjacent lot unless appropriate easements have been provided for such drainage or such drainage is otherwise allowed by local ordinances and permitted by Declarant. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system. All connections for sanitary sewer, water and storm sewer on each lot shall be made with watertight joints and otherwise in accordance with all applicable plumbing and building code requirements. No Hazardous Substances (as hereinafter defined) shall be dumped or introduced into the sanitary or storm sewer system for Sutherland, or otherwise disposed of on any lot.

15. **Section 11, Article II.** Section 11, Article II of the Declaration entitled "Disposal of Trash" is hereby amended and restated in its entirety as follows:

Section 11. Disposal of Trash; No Hazardous Substances. No lot shall be used or maintained as a dumping ground for, or for the storage or keeping or disposal of, rubbish, trash, or garbage or other waste or Hazardous Substances. Rubbish, trash, garbage or other waste shall not be kept on any lot except for normal household rubbish, trash, garbage and similar waste kept indoors within sanitary closed containers temporarily prior to collection. There shall be no burning of trash or other refuse on any lot. Such containers shall be placed at appropriate collection points not earlier than the night preceding a scheduled collection, and shall be promptly removed and returned indoors after each collection. Declarant and the Community Association reserve the right to from time to time establish and maintain a uniform and exclusive trash collection program for Sutherland with one or more contractors or companies selected by Declarant or the Board on such terms as deemed acceptable by the Declarant or the Board in their respective discretion. For purposes of this Declaration, the term "Hazardous Substances" shall include, without limitation, petroleum, its products and by-products, and petrochemicals, and any compound containing any of the same, asbestos, radioactive substances, polychlorinated biphenals, any pollutant or contaminant and any hazardous, toxic, dangerous or flammable waste, substance or material, including any of the same defined as such in, for purposes of, or otherwise regulated or classified by or pursuant to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (43 U.S.C. §9601, et seq.) and regulations promulgated thereunder, as amended, any so-called "superfund" or "superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree (whether now existing or hereafter enacted, promulgated or issued) or any judicial or administrative interpretation of any of the same, and including "oil" and "oil waste" as defined in the Clean Water Act (33 U.S.C. §1251, et seq.), as amended. The definition of "Hazardous Substances" for purposes of this Declaration shall not include, however, small quantities of such substances described above which constitute or are included within normal household cleaning substances or other substances used in connection with normal single-family residential purposes, which are in all cases kept within approved containers and stored, used and disposed of in accordance with all applicable governmental laws, rules and regulations and other applicable guidelines existing or established from time to time (such substances being hereinafter referred to as "Permitted Substances"). Each lot owner shall indemnify and hold harmless Declarant, its officers, employees, stockholders, successors and assigns, the Board and the Community Association, and the members of the NTS Group (as hereinafter defined), from and against any and all liabilities, damages, actions and causes of

action, costs and expenses arising from or related to the introduction and/or use of any Hazardous Substances and/or Permitted Substances by such lot owner or otherwise on such lot owner's lot during the ownership of the lot by such lot owner.

16. **Section 12(b), Article II.** Section 12(b), Article II of the Declaration is hereby amended and restated in its entirety as follows:

(b) Additional Easements.

(i) Easements for underground electric and telephone transmissions and distribution feeder lines, poles and equipment appropriate in connection therewith, are reserved over, across and under all spaces (including park, open and drainage space area) outlined or otherwise shown and designated on the Plat for any Phase, and over, across and under such portions of the common area as Declarant shall determine from time to time, for underground facilities. Declarant hereby reserves the right to grant such additional easements as may be necessary to facilitate electric service, gas service, telephone and communications services, cable television and the like throughout Sutherland.

(ii) Aboveground electric transformers and pedestals may be installed at appropriate points in any electric or other utility easement with the prior written approval of Declarant, which shall not be unreasonably withheld.

(iii) In consideration of bringing service to the Property, LG&E and S.C. Bell are granted the right to make further extensions of their respective underground lines in areas acceptable to Declarant to serve additional locations within Sutherland from all underground distribution lines.

17. **Section 12(c), Article II.** A new Section 12(c), Article II entitled "Cable Television Easements" is hereby added to the Declaration to read as follows:

(c) Cable Television Easements. The electric and telephone easements dedicated and reserved in this Section 12, and those as shown on the Plat for any Phase, shall include easements for the installation, operation and maintenance of cable television service to the lots and the common area, including the 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 communications, telecommunications and energy transmission mediums.

18. **Section 13, Article II.** Section 13, Article II of the Declaration entitled "Rules for Common Area" is hereby amended and restated in its entirety as follows:

Section 13. Rules for Common Area. The Community Association is authorized to adopt and modify from time to time rules and regulations for the use of the common area, including, without limitation, all lakes, recreational facilities and other common amenities now or hereafter located within Sutherland upon such common area, and such rules, if not otherwise posted at any such facility or amenity, shall be furnished in writing to a lot owner upon reasonable request. No lot owner shall do or permit anything to be done or kept on or in the common area which might result in the cancellation of insurance on any part of the common area, which would interfere with rights of other lot owners, or which would be noxious, harmful or unreasonably offensive to other lot owners as determined by Declarant or the Board in their respective sole discretion. No waste shall be committed by any lot owner or resident of Sutherland in the common area.

19. **Section 14, Article II.** A new Section 14, Article II entitled "Exclusive Water and Sanitary Sewer Service" is hereby added to the Declaration to read as follows:

Section 14. Exclusive Water and Sanitary Sewer Service. Each lot owner shall be obligated upon the construction of a residence on any lot to connect to, and obtain service from, the central water and sewage disposal systems provided for Sutherland. No other water or sewage system shall be permitted on or for any lot.

20. **Section 15, Article II.** A new Section 15, Article II entitled "Playgrounds" is hereby added to the Declaration to read as follows:

Section 15. Playgrounds. Any playground or other play areas or equipment furnished by Declarant or the Community Association, or others with the consent of Declarant, upon the common area or otherwise within Sutherland, shall be used at the risk of the user, and Declarant and the Community Association shall not be held liable to any person or entity for any claim, damage, liability or injury occurring thereon or related to use thereof.

21. **Section 16, Article II.** A new Section 16, Article II entitled "Air Conditioning Units" is hereby added to the Declaration to read as follows:

Section 16. Air Conditioning Units. Except as may be permitted from time to time by Declarant in its sole discretion, no window air conditioning units may be kept or used on any lot.

22. **Section 17, Article II.** A new Section 17, Article II entitled "Lighting" is hereby added to the Declaration to read as follows:

Section 17. Lighting. Except for seasonal Christmas/Holiday season decorative lights, and attendant displays and decorations, which may be displayed from December 1 of each year through the following January 10, and only as shall be acceptable to Declarant in its sole discretion, all exterior lights must receive the prior written approval of Declarant.

23. **Article III.** Article III of the Declaration entitled "Architectural Control" is hereby amended and restated in its entirety as follows:

ARTICLE II -- ARCHITECTURAL CONTROL

Section 1, Approval of Construction and Landscape Plans.

(a) Grading and Construction Plans.

(i) No clearing or grading of any lot shall be permitted, and no structure may be erected, placed or altered on any lot, until a lot grading plan showing proposed clearing limits, grading and house location and location and size of the proposed driveway, leadwalks, fountains, pools and the like and any other proposed structures, and the construction plans and building specifications for all of the foregoing and any other structures, including, without limitation, (1) the location of all improvements and proposed improvements on the lot and the minimum elevation of any proposed improvements, (2) the final grade elevation (including rear, front and side elevations) and first floor elevation, which must be in compliance with Declarant's drainage and grade plans for Sutherland, (3) the type of exterior material (including delivery of samples thereof if requested by Declarant) and the color of paint or stain to be applied to any exterior surfaces (including

delivery of samples thereof if requested by Declarant), and (4) the time frame within which all construction shall be completed, shall have been approved in writing by Declarant in its sole discretion. Declarant may further specify the requirements of such plans and specifications in the Design Guidelines (as defined below) or otherwise as shall be acceptable to Declarant.

(ii) All driveways on any lot shall be of exposed aggregate concrete unless otherwise approved in writing by Declarant, which shall be constructed in final finished form not later than thirty (30) days subsequent to the substantial completion of any residence on a lot, as determined by Declarant in its sole discretion.

(iii) Declarant reserves the right to compile and modify from time to time architectural and design review and/or construction standards manuals and guidelines, or other written standards (collectively, "Design Guidelines"), for use by lot owners for guidance in the construction of any structures and other improvements on the lots, and for such other purposes as described in this Declaration, and all improvements addressed therein shall be constructed by lot owners in accordance therewith and pursuant to the plan(s) therefor approved pursuant to this Article III. All such manuals and guidelines constituting Design Guidelines shall, from time to time when issued by Declarant, be deemed to constitute a part of and be incorporated within this Declaration.

(iv) All approved construction activities, and landscape activities contemplated by Section 1(b), Article III, below, shall be completed by the lot owner within the time frame specified in the approved plans contemplated by this Section 1. Upon completion of all such construction, the lot owner shall, at the lot owner's cost, furnish to Declarant upon request a written statement and certification of the lot owner's Builder and/or an engineer acceptable to Declarant, to the effect that (1) the improvements constructed upon the lot substantially conform to the plans and specifications approved pursuant to this Section 1, and (2) drainage of the lot after improvement is in positive drainage compliance with the drainage plans for Sutherland. Declarant reserves the right to require any Builder (as hereinafter defined) to post separate deposits with Declarant to ensure compliance with such approved construction plans and/or the drainage plans for Sutherland, in such amount as Declarant shall from time to time elect not in excess of Ten Thousand Dollars (\$10,000.00) for each such deposit.

(v) In the event any such structures or other improvements constructed on any lot, and/or the final grade of any lot, do not conform to the approved construction plans or drainage plans for Sutherland, the lot owner shall, within thirty (30) days after written notice from Declarant (or such greater period as Declarant shall specify in such notice), cause such non-compliance to be fully remedied to the satisfaction of Declarant. Further, in the event that the lot owner shall fail to diligently proceed with and/or complete the construction of any improvements on a lot within the time frame established pursuant to the construction plans and specifications therefor approved by Declarant, the lot owner shall, within thirty (30) days after written notice from Declarant, complete such improvements in a good, workmanlike and professional manner, or, if the existing status of the improvements on the lot are such that the same cannot be reasonably completed within such thirty (30) day period, the lot owner shall immediately

commence and proceed with all due diligence and best efforts toward the completion of all such improvements, which shall in any case be completed within one hundred eighty (180) days of such notice from Declarant or within such other period as shall be reasonably specified by Declarant (which specification shall be deemed reasonable if confirmed in writing by at least two (2) Builders). Should such lot owner fail to cure such non-compliance or to complete such construction within the applicable period provided above, Declarant may, in its sole discretion, elect to cause such non-compliance to be so cured, and may, in its sole discretion, elect to complete such construction on such lot in accordance with the approved plans therefor, and Declarant and/or the Community Association, and their respective agents, employees and contractors, may enter upon the lot and all improvements thereon at any time and from time to time in connection therewith, without liability or obligation of any kind to such lot owner or any resident or lessee of such lot, and the lot owner shall reimburse Declarant upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and all such costs and expenses shall constitute a charge on the lot and shall bear interest until paid at the Reimbursement Rate, and Declarant shall have a lien on such lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV below.

(b) Landscape Plans.

(i) In addition to, and contemporaneously with, the plans and specifications referred to in Section 1(a), a landscape plan shall be submitted by such lot owner to Declarant for its approval in writing, which plan shall show the trees, shrubs and other plantings then existing and/or to be planted on the lot, and specify the time frame within which such landscaping shall be completed. Each landscape plan for a lot submitted to Declarant shall show that the lot has or will have prior to occupancy a minimum of two trees (at least 3 inches in diameter) in the front yard of the lot (and where the lot is a corner lot, two additional such trees in the street side yard) and an additional two trees (at least 1-1/2 inches in diameter) elsewhere on the lot, and shall further obligate, and this Declaration does so obligate, each lot owner to install, prior to occupancy or within such other period as permitted by this Declaration (to the extent the same are not already located on the lot), and to maintain in good health at all times thereafter, and to replace as necessary, in the front and side yards of each lot, readily visible from the street(s) adjacent to the lot, if any, the trees required above, and other trees, shrubs, plantings and landscaping (excluding grass and sprinkler or other irrigation systems) having a current fair market value of not less than Two Thousand Dollars (\$2,000.00), or such other fair market value as specified in any applicable Supplementary Declaration. Further, all unimproved areas of a lot which are not to be landscaped pursuant to an approved landscape plan, shall be sodded by the lot owner to the satisfaction of Declarant. The trees required by this Section 1(b) shall be in addition to any trees planted by Declarant, or otherwise present in, any right-of-way.

(ii) The lot owner shall retain all receipts for required landscaping for inspection by Declarant at its request at any time following commencement of occupancy of the residence on the lot; provided, that when seasonal limitations prohibit, the approved landscaping on, and/or sodding of, the lot must be installed with thirty (30) days from the time planting operations can be feasibly undertaken as determined by Declarant. Moreover, when seasonal limitations do not permit planting, erosion control measures

must be implemented in accordance with generally accepted practices in the real estate development industry, as approved by Declarant in its sole discretion, and as otherwise may be required by applicable laws, rules, regulations and ordinances, and as otherwise provided in this Declaration. In no event shall any irrigation or other water system on any lot be permitted to draw or otherwise use water from any lakes or waterways within or adjacent to Sutherland, without the prior written consent of Declarant in its sole discretion. Declarant reserves the right to waive in its discretion all or any of the requirements of this Section 1(b) with respect to any lot.

(iii) In the event that the lot owner shall fail to diligently proceed with and/or complete the landscaping of the lot within the time frame established pursuant to the landscape plans therefor approved by Declarant, the lot owner shall, within fifteen (15) days after written notice from Declarant (or within such greater period as specified by Declarant considering seasonal limitations in Declarant's sole discretion), cause such landscaping to be completed in a good, workmanlike and professional manner. Should such lot owner fail to complete such landscaping within the applicable period provided above, Declarant may, in its sole discretion, elect to complete such landscaping on such lot in accordance with the approved plans therefor, and Declarant, its agents, employees and contractors, may enter upon the lot at any time and from time to time in connection therewith, without liability or obligation of any kind to such lot owner or any resident or lessee of such lot, and the lot owner shall reimburse Declarant upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and all such costs and expenses shall constitute a charge on the lot, and shall bear interest until paid at the Reimbursement Rate, and Declarant shall have a lien on such lot to secure the payment thereof equal priority to the lien for assessments provided for in Article IV of this Declaration.

(c) Definitions.

(i) References to "Declarant" in this Declaration shall include any entity, person or association to whom Declarant may from time to time assign all or any of its rights under this Declaration, including rights of approval, whether on a permanent or temporary basis. Declarant, its successors and assigns shall have the right to so assign all or any such rights to the Community Association, which assignment the Community Association hereby irrevocably agrees to accept when executed by Declarant.

(ii) References to "structure" in this Declaration shall include, without limitation, any building, residence, garage, fence, wall, antennae, microwave and other receivers and/or transmitters (including those currently called "satellite dishes"), dock, deck, swimming pools and tennis courts.

(d) No Occupancy Before Completion. No occupancy of any residence shall be permitted prior to the completion thereof to the satisfaction of Declarant, and the compliance with the provisions of this Declaration, including, without limitation, this Article III, in connection with the construction thereof and other improvements on the lot. No private water or sewage treatment systems shall be permitted in Sutherland.

Section 2 Building Materials; Roof; Builder; Architectural Standards and Design Guidelines.

(a) Building Materials.

(i) The exterior building material of all residences and structures on any lot shall extend to ground level, and the exterior building materials of all residences shall be brick, stone, brick veneer or stone veneer or a combination of same, or such other materials as shall hereafter be specified in the Supplementary Declaration, if any, or on any Plat. Declarant recognizes that the appearance of other exterior building materials (such as wood siding) may be attractive and innovative and reserves the right to approve in writing the use of other exterior building materials. Exposed smooth or brick mold-poured concrete walls shall not be permitted. All exterior paint and stain finishes and combinations and prefinished exterior materials, whether original application or later reapplication, must receive the prior written approval of Declarant.

(ii) Each lot owner and resident of Sutherland is hereby advised that rights of approval reserved by Declarant in this Declaration include, without limitation, the right of prior approval and specification, in its sole discretion, of the color, texture and appearance of all brick, stone and mortar to be used on the exterior of residences or other structures built on lots which abut or are adjacent to, or are in the vicinity of (as determined by Declarant in its sole discretion), portions of the common area on which entry walls, signature gates and/or entryways, or other walls and/or structures have been constructed.

(b) Roof Pitch. The roof pitch of any residential structure shall not be less than a plane of 8 inches vertical for every plane of 12 inches horizontal, or such other plane(s) as shall otherwise be specified in any Supplementary Declaration or on any Plat. Declarant may waive the requirements of this Section 2(b) in its sole discretion in special cases where architectural design warrants or requires for proper perspective.

(c) Builder Approval. Declarant reserves the right of prior approval, in its sole and absolute discretion, of each general contractor, contractor, builder or other person or entity (collectively, as so approved, the "Builders," and individually, a "Builder") which proposes, or is contracted with, hired or otherwise retained by or on behalf of any lot owner, to construct a residence on any lot, which approval must be obtained prior to the commencement of any such construction. No lot owner, unless an approved Builder, may construct a residence on the lot. Declarant reserves this right of prior approval because Sutherland is a planned community of high aesthetic and construction quality, with which the NTS name and reputation, and the name and reputation of Declarant and that of its affiliated and related entities, shall continue to be associated and identified, and further in an attempt to ensure (i) the maintenance of a high quality of construction within Sutherland, (ii) that the economic value of other lots and structures within Sutherland will not be impaired by the construction of residential structures not of the same or comparable quality as now exist in Sutherland, (iii) the maintenance of the existing high aesthetic quality of Sutherland, and (iv) a uniform subdivision, development, improvement and marketing program for Sutherland. **Nothing contained in this Section 2 or otherwise within this Declaration shall constitute or be deemed to be a representation or warranty by Declarant with regard to any matter whatsoever pertaining to any Builder, or of the value or quality of any lot, or any residence or other structure or improvement constructed thereon or otherwise within Sutherland.**

(d) Architectural Standards. Declarant reserves the right to issue and modify from time to time architectural and other standards and design guidelines as a part of the Design Guidelines to assist lot owners in their initial design efforts prior to submitting plans and

thereto, between the residence on the lot and the pavement of any abutting roadways, and each lot owner shall thereafter maintain (and replace, as necessary) all of the same in good health and in a neat, attractive and well-kept condition satisfactory to Declarant. Declarant in its sole discretion may lengthen or shorten the foregoing sixth (60) day period in consideration of weather conditions.

(b) Sidewalk. Each lot owner shall cause a concrete (or other material approved by Declarant in its sole discretion) sidewalk to be constructed on the lot at the location approved by Declarant and otherwise in accordance with all applicable governmental requirements, including, without limitation, curb cuts and extensions to the paved street(s) adjacent to the lot, as applicable, and, including on any right-of-way adjacent to such lot, as applicable, within one year from the date construction of a residence on 80% of the lots in the Phase which includes such lot has begun, as determined by Declarant, whether or not the lot owner has begun construction on that particular lot. Such sidewalk shall thereafter be maintained in good repair and condition by the lot owner, regardless of whether the sidewalk is located on the lot or within a right-of-way and/or easement adjacent to the lot. Any area labeled on a Plat as a "sidewalk easement" or "pedestrian access easement" shall be deemed to reserve in favor of the Declarant, its successors and assigns, and the Community Association, its successors and assigns, a perpetual pedestrian access easement over and through such area, and such area shall be deemed to be "Common Area" under this Declaration, subject to the maintenance of any sidewalk thereon by the lot owner as contemplated by this Section 6(b). Notwithstanding the foregoing, Declarant may elect to construct, or to cause the construction of, such sidewalks on such lots, at each lot owner's respective expense, and to invoice each lot owner for the cost thereof (which may include an overhead factor of 15%). Each lot owner shall pay the cost so invoiced within thirty (30) days after the issuance of such invoices by Declarant, and the costs as evidenced by such invoices shall constitute a charge upon the lots, shall bear interest at the Reimbursement Rate after the due date thereof, and Declarant shall have a lien on each such lot to secure the payment thereof, as well as all costs and expenses incurred in collecting or attempting to collect the same (including reasonable attorneys' fees and court costs), of equal priority with the lien for assessments provided for in Article IV of this Declaration.

(c) Driveway. Each lot owner shall concrete, brick or asphalt, or otherwise finish in a material or materials approved by Declarant, and thereafter maintain in good repair and condition, the driveway from the abutting street to the lot within thirty (30) days after substantial completion of a residence on such lot, as determined by Declarant; provided, however, that portion of the driveway from the pavement of any abutting street to the sidewalk shall be concrete and shall be constructed and maintained in good repair and condition by the lot owner, regardless of whether located on the lot or within a right-of-way and/or easement adjacent to the lot.

(d) Trees. Each lot owner shall cause to be planted on the lot such trees as shall be required and otherwise approved pursuant to Section 1 of this Article III. No tree shall be removed from any lot subsequent to the implementation of the approved initial lot grading plan for such lot without the prior written approval of Declarant in its sole discretion.

(e) Default. Upon a lot owner's failure to comply with the provisions of this Section 6, Declarant may take or cause to be taken such action as may be necessary in Declarant's opinion to cause compliance therewith, without liability of Declarant, or any of its successors, assigns, officers, employees, stockholders, agents, servants or contractors, or affiliates or related entities (collectively, the "NTS Group"), to the lot owner or others for trespass or otherwise, and the lot owner shall immediately, upon demand, reimburse Declarant or other performing party for all expenses incurred in so doing, together with interest at the Reimbursement Rate, and Declarant shall have a lien on that lot and the improvements thereon

to secure the repayment of such amounts, which lien shall be of equal priority as the lien for assessments provided for in Article IV of this Declaration.

Section 7. Mail and Paper Boxes. Each lot owner is advised that Declarant shall require that a uniform mail box and paper holder (with uniform letters and numbers) be purchased directly from Declarant, a related entity, or a specified third party vendor, in order to ensure uniform use and appearance throughout Sutherland. No other mail boxes or paper holders, whether temporary or otherwise, shall be permitted on any lot.

Section 8. Docks and Other Structures. No dock, walkway, gazebo or other structure may be constructed in, projected into, or floated upon, any lake, pond or other body of water within or adjacent to Sutherland without the prior written approval of Declarant in its sole discretion.

Section 9. Design Guidelines. Notwithstanding anything to the contrary in this Declaration, Declarant reserves the right to reject any plans that do not comply with such architectural and other standards set forth in the Design Guidelines, as the same may be issued from time to time by Declarant.

24. Section 2, Article IV. Section 2, Article IV of the Declaration entitled "Lot Owners' Easements of Enjoyment" is hereby amended and restated in its entirety as follows:

Section 2. Easements of Enjoyment.

(a) Common Area.

(i) Every lot owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass with the title to every lot, subject to the easements and other reservations set forth in this Declaration. Further, Declarant, and its successors and assigns, shall have a superior right and easement in gross for ingress, egress and access on and over, and use of, the common area for so long as Declarant, its successors or assigns owns any lot or any portion of the property subject to this or another declaration of covenants, conditions and restrictions applicable to Sutherland. The term "common area" as used in this Declaration means and refers to all of the following, and all facilities and amenities thereon designated by Declarant as a part of the "common area":

(1) All non-residential lots and areas which are shown on any Plat, unless expressly excluded on such Plat or otherwise designated or excluded as contemplated below;

(2) All areas shown and designated on any Plat, or on any other subdivision plat for any portion of the property subject to this Declaration filed by Declarant in the aforesaid Clerk's Office, as "common area," "common area," "open space" or the like, or as otherwise subject to the control and/or jurisdiction of the Community Association;

(3) All areas encumbered by easements reserved in favor of the Community Association on any Plat, in any Supplementary Declaration or otherwise on any other subdivision plat for, or any easement, leasehold or license in favor of the Community Association applicable to, any portion of the property subject to this Declaration, or any other real property, filed by

Declarant or with the express written consent of Declarant in the aforesaid Clerk's Office, subject to the terms thereof;

(4) All roads, streets and public rights-of-way on portions of the property subject to this Declaration, and all other streets, roads and public rights-of-way within Sutherland designated by Declarant or the Community Association, regardless of whether any of the same are dedicated to public use, and all street lights thereon, until such time as the same are accepted for maintenance by an applicable governmental authority to the satisfaction of Declarant and are relinquished by the Community Association;

(5) All areas designated in any Supplementary Declaration or on any Plat as a part of the "common area" or as "sidewalk and/or landscape" easements; and

(6) Such other areas of the property subject to this Declaration, and facilities thereon, as Declarant shall designate from time to time as a part of the "common area."

(ii) Any entranceways, gate houses, signature entrances, and other similar structures, and attendant lighting fixtures and landscaping, to or within Sutherland, and landscaped medians, although constructed and/or located in areas intended for or dedicated to public use, are also part of the common area subject to maintenance by the Community Association; provided, that any areas labeled on a Plat as a "Variable Easement for Installation and Maintenance of Entrance and Plantings" shall be deemed a perpetual easement reserved for such purposes, and for the lighting thereof and the construction of walls and signs thereon, in favor of Declarant, its successors and assigns.

(iii) Declarant and its successors and assigns, shall have the unfettered and unencumbered right to from time to time convey all or any portion of the common area and any of the facilities and amenities located thereon, in the then existing condition thereof, to the Community Association, as may be determined by Declarant in its sole discretion, and which conveyances the Community Association shall be obligated and hereby agrees to accept. Any such portion or portions of the common area to be conveyed in fee shall be conveyed by quit claim deed from Declarant to the Community Association, and any such portion or portions of the common area so conveyed shall be quitclaimed free and clear of all liens except for the lien of ad valorem taxes not yet due and payable and for such liens as are contemplated by this Declaration, and subject to all other matters of record.

(b) Reservations. The rights and easements of enjoyment granted pursuant to Section 2(a) above, and the provisions of Article II above, are further subject to the following:

(i) The right of the Community Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facilities and other amenities situated upon the common area and to adopt rules and regulations with regard to the use of the common area. The Board of Directors of the Community Association (the "Board") may, as part of the operation of such facilities and amenities, permit nonresidents of Sutherland to use such facilities and amenities for an annual fee, or permit the occasional use thereof by nonresidents of Sutherland on a fee basis, in each

case determined by the Board and payable to the Community Association. Such users shall not be members of the Community Association.

(ii) The right of the Community Association to borrow money for the purpose of improving the common area, or for constructing, repairing or improving any facilities and/or amenities located or to be located thereon, and to give as security for the payment thereof, a mortgage encumbering all or any part of the common area.

(iii) The right of the Community Association to suspend the voting rights and the right to use the recreational facilities and other common area amenities by a lot owner for any period during which a violation of this Declaration by such lot owner or a resident of such lot exists, or any assessments or liens against the lot owner's lot or other sums due to the Community Association by such lot owner, remain unpaid, and for a period of time for any infraction of this Declaration and/or the rules and regulations of the Community Association.

(iv) The right of the Community Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board, and to grant permits and licenses as well as easements for access, utilities, drainage, water facilities and other matters, in, on, over, across or under the common area, as may be deemed necessary or useful by the Board. Declarant may dedicate access, utility, drainage, water facility, service and other easements, rights and licenses on or over the common area, and any recreational facilities and other amenities thereon, owned by the Community Association at Declarant's sole discretion for so long as Declarant, its successors or assigns, owns any lot or any portion of the property subject to this Declaration or another similar declaration of covenants, conditions and restrictions applicable to Sutherland ("Additional Declaration").

(v) An easement in gross on and over the common area in favor of Declarant, its successors and assigns, for so long as Declarant, its successors or assigns, owns any lot or portion of the property subject to this Declaration or an Additional Declaration. Declarant, its successors and assigns, shall have the specific right to hold and/or sponsor home shows, such as Homerama, within Sutherland and to temporarily restrict portions of the common area and any facilities thereon from general use for duration of such shows, including the temporary closing of any streets and roads not accepted for public maintenance, and other streets and roads as may be permitted under applicable law. All rights and easements reserved to Declarant under or pursuant to this Declaration shall be superior to all other rights and easements otherwise granted to others under this Declaration.

(vi) Declarant shall be entitled to modify, restrict, and/or confirm any of the foregoing rights and easements provided for in this Section 2(b), and/or to grant additional rights and easements on or over the common area in favor of Declarant, its successors and assigns, by separate written instrument executed by Declarant and hereinafter recorded in the aforesaid Clerk's Office.

(c) Construction Mortgages. Declarant may from time to time construct certain recreational facilities and/or amenities on portions of the common area owned or to be owned

by the Community Association, and, in order to finance this construction and the development of Sutherland in general, Declarant shall have the right to subject all or any portion of the common area and any improvements thereon to the lien of a mortgage on terms acceptable to Declarant in its sole discretion.

25. **Section 4, Article IV.** Section 4, Article IV of the Declaration entitled "Community Association's Right of Entry" is hereby amended and restated in its entirety as follows:

Section 4. Right of Entry. The officers, employees, agents and authorized representatives of Declarant, the Community Association and the Board shall be entitled to reasonable access to the individual lots as may be required (a) in connection with the preservation of property on an individual lot or in the event of an emergency or in connection with the maintenance of, repairs or replacements within the common area, of any equipment, facilities or fixtures affecting or serving other lots and/or the common area, or to make any alteration required by any governmental authority, and (b) in connection with and reasonably related to the exercise and performance by Declarant, the Community Association or the Board of their respective rights and responsibilities pursuant to this Declaration, including, without limitation, the right of access to each lot at reasonable times and intervals and in a manner which does not unreasonably interfere with the use thereof to inspect the lot for purpose of verifying conformance with this Declaration, whether in connection with the construction of improvements thereon in accordance with Article III of this Declaration, or otherwise.

26. **Section 5, Article IV.** Section 5, Article IV of the Declaration entitled "Assessments; Creation of the Lien and Personal Obligation" is hereby amended and restated in its entirety as follows:

Section 5. Assessments; Lien and Personal Obligation.

(a) **Payment.** Each lot owner, except Declarant, by acceptance of a deed for the lot, whether or not it shall be so expressed in such deed, covenants and agrees to observe and conform to, and to cause the residents of the lot to observe and conform to, the provisions of this Declaration, and such lot owner further covenants and agrees, and incurs an obligation, to pay to the Community Association, except as otherwise provided in this Declaration, (i) annual assessments or charges, and (ii) special assessments, such assessments to be established and collected as provided in this Article IV. At the sole discretion and direction of Declarant or the Board, however, the Community Association shall not levy any assessment against any lot conveyed to a Builder (other than assessments with respect to such Builder's personal residence) until the first anniversary of such conveyance or the conveyance of the lot by the Builder, whichever first occurs, or until such other time as Declarant or the Board may elect. Declarant shall be responsible for the maintenance costs of the Community Association with respect to the Property, incurred over and above assessed amounts payable to the Community Association by the lot owners until Declarant transfers control of the Community Association and the Class B membership therein ceases, and Declarant shall be entitled to recoup any such accumulated funded deficit of the Community Association, now or hereafter existing, and whether funded in cash or in kind, from any excess or surplus funds generated prior to such transfer of control.

(b) **Charge and Lien.** The annual assessments and special assessments, together with interest thereon at the Reimbursement Rate, or such other rate of interest as shall be from time to time be determined by the Board not in excess of the maximum rate permitted by applicable law, and costs of collection and reasonable attorneys' fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person or entity which was the lot owner of such lot at the time when the assessment fell due, and the personal obligation for delinquent assessments

shall pass jointly and severally on to such lot owner's successors in title, regardless of whether expressly assumed by such successors, and such delinquent assessments shall remain a charge on and continuing lien against the lot, which may be foreclosed by the Community Association.

27. **Section 10, Article IV.** Section 10, Article IV of the Declaration entitled "Date of Commencement of Annual Assessments; Due Dates" is hereby amended and restated in its entirety as follows:

Section 10. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for in this Declaration shall begin as to any lot at the time the lot is initially conveyed by Declarant, its successors and assigns, to a person or entity other than any of the affiliated or related entities of Declarant, as determined by Declarant, unless otherwise provided in the Deed for such lot. The first annual assessment for a lot shall be adjusted according to the number of months remaining in the assessment year when the lot is so first conveyed.

28. **Section 11, Article IV.** Section 11, Article IV of the Declaration entitled "Effect of Nonpayment of Assessments; Remedies of the Community Association" is hereby amended and restated in its entirety as follows:

Section 11. Effect of Nonpayment of Assessments; Remedies of the Community Association. Any annual assessment or special assessment not paid by the due date thereof shall bear interest from the due date at the Reimbursement Rate. The Community Association may bring an action against the lot owner(s) and/or persons personally obligated to pay such assessment, and/or may foreclose the lien against the lot, and such interest, and costs and reasonable attorneys' fees of such action and/or foreclosure shall be added to the amount of such assessments. No lot owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of the lot, or by claim of set-off.

29. **Section 12, Article IV.** Section 12, Article IV of the Declaration entitled "Subordination of the Lien to Mortgages" is hereby amended and restated in its entirety as follows:

Section 12. Subordination of Assessment Lien to First Mortgage. Annual assessments and special assessments under this Declaration shall constitute a charge upon each lot, and the lien of such assessments shall be subordinate to the lien of any first mortgage encumbering a lot in favor of a bona fide institutional lender, which mortgage encumbered the lot prior to the due dates of any such assessments. Sale or transfer of any lot shall not affect the assessment lien or other liens provided for in this Declaration.

30. **Section 15, Article IV.** A new Section 15, Article IV entitled "Lot Owner's Negligence" is hereby added to the Declaration to read as follows:

Section 15. Lot Owner's Negligence. In the event that the need for maintenance, repair, or replacement of the common area, or any portion thereof, is caused through or by the negligent or willful act or omission of any lot owner, or by any member of a lot owner's family, or by a lot owner's tenants, guests or invitees, then the expenses, costs and fees incurred by the Community Association for such maintenance, repair, or replacement, in the amount for which the lot owner or the lot owner's family members, tenants, guests, or invitees are liable under Kentucky law, shall be a personal obligation of such lot owner and shall constitute a charge upon and lien against the lot owner's lot of equal priority to the lien for assessments provided for in this Article IV, and, if not repaid to the Community Association within thirty (30) days after the Community Association gives notice to the lot owner of the total amount or amounts due from time to time, such lien may be enforced in accordance with applicable law.

31. **Section 16, Article IV.** A new Section 16, Article IV entitled "Recorded Easements" is hereby added to the Declaration to read as follows:

Section 16. Recorded Easements. The common area, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the common area, or any portion thereof, and to any other easements of record, which shall include without limitation, use for construction, installation and repair of utilities, maintenance, encroachment, drainage, and ingress and egress as of the date of recordation hereof.

32. **Section 1, Article V.** Section 1, Article V of the Declaration entitled "Enforcement" is hereby amended and restated in its entirety as follows:

Section 1. Enforcement.

(a) **Parties.** Enforcement of these restrictions shall be by proceeding at law and/or in equity, brought by Declarant and/or the Community Association, or in the absence of any such action, by any lot owner (although Declarant and/or the Community Association shall at all times have the superior right to bring and/or assume and control the course of, as applicable, any such proceeding) against any party violating or attempting to violate any covenant or restriction or other provision of this Declaration, either to restrain violation, to direct restoration and/or to recover damages. Failure of any lot owner, Declarant or the Community Association to demand or insist upon observance of any of the provisions of this Declaration, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or of the right to seek enforcement of that provision in that or any other case. Any such lot owner, Declarant and/or the Community Association enforcing this Declaration shall be entitled to recover all costs and expenses incurred in connection with such action, including, without limitation, court costs and reasonable attorney's fees. Any award of damages received by Declarant or the Community Association in connection with any such action, and all costs and expenses incurred by Declarant or the Community Association in connection therewith, shall constitute a lien upon the lot, of equal priority to the lien for assessments provided for in Article IV, and any award of damages received by any lot owner in connection with any such action shall accrue and inure to the sole benefit of and shall be paid to the Community Association.

(b) **Liens.** All liens created and/or imposed against any lot pursuant to the provisions of this Declaration may be enforced in accordance with the applicable provisions of Kentucky law, including the judicial foreclosure thereof and sale of the lot encumbered thereby, with the lot owner and any other persons responsible therefor remaining liable for any deficiency.

33. **Section 3, Article V.** Section 3, Article V of the Declaration is hereby amended to delete the term "Springhurst" where the same appears and to substitute therefor the term "Sutherland". Further the following additional paragraphs are hereby added to Section 3, Article V to read as follows:

Notwithstanding any other provision of this Declaration, no cancellation, alteration or amendment of this Declaration shall in any event (i) affect or impair the rights, privileges or easements granted pursuant to this Declaration in favor of Declarant, its successors and assigns, LG&E and S.C. Bell or any other person or entity other than the lot owners, without the express written consent of the foregoing entities and such other persons and entities benefitted thereby, or (ii) change the method of assessment or the obligations or duties of the Community Association without the prior written consent of Declarant in its sole discretion.

Until the Declarant, its successors and assigns, conveys all lots and all Phases of Sutherland, and for so long as any portion of the property subject to this Declaration or an

Additional Declaration remains unplatted as Phases by Declarant, or until Declarant shall otherwise declare, each lot owner, by the acceptance for a deed for such lot, does automatically and irrevocably appoint the Declarant as the attorney-in-fact and proxy for such lot owner, in the name and stead of such lot owner, (i) to act for such lot owner in executing any document or taking any action to amend this Declaration and/or the Articles or Bylaws of the Community Association, as applicable, and (ii) to otherwise exclusively exercise all rights of such lot owner to vote as a member of the Community Association on all matters coming before the members of the Community Association, and to cast such vote as Declarant sees fit in its sole discretion. All actions so taken by the Declarant as such attorney-in-fact and proxy shall be fully binding upon the lot owner as if taken by the lot owner in its, his or her own name without acting through an attorney-in-fact and proxy. Such irrevocable appointment of Declarant as attorney-in-fact and proxy for each such lot owner is a power coupled with an interest.

34. **Section 7, Article V.** A new Section 7, Article V entitled "Notices" is hereby added to the Declaration to read as follows:

Section 7. Notices. Upon purchase of any lot, the purchaser thereof shall notify Declarant and the Community Association in writing, sent to the address of Declarant set forth above (or to such other address or to such other entity as shall be designated by Declarant and/or the Community Association, whether by notice to lot owners or by the filing of a statement and/or declaration in the aforesaid Clerk's Office), of such purchase and shall set forth in writing the then existing address of such purchaser and the lot purchased. Any notice required to be sent to any lot owner pursuant to the provisions of this Declaration shall be deemed to have been properly given upon personal delivery, or when mailed, by ordinary mail, post-paid, to the last known address of the person or entity which appears as the lot owner on the records of Declarant or of the Community Association at the time of such mailing, or as specified on the deed of the lot to such lot owner.

35. **Section 8, Article V.** A new Section 8, Article V entitled "Captions and Headings" is hereby added to the Declaration to read as follows:

Section 8. Captions and Headings. All captions and headings used in this Declaration are for convenience of reference only and shall not affect the interpretation of the provisions hereof.

36. **Section 9, Article V.** A new Section 9, Article V entitled "Additional Rights of Declarant" is hereby added to the Declaration to read as follows:

Section 9. Additional Rights of Declarant. Notwithstanding any provisions contained in this Declaration to the contrary, so long as Declarant owns any lots or other portions of the property subject to this Declaration or an Additional Declaration, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the common area and facilities thereon, such activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction, development, improvement and marketing of lots within Sutherland, including, without limitation, business offices, signs and sales offices, and Declarant shall have an easement for access to such facilities. The right to maintain and carry on such activities shall include specifically the right to use any clubhouse, community center or similar facility which may be owned by the Community Association or otherwise be located on the common area for such purposes. Further, no person or entity shall be entitled to use the words "Sutherland", "Sutherland Subdivision" or "Sutherland Community Association," or any derivative of any of the foregoing, or logos used in connection therewith, in any printed, radio or television advertisements or programming, or other promotional materials, without the prior written consent of Declarant in its sole discretion; provided, however, that lot owners may use the terms "Sutherland", "Sutherland Subdivision" and the like

in printed or promotional matter where such term is used solely to specify that particular property is located within Sutherland.

37. **Section 10, Article V.** A new Section 10, Article V entitled "Reservation of Easement" is hereby added to the Declaration to read as follows:

Section 10. Reservation of Easement. Declarant hereby reserves, grants and conveys unto itself, its successors and assigns, a perpetual easement five (5) feet in width within and along the boundaries of each lot, plus rights of ingress and egress and access on and over each lot to such easement, for utility services, access, drainage, construction, grading, and fill, and such other use as Declarant shall determine in its reasonable discretion, which easement is reserved, granted and conveyed for the benefit of Declarant, its successors and assigns, and of any lot or other portion of Sutherland, and other persons or entities, selected by Declarant in its sole discretion; provided, that sidewalks, driveways and other structures approved pursuant to Article III above, and utilities to serve such lot, shall be permitted to cross such easement.

38. **Section 11, Article V.** A new Section 11, Article V entitled "Declarant's Rights to Complete Development: is hereby added to the Declaration to read as follows:

Section 11. Declarant's Rights to Complete Development. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, sale and leasing of lots developed from within Sutherland; to construct or alter improvements on any real property owned by Declarant, its successors and assigns, or any of their affiliated entities as determined by Declarant, within the boundaries of the property; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant, its successors and assigns, or owned by the Community Association within the boundaries of the property subject hereto or to an Additional Declaration; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of such property. Nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approval for any matters whatsoever, including, without limitation, to: (a) excavate, cut, full or grade any property owned by Declarant, its successors and assigns, or to construct, alter, remodel, demolish or replace an improvements on any portion of the common area or any property owned by Declarant, its successors and assigns; or (b) use any structure on any portion of the common area or any property owned by Declarant, its successors and assigns, as a construction, model home or real estate sales or leasing office. Nothing in this Section 11 shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration, and Declarant shall be generally exempt from the application of the covenants, conditions and restrictions imposed by this Declaration except as it may from time to time elect in writing in its sole discretion.

39. **Section 12, Article V.** A new Section 12, Article V entitled "Declarant's Approval of Conveyances or Changes in Use of Common Area" is hereby added to the Declaration to read as follows:

Section 12. Declarant's Approval of Conveyances or Changes in Use of Common Area. The Community Association shall not, without first obtaining the prior written consent of Declarant, convey, mortgage, change or alter the use of the Common Area.

40. **Section 13, Article V.** A new Section 13; Article V entitled "Reservation of Additional Easements, Exceptions and Exclusions" is hereby added to the Declaration to read as follows:

Section 13. Reservation of Additional Easements, Exceptions and Exclusions. Declarant reserves to itself and hereby grants to the Community Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the common area for purposes including but not limited to streets,

paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions consistent with the ownership of Sutherland for the best interest of the lot owners and the Community Association, in order to serve the lot owners within Sutherland as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant, as long as it does not unduly hamper the enjoyment of Sutherland, as built or expanded, by the lot owners.

41. **Section 14, Article V.** A new Section 14, Article V entitled "Drainage Easement" is hereby added to the Declaration to read as follows:

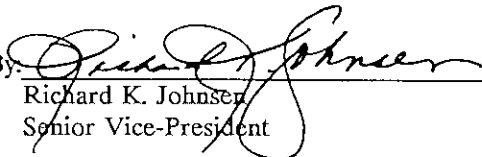
Section 14. Drainage Easement. An easement is hereby reserved to the Declarant and granted to the Community Association, and their respective officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under all lots and any portion of the common area for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the common area so as to improve the drainage of water on the common area. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the lot owners of their lots, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board prior to undertaking such drainage work, which approval shall not be unreasonably withheld, delayed or conditioned.

42. **Joinder.** The Sutherland Community Association, Inc. joins herein for purposes of acknowledging, consenting and agreeing to the terms and provisions of this Amendment.

43. **Reaffirmation.** Except as expressly modified hereby, the Declaration shall remain in full force and effect as written.

WITNESS, the signatures of the undersigned as of the day, month and year first above written.

NTS/SUTHERLAND, INC., a Kentucky corporation
f/k/a STM/Sutherland, Inc.

By: 
Richard K. Johnson
Senior Vice-President

