

MASTER DOCUMENTS  
FOR  
PALOMAR HILLS

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
PALOMAR HILLS

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**INDEX**

1. Declaration of Covenants, Conditions, and Restrictions for Palomar Hills
2. Subsequent Amendment to the Declaration of Covenants, Conditions and Restrictions for Palomar Hills
3. Articles of Incorporation of Palomar Hills Community Association, Inc.
4. Subsequent Amendment to the Declaration of Covenants, Conditions and Restrictions for Palomar Hills

- TABLE OF CONTENTS -

	<u>Page</u>
I. DEFINITIONS	2
1. Area of Common Responsibility .....	2
2. Association; Board of Directors; Board.....	2
3. By-Laws .....	2
4. Class "B" Control Period .....	2
5. Common Area .....	2
6. Common Expenses .....	2
7. Community-Wide Standard .....	3
8. Declarant .....	3
9. District .....	3
10. General Assessment.....	3
11. Limited Common Area .....	3
12. Master Land Use Plan .....	3
13. Member .....	4
14. Mortgage.....	4
15. Mortgagee.....	4
16. Mortgagor .....	4
17. Neighborhood .....	4
18. Neighborhood Assessments .....	4
19. Owner.....	5
20. Person .....	5
21. Properties.....	5
22. Special Assessment .....	5
23. Subsequent Amendment .....	5
24. Unit.....	5
25. Voting Member .....	6
II. PROPERTY RIGHTS.....	6
III. MEMBERSHIP AND VOTING RIGHTS .....	6
1. Membership.....	6
2. Voting.....	7
3. Neighborhoods and Electoral Districts .....	8
IV. MAINTENANCE .....	10
1. Association's Responsibility .....	10
2. Owner's Responsibility.....	10
3. Neighborhood's Responsibility .....	11
V. INSURANCE AND CASUALTY LOSSES.....	11
1. Insurance.....	11
2. Individual Insurance.....	15
3. Disbursement of Proceeds.....	15
4. Damage and Destruction .....	16
5. Repair and Reconstruction .....	16

VI.	NO PARTITION.....	17
VII.	CONDEMNATION .....	17
VIII.	ANNEXATION OF ADDITIONAL PROPERTY .....	18
	1. Annexation Without Approval of Class "A" Membership.....	18
	2. Annexation With Approval of Class "A" Membership .....	18
	3. Acquisition of Additional Common Area .....	19
	4. Amendment .....	19
IX.	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION .....	19
	1. Common Area .....	19
	2. Personal Property and Real Property for Common Use.....	19
	3. Rules and Regulations.....	20
	4. Implied Rights .....	20
	5. Powers of the Association with Respect to Neighborhoods .....	20
	6. Special Services .....	21
X.	ASSESSMENTS .....	21
	1. Creation of Assessments.....	21
	2. Computation of Assessment.....	23
	3. Special Assessments .....	23
	4. Lien for Assessments.....	24
	5. Capital Budget and Contribution .....	24
	6. Date of Commencement of Assessments.....	25
	7. Subordination of the Lien to First Mortgages.....	25
	8. Capitalization of Association.....	25
	9. Exempt Property .....	25
XI.	ARCHITECTURAL STANDARDS.....	26
	1. New Construction Committee .....	26
	2. Modifications Committee .....	27
	3. No Waiver of Future Approvals .....	27
	4. Variance .....	28
XII.	USE RESTRICTIONS .....	28
	1. Signs .....	28
	2. Parking and Garages .....	29
	3. Occupants Bound.....	29
	4. Animals and Pets.....	29
	5. Nuisance.....	29
	6. Unsightly or Unkempt Conditions.....	30
	7. Antennas .....	30

8. Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc .....	30
9. Subdivision of Unit .....	30
10. Guns .....	30
11. Pools.....	30
12. Irrigation.....	31
13. Tents, Trailers and Temporary Structures .....	31
14. Drainage .....	31
15. Tree Removal .....	31
16. Site Distance at Intersections .....	31
17. Utility Lines.....	31
18. Air Conditioning Units .....	31
19. Lighting.....	31
20. Artificial Vegetation, Exterior Sculpture, and Similar Items .....	32
21. Energy Conservation Equipment .....	32
22. Mailboxes.....	32
23. Leases.....	32
24. Lakes.....	33
25. Playground .....	33
26. Fences .....	33
27. Business Use.....	33
XIII. GENERAL PROVISIONS .....	34
1. Term .....	34
2. Amendment .....	34
3. 3 . Indemnification .....	34
4. Easements of Encroachment .....	35
5. Easements for Utilities, Etc .....	35
6. Easement for Access to Adjacent Property .....	36
7. Severability.....	36
8. Right of Entry .....	36
9. 9 . Perpetuities .....	37
10. Litigation .....	37
11. Use of the Words "Palomar Hills" .....	37
12. Security .....	37
XIV. MORTGAGEE PROVISIONS .....	38
1. Notices of Action.....	38
2. Special FHLMC Provision.....	39
3. No Priority.....	40
4. Notice to Association .....	40
5. Amendment by Board.....	40
6. Applicability of Article XIV.....	40
7. Failure of Mortgagee to Respond.....	40
XV. DECLARANT'S RIGHTS .....	40

- TABLE OF EXHIBITS -

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Appearing</u>
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	3
"C"	By-Laws of Palomar Hills Community Association, Inc.	2

1124g

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

PALOMAR HILLS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this day of \_\_\_\_\_, 19\_\_\_\_\_, by Palomar Hills Development Company, a Kentucky general partnership (hereinafter referred to as "Declarant") and South Elkhorn Development Company, a Kentucky general partnership (hereinafter referred to as "Undersigned Owner");

W I T N E S S E T H

WHEREAS, Declarant and the Undersigned Owner each own a portion of the real property described in Exhibit "A" attached hereto and incorporated herein by reference and intend by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Properties. Declarant and the Undersigned Owners desire to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration;

NOW, THEREFORE, Declarant and the Undersigned Owners hereby declare that all of the property described in Exhibit "A" and any additional property as is hereafter subjected to this Declaration by Subsequent Amendment (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the Kentucky Horizontal Property Law, Kentucky Revised Statutes, Section 381.805, et seq.



Article I  
Definitions

The terms in this Declaration and the By-Laws shall be construed to have their ordinary, generally accepted meanings unless otherwise specifically defined herein or in the By-Laws. In addition, the following definitions shall apply:

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration or by contract with any Person or by agreement with any Neighborhood become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, may be part of the Area of Common Responsibility.

Section 2. "Association" shall mean and refer to the Palomar Hills Community Association, Inc., a Kentucky nonprofit corporation, its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Kentucky corporate law. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 3. "By-Laws" shall mean and refer to the By-Laws of Palomar Hills Community Association, Inc., attached hereto as Exhibit "C" and incorporated herein by reference, as they may be amended from time to time.

Section 4. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" member is entitled to appoint a majority of the members of the Board of Directors, as specified in Article III, Section 2, of the By-Laws.

Section 5. "Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of the Owners. The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchaser.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, both for general and Neighborhood purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 7. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined and set forth by the Board of Directors and the New Construction Committee.

Section 8. "Declarant" shall mean and refer to Palomar Hills Development Company, a Kentucky general partnership, or its successors, successors-in-title or assigns who take title to any portion of the undeveloped or unsold property described on Exhibits "A" or "B" for the purpose of development or sale and who are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 9. "District" shall mean a group comprised of one or more housing types and representing a political unit for the purpose of electing directors, as more particularly described in Article III, Section 3(b), of this Declaration.

Section 10. "General Assessment" shall mean and refer to assessments levied to fund expenses for the benefit of all Members of the Association.

Section 11. "Limited Common Area" shall mean and refer to certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Limited Common Areas shall be assessed against the Owners of Units in only those Neighborhoods which are benefited thereby as a Neighborhood Assessment, as defined herein. By way of illustration and not limitation, Limited Common Areas may include recreational facilities intended for the exclusive use of Owners within a particular Neighborhood or Neighborhoods and supported exclusively by Neighborhood Assessments. Initially, any Limited Common Areas shall be designated as such and assigned in the deed conveying the Common Area to the Association. A portion of the Common Area may be assigned as Limited Common Area of a particular Neighborhood and Limited Common Area may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes within the Neighborhood(s) to which they are assigned.

Section 12. "Master Land Use Plan" shall mean and refer to the preliminary development map or maps for the property described on Exhibits "A" and "B" most recently approved by the County of Fayette, Kentucky, as such map or maps may be amended from time to time.

Section 13. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 14. "Mortgage" shall mean and refer to a mortgage, deed of trust, deed to secure debt, or other security deed.

Section 15. "Mortgagee" shall mean and refer to a beneficiary or holder of a mortgage, deed of trust, deed to secure debt, or other security deed.

Section 16. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 17. "Neighborhood" shall mean and refer to each separately developed and designated residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association members, such as a common theme, entry features, development name, and/or common areas and facilities which are not available for use by all Association members. For example, and by way of illustration and not limitation, each condominium, townhome development, cluster home development, and single-family detached housing development shall constitute a separate Neighborhood. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Article III, Section 3) having jurisdiction over the property within the Neighborhood.

Section 18. "Neighborhood Assessments" shall mean assessments for common expenses provided for herein or by any Subsequent Amendment which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Units against which the specific Neighborhood Assessment is levied and of maintaining the properties within a particular Neighborhood, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

Any Neighborhood Assessment shall be levied equally against all Units in the Neighborhood benefiting from the services supported thereby, provided that in the event of assessments for exterior maintenance of structures, or insurance on structures, or replacement reserves which pertain

to particular structures or improvements (pursuant to a Subsequent Amendment or supplement to this Declaration), or other expenses incurred for the benefit of particular Units, such assessments may be levied on a pro rata basis among the benefited Units.

Section 19. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

Section 20. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 21. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property as is hereafter subjected to this Declaration by Subsequent Amendment.

Section 22. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3, of this" Declaration.

Section 23. "Subsequent Amendment" shall mean an amendment to this Declaration which subjects additional property to this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

Section 24. "Unit" shall mean a portion of the properties intended for development, use and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Subsequent Amendments covering all or a part of the Properties. The term shall include all portions of the lot owned including any structure thereon. In the case of a structure which contains multiple apartments, each apartment shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for such parcel on the Master Land Use Plan or the site plan approved by Declarant, whichever is most recent.

Section 25. "Voting Member" shall mean and refer to the representative selected by the Members of each Neighborhood to be responsible for casting all votes attributable to Units within the Neighborhood for election of directors, amending this Declaration or the By-Laws, and all other matters provided for in this Declaration and in the By-Laws. The voting Member from each Neighborhood shall be the senior elected officer (e.g., Neighborhood Committee chairman or Neighborhood Association president) from that Neighborhood; the alternate Voting Member shall be the next most senior officer.

#### Article II Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, approved lessees, and social invitees subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit pursuant to Article XII, Section 23, of this Declaration shall be deemed to have delegated all such rights to the Unit's lessee.

Declarant reserves the right to amend this Declaration unilaterally at any time during the Class "B" Control Period for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, without prior notice and without the consent of any Person other than the owner thereof, to the extent such property was included originally in error or as a result of any changes whatsoever in the plans for Palomar Hills desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Palomar Hills.

#### Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Section 19 of Article I, shall be deemed to have a membership in the Association. No Owner, whether one or more Persons,

shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof; provided, no Owner shall be entitled to a vote for any Unit until such time as the Unit is subject to the full annual assessment under Article X, Section 6 hereof. There shall be only one (1) vote per Unit. Unless otherwise specified in this Declaration or the By-Laws, the vote for each Unit shall be exercised by the Voting Member, as defined in Article I, representing the Neighborhood of which the Unit is a part.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one (1) Person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall be the Declarant. The rights of the Class "B" member, including the right to approve actions taken under this Declaration and the By Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" member shall be entitled to one (1) vote per Unit owned and, in addition, shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2 of the By-Laws. The Class "B" membership shall terminate and be converted to Class "A" membership five (5) years after the expiration of the Class "B" Control Period.

Section 3. Neighborhoods and Electoral Districts.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood as defined in Article I. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a separate owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Article V, Section 3, of the By-Laws, to represent the interests of Owners of Units in such Neighborhood. Each Neighborhood Association or Committee may, upon the affirmative vote, written consent, or a combination thereof of a majority of Owners within the Neighborhood, request that the Association provide a higher level of service or special services for the benefit of Units in the Neighborhood, the cost of which shall be assessed against the benefited Units pursuant to Article X. In addition, any Subsequent Amendment or declaration of covenants affecting the Property within a Neighborhood which is executed or consented to by Declarant may assign maintenance, insurance or other responsibilities to the Association, the cost of which shall be assessed as a Neighborhood Assessment. The senior elected officer of the Neighborhood Association or the Neighborhood Committee shall serve as the Voting Member for such Neighborhood and shall cast all votes attributable to Units in the Neighborhood on all Association matters requiring membership vote, unless otherwise specified in this Declaration or the By-Laws. The Voting Member may cast all votes as it, in its discretion, deems appropriate.

Initially, each portion of the Properties which is separately owned and intended for separate development at the time it is subjected to this Declaration shall constitute a Neighborhood. The developer of any such Neighborhood may apply to the Board of Directors to divide the parcel constituting the Neighborhood into more than one (1) Neighborhood at any time. Upon a petition signed by a majority of the Unit Owners in the Neighborhood, any Neighborhood Association or Neighborhood Committee may also apply to the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods. Any such application shall be in writing and shall include a plat of survey of the entire parcel which indicates the boundaries of the proposed Neighborhoods. The Neighborhood division requested by the Neighborhood or parcel developer shall automatically be granted unless the Board of Directors denies such application in writing within ten (10) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for

distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) Electoral Districts. In order to allocate representation on the Board of Directors among the various housing types and residential areas within the Properties and to ensure that no single group, by virtue of its size, is able to elect the entire Board of Directors and exclude representation of others, Districts shall be established for election of directors to the Board of Directors. Districts may be composed of one (1) or more Neighborhoods and need not be equal in population. A District may contain non-contiguous property, but to the extent practical it shall be composed of properties dedicated to similar uses. No District shall be comprised of less than fifteen (15%) percent of the total number of Units within the Properties. The number of Districts within the Properties shall not exceed the total number of directors authorized to serve on the Board of Directors pursuant to the By-Laws. The number of directors to be elected by and from each District shall be determined in accordance with Article III, Section 5, of the By-Laws.

Districts initially shall be established by the Declarant by filing in the Fayette County, Kentucky, land records an addendum to this Declaration designating by metes and bounds description or map all parcels of property contained within a specified District. As additional property is subjected to this Declaration pursuant to Article VIII hereof, such addendum may be amended by Declarant to change the composition of existing Districts or to establish new Districts to account for the additional property. After expiration of the Declarant's right to annex property pursuant to Article VIII hereof, the Board of Directors shall have the right to file or amend such addendum upon the vote of at least two-thirds (2/3) of the total number of Directors. Neither recordation nor amendment of such addendum shall constitute an amendment to this Declaration and shall not require the formality thereof. Until such time as an addendum is filed, all of the Properties shall constitute a single District. After an addendum is filed, any and all portions of the Properties which are not assigned to a specific District therein, until so assigned, shall constitute a single District.



Article IV  
Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon such areas, landscaping on medians and rights-of-way of all public roads, and landscaping of buffers around any public park within or adjacent to the Properties. Notwithstanding the obligation to maintain the Area of Common Responsibility, the Board of Directors may discontinue the operation of any fountain or similar aesthetic device within such Area of Common Responsibility if, in its sole discretion, the Board determines that doing so is in the best interest of the Association.

Notwithstanding that the Association may have responsibility for maintaining Limited Common Areas, all costs associated with maintenance, repair and replacement of Limited Common Areas shall be assessed solely against the Units in the Neighborhood(s) benefitting therefrom as a Neighborhood Assessment pursuant to Article X, Section 1, of this Declaration.

The Association shall maintain, repair and replace any property within a Neighborhood for which such responsibility is specifically assigned to the Association by any Subsequent Amendment or additional declaration of covenants recorded in the Fayette County, Kentucky land records affecting any portion of the Properties, provided such Subsequent Amendment or additional declaration is executed by or consented to by Declarant. If any such instrument is not executed by Declarant, then Declarant's written consent shall be attached thereto and recorded in the land records. In addition, the Association may, in the discretion of its Board, assume the maintenance responsibilities of a Neighborhood Association set out in this Declaration or in any Subsequent Amendment or additional declaration subsequently recorded either by contract or agreement or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all

applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood Association pursuant to any additional declaration of covenants applicable to such Unit. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the Owner in accordance with Article X, Section 3 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Neighborhood's Responsibility. Each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain Common Areas and Limited Common Areas within or adjacent to such Neighborhood which primarily benefit the Owners of Units within the Neighborhood, including, without limitation, the costs of maintenance of any right-of-way and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association. The Board of Directors shall identify, prior to levying assessments for any fiscal year, which property shall be maintained at Neighborhood expense pursuant to this paragraph during such fiscal year; provided, to the greatest extent possible, all similarly situated Neighborhoods shall be treated the same.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to a declaration of covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional declaration, the Association may perform it and assess the costs against all Units within such Neighborhood Association as provided in Article X, Section 3 of this Declaration.

## Article V

### Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably

available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

Premiums for all insurance on the Common Area shall be common expenses of the Association and shall be included in the General Assessment, as defined in Article I, Section 10, and as more particularly described in Article X, Section 1. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

In addition to casualty insurance on the Common Area, the Association may, upon request of a Neighborhood Association or Committee, obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for one hundred (100%) percent of the replacement cost of all structures located on Units within the Neighborhood and/or common property of the Neighborhood Association, and charge the costs thereof to the Owners within the benefited Neighborhood as a Neighborhood Assessment, as defined in Article X hereof. Notwithstanding this authority, the Association shall not be obligated to provide insurance for any Neighborhood unless specifically assigned such responsibility in a Subsequent Amendment or additional declaration of covenants affecting such Neighborhood executed by Declarant or consented to by Declarant as evidenced by a written consent attached hereto and recorded in the Fayette County, Kentucky land records.

Insurance obtained on the properties within any Neighborhood, whether obtained by such Neighborhood or the Association, shall at a minimum comply with the applicable provisions of this Section 1, including the provisions of this Article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, as applicable.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for

all damage or injury caused by the negligence of the Association or any of its Members or agents. If reasonably available, the public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million (\$3,000,000.00) Dollar limit per occurrence, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit. If policies in such amounts are not reasonably available, then the Board shall obtain policies in the next highest amount which is reasonably available, but at least a One Million (\$1,000,000.00) Dollar combined single limit.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Kentucky which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Association and its members as their interests may appear; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one (1) or more qualified persons, at least one (1) of whom must be in the

real estate industry and familiar with construction in the Fayette County, Kentucky, area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests; .

(ii) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

(iii) that no policy may be cancelled, invalidated or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, directors' and officers' liability coverage, and, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon meeting the same requirements as set forth for insurance in Section 1 of this Article V, unless the Neighborhood Association or Committee for the Neighborhood in which the Unit is located or the Association carries such insurance. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration and the Owner shall pay any costs of any repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

A Neighborhood Association or Committee may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units subject to its jurisdiction and the standard for returning the Units to their natural state in the event the structures are not rebuilt or reconstructed.

Section 3. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in the applicable building code.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. Any damage or destruction to the common property of any Neighborhood Association shall be repaired or reconstructed unless the members holding at least seventy-five (75%) percent of the total vote of the Neighborhood Association whose common property is damaged shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association or the Neighborhood Association, as appropriate, within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive condition, consistent with the Community-Wide Standard.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area or to the common property of

a Neighborhood Association for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against all Owners on the same basis as provided for General Assessments, provided, if the damage or destruction involves the common property of a Neighborhood Association, only the Owners of Units in the affected Neighborhood Association shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

#### Article VI

##### No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

#### Article VII

##### Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least two-thirds (2/3) of the total Association vote and the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least seventy-five (75%) percent of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in



the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

#### Article VIII

##### Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or January 1, 1997, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof, whether in fee simple or leasehold, by filing in the public records of Fayette County, Kentucky, an amendment annexing such Properties. Such Subsequent Amendment to this Declaration shall not require the consent of members or Voting Members. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" attached hereto and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that shown on Exhibit "B", and following the expiration of the right in Section 1, the Properties shown on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing a majority of the Class "A" votes of the Association (other than those held

by Declarant) present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject in accordance with Section 1 of this Article. Annexation shall be accomplished by filing of record in the public records of Fayette County, Kentucky, a Subsequent Amendment with respect to the Properties being annexed. Any such Subsequent Amendment shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey or cause to be conveyed to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Amendment. This Article VIII shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B".

## Article IX

### Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the recreational facilities. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. In addition, the Association, through the Board, may, by contract or other agreement, enforce county ordinances or permit the County of Fayette to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Powers of the Association with Respect to Neighborhoods. The Association shall have the absolute power to veto any action taken or contemplated to be taken by any Neighborhood Association or Committee, and the Association shall have the absolute power to require specific action to be taken by any Neighborhood Association or Committee in connection with the obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Committee, may require that a proposed budget include certain items and that expenditures be made therefore, may veto or cancel any contract providing for maintenance, repair or replacement of the property governed by such Neighborhood Association or Committee and may otherwise require or veto any other action of the Neighborhood Association or Committee or any committee thereof as the Association deems appropriate from time to time.

Any action required by the Association in a written notice to be taken by a Neighborhood Association or Committee shall be taken within the time frame set by the Association in such written notice. If the Neighborhood Association or Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Committee and shall assess the Units contained within such Neighborhood for their prorata share of any expenses incurred by the Association under the circumstances (to cover the

Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association) in the manner provided in Article X, Section 3. Such assessments may be collected as a Special Assessment hereunder and shall be subject to all lien rights provided for herein.

Section 6. Special Services. The Association shall have the right to make available to Members special services, such as/ but not limited to, golf or tennis lessons, or other services, the cost of which is not included in the operating budget of the Association, and to charge user fees or other charges to cover the costs thereof to Members requesting such services.

## Article X

### Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Common Expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 6 of this Article. There shall be three (3) types of assessments: (1) General Assessments to fund expenses for the benefit of all Members of the Association; (2) Neighborhood Assessments for expenses benefiting only Units within a particular Neighborhood; and (3) Special Assessments as described in Section 3 below.

General Assessments shall be levied equally on all Units. Neighborhood Assessments shall be levied equally on all Units within the Neighborhood for whose benefit Common Expenses are incurred which benefit less than the Association as a whole. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate not to exceed eighteen (18%) percent or the highest rate allowed by Kentucky law as computed for the date the delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a

Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual General Assessment for delinquents. Unless the Board otherwise provides, the General Assessment shall be paid in monthly installments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the following shall apply: unless assessments have commenced, pursuant to Section 6 below, on all Units subject to this Declaration as of the first day of any fiscal year, the Declarant shall be obligated for the difference between the amount of assessments levied on all Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution

of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the common expenses.

Section 2. Computation of Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Voting Members, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general and Neighborhood expenses, if any. The General Assessment to be levied for the coming year against each Unit subject to assessment under Section 6 below shall be computed by dividing the total operating budget (excluding Neighborhood expenses) by the total number of Units shown on the Master Land Use Plan as of sixty (60) days before the end of the current fiscal year. The Board shall cause a copy of the budget and the amount of the General Assessments to be levied against each Unit for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the meeting by a vote of Voting Members or their alternates representing at least a majority of the total Class "A" vote in the Association, and the approval of the Class "B" member, so long as the Class "B" membership exists.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, such assessment shall have the affirmative vote or written consent of Voting Members or their alternates representing fifty-one (51%) percent of the Class "A" vote in the Association held by Members other than Declarant and the approval of the Class "B" member, so long as the Class "B" membership exists.

The Association may levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, which Special

Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the senior officer of the Neighborhood Association or Committee and an opportunity for a hearing.

Section 4. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) No right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and an opportunity for a hearing, the Board may temporarily suspend the voting rights of a Member who is in default in payment of any assessment.

Section 5. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution shall be fixed by the Board and included within

and distributed with the budget and assessment, as provided in Section 2 of this Article.

Section 6. Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Unit ninety (90) days after the date on which a building permit is issued for the Unit. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Section 7. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Kentucky law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title, its successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units, including such acquirer, its successors and assigns.

Section 8. Capitalization of Association. Upon acquisition of record title to a Unit by the first purchaser thereof other than the Declarant or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the amount of the annual General Assessment per Unit for that year as determined by the Board. This amount shall be deposited into the purchase and sales escrow and disbursed there from to the Association for use in meeting unforeseen expenditures, purchasing equipment deemed necessary or desirable, or otherwise covering operating expenses properly incurred by the Association. Such contributions shall not be considered an advance payment of regular assessments.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of General Assessments, Neighborhood Assessments, and Special Assessments:



- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks.

## Article XI

### Architectural Standards

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 1 and 2 of this Article XI. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any property subject to this Declaration or has an unexpired option to subject additional property to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the appropriate committee has been obtained.

Section 1. New Construction Committee. The New Construction Committee (NCC) shall have exclusive jurisdiction over all original construction on any portion of the Properties. The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines and application and review procedures, all as part of the Community Development Code and Land Use Standards ("CDC-LUS"). Copies shall be available from the New Construction Committee for review. The guidelines and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend the CDC-LUS. It shall make the CDC-LUS available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. Until one hundred (100%) percent of the Properties, computed on an area basis, have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of

Directors shall appoint the members of the NCC in the same manner as provided in Section 2 of this Article for the Modifications Committee.

Section 2. Modifications Committee. The Board of Directors may appoint a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the appropriate board or committee of any owners association subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with the CDC-LUS. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

Section 3. No Waiver of Future Approvals. The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The NCC may authorize variances from compliance with any of the provisions of the CDC-LUS when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

## Article XII

### Use Restrictions

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association) as may more particularly be set forth in this Declaration, amendments hereto or subsequently recorded declarations creating associations subject to this Declaration. The declaration or other creating document for any other association may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make, to modify, and to enforce standards and restrictions governing the use of Units and Common Area, including common property of any Neighborhood Association, in addition to those contained herein, and to impose reasonable user fees for facilities, including, but not limited to, vehicle storage areas, pathway systems, swimming pools, tennis courts, community center and parking facilities, if any. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by Voting Members representing a Majority of the total Class "A" votes in the Association and by the vote of the Class "B" member, so long as such membership shall exist.

the w **"PLEASE SEE AMENDED RESTRICTIONS TO ARTICLE XII: USE RESTRICTIONS LOCATED  
have **AT THE END OF THIS DOCUMENT, BOOK 1737 PAGE 402 THRU 409.****

Section 2. Parking and Garages. Vehicles shall be parked only in the garages or in the driveways serving the Units or appropriate spaces or designated areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations as the Board of Directors may adopt. All commercial vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers must be parked entirely within a garage or within the side yard or back yard of a unit totally screened from view unless otherwise permitted by the Board. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

Section 3. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Unit.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, kept, or permitted on any Unit, except that dogs, cats, or other usual and common household pets not to exceed a total of two (2) may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any property located adjacent to the Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person.

Section 5. Nuisance. No Unit shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Unit that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Unit. There shall not be maintained any plants or animals or device or thing of

any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

Section 7. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 8. Basketball Equipment. Clotheslines, Garbage Cans. Tanks. Etc. All basketball hoops and backboards, garbage cans, above-ground tanks, and other similar items shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. No clotheslines shall be permitted on any Unit.

Section 9. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns prior to conveyance by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 10. Guns. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 11. Pools. No above-ground pools shall be erected, constructed or installed on any Unit.

Section 12. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other waterways within the Properties shall be installed, constructed or operated within the Properties unless prior written approval has been received from the NCC. All sprinkler and irrigation systems shall be subject to approval in accordance with Article XI of this Declaration and shall draw water only from city or county water supplies or wells, unless otherwise approved.

Section 13. Tents, Trailers and Temporary Structures. Except as may be permitted by the NCC during initial construction of Units, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Unit or any part of the Properties.

Section 14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow.

Section 15. Tree Removal. No trees shall be removed from any portion of the Properties by any person other than Declarant unless approved in accordance with Article XI of this Declaration.

Section 16. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 17. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 18. Air Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Unit.

Section 19. Lighting. Except for seasonal Christmas decorative lights, which may be used between December 1 and January 10 only, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 20. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration.

Section 21. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof.

Section 22. Mailboxes. All mailboxes shall satisfy applicable postal regulations and shall conform to specifications established by the Declarant.

Section 23. Leases. Except as otherwise provided in this Section in the case of undue hardship, the leasing of a Unit or Units shall be prohibited. The Board of Directors shall be empowered to allow reasonable leasing of Units to avoid undue hardship, including, but not limited to, (a) where a Unit Owner must relocate his or her residence and cannot, within ninety (90) days from the date that the Unit was placed on the market, sell the Unit for at least the current appraised market value, after having made reasonable efforts to do so; (b) where the Owner dies and the Unit is being administered by his or her estate; or (c) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit, in which case the Unit Owner must reapply at the end of the lease term for renewal of the hardship exception. Those Owners who are required to demonstrate and have demonstrated that the inability to lease their Unit would result in undue hardship and who have obtained the requisite approval of the Board may lease their Units for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Notwithstanding any provision herein to the contrary, the provisions of the immediately preceding paragraph shall not apply to any leasing transaction entered into by (i) the Owner of a Unit who purchased the Unit from the holder of a first Mortgage, or (ii) the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

Such leasing as is permitted hereunder shall be subject to reasonable rules promulgated by the Board and the following restrictions. All leases shall be in writing and a copy shall be filed with the Board of Directors. There shall be no subleasing or assignment of leases except with the prior

written approval of the Board. No transient tenants shall be accommodated in any Unit. No Unit shall be leased except in its entirety.

Section 24. Lakes. All lakes, ponds and streams within the Properties shall be aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties.

Section 25. Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 26. Fences. No fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI of this Declaration.

Section 27. Business Use. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve Persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which includes the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a lot in accordance with Section 23 of this Article shall not be considered a trade or business within the meaning of this Section.



Article XIII  
General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Exhibits "A" or "B" for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the public records of Fayette County, Kentucky.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to so consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding

(including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 5. Easements for Utilities. Etc. There is hereby reserved unto Declarant, its general partners, and its designees, so long as any of the foregoing own any property described on Exhibits "A" or "B", and to the Association and its designees, (which may include, without limitation, Fayette County, Kentucky, and any utility) blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over the Units for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate all or part of the Common Area to the City of Lexington, Fayette County or any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in Article XIV, Section 2 of this Declaration.

Section 6. Easement for Access to Adjacent Property. The Declarant, its general partners, and its duly authorized agents, representatives, and employees as well as their successors, assigns, licensees and mortgagees, shall have and there is hereby reserved an easement over the Properties for the purposes of enjoyment, use, access and development of the property described in Exhibit "B" attached hereto and by this reference incorporated herein. This easement includes but is not limited to ingress and egress over Common Areas for construction of roads and installation of utilities on the property described in Exhibits "B". Declarant agrees that it, its successors and assigns, shall be responsible for any damages caused to the Common Areas as a result of vehicular traffic connected with development of the property described in Exhibit "B".

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 8. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event on Owner fails or refuses to euro the

condition upon request by the Board and shall also include the right to enter upon the land comprising any Unit for the purpose of inspecting for compliance with the requirements of Article XI.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Board of Directors. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or By-Laws of the Association to the contrary, a Board member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five (75%) percent of all Members of the District represented by the Board member. Any meeting called for such purpose shall be subject to the same notice and quorum requirements and other procedures as provided in the By-Laws for meetings of the membership. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 11. Use of the Words "Palomar Hills". No Person shall use the words "Palomar Hills" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term "Palomar Hills" in printed or promotional matter where such term is used solely to specify that particular property is located within Palomar Hills.

Section 12. Security. The Declarant and/or the Association may, but shall not be obligated to, undertake certain measures designed to increase safety or security in the Properties. In such event, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, AND NEITHER THE ASSOCIATION OR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY

REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE NEW CONSTRUCTION AND MODIFICATIONS COMMITTEES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE NEW CONSTRUCTION OR MODIFICATIONS COMMITTEES MAY NOT BE COMPRISED OR CIRCUMVENTED, THAT FIRE PROTECTION AND BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION AND BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, TENANT, GUEST OR INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND COMMITTEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN.

#### Article XIV

##### Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in Palomar Hills. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding

this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Voting Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Kentucky law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## Article XV

### Declarant's Rights

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Fayette County, Kentucky. Nothing in this

Declaration shall be construed to require Declarant, its general partners, or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant, its general partners, and any builder or developer approved by Declarant to maintain and carry on upon such portion of the Properties as Declarant and its general partners may deem necessary, such facilities and activities as, in the sole opinion of Declarant and its general partners, may be reasonably required, convenient, or incidental to Declarant's, its general partners', and such builder's or developer's development, construction, and sales activities related to the Properties and any other property now owned or which may in the future be owned by Declarant, its general partners, and any builder or developer approved by Declarant (such other property hereinafter referred to as "Additional Property"). Declarant, its general partners, and any such builder or developer shall have an easement for access to such facilities.

This reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to: (a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, in or on the Properties; (b) the right to tie into any portion of the Properties with driveways, parking areas and walkways; (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Properties; (d) the right to carry on sales and promotional activities on the Properties; and (e) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices on the Properties. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned or leased by the Declarant, its general partners, or any such builder or developer, and any clubhouse or community center which may be owned by the Association, as model residences and sales offices, respectively. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of the



Properties, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released except by delivery of a quit-claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Properties, the Owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities with the Owners in the Properties in the proportion that the number of completed dwellings on the affected Additional Property bears to the total number of completed dwellings upon the affected Additional Property and the number of Units in the Properties. The costs of maintenance and repair of driveways on the Properties shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Properties. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefore may be done on a monthly, quarterly, or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Properties, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

IN WITNESS WHEREOF, the undersigned Declarant and the undersigned Owner have executed this Declaration this 2<sup>nd</sup> day of July, 1987

PALOMAR HILLS DEVELOPMENT COMPANY,  
a Kentucky general partnership

By: JOE MONTGOMERY BUILDERS, INC. a  
Kentucky corporation, a general partner

By: J. GAIL MONTGOMERY, a general

SOUTH ELKHORN DEVELOPMENT  
COMPANY, a Kentucky general partnership

By: James C. Ball, Jr., Managing Partner

STATE OF KENTUCKY)

COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of July, 1987, by Joe Montgomery, Jr., President of Joe Montgomery Builders, Inc., a Kentucky corporation, which is a general partner of Palomar Hills Development Company, a Kentucky general partnership, on behalf of the corporation and the general partnership.

EXHIBIT "A"  
Land Initially Submitted

TRACT 1

Being all of Unit 2-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 744, in the Fayette County Court Clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being all of Unit 2-B of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 745, in the aforesaid clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property; and

Tract 1 being a part of the same property conveyed to Palomar Hills Development Company, a Kentucky general partnership, by deed dated January 23, 1987, and of record in Deed Book 1431, Page 744, in the aforesaid clerk's office.

TRACT 2

Being all of Unit 1 of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 714, in the Fayette County Court Clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being a part of the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated March 13, 1986, of record in Deed Book 1398, Page 89, and by deed dated October 28, 1985, of record in Deed Book 1386, Page 339, both in the aforesaid clerk's office;

Being all of Unit 2 of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 715, in the aforesaid clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being all of Unit 3 of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 716, in the aforesaid clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being all of Unit 5, of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 739, in the aforesaid clerk's office, to which reference is hereby made for a more accurate and complete description of said property; and

The above described property being part of the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated October 28, 1985, which • appears of record in Deed Book 1386, Page 339, in the aforesaid clerk's office .

EXHIBIT "B"  
Land Subject to Annexation

TRACT 1

All of Parcels A, A-1, A-2 and Parcel C, as shown by a Non-Building & Consolidation Minor Amended Record Plat of the Ford Philpot Evangelistic Association, Inc. Property as shown by plat thereof of record in Plat Cabinet E, Slide 755, in the Fayette County Court Clerk's office.

There is excluded from Parcel A and Parcel A-1 any portion thereof which is described in Tract 1 of Exhibit "A."

Parcel A and Parcel A-1 being the same property conveyed to Palomar Hills Development Company, a Kentucky general partnership, by deed dated January 23, 1987, which is of record in Deed Book 1431, Page 304, in the aforesaid clerk's office.

Parcel A-2 being part of the same property conveyed to Ford R. Philpot Evangelistic Association, Incorporated, a Kentucky non-profit corporation, by deed dated December 21, 1979, which is of record in Deed Book 1243, Page 517, in the aforesaid clerk's office, and by Deed of Correction dated September 13, 1984, which is of record in Deed Book 1352, Page 483, in the aforesaid clerk's office.

Parcel C being the same property conveyed to Christ United Methodist Church by deed dated September 3, 1980, which is of record in Deed Book 1258, Page 691, in the aforesaid clerk's office.

TRACT 2

All of Parcels 1, 2 and 3 as shown by Consolidation Plat of the South Elkhorn Development Company Property as shown by plat thereof of record in Plat Cabinet F, Slide 297, in the Fayette County Court Clerk's office.

There is excluded from the above described property all of that property described in Tract 2 of Exhibit "A."

Parcel 3 being part of the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated October 28, 1985, which is of record in Deed Book 1386, Page 339, in the aforesaid clerk's office. f->

Parcel 2 being the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated March 13, 1986, which is of record in Deed Book 1398, Page 89, in the aforesaid clerk's office.

Parcel 1 being the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated March 13, 1986, which is of record in Deed Book 1398, Page 93, in the aforesaid clerk's office.

TRACT 3

All of Parcel B as shown on a Non-Building Development Minor Subdivision Plat of the James A. Hoover Property as shown by plat thereof of record in Plat Cabinet C, Slide 20, in the Fayette County Court Clerk's office.

Being part of the same property conveyed to James A. Hoover and Rebecca A. Hoover, his wife, by deed dated December 12, 1952, which is of record in Deed Book 532, Page 201, in the aforesaid clerk's office.

EXHIBIT "C"

BY-LAWS

OF

PALOMAR HILLS COMMUNITY ASSOCIATION, INC.

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- TABLE OF CONTENTS -

	Page
I. NAME, PRINCIPAL OFFICE AND DEFINITIONS .....	1
1. Name .....	1
2. Principal Office .....	1
3. Definitions .....	1
II. ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES ....	1
1. Membership .....	1
2. Place of Meetings .....	1
3. Annual Meetings .....	1
4. Special Meetings .....	2
5. Notice of Meetings .....	2
6. Waiver of Notice .....	2
7. Adjournment of Meetings .....	3
8. Voting .....	3
9. Proxies .....	3
10. Majority .....	3
11. Quorum .....	3
12. Conduct of Meetings .....	3
13. Action Without A Meeting .....	4
III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS .....	4
A. <u>Composition and Selection.</u>	
1. Governing Body; Composition .....	4
2. Directors During Class "B" Control .....	4
3. Number of Directors .....	5
4. Nomination of Directors .....	5
5. Election and Term of Office .....	5
6. Removal of Directors and Vacancies .....	7
7. Voting Procedure for Directors .....	7
B. <u>Meetings.</u>	
8. Organization Meetings .....	7
9. Regular Meetings .....	7
10. Special Meetings .....	8
11. Waiver of Notice .....	8
12. Quorum of Board of Directors .....	8
13. Compensation .....	9
14. Conduct of Meetings .....	9
15. Open Meetings .....	9
16. Action Without a Formal Meeting .....	9



	Page
C. <u>Powers and Duties.</u>	
17. Powers.....	9
18. Management Agent .....	11
19. Accounts and Reports .....	12
20. Borrowing.....	13
21. Rights of the Association.....	13
22. Enforcement .....	14
IV. OFFICERS .....	15
1. Officers .....	15
2. Election, Term of Office, and Vacancies .....	15
3. Removal .....	16
4. Powers and Duties .....	16
5. Resignation.....	16
6. Agreements, Contracts, Deeds, Leases, Checks, Etc.....	16
V. COMMITTEES .....	16
1. General.....	16
2. Covenants Committee .....	16
3. Neighborhood Committees .....	17
VI. MISCELLANEOUS.....	17
1. Fiscal Year.....	17
2. Parliamentary Rules .....	18
3. Conflicts.....	18
4. Books and Records.....	18
5. Notices .....	18
6. Amendment .....	19

BY-LAWS  
OF  
PALOMAR HILLS COMMUNITY ASSOCIATION, INC.

Article I

Name. Principal Office and Definitions

Section 1. Name. The name of the Association shall be Palomar Hills Community Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of Kentucky shall be located in the County of Fayette. The Association may have such other offices, either within or without the State of Kentucky, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Palomar Hills, (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Article II

Association: Membership. Meetings. Quorum. Voting. Proxies

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Voting Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the membership, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no later than one hundred twenty (120) days and no less than ninety (90) days before the close of the Association's fiscal year. Subsequent regular annual meetings

of the membership shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that Voting Members or their alternates representing at least twenty-five (25%) percent of the total votes of the Association remain present, and provided further that any action taken is approved by at least a majority of the Voting Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates.

Section 10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing one-third (1/3) of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Voting Members.

### Article III

#### Board of Directors: Number. Powers. Meetings

##### A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except as provided in Section 2 of this Article, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation or partnership, the person designated in writing to the secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a director.

Section 2. Directors During Class "B" Control. The directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

- (i) when seventy-five (75%) percent of the Units permitted by the Master Land Use Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than the Declarant or builders holding title for purposes of development and sale;
- (ii) January 1, 1997; or
- (iii) when, in its discretion, the Class "B" member so determines.

Within one hundred twenty (120) days thereafter, the Class "B" member shall call a meeting, as provided in Article II, Section 4, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control.

The directors selected by the Class "B" member pursuant to this Section need not be Members or spouses of such Members as provided in Section 1 of this Article.

Section 3. Number of Directors. The number of Directors in the Association shall be not less than three (3) nor more than seven (7), as provided below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation. Except during the period of Class "B" control as provided in Section 2 of this Article, directors shall be elected from and shall represent Districts.

Section 4. Nomination of Directors. Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association with at least one (1) from each District. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations from each District for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled from each District. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 5. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own twenty (20%) percent of the Units permitted in the Master Land Use Plan for the property described on Exhibits "A" and "B" and certificates of occupancy have been issued thereon, or whenever the Class "B" Member earlier determines, the Association shall call a special meeting to be held at which Voting Members other than the Class "B" Member shall elect one (1) of the three (3) directors who shall be an at-large director. The director so elected shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own forty (40%) percent of the Units permitted in the Master Land Use Plan for the property described on Exhibits "A" and "B" and certificates of occupancy have been issued thereon, or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) directors. The Association shall call a special meeting to be held at which Voting Members other than the Class "B" Member shall elect two (2) of the five (5) directors, both of whom shall be at-large directors. The Directors so elected shall not be subject to removal by Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) At the first annual meeting of the membership after the termination of the Class "B" Control and at each annual meeting of the membership thereafter, all directors shall be elected by the Voting Members. Separate slates shall be proposed for each District and only those Voting Members representing Units in a District shall vote on the representatives for that District. A separate slate shall also be proposed for any at-large directors, and all Voting Members shall be entitled to vote thereon. The number of directors to be elected from each District shall be determined on the basis of a percentage calculated by dividing the number of Units in the District by the total number of Units in the Properties and multiplying by 100. If the resulting percentage is:

- 15-25%, the District will elect one (1) director;
- 26-50%, the District will elect two (2) directors;
- 51-75%, the District will elect three (3) directors;
- 76-100%, the District will elect four (4) directors.

If application of this formula for any election results in an even number of directors, then one (1) additional director shall be elected at-large by the Voting Members.

All directors shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 6. Removal of Directors and Vacancies. Directors may be removed, with or without cause, by a vote of the Voting Members holding a majority of the votes of the District represented by the director whose removal is being sought. Any director whose removal is sought will be given notice prior to any meeting called for that purpose. A director who was elected at large solely by the votes of Voting Members other than the Class "B" Member may be removed from office prior to the expiration of his or her term only by the votes of a majority of Voting Members other than the Class "B" Member. Upon removal of a director, a successor shall then and there be elected to fill the vacancy by the Voting Members responsible for such removal.

Any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board and it may appoint a successor. Any director appointed by the Board shall serve for the remainder of the term such successor was appointed to fill. The director appointed to fill the vacancy shall be selected from the District represented by the director who has vacated the position,

Section 7. Voting Procedure for Directors. At any election of directors to the Board of Directors, each Voting Member may cast, in respect to each vacancy, as many votes as he or she is entitled to exercise under Article III of the Declaration. Votes shall be cast as provided in Section 5. The candidates receiving the largest number of votes shall be elected.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any



Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by a majority of directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meetings of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened

meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Area within three (3) days after the written consents of all the Board members have been obtained.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing

agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the owners. All books and records shall be kept in accordance with generally accepted accounting practices;

(m) make available to any prospective purchaser of a Unit, any Owner of a Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit, and all other books, records, and financial statements of the Association; and

(n) permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

Section 18. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee or penalty on ninety (90) days' or less written notice.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors ;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying the monthly installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be

considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

(g) an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed, or unaudited basis, as determined by the Board, by an independent certified public accountant for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand (\$75,000.00) Dollars. If said report is not prepared by an independent certified public accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Area of Common Responsibility without the approval of the membership; provided, however, the Board shall obtain Voting Member approval in the same manner provided in Article X, Section 3, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 21. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any Person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the period of Class "B" control unless such contract, lease or other agreement contains a right of termination exercisable by either

party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

Notwithstanding anything to the contrary contained herein, the Association, through its Board of Directors, shall have the right to enter into a declaration of easements and covenant to share costs or similar arrangement whereby the Association assumes maintenance responsibility for property which it does not own, or grants easements to Persons who are not Members, in consideration for payment by the owner of such property or such nonmembers of all or a portion of the costs associated with such maintenance or use.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter,

(a) Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting.

Such proof shall be deemed adequate if a copy of the notice/ together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

#### Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise



may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

## Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and

resolutions the Board may adopt, the Covenants Committee/ if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 22 of these By-Laws.

Section 3. Neighborhood Committees. In addition to any other committees appointed as provided above, there shall be a Neighborhood Committee for each Neighborhood which has no formal organizational structure or association. Such Neighborhood Committees shall consist of three (3) members; provided, however, by vote of at least fifty (50%) percent of the Owners within the Neighborhood this number may be increased to five (5). The members of each Neighborhood Committee shall be elected by the vote of Owners of Units within that Neighborhood at an annual meeting of such Owners, at which the Owners of Units within that Neighborhood holding at least one-third (1/3) of the total votes of Units in the Neighborhood are present or represented by proxy. Each Owner of a Unit within a Neighborhood shall have the number of votes assigned to his Unit in the Declaration. Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the Committee. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board of Directors.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article III, Sections 6, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors and shall be the Voting Member from that Neighborhood.

Article VI  
Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Kentucky law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Kentucky law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Kentucky law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws so long as it still owns property described in Exhibits "A" or "B" to the Declaration for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Member. Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment shall be effective until recorded in the public records of Fayette County, Kentucky.

[Continued]

1122g

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Palomar Hills Community Association, Inc. a Kentucky corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the    day of    , 19    .

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this    \_\_ day of    , 19    .

Secretary  
(SEAL) 1122g

STATE OF KENTUCKY  
COUNTY OF FAYETTE

SUBSEQUENT AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR PALOMAR HILLS

THIS AMENDMENT is made this 2nd day of July, 1987, by Palomar Hills Development Company, a Kentucky general partnership (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, on July 2, 1987, contemporaneous with the filing of this Amendment, Declarant filed that certain Declaration of Covenants, Conditions and Restrictions for Palomar Hills ("Declaration") recorded in Deed Book 1447 Page 29 of the Fayette County, Kentucky public records; and

WHEREAS, Declarant desires to amend the Declaration by adding additional covenants and use restrictions to the real property described on Exhibit "A" to the Declaration;

WHEREAS, South Elkhorn Development Company, a Kentucky general partnership ("South Elkhorn"), as the owner of a portion of the property subject to this Amendment, joins herein to evidence its consent hereto; and

NOW, THEREFORE, pursuant to the powers retained in Declarant under Article XIII, Section 2 of the Declaration, and in accordance with the provisions of that section, Declarant hereby subjects all of those tracts or parcels described on Exhibit "A" to the Declaration, a copy of which is attached hereto and incorporated hereby in reference, except as otherwise indicated, to the following additional covenants and use restrictions:

1. No structure shall be located on any lot nearer to the front lot line or the side street line than the maximum building set back line shown on the recorded plat, except bay windows and steps may project into said areas not more than six (6'); and six (6') foot side lot restrictions are required.

2. No truck, trailer, commercial vehicle, camping vehicle or boat shall be parked or kept on any lot at any time unless said vehicle is housed in a garage or basement; and no inoperable automobile shall be parked on any lot or street, unless housed in a garage.

3. After the residence has been constructed, the lot owner shall be responsible for grading and sodding between the front and street sidewalks and the pavement or any abutting street.

4. Each lot owner shall be responsible for constructing a tapered sidewalk apron of that lot's driveway with curb cuts and related work to be in a material and in conformity with the DECLARANT'S plan; and each lot owner agrees to maintain sidewalks on that lot, at the lot owner's expense.

5. Upon completion of construction of the residence on each lot. Builder shall be responsible for planting trees in accordance with the recorded plat covering the property in conformity with the Lexington-Fayette Urban County Government City Regulations; upon the failure of any Builder to comply with the provisions of this paragraph, the DECLARANT or any person or association to whom DECLARANT may assign the right, may take action to comply with the terms of this paragraph and shall be

reimbursed by the Builder for the expenses incurred in complying with this paragraph.

6. Drainage of each lot shall be in conformity with the general drainage plan of the subdivision; no storm water drains, roof downspouts or ground water shall be integrated into the sanitary sewer system, and all lot connections shall be made with water tight joints in accordance with plumbing code regulations.

7. The existing wire fence on the west boundary line of the subdivision (Urban Service Area boundary) shall be maintained by the respective owner of each lot, provided, however, the boundary fence may be removed if immediately replaced by another boundary fence of at least the same height of that currently existing; and no trees shall be removed within 25 feet of the Urban Service Boundary area unless said trees are dead or diseased. The owner of each lot shall be responsible for the enforcement of this covenant.

8. No vegetable gardens shall be planted or extended nearer the street than the rear yard of any residence and in no event shall be nearer than twenty (20') feet from the right of way line of any street.

9. All residences must have a two car attached or basement garage, which shall be rear or side entry unless otherwise approved by Declarant. For purposes of this provision, garages connected by permanent overhead walkway shall be considered attached.



10. No lots located on the corner of any intersection of Palomar Boulevard shall access a driveway directly onto Palomar Boulevard. All driveways on said lots shall access only onto intersecting streets.

11. All exterior siding materials used shall be subject to the approval of the Declarant; and shall extend to grade level unless otherwise approved by the Declarant.

12. The following Minimum square footage requirements shall apply as follows, based upon the house type:

(a) All of Unit 5, of South Elkhorn Subdivision, a Section of Palomar Hills Development, to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 739, in the aforesaid Clerk's Office.

- |                                |               |
|--------------------------------|---------------|
| (i) 1Story                     | 1,800 sq. ft. |
| (ii) 1 ½ Story<br>(Main Level) | 1,300 sq. ft. |
| (iii) 2 Story                  | 2,400 sq. ft. |

(b) Lot 1, Block G, Lots 14 and 15, Block L, Lots 11 and 12, Block E and Lot 16, Block B, of Unit 2, of South Elkhorn Subdivision, a Section of Palomar Hills Development, to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 715, in the aforesaid Clerk's Office.

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|--------------------------------|---------------|
| (i) 1 Story                    | 1,650 sq. ft. |
| (ii) 1 ½ Story<br>(Main Level) | 1,100 sq. ft. |
| (iii) 2 Story                  | 2,000 sq. ft. |

(c) Lots 19 through 24, inclusive, Block H, Lots 1 through 6, inclusive, Block F, Lots 17 through 24, inclusive, Block B, and Lots 2 through 11, inclusive. Block G, of Unit 2, of South Elkhorn Subdivision, a Section of Palomar Hills Development, to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 715, in the aforesaid Clerk's Office.

- |                |               |
|----------------|---------------|
| (i) 1 Story    | 1,500 sq. ft. |
| (ii) 1 ½ Story | 1,000 sq. ft. |
| (Main Level)   |               |
| (iii) 2 Story  | 1,800 sq. ft. |

(d.) All of Unit 1, of South Elkhorn Subdivision, a Section of Palomar Hills Development, to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 714, in the aforesaid Clerk's Office.

- |                |               |
|----------------|---------------|
| (i) 1 Story    | 1,650 sq. ft. |
| (ii) 1 ½ Story | 1,100 sq. ft. |
| (Main Level)   |               |
| (iii) 2 Story  | 2,000 sq. ft. |

(e) All of Unit 3, of South Elkhorn Subdivision, a Section of Palomar Hills Development, to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 716, in the aforesaid Clerk's Office.

- |                |               |
|----------------|---------------|
| (i) 1 Story    | 1,500 sq. ft. |
| (ii) 1 ½ Story | 1,000 sq. ft. |
| (Main Level)   |               |
| (iii) 2 Story  | 1,800 sq. ft. |

(f) All of Unit 2-A and all of Unit 2”B” of Palomar Hills Subdivision, to the City of Lexington, Fayette County, Kentucky, as shown on the final record plats thereof of record in Plat Cabinet F, Slide 744, and Plat Cabinet F, Slide 745, respectively, in the aforesaid Clerk's Office.

- |                                |               |
|--------------------------------|---------------|
| (i) 1 Story                    | 2,150 sq. ft. |
| (ii) 1 ½ Story<br>(Main Level) | 1,550 sq. ft. |
| (iii) 2 Story                  | 2,900 sq. ft. |

If any restriction(s) or covenant(s) herein shall be in conflict with the restriction(s) or covenant(s) set forth in the Declaration, the restriction(s) or covenant's) of this Subsequent Amendment shall control.

The covenants and restrictions of this Subsequent Amendment shall run with and bind the Property described in Exhibit A, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property described in Exhibit A subject to this Subsequent Amendment, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Subsequent Amendment is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Subsequent - Amendment shall be modified or terminated as specified.

IN WITNESS WHEREOF, Declarant and South Elkhorn have caused this Subsequent Amendment to be executed the day and year written above.

PALOMAR HILLS DEVELOPMENT COMPANY, a Kentucky general partnership

By: JOE MONTGOMERY BUILDERS, INC., a general partner

SOUTH ET.KHORN DEVELOPMENT COMPANY, a Kentucky general partnership

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STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this day of July, 1987, by Joe Montgomery, Jr., President, of Joe Montgomery Builders, Inc., a Kentucky corporation, which is a general partner of Palomar Hills Development Company, a Kentucky general partnership, on behalf of the general partnership and the corporation.

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of July, 1987, by J. Gail Montgomery, general partner, of Palomar Hills Development Company, a Kentucky general partnership, on behalf of the general partnership.

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of July, 1987, by James C. Ball, Jr., as Managing Partner of South Elkhorn Development Company, a Kentucky general partnership, for and on behalf of said general partnership.

THIS INSTRUMENT PREPARED BY:

Frank L. Wilford STOLT, KEENON & PARK 1000 First Security Plaza Lexington, Kentucky 40507  
(606) 231-3000

EXHIBIT "A"

Land Initially Submitted

TRACT 1

Being all of Unit 2-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 744, in the Fayette County Court Clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being all of Unit 2-B of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 745, in the aforesaid clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property; and

Tract 1 being a part of the same property conveyed to Palomar Hills Development Company, a Kentucky general partnership, by deed dated January 23, 1987, and of record in Deed Book 1431, Page 744, in the aforesaid clerk's office.

TRACT 2

Being all of Unit 1 of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 714, in the Fayette County Court Clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being a part of the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated March 13, 1986, of record in Deed Book 1398, Page 89, and by deed dated October 28, 1985, of record in Deed Book 1386, Page 339, both in the aforesaid clerk's office;

Being all of Unit 2 of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 715, in the aforesaid clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being all of Unit 3 of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 716, in the aforesaid clerk's office, to which plat reference is hereby made for a more accurate and complete description of said property;

Being all of Unit 5, of South Elkhorn Subdivision, a Section of Palomar Hills Development to the City of Lexington, Fayette County, Kentucky, as shown by the final record plat thereof of record in Plat Cabinet F, Slide 739, in the aforesaid clerk's office, to which reference is hereby made for a more accurate and complete description of said property; and

The above described property being part of the same property conveyed to South Elkhorn Development Company, a Kentucky general partnership, by deed dated October 28, 1985, which appears of record in Deed Book 1386, Page 339, in the aforesaid clerk's office.

ARTICLES OF INCORPORATION  
OF  
PALOMAR HILLS COMMUNITY ASSOCIATION, INC

ARTICLE I

Name

The name of the corporation shall be Palomar Hills Community Association, Inc. For convenience, the corporation shall be referred to in this instrument as the "Association."

ARTICLE II

Address

The principal address of the Association is 3565 Harrodsburg Road, Lexington, Kentucky 40503.

ARTICLE III

Purposes

A. The purposes for which the Association is organized are:

(i) to be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions, and Restrictions for Palomar Hills recorded in the public records of Fayette County, Kentucky, as amended from time to time (the "Declaration"), to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By-Laws, and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners in the development.



B. The Association shall make no distributions of income to its members, directors or officers.

C. All terms used herein which are not defined shall have the same meaning provided in the Declaration.

#### ARTICLE IV

##### Powers

The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles, the Declaration, and the By-Laws of this Association.

B. The Association shall have all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, or the Declaration, including, without limitation, the following:

(i) to fix and to collect assessments or other charges to be levied against the Units;

(ii) to manage, control, operate, maintain, repair, and improve property subjected to the Declaration or any other property for which the Association by rule, regulation, Declaration, or contract has a right or duty to provide such services;

(iii) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under any Declaration or By-Laws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of all owners;

(v) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(vi) to borrow money for any purpose as may be limited in the By-Laws;

(vii) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(ix) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and

(x) to provide any and all supplemental municipal services as may be necessary or proper.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article IV are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of Article IV.

#### ARTICLE V

##### Members

A. The Association shall be a membership corporation without certificates or shares of stock.

B. The owner of each Unit subject to the Declaration shall be a member of the Association and shall be entitled to vote in accordance with the formula set forth in the Declaration, except there shall be no vote for any Unit owned by the Association. The manner of exercising voting rights shall be determined by the By-Laws of the Association.

C. Change of membership in the Association shall be established by recording in the public records of Fayette County, Kentucky, a deed or other instrument establishing record title to a Unit subject to the Declaration. The owner designated by such instrument thus becomes a member of the Association and the membership of the prior owner is terminated. Written notice shall be delivered to the Association of such change in title.

D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance of his Unit.

ARTICLE VI

Term

The Association shall be of a perpetual duration.

ARTICLE VII

Directors

A. The affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The initial Board of Directors shall consist of three (3) directors.

B. The names and addresses of the members of the initial Board of Directors, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

Joe Montgomery, Jr.  
3565 Harrodsburg Road  
Lexington, Kentucky 40503

Steve Haydon  
3305 Riggs Court  
Lexington, Kentucky 40513

James C. Ball, Jr.  
1365 Devonport Drive  
Lexington, Kentucky 40504

C. The method of election and term of office, removal, and filling of vacancies shall be as set forth in the By-Laws. The Board may delegate such operating authority to such companies, individuals, and committees as it, in its discretion, may determine.

ARTICLE VIII

By-Laws

The By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided by the By-Laws.

ARTICLE XI

Amendments

Amendments to the Articles of Incorporation may be proposed and adopted as provided in Kentucky Revised Statutes provided that no amendment may be in conflict with the Declaration, and provided, further, no amendment shall be effective to impair or dilute any rights of members that are governed by such Declaration.

ARTICLE X

Incorporators

The name and address of the incorporator of these Articles of Incorporation is as follows:

John W. Walters, Jr.  
1000 First Security Plaza  
Lexington, Kentucky 40507

ARTICLE XI

Registered Agent and Office

The initial registered office of the Association is 3565 Harrodsburg Road, Lexington, Kentucky 40503, and the initial registered agent at such address is Joe Montgomery, Jr.

IN WITNESS WHEREOF, the incorporator has hereunto affixed his signature this 2<sup>nd</sup> day of July 1987.

John W. WALTERS, JR.

STATE OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing Articles of Incorporation were acknowledged before me this 3 day of /]6^-7 , 1987, by John W. Walters, Jr.

THIS INSTRUMENT PREPARED BY:

STOLL, KEEHON & PARK  
1000 First Security Plaza  
Lexington, Kentucky 40507

SUBSEQUENT AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR PALOMAR HILLS

THIS SUBSEQUENT AMENDMENT is made this 16<sup>th</sup> day of October, 1987, by The Montgomery Companies, a Kentucky general partner-ship, formerly known as Palomar Hills Development Company, (hereinafter referred to as "Declarant") ;

WITNESSETH:

WHEREAS, on July 2, 1987, Declarant filed that certain Declaration of Covenants, Conditions and Restrictions for Palomar Hills ("Declaration") recorded in Deed Book 1447, page 29 of the Fayette County, Kentucky records; and

WHEREAS, contemporaneous with filing the Declaration, the Declarant filed a Subsequent Amendment imposing additional covenants and restrictions upon the property submitted; and

WHEREAS, Declarant desires to further amend the Declaration by adding additional covenants and restrictions; and

NOW, THEREFORE, pursuant to the powers retained in the Declarant under Article XIII, Section 2 of the Declaration, in accordance with the provisions of that Section, Declarant hereby amends Article VIII of the Declaration to include the additional following Section;

Section 13. Amenities. No recreational amenities or facilities constructed on the properties are, or are proposed to be, leased to the Association or Unit Owners. None of such amenities or facilities will be subject to any restriction or reservation in favor of the Declarant or any affiliate of the Declarant, other than easements as set forth in this Declaration, and such amenities will be owned by the Association free and clear of liens or encumbrances in favor of the Declarant, or any affiliate thereof. All of the aforesaid amenities and facilities shall be conveyed to the Association by the Declarant free and clear of all

liens and encumbrances on or before the date upon which the Declarant must relinquish control of the Association pursuant to the terms of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Subsequent Amendment to be executed the day and year written above.

THE MONTGOMERY COMPANIES,

a Kentucky general partnership

By: JOE MONTGOMERY BUILDERS, INC., a general partner

STATE OF KENTUCKY COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October, 1987, by Joe Montgomery, Jr., President, of Joe Montgomery Builders, Inc., a Kentucky corporation, which is a a general partner of The Montgomery Companies, a Kentucky general partnership, on behalf of the general partnership and the corporation.



STATE OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October, 1987, by J. Gail Montgomery, general partner of The Montgomery Companies, a Kentucky general partnership, on behalf of the general partnership.

THIS INSTRUMENT PREPARED BY:

Frink L. Wilford  
STOLL, KEENON & PARK  
1000 First Security Plaza  
Lexington, Kentucky 40507  
(606) 231-3000

AMENDMENT TO DECLARATION OF COVENANTS.  
CONDITIONS AND RESTRICTIONS FOR PALOMAR HILLS

THIS AMENDMENT made and entered into this 13<sup>th</sup> day of June 1994, by Palomar Hills Community Association, Inc., (hereinafter referred to as the "Association").

WITNESSETH:

WHEREAS, on July 2, 1987, the Palomar Hills Development Company, a Kentucky general partnership, and South Elkhorn Development Company, a Kentucky general partnership, recorded a Declaration of Covenants, Conditions, and Restrictions for Palomar Hills (the "Declaration") in Deed Book 1447, Page 29, in the Fayette County Clerk's Office; and

WHEREAS, Palomar Hills Development Company simultaneously recorded a Subsequent Amendment to the Declaration of Covenants, Conditions and Restrictions for Palomar Hills in Deed Book 1447, Page 105, in the Fayette County Clerk's Office; and

WHEREAS, on or about May 11, 1993, the Class "B" Members resigned from the Board of Directors of Palomar Hills Community Association, Inc. and the operation of the Association was turned over to the Owners; and

NOW THEREFORE, pursuant to Article XII, Section 2 of the Declaration, the Voting Members representing in excess of seventy-five percent (75%) of the total votes of the Association, have amended Article XII - Use Restrictions such that Sections 1, 2, 4, 7, 8, 15, 20 and 26 are amended and restated as follows with an additional new

paragraph related to disciplinary procedures (four steps) being added at the end of Article XII of the Declaration.

Section 1. Signs. No sign of any kind, except one "For Sale" and one "Open House" sign, not to exceed 48" high and 24" wide, placed between the front plane of the Unit and the sidewalk, shall be erected within the Properties without the written consent of the Board of Directors. This shall include "political" signs. The Board of Directors and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

Section 2. Parking and Garages. Vehicles shall be parked only in the garages or in the driveways serving the Units or appropriate spaces or designated areas in which parking may or may not be assigned and then subject to reasonable rules and regulations as the Board of Directors may adopt. All commercial vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other water craft, and boat trailers must be parked entirely within a garage or within the side yard or back yard of a Unit totally screened from view unless otherwise permitted by the Board. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed. This regulation does not override policies for certain areas of Palomar which have in place subsequent amendments with their own parking restrictions or any other laws and ordinances of state and local governments.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, kept, or permitted on any Unit, except that dogs, cats, or other usual and common household pets not to exceed a total of two (2) may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any property located adjacent to the Properties shall be removed upon request of the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person.

Section 7. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system be utilized by the Association and require any such exterior apparatus.

Section 8A. Basketball and Play Equipment. No permanently mounted backboards or play equipment designed for use by more than one child at a time, may extend beyond the front plane of the unit, or extend beyond one-half the distance between the street and

side plane of the unit for corner properties. No basketball backboard may be mounted over a garage door which directly faces the street. All basketball equipment must be commercially manufactured. Hours of use shall be controlled by local noise ordinance.

Section 8B. Clothesline. Garbage Cans, Tanks. Etc. Garbage cans, above-ground tanks, and other similar items shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. Garbage cans or recycling bins shall not be left at the curb after the designated day for pick-up. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. No clotheslines shall be permitted on any Unit.

Section 15. Tree Removal. No live trees shall be removed from any portion of the Properties by any person other than the Declarant unless approved in accordance with Article XI, Section 2, of this declaration. This regulation does not override policies for certain areas of Palomar which have in place subsequent amendments with their own restrictions regarding tree removal.

Section 20. Artificial Vegetation. Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. On the front sides of all units, there shall not be more than one (1) decorative flag, not to exceed the size of 3' x 5', not more than three (3) neutral colored stone sculptures, not to exceed 2' x 2'. Any exceptions to these provisions must be approved by the Modifications Committee.

Section 26. Fences. No fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI, Section 2, of this Declaration.

All other sections in Article XII shall remain as originally written. The following Disciplinary Procedure for Use Restriction Violations is an entirely new section.

The Disciplinary Procedure shall read as follows:

Step 1. Occupant/Property owner is notified in writing by a member of the Palomar Hills administrative staff of the violation and given 10 days to correct the violation, request a hearing before the Board or its designee, or request in writing additional time to correct the violation. Such request to detail plans for correcting the violation.

Step 2. If the violation is not corrected within 10 days of attempted notification, a hearing is denied, or the Board does not grant additional time for correction, a fine shall be levied on the property owner, effective the 11<sup>th</sup> day, in the amount of twenty-five dollars (\$25.00). For every subsequent 7-day period the violation goes uncorrected, an additional \$25.00 fine shall be assessed. The occupant/property owner will receive written notice indicating the day on which the first fine was levied.

Step 3. If the violation has not been corrected within 30 days, the occupant/property owner's name and a brief description of the violation shall be included in the next Palomar Hills Neighborhood Association newsletter. This notice will be repeated in each subsequent newsletter until the violation is corrected. The occupant/property owner shall receive written notice of the Association's intent to publish

said notice prior to such publication. Privileges for the pool, basketball, tennis courts and Lodge shall be suspended.

Step 4. If after 90 days the violation has not been corrected, a lien shall be placed on the owner's property for the amount of the fines accumulated to date. This shall be repeated every 90 days as necessary. All filing and legal fees association with such filings shall be added to the amount due from the occupant/ property owner.

IN WITNESS WHEREOF, the President and Secretary of the Association have executed this Amendment on the day and year first above written to acknowledge that this Amendment was duly authorized.

PALOMAR HILLS COMMUNITY ASSOCIATION, INC. ATTEST:

BY: BERNARD F. LOVELY, SECRETARY                      KEITH ASEF, PRESIDENT

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 1994, by KEITH ASEF, President of Palomar Hills Community Association, Inc., a Kentucky corporation.

STATE OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 13th day of June, 1994, by  
BERNARD F. LOVELY, Secretary of Palomar Hills

THIS INSTRUMENT PREPARED BY:

John P. WATZ, ESQ.  
HENRY/WATZ GARDNER & SELLARS, P.S.C.  
401 West Main Street, Suite 314  
Lexington, KY 40507  
(606) 253-1320



I, Donald W Blevins, County Court Clerk of Fayette County, Kentucky, hereby certify that the foregoing instrument' been duly recorded in my office.

By: Bob HOLLIDAY, dc

199407060195

July 6, 1994 15:37:05 PM

Fees \$16.50 Tax \$.00

Total Paid \$16.50

THIS IS THE LAST PAGE OF THE DOCUMENT

8 Pages

402 - 409

STATE OF KENTUCKY  
COUNTY OF FAYETTE

SUBSEQUENT AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR PALOHAR HILLS

THIS SUBSEQUENT AMENDMENT is made this 30th day of March, 1988, by The Montgomery companies, a Kentucky general partnership, (formerly Palomar Hills Development Company), (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, on July 2, 1987, Declarant filed that certain Declaration of Covenants, Conditions and Restrictions for Palomar Hills ("Declaration") recorded in Deed Book 1447, Page 29, of the Fayette County, Kentucky public records; and

WHEREAS, Declarant is the owner of the real property described in Schedule "A" attached hereto (the "Submitted Property");

WHEREAS, Declarant desires to subject to the provisions of the Declaration, as amended, the Submitted Property, said Submitted Property being a portion of the real property described on Exhibit "B" to the Declaration; and

WHEREAS, Declarant desires to impose covenants, conditions and restrictions on the Submitted Property which are in addition to those contained in the Declaration, as amended;

NOW, THEREFORE, pursuant to the powers retained in Declarant under Article VIII, Section 1 of the Declaration, and under Article XIII, Section 2, and in accordance with the provisions of those sections, Declarant hereby subjects all of those tracts or parcels described on Exhibit "A" attached hereto to the provisions of the Declaration, as amended, and to the additional covenants, conditions and restrictions contained herein. The Submitted Property shall be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, as amended, and the additional covenants, conditions and restrictions contained herein, all of which shall run with the title to the Submitted Property and shall be binding upon all parties having any right, title or any interest in the Submitted Property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

ARTICLE I

DEFINITIONS

All terms used in this Subsequent Amendment shall have the same meaning as set forth in the Declaration, as amended, unless the context shall prohibit.

The Submitted Property shall contain a separately developed and designated residential area comprised exclusively of townhouse units and shall constitute a Neighborhood, as defined in the Declaration.

ARTICLE II  
INSURANCE AND OBLIGATION TO REBUILD

2.1 Insurance. Pursuant to Article V, Section 1 of the Declaration, the Association shall obtain and continue in effect adequate blanket all-risk casualty insurance, in such form as the Board of Directors deems appropriate, for one hundred (100%) of the replacement cost of all structures located on Units within the Submitted Property, and shall charge the cost thereof to the Owners of Units within the Submitted Property as a Neighborhood Assessment, to be apportioned equally among such Owners.

2.2 Damage and Destruction — Duty to Rebuild. If all or any portion of any structure constituting a part of an Unit is damaged or destroyed by vandalism, malicious mischief, fire, windstorm, or other casualty, it shall be the duty of the Owner of said Unit to rebuild, repair, or reconstruct said Unit in a manner that will restore it substantially to its appearance and condition immediately prior to the casualty unless seventy-five (75%) percent of the Owners of Units within the Submitted Property, including the Owner(s) of the damaged Unit(s), shall decide within sixty (60) days after the casualty not to repair or reconstruct.

In the event that it should be determined in the manner described above that the damage or destruction to the Unit shall not be repaired or reconstructed and no alternative improvements are authorized, then the affected portion of the Properties shall be restored to their natural state and maintained by the Unit Owner(s) in a neat and attractive condition, consistent with the Community-Wide Standard.

2.03 Time Limitation. The Owner of any damaged Unit shall be obligated to proceed with all due diligence and commence repairs or reconstruction within forty-five(45) days after the damage occurs and to complete repairs or reconstruction within eight (8) months after the damage occurs for any major structural damage, and within sixty (60) days for any minor non-structural damage, unless delayed by causes beyond their reasonable control, except that disputes concerning insurance coverage shall not be deemed as a sufficient cause for delay.

ARTICLE III  
USE RESTRICTIONS AND RULES

3.01 Vehicles and Parking. Vehicles, including motorcycles, shall be parked only in garages or spaces designated for parking on the Common Area. The Board shall have the authority, without

obligation, to assign the right to use specific parking spaces to each Unit. The occupants of each Unit shall park no more than a total of two (2) vehicles on the Submitted Property on a regular basis for purposes of this provision, a vehicle shall be considered parked on a regular basis if it is parked on the Submitted Property for eight (8) or more hours per day, eight (8) or more days per month. Any Owner may convey in writing to any other Owner the right to use one or more of the parking spaces allotted to his Unit.

The following vehicles are strictly prohibited from being parked, stored, or allowed to remain on the Submitted Property (except in areas, if any, specifically designated by the Board of Directors for parking or storing an otherwise prohibited vehicle). disabled vehicles, stored vehicles, vehicles over twenty (20) feet in length or having more than four (4) wheels, trucks within a capacity of more than one (1) ton (other than mini-vans) , mobile homes, motor homes, campers, boats, and similar recreational vehicles, trailers of any kind, vehicles primarily used for commercial purposes, vehicles used for storage of machinery, equipment, tools, or similar materials, and vehicles with commercial writings on their exteriors. Notwithstanding the above, commercial vehicles shall be allowed on the Common Areas between the hours 8:00 a.m. and 8:00 p.m. for the purpose of serving a Unit or the Common Areas; provided, no such vehicle shall be permitted to remain on the Submitted Property overnight or for any purpose other than serving a Unit or the Common Areas. The Board may promulgate rules and regulations further restricting parking and traffic on the Submitted Property as it deems necessary or desirable.

For purposes of this Section, a vehicle shall be considered "disabled" if (a) it does not have a current license tag or is obviously inoperable; and (b) is parked on the Common Area for more than fourteen (14) consecutive days. A vehicle shall be considered "stored" if (a) it is set on blocks or covered with a tarpaulin for fourteen (14) consecutive days or longer without the prior written permission of the Board of Directors.

If any vehicle is parked on the Submitted Property in violation of this Section, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after two (2) days the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. If two (2) days after such notice is placed on the vehicle, the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the owner or user of the vehicle. If a vehicle is parked in a fire lane or is blocking another vehicle, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the

Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its to tow, as set forth herein.

3.02 Heating of Dwellings in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum of fifty-five (55°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) during the-months of October, November, December, January, February, March, and April or at any other time when the temperature is forecasted to or does reach thirty-two (32°) degrees Fahrenheit or below. Owners and occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or occupant shall immediately inform the Board of Directors of this failure of the equipment and of the time needed to repair the equipment. Owners shall notify the Association of any planned absence from a Unit of longer than two (2) weeks during the year. Notwithstanding any provision in the Declaration or in the By-Laws to the contrary, any Owner or occupant may be fined up to Five Hundred (\$500.00) Dollars for violation of this requirement by the Board of Directors, in addition to any other remedies of the Association, without a prior warning, demand, or hearing. Any fine imposed pursuant to this Section shall be deemed an assessment against the Unit and may be collected in the same manner as provided in the Declaration for collection of assessments.

3.03 Landscaping and Gardening. All planting and gardening on- Units shall be restricted to floral gardening in the individual patio or open area located within the Units. No fence's, hedges, trees, bushes, walls, shutters or awnings shall be erected or maintained upon any Unit except those which are installed in accordance with the initial construction of the improvements located thereon, or as approved by the Board or its designated\_ representatives. Any floral gardening by any Owner shall be maintained by such Owner and should such Owner fail to maintain such gardening, the Association shall have the right either to maintain such gardening and assess the cost of maintenance against the individual Owner or to return the gardened area to its prior condition and assess the cost thereof against the individual Owner.

Article IV  
EASEMENTS

4.01 Owner's Right to Ingress, Egress and Support. Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Unit and shall have the right to lateral support for his Unit and such rights shall be appurtenant to and pass with the title to each Unit. In addition, each Owner shall have the right to ingress and egress over, upon and across any other Unit to the extent such access is provided for on the final Plat covering the Submitted Property recorded in the Fayette County, Kentucky public records, and likewise shall have the benefits of all easements, notes and rights of Way reflected thereon.

4.02 Association's Easement for Sewers. The Association shall have a right and easement for the maintenance, repair and replacement of sanitary sewers and storm sewers. Each Unit shall be subject to an easement in favor of the Association to use, maintain, repair and replace the sanitary sewer lines serving the properties and located in and beneath each Unit. The Association shall have a right of access to each Unit's improvements thereon to inspect the same and to maintain, repair or replace the sanitary sewer lines contained therein or elsewhere in the Submitted Property.

4.03 Easement for Utilities, Etc. Each Owner is hereby granted a blanket easement upon, across, over and under the Common Areas and that portion of each Unit not containing a structure, residence or other improvement, for ingress, egress, installation, replacing, repairing and maintaining master television cable systems, security and similar systems, and all utilities, including, but not limited to, water, sewers, telephones, gas and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain the necessary poles and other necessary equipment on the Submitted Property and to affix and maintain utility wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Units.

Notwithstanding anything to the contrary contained in this Section 4.03, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Submitted Property except as may be approved by the Board of Directors. Should any entity furnishing a service covered by the general easement provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement without further approval of the Owners. The easements provided for in this Section shall in no way affect any other recorded easement on the Submitted Property.

The cost of any such maintenance, replacement, installation or repair, including repair to the structure located on any Unit, necessitated by such maintenance, replacement, installation or repair, shall be borne by the Owner for whose benefit, or upon whose direction, such work was performed, and any Unit damaged shall be restored to the condition in which it existed immediately prior to such work.

4.04 Use of Common Area. Except for the right of ingress and egress the Owners of the Units are hereby prohibited and restricting from using any of the Common Area, except as may be allowed by the Board or as expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary-for the protection of said Owners.

#### ARTICLE V MAINTENANCE

5.01 Association's Responsibility. Except as provided in Article IV, Section 3.03 above, the Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Units. The Association shall maintain and keep in good repair all paved\_ or concrete .walkways, driveways^ and parking areas r even though located partially or wholly within the boundaries of a Unit. The Association shall maintain and keep in good repair all water and sewer pipes or facilities which serve more than one (1) Unit, whether located within or without a Unit's boundaries.

The Association shall provide exterior maintenance upon Units as follows: paint, stain, repair, replace and care\* for decks, roof surfaces and roof systems, gutters, downspouts, and all exterior building surfaces, except that the Association shall not be responsible for maintaining, repairing or replacing (except for painting or staining of) entry doors and door frames, windows and window frames, glass, and the appurtenant hardware of the foregoing. The cost of performing the foregoing maintenance shall be assessed against all Units within the Submitted Property as a Neighborhood Assessment and allocated equally among such Units.

5.02 Owner's Responsibility. Except as provided in Section 5.01, above~7all maintenance of the Unit shall be the responsibility of the Owner thereof, including, without limitation, maintenance, repair and replacement (except painting or staining) of entry doors and door frames, windows and window frames, glass and the appurtenant hardware of the foregoing. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without the Unit's boundaries (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus serving only the Unit). Such maintenance shall be performed consistent with the Declaration, this Subsequent Amendment and the Community-Wide Standard.

### 5.03 Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Section, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by negligent or willful acts causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(f) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions" of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.



ARTICLE IV  
AMENDMENT

This Subsequent Amendment may be unilaterally amended at any time and from time to time by Declarant for the purpose of submitting any portion of the additional property described on Exhibit "B" of the Declaration to the terms hereof. Declarant may unilaterally amend this Subsequent Amendment so long as it still owns property described on Exhibits "A" or "B" of the Declaration for development and so long as the amendment has no material adverse effect upon any right of any Owner; otherwise, this Subsequent Amendment may be amended only upon written approval of owners of a majority of the Units subject hereto and of the Declarant, so long as the Declarant owns any property subject to the Declaration. Any such amendment shall be executed by all persons whose consent is required and shall become effective upon recording in the Fayette County, Kentucky, Court Clerk's office.

IN WITNESS WHEREOF, Declarant has caused this Subsequent Amendment to be executed the day and year written above.

By:

THE MONTGOMERY COMPANIES,  
a Kentucky general partnership  
JOE MONTGOMERY BUILDERS, INC., a Kentucky corporation, a general partner

By:

STATE OF KENTUCKY COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 30th day of March, 1988, by Joe Montgomery, Jr., President of Joe Montgomery Builders, Inc., a Kentucky corporation, which is a general partner of The Montgomery Companies, a Kentucky general partnership, on behalf of the general partnership and on behalf of the corporation.

PREPARED BY:  
STOLL, KEENON & PARK  
1000 First Security Plaza  
Lexington, Kentucky 40507  
(606) 231-3000

313/12913/001

## EXHIBIT A

Being all of Lots Nos. 5-12, inclusive, Unit 1-A, Section 1 of Palomar Hills Subdivision (erroneously referred to as the Joe Montgomery Property), Lexington, Fayette County, Kentucky, as shown by plat thereof of record in Plat Cabinet H, Slide 15 in the Fayette County Clerk's Office.

Being a part of the same property conveyed to The Montgomery Companies (formerly known as Palomar Hills Development Company) , a Kentucky general partnership, by deed dated January 23, 1987, and of record in Deed Book 1431, Page 744 in the aforesaid Clerk's Office.

SUBSEQUENT AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALOMAR HILLS  
ANNEXING UNIT 1-L, SECTION 1-A OF PALOMAR HILLS SUBDIVISION

THIS SUBSEQUENT AMENDMENT is made and entered into this 23<sup>rd</sup> day of May 1996, by (i) THE MONTGOMERY COMPANIES, a Kentucky general partnership (formerly Palomar Hills Development Company), (hereinafter referred to as "Declarant"), (ii) PALOMAR HILLS COMMUNITY ASSOCIATION, INC., a Kentucky corporation (hereinafter referred to as "Association"), (iii) KENTUCKY CUSTOM HOMES, INC., a Kentucky corporation (hereinafter referred to as "KCH") and (iv) DAVID LEWIS JONES, a single person, JANET LYNN JONES, a single person, RAY R. GILLISPIE and VIVIAN J. GILLISPIE, his wife, (KCH and David Lewis Jones, Janet Lynn Jones, Ray R. Gillispie and Vivian J. Gillispie being collectively hereinafter referred to as "Owners");

WITNESSETH:

WHEREAS, on July 2, 1987, Declarant filed that certain Declaration of Covenants, Conditions and Restrictions for Palomar Hills ("Declaration"), recorded in Deed Book 1447, Page 29, of the Fayette County, Kentucky Public Records; and

WHEREAS, on March 30, 1988, Declarant filed that certain Subsequent Amendment to the Declaration of Covenants, Conditions and Restrictions for Palomar Hills recorded in Deed Book 1472, Page 608 of the Fayette County, Kentucky Public Records, for the purpose of imposing additional covenants and restrictions specifically applicable to townhouses (the "Townhouse Subsequent Amendment"); and

WHEREAS, on June 13, 1994, Palomar Hills Community Association, Inc. filed that certain Amendment to Declaration of Covenants, Conditions and Restrictions for Palomar Hills recorded in Deed Book 1737, Page 402 in the Fayette County Clerk's Office, Kentucky Public Records, (the "Amendment to Declaration"); and

WHEREAS, Owners are the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Submitted Property"); and

WHEREAS, the parties desire to subject the Submitted Property to the provisions of the Declaration, as amended, the Townhouse Subsequent Amendment, and die Amended Declaration, said Submitted Property being a portion of real property described on Exhibit "B" to the Declaration.

WHEREAS, the Association, and Owners desire to agree to specific covenants and restrictions with respect to the Submitted Property in order to comply with a letter agreement dated August 29, 1994 between David Jones of Kentucky Custom Homes, Inc. and James Karns, president of the Palomar Hills Townhome Association, a part of the Association.

NOW, THEREFORE, in consideration of the foregoing and further good and valuable consideration, the parties hereto agree as follows:

1. Pursuant to the powers retained in Declarant under Article VIE, Section 1 of the Declaration, and under Article IV of the Townhouse Subsequent Amendment, and in accordance with the provisions therefore, Declarant hereby submits all of those tracts or parcels described on Schedule "A" or so described in Exhibit "A" attached hereto to the provisions of the Declaration, as amended, the Townhouse Subsequent Amendment (the "Restrictions"). Such property shall be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered pursuant to the provisions of the Restrictions, all of which shall run with the title to the Submitted Property and shall be binding upon all the parties having any right, title and interest in the Submitted Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

2. The Submitted Property shall in addition to being subject to the Restrictions, be subject to the following additional covenants and use restrictions, which in the event of any conflict with the Restrictions, shall be controlling:

- a. All homes will be constructed of brick to grade;
- b. Intentionally omitted.
- c. If a waterline connecting the underground sprinkler systems of the townhomes on each side of Submitted Property is installed by Owners, then access to such waterline will be provided to townhome owners. The Owners will not be required to install any underground sprinkler system for the Submitted Property, but will offer a sprinkler system as an option to the any purchasers of the Submitted Property;
- d. Each home will be a single family residence with at least 1400 square feet and no more than two stories;
- e. Each owner of any lot of the Submitted Property shall become a member of the Palomar Hills Community Association, Inc., a Kentucky non-profit corporation, as well as a special single family unit member of the neighborhood known as the Palomar Hills Townhomes Association;
- f. Each owner of a lot of the Submitted Property shall pay a reduced monthly assessment equivalent to 27.5% of the monthly assessment paid exclusively by members of the Palomar Hills Townhome Association. This monthly assessment will provide these lot owners with all the benefits and services of the townhomes, with the exception of insurance, building maintenance and repair, painting, sprinklers and lawn care. This fee is in addition to the monthly fee paid by each homeowner in the Palomar Hills Community Association, Inc., which is currently \$35.00. Special assessments made from time to time related to the Townhomes neighborhood for a specific purpose require approval by a majority of the members of the Palomar

Hills Townhome Association. Such assessments will be binding upon the owners of these lots of the Submitted Property only if the purpose of the assessment is to benefit these units in substantially the same manner as the other townhome owners. As a matter of example, but in no way meant as a limitation, a special assessment approved to replace roofs on the townhomes would not apply to the lots in the Submitted Property because these lots are responsible for the maintenance of their own roofs. However, a special assessment to repair the private roadways in the townhome neighborhood would apply equally to the owners of these lots as well as the other townhome owners;

- g. Each driveway shall be at least thirty feet long in order to provide adequate off street parking for the owners;
- h. A \$150.00 assessment will be paid to the Palomar Hills Townhome Association by the Owners immediately upon taking title to any of the lots of the Submitted Property;
- i. During construction of the improvements on any of the lots of the Submitted Property, the Owners agree to create a construction entrance off Lyon Drive for mandatory use by all construction traffic, including but not limited to delivery trucks and construction workers; the Owners will post signs restricting construction access; and the construction owners will have personnel on-site during working hours responsible for preventing usage of the private streets in the Palomar Hills Townhomes neighborhood by laborers and materialmen; no construction vehicle shall park in the Palomar Hills Townhomes neighborhood or use the Palomar Hills Townhomes private street to access the job site. During construction, should the Lexington Fayette Urban County Government or any other governing agency preclude access to the subject properties from Lyon Drive, then use of Stone Garden Lane shall be permitted with the additional restrictions that the Owners must insure that (a) any dirt, mud, trash or other debris will be removed at the end of each day and (b) road repairs will be made in a timely fashion if the roadways are damaged by construction activity;
- j. Concrete and brush rinsing shall not be done in the sewers;
- k. Two street lights like those presently in the Palomar Hills Townhome neighborhood shall be provided and installed by the Owners upon completion of the improvements on all nine lots;
- l. To the extent there are not adequate mailboxes to accommodate the present Townhome owners and the Owners of the Submitted Property, mailboxes like those presently in the Palomar Hills Townhome neighborhood shall be provided and installed by Owners;

- m. The Owner or its builder will maintain adequate General Liability Insurance which shall list the Association as an additional insured. The Owner or its builder will repair any damage which may occur to the private streets as a result of the construction of improvements;
- n. Rest room facilities for construction workers will be property maintained;
- o. If not provided in the plat, the Owners will plant trees along Lyon Drive in number and of the same kind as those on the opposite side of Lyon Drive;
- p. All of the covenants and restrictions herein shall run with the land and be binding upon all parties having any right, title or any interest in the Submitted Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed the day and year first above written.

THE MONTGOMERY COMPANIES, a Kentucky general partnership

By: JOE MONTGOMERY BUILDERS, INC., a Kentucky Corporation, General Partner

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 1996, by Joe Montgomery, Jr., president of Joe Montgomery Builders, Inc., a Kentucky corporation, as general partner of The Montgomery Companies, a Kentucky general partnership.

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 1996, by Bernard F. Lovely, as President of the Palomar Hills Community Association, a Kentucky corporation.



STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 1996, by David L. Jones, President of Kentucky Custom Homes, Inc., Kentucky Corporation.

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 1996, by David Lewis Jones.

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 1996, by Janet Lynn Jones.

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 1996, by David Lewis Jones, President of Kentucky Custom Homes, Inc., a Kentucky corporation.

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 1996, by Vivian J. Gillispie as Attorney-in-Fact for Ray R. Gillispie.

STATE OF KENTUCKY }  
COUNTY OF FAYETTE }

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 1996, by Vivian J. Gillispie.

INSTRUMENT PREPARED BY:

John tf. Wktz, Esq.  
HENRY WATZ GARDNER & SELLARS, P.S.C.  
401 Witet/Main Street, Suite 314  
Lexington, Kentucky 40507  
Telephone: (606) 253-1320

EXHIBIT A

Being all of lots 23 and 25 of Unit 1-L, Section 1-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky as shown by Final Record Plat of Joe Montgomery Property of Record in Plat Cabinet J, Slide 398, in the Fayette County Clerk's office.

Being the same property conveyed to Kentucky Custom Homes, Inc. by deed of Prizm Properties dated April 11, 1995 of record in Deed Book 1780, Page 402.

Being all of lot 22 of Unit 1-L, Section 1-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky as shown by Final Record Plat of Joe Montgomery Property of Record in Plat Cabinet J, Slide 398, in the Fayette County Clerk's office.

Being the same property conveyed to David Lewis Jones by deed of Kentucky Custom Homes, Inc. dated October 23, 1995, of record in Deed Book 1814, Page 669 in the aforesaid clerk's office.

Being all of lot 21 of Unit 1-L, Section 1-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky as shown by Final Record Plat of Joe Montgomery Property of Record in Plat Cabinet J, Slide 398, in the Fayette County Clerk's office.

Being the same property conveyed to David Lewis Jones by deed of Kentucky Custom Homes, Inc. dated August 7, 1995 of record in Deed Book 1803, Page 202 in the aforesaid clerk's office.

Being all of the property shown as lots 18 and 19 of Unit 1-L, Section 1-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky as shown by Final Record Plat of Joe Montgomery Property of Record in Plat Cabinet J, Slide 398, in the Fayette County Clerk's office.

Being the same property conveyed to Ray R. Gillispie and Vivian J. Gillispie by Kentucky Custom Homes, Inc. by Prizm Properties-by deed dated April 29<sup>th</sup>, 1996, of record in Deed Book 1847 Page 072 in the aforesaid clerk's office.

Being all of the property shown as Lots 20, 24 and 26 of Unit 1-L, Section 1-A of Palomar Hills Subdivision to the City of Lexington, Fayette County, Kentucky as shown by Final Plat of Joe Montgomery Property of Record in Plat Cabinet J, Slide 398 in the Fayette County Clerk's office.

Being the same property conveyed to Janet Lynn Jones, a single person, by deed of Kentucky Custom Homes, Inc. dated April 29<sup>th</sup>, 1996, of record in Deed Book 1847 Page 075 in the aforesaid clerk's office.

I, Donald W Blevins, County Court Clerk of Fayette County, Kentucky, hereby certify that the foregoing instrument has been duly recorded in my office.

By: Doug BRADLEY, dc

199605300080

May 30, 1996 10:36:53 AM

Fees \$26.00 Tax \$.00

Total Paid \$26.00

THIS IS THE LAST PAGE OF THE DOCUMENT

11 Pages

153 - 163