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(BOOK 1466 PAGE 1)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND
EASEMENTS OF THE LOFTS AT LOCUST HILL TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS is made this 7th day of January 1998 by W & T DEVELOPMENT CORP., a Kentucky corporation, (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the Owner of the "Phase 1 Property" (as hereinafter defined) and the "Annexation property" (as hereinafter defined); and

WHEREAS, Developer intends to develop "Residences" on Phase 1, (as hereinafter defined) and may subsequently subdivide and develop all or part of the "Annexation Property"; and

WHEREAS, Developer desires to subject the "Phase 1 Property" to certain covenants, conditions, restrictions, reservations and easements as more fully set out herein; and

WHEREAS, Developer desires to reserve the right to add, from time to time, all or portions of the "Annexation Property" to the community of "Residences" commenced initially on the "Phase 1 property";

NOW, THEREFORE, Developer hereby declares that the "Phase 1 Property" and such portions of the "Annexation Property" as Developer hereafter elects, from time to time, to make subject hereto, shall be held, conveyed, encumbered, used, occupied and improved subject to the following restrictions, covenants, conditions and easements, all of which are in furtherance of a plan for subdivision, improvement and sale of said real property and are established for the purpose of enhancing the value, desirability and attractiveness of the real property and every part thereof. All of the restrictions, covenants, conditions and easements shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein or thereto and shall be for the benefit of each "Owner" (as hereinafter defined) of any portion thereof and shall be binding upon and inure to the benefit of each successor in interest of such "Owner".

ARTICLE I

DEFINITIONS

The following terms, when used herein, shall have the meanings ascribed thereto below:

1.01 "Annexation" shall mean the process by which portions of the "Annexation Property" are made subject to the "Declaration" pursuant to Article X.

1.02 "Annexation Property" shall mean all that tract or parcel of land being in Fayette County, Kentucky, being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof. (begin BOOK 1466 PAGE 2)

1.03 "Area of Common Responsibility" shall mean and refer to the "Common Area", together with those areas within or upon a "Lot", the maintenance, repair or replacement of which are the responsibility of the "Association", which areas include the following: exterior surfaces of enclosed garages; visually exposed surfaces of unenclosed garages, including walls and ceilings; all party walls, roofs, downspouts, gutters, storm sewers, foundation drains, catch basins and other drainage systems, and all building exterior surfaces of whatever type or texture, kind or description, including waterproofing, above and below the surface of the ground, and caulking

around windows and doors; wrought iron balconies and railings (except those installed by "Individual Owners"), and window shutters; all driveways, fences, gates, mailboxes, brick, rock or other structural or decorative walls, decks and balconies including rails and screening devices, walkways, patio surfaces, planting areas (other than those planted by "Individual Owners"); all exterior doors, including storm doors, exterior hinges, frames, doorframes, weather-stripping and hardware which are part of the entry system. Specifically excluded from such "Area of Common Responsibility" shall be HVAC or other similar equipment located outside the "Residence", hose bibbs and pipes contained in interior or exterior walls pertaining to a specific Residence; lighting fixtures pertaining to a particular "Residence" and being located outside an entryway, on a balcony or deck, or in or on a carport or garage; window and door screens and glass. There shall also be excluded from the "Area of Common Responsibility" all cleaning of carports, garages, balconies, decks and surface drains (catch basins) located within the boundaries of the "Lots".

1.04 "Articles" shall mean and refer to the Articles of Incorporation of the "Association" as amended from time to time.

1.05 "Association" shall mean The Lofts at Locust Hill Townhomes, Inc., a Kentucky non-profit corporation, or any successor thereof charged with the duties and obligations of the Association hereunder, its successors and assigns.

1.06 "Board" shall mean the Board of Directors of the Association, duly elected and acting pursuant to the Articles and "By-Laws".

1.07 "By-Laws" shall mean and refer to the By-Laws of the Association which are and shall be adopted by the Board, as they may from time to time be amended.

1.08 "Common Area" shall mean all real and personal property in which the Association owns an interest for the common use and enjoyment of all the "Owners". Such property shall include, but not be limited to, street right of ways, open grassy area and lakes. Said interest or interests may include, without limitation, estates in fee, estates for a term of years, or easements. The real property to be owned by the Association as Common Area in connection with the "Phase 1 Property" and any portion of the Annexation property submitted to this "Declaration" by Annexation, is shown on the "Plat" or "Plats" with respect thereto.

1.09 "Common Expenses" means all expenditures lawfully made or incurred on behalf of the Association as provided for in this Declaration, including, but not limited to, expenditures under section 1.03, 1.08, 4.01, 4.02, 4.05, 6.01, 6.02, 6.03, 7.02, and 8.02 of this Declaration, together with funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the "community Instruments". (begin BOOK 1466 PAGE 3)

1.10 "Common Profits" means all income collected by or on behalf of the Association, other than income derived from assessments pursuant to Article VIII hereof.

1.11 "Community" means the planned unit development known as The Lofts at Locust Hill Townhomes created pursuant to the "Community Instruments".

1.12 "Community Instruments" means the "Declaration", the Articles, the By-Laws, the Rules and Regulations, the "Plat" or "Plats" and any exhibits, schedules or certifications attached to or incorporated in any of the foregoing, and any duly adopted amendments thereof.

1.13 "Declaration" shall mean this "Declaration of Covenants, Conditions, Restrictions, Reservations and Easements of The Lofts at Locust Hill Association as amended from time to time.

1.14 "Developer" shall mean and refer to: (i) W & T Development Corp., a Kentucky Corporation, (ii) any successor-in-title to the said corporation to all or some portion of the then existing "Submitted property" or the "Annexation property", provided such successor-in-title shall acquire such property for purposes of development or sale, and provided further, that in a written instrument, such successor-in-title is expressly designated as the

"Developer" hereunder by the grantor of such conveyance, which grantor shall be the "Developer" hereunder at the time of such conveyance; or (iii) should any of the "Submitted property" or the Annexation Property become subject to a first "Mortgage" given by "Developer" as security for the repayment of a construction loan, then all rights, privileges and options herein reserved to "Developer" shall inure to the benefit of the holder of such first "Mortgage" upon its becoming the actual Owner of all the "Submitted Property" and Annexation Property then subject to such first "Mortgage" through a judicial foreclosure or sale made pursuant to any power of sale contained in such first "Mortgage"; and further, all rights, privileges and options herein reserved to "Developer" may be transferred to the successor-in-title of any such acquirer of title to such property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, in a written instrument, such successor-in-title is designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the "Developer" hereunder at the time of such conveyance. In the event that persons specified in both (ii) and (iii) above become entitled to succeed to the interests of the "Developer" as therein provided, then, as between such persons, any person entitled to be "Developer" by virtue of (iii) above, shall be "Developer" instead of any person entitled to be "Developer" by virtue of (ii) above.

1.15 "Identifying Number" means one or more letters, numbers, symbols or words, or any combination thereof, that identifies only one "Lot" in the "Submitted property".

1.16 "Individual Owner" shall include all "Owners" with the exception of the Developer.

1.17 "Lot" shall mean a portion of the "Submitted property" intended for any type of independent Ownership and use and shall include the "Residences". (begin BOOK 1466 PAGE 4)

1.18 "Maintenance" shall mean and refer to the preservation of the improvements being "maintained" by the party given the responsibility hereunder, in at least that condition which existed (i) in the case of Individual Owners' responsibilities, on the date of the conveyance by Developer to the first Individual Owner of the lot, reasonable wear and tear or damage or destruction by fire or other casualty excepted; or (ii) in the case of the Association's responsibilities, the date upon which such improvements are located become "Submitted Property", reasonable wear and tear excepted.

1.19 "Mortgage" means any mortgage, deed to secure debt, security deed and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.20 "Mortgagee" means the holder of record of any Mortgage.

1.21 "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities of fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.22 "Plat" or "Plats" means the survey which has been recorded in Plat Cabinet H, Slide 88, in the Office of the Fayette County Clerk, Fayette County, Kentucky, prior to the recording of this Declaration with respect to the "Phase 1 property" and the surveys, meeting the requirements of paragraph 10.04(g) hereof, which shall be recorded with respect to portions of the Annexation property prior to their Annexation.

1.23 "Residences" shall mean those improvements constructed within the Lots and intended for independent Ownership and use.

1.24 "Phase 1 property" shall mean all that tract or parcel of land lying and being in Fayette County, Kentucky, being more fully described on Exhibit "A-I" attached hereto and by this reference made a part hereof.

1.25 "Submitted property" means the Phase 1 property and such portions of the Annexation Property as may be later subjected to the provisions of this Declaration by Annexation.

ARTICLE II

EASEMENTS AND PROPERTY RIGHTS

2.01 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Areas;
- (b) The right of the Association to suspend the voting rights and right to use of the facilities by an Owner for any period during which any assessment against said Owner's Lot remains unpaid; and for a period not to (begin **BOOK 1466 PAGE 5**) exceed sixty (60) days for any infraction by an Owner of the Association's published Rules and Regulations; and
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by at least fifty-one (51%) percent of each class of members has been recorded.

2.02 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants and social invitees.

2.03 Owner's Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Lot, and over, upon and across the area designated for vehicular access and shall have the right to lateral support for his Lot and such rights shall be appurtenant to and pass with the title to each lot.

2.04 Television Cable. In the event the Association should so decide, cable television facilities may be located upon certain portions of the Submitted property with connections thereto being located within the boundaries of various lots. Any such connections shall be maintained in good order and repair by the Association. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purpose of providing connection of that Lot with the television cable most convenient thereto. The foregoing easement is granted and reserved subject to the condition that its use and enjoyment shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Lots servient to such easement or to which such easement is appurtenant.

2.05 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 Lot 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 townhome. The Association shall have a right of access to each Lot and townhome and other improvements thereon to inspect the same and to maintain, repair or replace the sanitary sewer lines contained therein or elsewhere in the properties.

2.06 Easement for Utilities, Etc. Each Owner and the Association is hereby granted a blanket easement upon, across, over and under the Submitted property and each Lot 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, sewer, telephones 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 Residences. Notwithstanding anything to the contrary contained in this Section 2.06, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Submitted (begin **BOOK 1466 PAGE 6**) property except as may be approved by the Board or as provided in paragraph 2.01 (c) or Article X. Should any

entity furnishing a service covered by the general easement herein 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 Lot, 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 Lot damaged shall be restored to the condition in which it existed immediately prior to such work.

2.07 Use of Common Area. The Association shall maintain all the grounds of the submitted property, including the cutting and caring for grass and the caring for plants and shrubs within the Common Area. The Association shall further be responsible for the cutting of grass within each Lot and each Owner shall provide to the lawn area for such maintenance by the Association. No planting or gardening shall be done except in the individual patio or open area located within the Lots. All planting and gardening shall be restricted to floral gardening. No fences, hedges, trees, bushes, walls, shutters or awnings shall be removed from, nor erected or maintained upon the Submitted Property 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 permitted within the Common Area shall be maintained by the Owner of such gardening 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 of such returning against the individual Owner. Except for the right of ingress and egress, the Owners of the Lots are hereby prohibited and restricted 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.

2.08 Lots. Each Lot shall for all purposes constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other real property, subject to the provisions of this Declaration. If there is any Owner other than the Developer, then no tax or assessment shall be levied on the Submitted property as a whole, but only on the individual Lots. Each Owner shall be entitled to the exclusive Ownership and possession of his Lot, subject to the provisions of this Declaration. Subject to the following, each Residence shall include all improvements constructed on any Lot. Any attachment to the exterior walls of a Residence constructed on any Lot which was constructed in accordance with the plans of the Developer and/or was approved by the Board of Directors or its designated representative which protrudes beyond the boundaries of the Lot shall be deemed a part of the Lot. There shall be no horizontal boundaries. The vertical boundaries, however, shall be as shown on the Plats. All conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to one or more other Residences and/or to the Common (begin BOOK 1466 PAGE 7) Area are part of the Common Area and are excluded from a Lot although located, in part, within the boundaries thereof. The Ownership of each Lot shall include, and there shall pass with each Lot as appurtenances thereto whether or not separately described, all of the right, title and interest of a Lot Owner in the Common Area, which shall include, but not be limited to, membership in the Association.

2.09 Conveyance. Developer (or Developers) may at any time and from time to time convey to the Association such facilities, water lines, sanitary sewer lines or storm drainage lines, roads and other real property and such other facilities as Developer may from time to time determine, all of which facilities shall be deemed to be Common Area, and all of which conveyances will be deemed automatically accepted by the Association. No further consent of the Association shall be required for such conveyance.

2.10 Rules and Regulations. No Owner shall violate such Rules and Regulations for the use of the Lots and the Common Area as may be adopted from time to time by the Board.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.01 Membership. Every Owner shall be a member of the Association. No Owner, whether one or more persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from Ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership.

3.02 Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds Ownership interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earliest:

(i) Upon the sale of seventy-five (75%) percent of the Lots which are planned for development in the Submitted property

(ii) Five (5) years from the date of sale of the first Lot planned for development in the Submitted Property.

Owners may vote by written proxy presented to the Secretary of the Association prior to any meeting, and an Owner's vote may be cast by the Owner's spouse in the Owner's absence. (begin BOOK 1466 PAGE 8)

3.03 Authority of Board. Except to the extent otherwise expressly required by the Kentucky Revised Statutes or the Community Instruments, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the members.

ARTICLE IV

INSURANCE AND CASUALTY LOSSES

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4.01 Hazard and Liability Insurance. The Association shall obtain and maintain insurance for all insurable improvements, if any, on the Common Area against loss or damage by fire or other hazards, including extended coverage and vandalism and malicious mischief, in an amount equal to full replacement value of all structures and other insurable improvements within the Common Area. The Association shall also obtain a public liability policy covering all the Common Area and all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall be in amounts authorized from time to time by the Association not less than \$500,000.00 for injury, including death, to one individual, \$1,000,000.00 for injury or injuries, including death, arising out of a single occurrence, and \$50,000.00 property damage, including, but not limited to, water damage" liability, liability for non-owned and hired automobiles and liability for property of others. The public liability policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. Premiums for all such insurance shall be Common Expenses not specially assessed. All such insurance coverage shall be written in the name of the Association as trustee for each of the Owners. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

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(b) Provision shall be made for the issuance of a certificate of insurance to each Owner and his Mortgagee, if

any.

(c) The original of all policies and endorsements thereto shall be deposited with the Board which shall hold them for safekeeping in the manner the Board maintains all other books, records or documents. Such policies shall be available for review by any Owner and any Mortgagee upon reasonable notice.

(d) Exclusive authority to adjust losses under policies hereafter in force on the Submitted property shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. (begin BOOK 1466 PAGE 9)

(e) In no event shall the insurance coverage obtained and maintained by the Board be brought into contribution with insurance purchased by Owners or their Mortgagees.

(f) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their Mortgagees, may realize under any insurance policy which the Board may have in force on the Submitted Property at any particular time. Each Owner should maintain insurance on the contents of his or her unit, as no insurance obtained by the Association will cover the contents of any unit.

(g) Any Owner who obtains an individual insurance policy covering any portion of the Submitted Property or improvements thereon shall file a copy of such individual policy with the Board within thirty (30) days after purchase of such insurance.

(j) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, title insurance on his individual Lot and such other insurance as is not provided by the Association pursuant to the provisions of this Article.

(i) The Board shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements on the Submitted Property by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with attached housing construction.

(j) The Board 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, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees and of any defenses based on co-insurance or on invalidity arising from the acts of the insured;

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

(iii) that the policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer, director, agent or employee of the Association without a 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, any Owner or Mortgagee;

(iv) that any "other insurance" clause in the policy exclude Owner's policies from consideration;

(v) that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice as to non-payment and thirty (30) days' (begin BOOK 1466 PAGE 10) prior written notice as to any other reason to any and all insureds including the institutions servicing Mortgages on behalf of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(vi) that coverage will not be prejudiced by (a) act or neglect of the Owners when said act or neglect is

not within the control of the Association, or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control.

4.02 Fidelity Coverage. The Association shall also obtain fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to the institutions servicing Mortgages on behalf of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

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4.03 Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty of all or any part of the property covered by insurance written in the name of the Association, the Board 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 property. Repair or reconstruction as used in this paragraph means repairing or restoring the property to substantially the same condition as existed prior to the fire or other casualty, with each Residence on each Lot having the same vertical boundaries and location on each Lot as before; construction or reconstruction shall be in substantial conformity with that which existed prior to the damage or destruction.

(b) Any such damage or destruction shall be repaired or reconstructed within sixty (60) days after the date of damage or destruction. If, for any reason, 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 are not made available to the Association within sixty (60) days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said period of time shall in no event exceed ninety (90) days after the casualty. (begin BOOK 1466 PAGE 11)

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4.04 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid to the Association is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Additional special assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

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4.05 Minor Repairs. Notwithstanding the foregoing provision of this Article, in the event of damage by fire or other casualty to either the Common Area, the Area of Common Responsibility or a Residence or Residences covered by Insurance written in the name of the Association and if the insurance proceeds initially offered or paid therefor are less than Ten Thousand (\$10,000.00) Dollars and the estimated cost of repairing such damage is less than twice the amount of such proceeds, then the instrument by means of which such proceeds are paid shall be endorsed by the Association and the damage shall be repaired in accordance with the following provisions:

(a) If the damage is confined to the Common Area or Area of Common Responsibility, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the Maintenance, repair and replacement of the Common Area or Area of Common Responsibility. If the cost of such repairs exceeds the amount of such insurance proceeds, the Board shall impose a special assessment equally against all Owners in sufficient amounts to provide the necessary funds or if the funds are not available,

the Board may appropriate from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Area, and the Area of Common Responsibility, such sums as the Board, in the exercise of its sole discretion, may determine.

(b) If the damage is confined to a Residence or Residences, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association. If the cost of such repair exceeds the amount of such insurance proceeds, such excess shall be provided by means of a special assessment levied by the Board equally against all of the Owners in sufficient amounts to provide the funds to pay such excess costs of repairs and reconstruction.

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4.06 Owner's Hazard Insurance.

(a) Each Owner shall, at his own cost and expense, obtain and maintain insurance for the insurable improvements on his Lot against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount at least equal to the full replacement value of all structures and improvements on said Lot. No Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their Mortgagees, may realize under any insurance policy which the Board may have in force on the Submitted Property at any particular time.

(b) The Owner shall file a copy of such policy, certificate or memorandum of coverage with the Board within fifteen (15) days after purchase of his Lot.

(c) The Policy shall provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice as to non-payment and thirty (30) days' prior written notice as to any other reason to the Association and to any and all insureds including the institutions servicing Mortgages on behalf of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(d) Upon the failure of an Owner to provide a copy of the policy or a certificate or memorandum of insurance to the Association, the Association may obtain such insurance and assess the Owner for the costs of such policy, which assessment shall become immediately due and payable, and if not paid, the Association may collect such assessment as provided in Article VIII hereof.

(e) In the event that any improvements on any Lot are damaged by fire or any other cause, the Owner thereof shall commence and complete the repair and restoration within a reasonable time. If the Owner fails to commence reconstruction and repair within sixty (60) days from the date of such damage or such other time as may be permitted by the Association, the Association shall have the following options:

(i) Subject to the rights of any bona fide lienholder, the Association may effect such repair or reconstruction as is necessary to restore the damaged improvements to its state of repair prior to such damage. In such event, the insurance proceeds shall be applied toward the costs of such repair to the extent such proceeds are available after any settlement is made with any bona fide holder of a lien on said property.

(ii) The Association may apply so much of the insurance proceeds remaining after full satisfaction of all bona fide lienholders, for the temporary protection or razing of the improvements, and shall thereafter distribute any balance of said insurance proceeds to the Owner of the Lot. In such event, the Association shall have the further option to purchase the damaged property at an appraised price to be determined by three appraiser selected in the following manner: One appraiser shall be selected by the Association, one appraiser selected by the Owner of the damaged property (to be selected within ten (10) days after notice to Owner by the Association of its election under this provision together with the name and address of the appraiser selected by the Association), and a third appraiser to be selected by the first two appraisers. The price determined by any two of the appraisers shall be final and binding on the parties.

(iii) The foregoing options shall be subordinate to the lien of any bona fide first mortgage or mortgages now or hereafter placed upon any Lot provided that such subordination shall apply only to rights or options which accrued to the Association prior to a sale or transfer of such Lot pursuant to a judgment and order of sale in a foreclosure action, or any proceedings or conveyances in lieu of foreclosure. Such sale or transfer shall not prohibit the Association from exercising any such options for which the right to exercise occurred after such sale or transfer.

ARTICLE V

CONDEMNATION

5.01 General. Whenever all or any part of the Submitted property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the (begin BOOK 1466 PAGE 12) Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association as hereinafter provided in this Article.

5.02 Common Area. If the taking is confined to the Common Area on which improvements have been constructed and if at least fifty-one (51%) percent of the total vote of the Association shall decide within sixty (60) days after such taking to replace said improvements, or any part thereof, on the remaining land included in the Common Area and according to plans therefore first approved by the Association, then the Board shall arrange for such replacement and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Common Area is to be repaired or reconstructed, as provided for in Article IV. If the damage is not to be repaired, the proceeds shall be placed in the Association's capital fund.

5.03 Residences. If the taking includes one or more Residences, or any part thereof, whether or not there is included in the taking any part of the Common Area, then the award shall be disbursed and all related matters shall be handled pursuant to and in accordance with the consent of not less than fifty-one (51%) percent of all Owners expressed in a duly recorded amendment to this Declaration, provided that the consent of the Owner or Owners of the Lot or Lots so taken must be included in said percentage. In the event that such an amendment shall not be recorded within ninety (90) days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided for in Section 4.04, whereupon this Declaration will be terminated in the manner therein prescribed, unless otherwise provided by law.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

6.01 The Common Area. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements, thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair, and shall be responsible for the Area of Common Responsibility as provided in this Declaration,

6.02 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Community, whether, such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration. The Association may, as an Association expense, arrange with others to furnish water, trash collection, sewer service or other common services to each Lot. (begin BOOK 1466 PAGE 13)

6.03 Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

6.04 Rules and Regulations. The Board may make reasonable Rules and Regulations governing the use of the Lots and of the Common Area, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration.

6.05 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, 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.

ARTICLE VII

MAINTENANCE

7.01 Owners' Responsibility. All Maintenance of the Lot and Residence thereon which is not specifically identified as being the responsibility of the Association shall be the responsibility of the Owner. Except as provided in Article IX herein, no Owner shall (i) decorate or change the appearance of any portion of the exterior of a Residence or the exterior appearance of any Lot unless such decoration or change is first approved, in writing, by the Board or its designated representative, or (ii) do any work which, in the reasonable opinion of the Board or its designated representative, would jeopardize the soundness and safety of the Submitted property, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case the unanimous, prior written consent of all the other Owners.

7.02 Association's Responsibility.

(a) The Association shall be responsible for Maintenance of the Area of Common Responsibility, which responsibility shall be deemed to include, but not be limited to, (1) the Maintenance, repair and replacement of such utility lines, pipes, wires, glass, conduits and systems which are part of the Common Area, (2) the providing of exterior Maintenance upon each Lot as follows: pain, stain, repair, replace and care for roof surfaces and roof systems, gutters, downspouts, storm sewers, foundation drains, catch basins, other drainage systems and, with the exception of hardware and glass, all exterior building surfaces, including decks and balconies, (3) the providing of maintenance to the surface grounds, including trees, shrubs and grass, but excluding the maintenance of individual unit's terraces, enclosed patios and floral gardens, (4) the providing of maintenance for the area designated as vehicular access easement Maintenance of the Common Area shall be deemed to include, but not limited to , Maintenance, repair and replacement, subject to the insurance and casualty loss provisions contained herein, at the Association's sole cost and expense, of all trees, shrubs, grass, walks, streets and other improvements situated upon the Common Area.

(b) In the event that the Board of Directors of the Association determines that: (i) any Owner has failed or refused to discharge properly of his obligations with regard to Maintenance, repair and/or replacement of items for which he is responsible hereunder; or (ii) that the need for Maintenance, (begin BOOK 1466 PAGE 14) repair and/or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his n family, guests, lessees or invitees, and is not covered or paid for by insurance in whole or in part, then and in that event, the Association, except in the event of an emergency situation, shall give such Owner written notice of the Association's intent to provide such necessary Maintenance, repair and/or replacement, at such Owner's sole cost and expense, which notice shall set forth with reasonable particularity the Maintenance, repairs and/or replacement deemed necessary. Such Owner shall have five (5) days within which to complete said Maintenance, repairs and/or replacement, or, in the event that such Maintenance, repairs and/or replacement is not capable of completion within said five (5) day period, to commence said Maintenance, repairs and/or replacement. If such Owner does not comply with the provisions

hereof, the Association may provide such Maintenance, repairs and/or replacement at such Owner's sole cost and expense, and said cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against such Owner's Lot.

ARTICLE VIII

COVENANTS FOR ASSESSMENTS

8.01 Creation of the Lien and Personal Obligation of Assessments.

(a) Each Individual Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

(i) annual assessments or charges; and

(ii) special assessments or charges, such assessments to be established and collected as herein provided; and

(iii) specific assessments or charges against any particular Lot which are established pursuant to the terms of this Declaration.

(b) All such assessments, together with interest, charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot 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 Lot at the time when the assessment fell due. Each Owner shall be liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot.

(c) The grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of such conveyance, without prejudice to such grantee's right to recover from such grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association as provided in Section 8.11 hereof, such grantee, his successors, successors-in-title and assigns, shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such statement, if any.
(begin BOOK 1466 PAGE 15)

8.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Submitted property, to pay Common Expenses, including, but not limited to, the cost of the improvement and maintenance of the Common Area and Area of Common Responsibility situated upon the Submitted property, including management fees to others, to make such repairs as the Association may deem necessary, to pay ad valorem taxes and water charges and other charges for services provided by the Association assessed against the Submitted Property and to pay insurance premiums as contemplated by Article IV hereof, and for such other purposes as the Board may determine. In addition, the assessments shall include amounts necessary to establish an adequate reserve fund for Maintenance, repairs and replacement of those portions of the Common Area and Area of Common Responsibility that must be replaced on a periodic basis. Such reserve fund shall be included in the annual assessment and shall be payable in periodic installments rather than by special assessment.

8.03 Computation. It shall be the duty of the Board at least sixty (60) days prior to the Association's annual meeting to prepare a budget covering the estimated cost of operating the Association during the coming year including an adequate reserve fund. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least twenty-one (21) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of a majority of the total Association membership. Notwithstanding the foregoing, however, in the event the Board fails for any reason 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.

8.04 Special Assessments. In addition to the annual assessments authorized above, the Association may levy upon all Owners, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair (which term shall include but not be limited to painting), or replacement of a capital improvement upon the Common Area or Area of Common Responsibility including fixtures and personal property related thereto provided that any such assessment shall have the assent of at least fifty-one (51%) percent of the votes of the Owners who are voting in person or by proxy at a meeting duly called for such purpose. The Board, without approval of the Owners, may make special assessments as required by Article V and as required to fulfill the obligation of the Association to indemnify its Directors, officers, committee members, the Board and the Developer, as provided in the By-Laws. The Board may make such special assessments payable in installments over a period of not more than three (3) years. Each such assessment together with interest, costs and reasonable attorney's fees shall become the personal obligation of each Owner, his heirs, successors and assigns.

8.05 Allocation of Liability for Assessments. The amount of all Common Expenses not specially assessed against a particular Lot or Lots as permitted herein, less the amount of all undistributed and unreserved Common Profits, shall be assessed equally against all the Lots owned by Individual Owners and, in accordance with the provisions of Paragraph 8.07(b), against the Lots owned by the Developer, in proportion to the square footage of the Unit situated on each Lot bears to the total square footage of all Units situated on the Lots in the Submitted Property. (begin BOOK 1466 PAGE 16)

8.06 Notice of Meeting. Written notice of any meeting called for the purpose of taking any action authorized under Sections 8.03 or 8.04 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast fifty-one (51%) percent of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called upon written notice of not less than three (3) nor more than five (5) days. Said meeting shall not be required to satisfy the quorum in order to do business. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.07 Date of Commencement of Annual Assessments.

(a) The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area located in such portion of the Submitted Property or Annexation Property by the Developer, and shall be due and payable in a manner and on a schedule which the Board shall provide. The first annual assessment shall be adjusted according to the number of months then remaining in that calendar year.

(b) Anything contained herein to the contrary notwithstanding, Developer covenants and agrees to pay and shall be subject only to the following reduced annual and special assessments, which liability shall be calculated and commence in accordance with the following criteria:

(i) For each Lot owned by Developer which includes a substantially completed Residence, one hundred (100%) percent of the assessment payable by the Individual Owners if such Residence is occupied for residential purposes and if such Residence is unoccupied, fifty (50%) percent of such assessment until the date such Residence is occupied.

(ii) Upon conveyance of each Lot by Developer to an Individual Owner, the full assessments payable by Individual Owners shall commence on the first day of the month following the date of such conveyance.

For the purposes of this paragraph 8.07 (b), a "substantially completed Residence" means a Residence which is ready for occupancy.

8.08 Lien for Assessments. All sums assessed to any Lot pursuant to this Article, together with interest, costs, charges and reasonable attorney's fees, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on

such Lot, except only for:

(a) Liens for ad valorem taxes; and

(b) A lien for all sums unpaid which are secured by a first in priority Mortgage, or any Mortgage in favor of Developer, duly recorded in the public records of Fayette County, Kentucky, and all amounts advanced pursuant to such Mortgage (s) and secured thereby in accordance with the terms of such instrument(s). (begin BOOK **1466 PAGE 17**)

All other persons acquiring liens or encumbrances on any Lot which become liens after this Declaration is filed for record shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens or encumbrances.

8.09 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment due for a period of thirty (30) days shall incur a late charge of Ten (\$10.00) Dollars. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within twenty (20) days following the due date. If the assessment is not paid within sixty (60) days, the lien provided for herein shall attach and in addition the lien shall include a late charge of Ten (\$10.00) dollars or ten (10%) percent, whichever is higher, together with interest on the principal amount due and the late charge at the rate of fourteen (14%) percent per annum, or at whatever rate the Association shall establish at its annual meeting, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided for herein. In the event that the assessment remains unpaid after sixty (60) days, the Association, through the Board, may institute suit to collect such amounts or to foreclose its lien. Each Owner, by his acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring actions against him personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

8.10 Effect of Lien on Mortgages. In the event that the holder of a first priority Mortgage, or secondary purchase money Mortgage of record, or other person acquires title to any Lot as a result of foreclosure of a first or secondary purchase money Mortgage, such holder or other person, his successors, successors-in-title and assigns, shall not be liable for, nor shall such Lot be subject to a lien for, any assessment hereunder or under any Community Instrument chargeable to such Lot on account of any period of time prior to such acquisition of title.

8.11 Certificate as to Assessments. Any Owner, Mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of the Assessments past due and unpaid (with late charges and interest applicable thereto), against that Lot.

ARTICLE IX

ARCHITECTURAL CONTROL

Except as provided in Article X, no construction of any nature whatsoever shall be commenced or maintained upon any Lot or the Common Area, nor shall any exterior addition to or change or alteration therein be made unless and until (begin BOOK **1466 PAGE 18**) the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or by an architectural control committee composed of three or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or to disapprove such design and location within

forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article IX will be deemed to have been fully complied with. If no such application has been made to the Board or to its representatives, or if such application has been disapproved, suit to enjoin or to remove such additions, alterations or improvements may be instituted at any time.

ARTICLE X

SPECIAL PROVISIONS RELATING TO DEVELOPER

10.01 Construction and Sales Activity. Developer may carry on such construction, selling and leasing activities on the Submitted Property as it deems necessary, may alter the exterior appearance of Residences owned by it, and may maintain upon such portions of the Submitted property as it deems necessary, such facilities as may be necessary, expedient or incidental to the completion of construction and to the selling or leasing of Lots, including, but not limited to, maintenance of a sales office, model Residences, signs, storage areas, construction facilities and construction offices.

10.02 Easements in Favor of Developer.

(a) The Developer shall have a transferable easement on and over the Common Area for the purpose of making improvements on the Submitted property and any Annexation Property, and for the purpose of doing all things in connection therewith.

(b) The Developer and its duly authorized agents, representatives and employees shall have an easement for the maintenance of sales offices and/or model Residences on the Submitted property for so long as the option to submit portions of the Annexation property to this Declaration as provided in Section 10.03 exists and thereafter for so long as the Developer owns any Lot for sale in the ordinary course of business.

10.03 Submission of Additional Property. Developer shall have the option and right from time to time, without the necessity of consent by the Association, the Board or Individual Owners, but subject to Section 10.04, to submit all or portions of the Annexation property to this Declaration and thereby to become a part of the Submitted Property. This option may be exercised by the Developer in accordance with the conditions and limitations set out in Section 10.04 which are the only conditions and limitations on such right.

10.04 Conditions of Annexation. Any annexation as permitted in Section 10.03 shall be in accordance with the following terms and conditions: (begin BOOK 1466 PAGE 19)

(a) The option to submit portions of the Annexation property may be exercised at any time and from time to time until ten (10) years from the date the Declaration is recorded.

(b) The legal description of the Annexation Property is set forth in Exhibit "A", portions of the Annexation property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become Submitted property.

(c) All lots created on portions of the Annexation Property which become Submitted Property will be restricted exclusively to residential use, except as provided elsewhere in this Declaration.

(d) The Residences developed on the Lots or portions of the Annexation Property which become Submitted property shall be compatible with the Residences constructed on the Phase 1 Property in terms of quality of construction, principal materials of construction, and architectural style; however, no assurances are made that any of the structures to be constructed on those portions of the Annexation Property which become Submitted property will be substantially identical to Residences on the Phase 1 Property. A certificate of a duly licensed Architect or Registered Professional Engineer shall be conclusive as to whether the Residences constructed on the Annexation Property, or portions thereof, meet the requirements of this subparagraph, and both the Individual Owners and the Association agree to be bound thereby.

(e) The Developer may submit portions of the Annexation Property to this Declaration prior to the completion of the Common Area, Area of Common Responsibility or Residences located thereon, but in such event the Developer shall be deemed to have agreed with the Association that the Common Area and Area of Common Responsibility located in such portion of the Annexation property then being submitted will be substantially completed in accordance with the plans and specifications therefor within 180 days of the date upon which such portion of the Annexation Property becomes Submitted property. The certificate of an Architect licensed to practice in the State of Kentucky or a Registered Professional Engineer shall be conclusive proof of the fact that the Common Area and Area of Common Responsibility are substantially complete in accordance with the plans and specifications therefor.

(f) As to any portion of the Annexation Property as to which the option contained in Section 10.10 is not exercised, the Developer shall be under no obligation to impose any covenants, conditions, restrictions or easements, the same as or similar to those contained herein.

(g) The option reserved in Section 10.03 may be exercised by the Developer alone (without the consent of the Association or any Individual Owner) by the execution by the Developer of any amendment to this Declaration, to which the certificate of an Architect or Engineer referred to above shall be attached, which shall be filed for record in the Office of the Clerk of the Fayette County Court, together with a Plat of that portion of the Annexation Property which is to become Submitted property, the boundaries of all Lots to be located therein, and an Identifying Number for each such Lot. Each Plat shall be in recordable form. Any such amendment shall expressly submit that portion of the Annexation property which is to become Submitted Property to all of the provisions of this Declaration, as it may be amended from time to time, and upon the exercise, if (begin BOOK **1466 PAGE 20**) any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Submitted property, including the Phase I property and such portions of the Annexation property as have become Submitted property by Annexation. Following recording of the Plat, the Developer shall convey the Common Area shown thereon to the Association by general warranty deed, subject to matters of record. From and after the Annexation of any portion of the Annexation property by such amendment:

(i) the number of votes in the Association shall be increased by the number of Lots added to the Submitted property by Annexation and each Lot in the Submitted property shall have voting rights as set forth in Section 3.02(b) of this Declaration; and

(ii) the liability of each Owner, including the Owners of Lots in such portions of the Annexation Property as have become Submitted Property shall, subject to the rights of the Developer under Paragraph 8.07(b), for both the annual and special assessments, be equal.

(h) The Phase 1 Property has been submitted to the Community Instruments. Any of the Annexation Property submitted to this Declaration by Annexation shall also be subjected to the Community Instruments.

(i) Each Individual Owner, by acceptance of a deed to a Residence in the Community, and the Association, shall be deemed to have approved Annexation in the manner provided in this Section 10.04. Each Individual Owner and the Association also agree that in any dispute with the Developer regarding Annexation or the Developer's right to convey real or personal property to the Association, the Association and the Individual Owners have an adequate remedy at law in connection with such dispute. Therefore, each Individual Owner and the Association hereby agree, jointly and severally, that they have no right to seek a temporary restraining order, temporary or permanent injunction, or other form of equitable relief in connection with such dispute, and hereby waive and renounce any right to seek equitable relief of any type in connection with such dispute.

ARTICLE XI

GENERAL PROVISIONS

11.01 Enforcement. Each Owner shall comply strictly with the By-Laws and with the Rules and Regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, restrictions and easement's set forth in this Declaration or in the deed to his or her Lot. The

Board may impose fines or other sanctions, collection of which may be made as provided for in Article VIII hereof. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages, or injunctive relief, or both, maintainable by the Board of behalf of the Association or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

11.02 Rights of First Mortgagees. In addition to the rights of Mortgagees elsewhere provided, each first Mortgagee of a Lot shall (a) be entitled to written notice from the Association of any default by an Owner in the (begin BOOK **1466 PAGE 21**) performance of his obligations under the Community Instruments which is not cured within thirty (30) days (b) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (c) be furnished copies of annual financial reports made to the Owners; and (d) be entitled to inspect the financial books and records of the Association during reasonable business hours_ provided, however, that such Mortgagee shall first file with the Association a written request that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of this Mortgagee at an address stated in such notice.

11.03 Consent of First Mortgagees. Unless at least seventy-five (75%) percent of the Mortgagees holding Mortgages constituting first liens on Lots subject to such Mortgages (based on one vote for each Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Owners shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the assessments or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Residences, the exterior Maintenance of Residences, the Maintenance of the Common Area walks, fences and driveways, Maintenance of the Area of Common Responsibility or the upkeep of lawns and plantings in the Common Area and on the Lots;

(d) fail to maintain fire and extended coverage insurance on the items required to be insured under Article IV in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost) ;

(e) use hazard insurance proceeds for losses to Residences or the Common Area for other than the repair, replacement or reconstruction of such Residences and Common Area; or

(f) terminate professional management of the Community, if any, and assume self-management

11.04 Priority of First Mortgagees. No provision of the Community Instruments shall be construed to grant to any Owner, or to any other party any priority over any rights of first Mortgagees of the Lots pursuant to their first Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or the Common Area or any portions thereof.

11.05 Professional Management. Any agreement for professional management of the Community must provide for termination by the Association for cause upon ninety (90) days written notice thereof. The term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. (begin BOOK **1466 PAGE 22**)

11.06 Taxes, Insurance Premiums, Etc. First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common Area and for the Residences, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association and this Section constitutes the Association's agreement

to such right and its agreement to immediately make such reimbursement.

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

11.08 Duration and Perpetuities.

(a) The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Kentucky law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land for a period of twenty (20) years from the date this Declaration is filed for record in the Fayette County Court Clerk's office, after which time such provision shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least fifty-one (51%) percent of the then Owners of record and the holders of first Mortgages on their Lots has been recorded in the Office of the Clerk of said Court agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Submitted property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

(b) If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Thomas N. Thompson of Owenboro, Kentucky.

11.09 Notice of Sale, Lease or Mortgage. In the event an Individual Owner sells, leases or mortgages his Lot, such Individual Owner will give the Association notice prior to closing, in writing, setting forth the name of the purchaser, lessee or Mortgagee of the Lot.

11.10 Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by the Developer (i) if such amendment is necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration, or (iv) if such (begin **BOOK 1466 PAGE 23**) amendment is necessary to enable any governmental agency, such as the Veterans Administration, Secretary of Housing and Urban Development, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, any such amendment shall not adversely affect the title to any Owner's Lot or materially alter or change any Owner's right to the use and enjoyment of the Common Area as set forth herein, unless any such Owner so affected thereby shall consent thereto in writing.

(b) This Declaration may be amended at any time and from time to time by an agreement by at least two-thirds (2/3rds) of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Developer if the Developer is the Owner of any real property then subject to this Declaration or retains the option to submit portions of the Annexation property to this Declaration.

(c) No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any first Mortgage encumbering any Lot or the Common Area affected thereby unless such holder shall consent in writing thereto.

(d) Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Fayette County Court, Kentucky. The written consent thereto of any

first Mortgagee affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

11.11 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.12 Rights of Third Parties. This Declaration shall be recorded in the public real estate records of the Clerk of the Fayette County Court, Kentucky, and shall inure to the benefit of the Developer, the Association, the Owners and the holders of the Mortgages affecting any of the Submitted property, their respective heirs, legal representatives, successors-in-title, successors and assigns; and by such recording, no Owner of property not located within the Submitted property shall have any right, title or interest whatsoever in the Submitted property or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of the Developer and Mortgagees as herein provided, the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such other person.

11.13 Reservation of Easements. The Developer hereby reserves for itself, its successors and assigns, across the Phase 1 Property, and across each portion of the Annexation property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, perpetual easements appurtenant to (begin BOOK 1466 PAGE 24) all or any portion of the Annexation property not subject to this Declaration for the following uses and purposes:

(a) An easement for ingress and egress by vehicular and pedestrian traffic over (i) such drives, roadways, walkways and paths as are shown on the Plat or Plats recorded in connection with the Phase 1 property and such portions of the Annexation property as have been submitted to this Declaration, and (ii) such drives, roadways, walkways and paths as may be constructed in the future;

(b) An easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewerage, storm drainage, electricity, telephone and other utilities and services, including the right to use in Common with the Owners in the Phase 1 property and portions of the Annexation property previously submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners.

The only limitation on the right of the Owner or Owners of those portions of the Annexation property not submitted to this Declaration to make use of the perpetual easements granted in this Section 11.13 shall be that use of the easements of ingress and egress granted in Paragraph 11.13(a) shall be limited to access to a residential development only (either single or multifamily, rental or otherwise). The easements reserved in this Section 11.13 are in addition to any easements or rights created elsewhere in this Declaration, in the other Community Instruments or in other easements of record. The provisions of this Section 11.13 may not be amended without the written consent of the Developer.

[9]

11.14 No Partition. There shall be no judicial partition of the Submitted property or any part thereof, nor shall any person acquiring any interest in the Submitted property or any part thereof seek any such judicial partition unless the Submitted property has been removed from the provisions of this Declaration.

IN WITNESS WHEREOF, Developer has executed this instrument to be executed by its duly authorized officer as of the day and year first above written.

W & T DEVELOPMENT CORP.

(signed) Thomas N. Thompson, President.

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STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 7th day of January, 1988, by Thomas N. Thompson as president of W & T Development Corp., a Kentucky corporation, on behalf of said corporation.

My commission expires: 9/15/91

(signed) Linda Gray, Notary Public, State at Large, Kentucky

This instrument prepared by Joseph B. Murphy, Attorney 300 First Federal Plaza Lexington, Kentucky, 40507

(signed) JB Murphy

(begin BOOK 1466 PAGE 26)

RESTRICTIONS OF THE LOFTS AT LOCUST HILL TOWNHOMES ASSOCIATION, INC.

Pursuant to Article 6 of the Declaration of Covenants, Conditions, Restrictions, Reservations and Easements of The Lofts at Locust Hill Townhomes Association, Inc., and further to assist the Board of Directors of the Association (hereinafter "Board") in providing for congenial occupancy and the protection of the value of the townhomes, it is necessary that the Board have the right and authority to exercise reasonable controls over the use of the townhomes. Violation of the following enumerated prohibitions shall not be permitted, and the Board is hereby authorized to take all steps necessary to prevent or discontinue any violations thereof, all at the expense of the violator:

1. All townhomes (for purposes of these Restrictions, "townhome" shall be defined to include the lot and the improvements erected thereon) shall be used only for private residential purposes. This provision shall not, however, be so construed as to prevent the Developer from using any townhome for a model business office or for display purposes, nor so as to prohibit the leasing of any townhomes thereon by the Developer, subject to the provisions of the Declaration and By-Laws.
2. No animal, other than common household pets, shall be kept or maintained in the property ("property" shall be defined to include all lots developed in the townhome community, together with all Common Areas) nor shall common household pets be bred, kept or maintained for commercial purposes on the property. The pets shall not be permitted outside the enclosed living area of the townhome unless accompanied by an adult person and carried or leashed. Such pet shall be kept clean and healthy and their excretions shall be cleaned up by the residents who keep them.
3. No Owner or other occupant of the townhomes shall post or expose any advertisement or posters of any kind in or about the the townhome, except these restrictions shall not apply to the advertisements, signs or posters utilized by the Developer or its agent in selling the townhome.
4. All private trucks, trailers, boats, mobile homes or any other similar device or any other piece of similar equipment designated by the board shall be parked only in those areas specifically designated for such use by the board.
5. No unlicensed vehicles, junked or immobile vehicles or private truck larger than a pickup, or any other similar device or any other similar piece of equipment designated by the Board shall be parked or permitted to stand within or upon any part of the property. Due to the unsightliness created and possible annoyance to other Owners and/or residents, no extensive work such as dismantling and repairing of motor vehicles or machinery of any type

shall be permitted upon any part of the property.

6. All driveway areas are to be used for ingress and egress to the townhome and no parking other than that which is temporary in nature shall be permitted on driveway areas.

(begin BOOK 1466 PAGE 27)

7. All guests of Owners and/or residents shall park only in those areas designated by the Board as parking areas for guests.

8. All vehicles belonging to members of the Association, members of their families, their tenants and guests shall be parked in such manner as to neither impede nor prevent ready access to any other parking space by another vehicle.

9. No elements of the property shall be used for an unlawful, immoral or improper purpose.

10. No nuisance shall be allowed in the townhome, nor shall any use or practice be allowed which is a source of annoyance to the residents or which interferes with the peaceful possession of the proper use of the townhome by its occupants.

11. Owners, occupants and- guests shall exercise extreme care to .avoid unnecessary noise or the use of musical instruments, radios, televisions or amplifiers that may disturb other residents.

12. No Owner or occupant shall install wiring for electrical or telephone installation, television antennae, machines or other equipment which protrude through the walls or the roof of the project or is otherwise visible on the exterior of the project except as authorized by the Board.

13. An Owner or occupant shall not place or cause to be placed in the public walkway, parking lot or other common areas or common facilities, other than courtyard or patio to which the Owner or occupant has sole access, any furniture, packages or objects of any kind. The public walkways shall be used for no purpose other than normal transit through them.

14. No further improvements of any nature (including but not limited to, fencing, enclosures, temporary buildings, or tents or trailers, decorative or recreational structures, landscaping, flowers, plantings, brick and concrete work and awnings> may be constructed, erected or placed outside the respective fenced courtyard for each townhome without the prior written approval of the Association.

15. No structural additions, alterations or improvements may be made within any of the properties without the prior written approval of the Association.

16. No clothing, laundry, rugs, bedding or wash shall be hung from or spread upon or from any patio, window or exterior portion of a townhome or any Common element.

17. In the use of the Common elements of the Townhome Developments, all Owners and occupants shall obey and abide by all valid laws, ordinances and zoning and other governmental regulations affecting the same and all applicable rules and regulations adopted by the Board and/or the Association. The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the townhome. (begin BOOK 1466 PAGE 28)

18. In order to maintain a uniform and decorous appearance, all blinds, drapes, curtains or other similar devices which may be viewed from the outside of any townhome must be either white, have a white lining or be backed with white sheers.

The above stated Restrictions of the The Lofts at Locust Hill Townhomes Association, Inc. were approved and adopted by the Board of Directors of the Association on the 7th day of January, 1988.

(signed) Thomas N. Thompson, President

(begin BOOK 1466 PAGE 29)

EXHIBIT A

ANNEXATION PROPERTY

PARCEL I

BEGINNING at the intersection of the right-of-way of Man 0' War Boulevard and the centerline of Rio Dosa Drive as shown on the plat of Wagon Wheel Estates, Unit I-A, recorded in Plat Cabinet D, Slide 143 at the Fayette County Clerk's Office. Thence with the centerline of Rio Dosa Drive, North 43° 42' 03" West, 1036.01 feet 1 thence leaving the centerline of Rio Dosa Drive North 46° 17' 57" East, 35.00 feet to the true point of beginning. Said true point of beginning being the northeast intersection of the rights-of-way of Rio Dosa Drive and Santa Fe Court. Thence crossing Santa Fe Court North 43° 42' 03" West, 50.00 feet to the northwest intersection of the rights-of-way of Rio Dosa Drive and Santa Fe Court. Thence with the rightof-way of Rio Dosa Drive North 43° 42' 03" West, 80.00 feet; with a curve to the right, said curve described by a circular arc having a radius of 1165.00 feet whose chord is North 31° 54' OS" west, 476.42 feet to the northeast intersection of the rights-of-way of Rio Dosa Drive and Bonanza Drive. Thence leaving the right-of-way of Rio Dosa Drive and continuing with the right-of-way of Bonanza Drive a curve to the left, said curve described by a circular arc having a radius of 525.00 feet, whose chord is North 60° 16' 51" East, 170.16 feet 1 North 50° 57' 17" East, 21S.33 feet 1 South 55° 15' 09" East, 114.55 feet to the northwest corner of Lot 22 Block "B" of Wagon Wheel Estates, Unit I-A as shown on the aforementioned plat. Thence leaving the right-of-way of Bonanza Drive and continuing with the boundary of said Block "B", South 50° 57' 17" West, 339.19 feet; South 2So 29' 13" East, 155.1S feet 1 South 36 ° 06' 09" East, 117.61 feet 1 North 50° 57' 17" East, 337.59 feet1 South 55° 15' 09" East, 271.61 feet; to the southeast corner of Lot 1, Block "B" as shown on the plat of Wagon Wheel Estates, Unit I-C, recorded in Plat Cabinet F, Slide 138 at said Clerk's Office. Said corner lying in the southeast line of Parcel 1 and being South 34° 44' 51" West 270.00 feet from the northeast corner of Parcell as shown on the Final Record & Consolidation Minor Plat of J. M. Johnson property, recorded in Plat Cabinet D, Slide "364 at said Clerk's Office. Thence South 34 ° 44' 51 n West 15.00 feet to the southwest corner of said Parcell. Thence with the southeasternmost line of Parcel 2 as shown on Plat D-364, South 46° 17' 57" west, 47.49 feet to the northeast corner of Parcel 4. Thence with said Parcel 4, North S5° 54' 09" East, 152.24 feet to a point in (begin BOOK 1466 PAGE 30) the right-of-way of Santa Fe Court. Thence with said' right-of-way, a curve to the right, said curve being described by a circular arc having a radius of 50.00 feet; whose chord is South 43° 38' 00" West, 63.66 feet; thence with a curve to the left, said curve being described by a circular arc having a radius of 75.00 feet, whose chord is South 64° 44' 03" West, 47.43 feet; thence South 46° 17' 57" West, 240.00 feet to the true point of beginning and containing 3.976 acres.

PARCEL II

BEGINNING at the northwest intersection of the rightsof-way of Rio Dosa Drive and Bonanza Drive as shown on the plat 6f Wagon Wheel Estates, Unit 1-A recorded in Plat Cabinet D, Slide 143 at the Fayette County Clerk's Office. Thence with the right-of-way of Rio Dosa Drive a curve to the right, said curve being described by a circular arc having a radius of 1165.00 feet, whose chord is North 15° 20' 50" West, 93.34 feet. Thence leaving said right-of-way North 50° 57' 17" East, 451.60 feet; South 55° 15' 09" East, 242.00 feet to the northwest corner of Lot 15, Block "A" as shown on said plat. Thence with the northwest line of Lot 15 South 34° 44' 51" west, 110.00 feet to a point in the right-of-way of Bonanza Drive. Thence with said right-of-way North 5So 15' 09" west, 65.65 feet; a curve to the right, said curve being described by a circular arc having a radius of 75.00 feet whose chord is North 36° 49' 03" West, 47.43 feet; a curve to the left, said curve being described by a circular arc having a radius of 50.00 feet, whose chord is South,87° 51' 04" west, 96.01 feet; a curve to the right, said curve being described by a circular arc having a radius of 75.00 feet, whose chord is South 32° 31' 11" West, 47.43 feet; South 50° 57' 17" East, 162.11 feet; a curve to the right, said curve being described by a circular arc having a radius of 475.00 feet, whose chord is South 60° 12' 03" West, 152.64 feet to the point of beginning and containing

1.508 acres.

Being the same property conveyed to W & T Development Corp. by Lynwood Wiseman et al by deed dated December 19, 1986, and of record in Deed Book 1427, Page 281, in the Fayette County Court Clerk's Office.

(begin BOOK **1466** PAGE **31**)

EXHIBIT A-1

PHASE 1 PROPERTY

All of Unit 1 of The Lofts at Locust Hill Townhomes Subdivision to the City of Lexington as shown by plat thereof of record in Plat Cabinet H, Slide 88 in the Fayette County Court Clerk's Office.

Being part of the same property conveyed to W & T Development Corp. by Lynwood Wiseman et al by deed dated December 19, 1986, and of record in Deed Book 1427, Page 281, in the Fayette County Court Clerk's Office.

(stamped) STATE OF KENTUCKY COUNTY OF FAYETTE. SCT. I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN DEED BOOK 1465 PAGE 1 IN MY SAID OFFICE. DONALD W. BLEVINS, CLERK. BY

[10]

(signed) A. F. Nevins DC.

[1]

The book and page number in parentheses were stamped on the original document by the Fayette County Clerk's Office, and have been noted in the text of this document in parentheses.

[2]

Converted from original document to an MS Word document November 2004; the text matches the document on file in the Fayette Co. Clerk's Office, except for the incorporation of amendments (noted in footnotes) and minor spelling corrections for obvious typographical errors.

[3]

Section 4.01, para. 1, reads as amended 29 February 1988 by Developer (unilaterally as sole owner of all "Phase 1 Property" and "Annexation Property".

[4]

Section 4.01(b) reads as amended 29 February 1988

[5]

Formerly sec. 4.04 (orig. sec. 4.03 moved to sec. 11.14 by 29 February 1988 amendment)

[6]

Formerly sec. 4.05 (orig. sec. 4.04 renumbered as 4.03)

[7]

Formerly sec. 4.06 (orig. sec. 4.05 renumbered as 4.04)

[8]

New section added by amendment 29 February 1988

[9]

As amended 29 February 1988 (formerly section 4.03)

[10]

Signature unclear, may not be transcribed correctly in this document. See document of record in Fayette County Clerk's Office if needed.