

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
TOP FLIGHT LANDING  
SPENCER COUNTY, KENTUCKY  
JULY 1, 2004**

**Top Flight Landing  
220 Airport Road  
Taylorsville, KY 40071**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOP FLIGHT LANDING SUBDIVISION ("declaration") is made, imposed and declared as of the 1<sup>st</sup> day of July, 2004, by The Spencer Co. Group, LLC, a Kentucky limited liability company, with a principal office address of 220 Airport Road, Taylorsville, Kentucky 40071 ("Declarant").

WITNESSETH:

WHEREAS, Declarant owns that certain residential subdivision located in Spencer County, Kentucky, more commonly known as "Top Flight Landing Subdivision," of which the legal description is recorded in Deed Book 156, Page 660, in the Office of the Clerk of Spencer County, Kentucky (the "Subdivision"), including Top Flight Landing, Phase I as set forth in Plat Cabinet 3, Slides 385 & 386 recorded in the Office of the Clerk of Spencer County, Kentucky, as such Subdivision may be amended from time to time; and

WHEREAS, it is the desire and intention of Declarant to develop the real property herein or hereafter made subject to this Declaration in sections, all in accordance with the provisions of the Declaration, as a part of, and as annexations and additions to, the "Property" (as defined below), and to subject and impose upon such real property certain rights, privileges, covenants, conditions and restrictions, and to reserve and/or dedicate certain easements, and to impose certain assessments, charges and liens, as applicable, and the other provisions of this Declaration, bind and benefit not only said persons and entities, but also their perspective heirs, personal representatives, successors and assigns, as applicable, and that all of such real property should be owned, held, leased, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges and liens set forth herein, and the other provisions of this Declaration; and

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

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conditions, restrictions, easements, assessments, charges, and liens set forth in, and the other provisions of, this Declaration;

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

## ARTICLE I – PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS

### Section 1.1 Subject Property

For purposes of this Declaration, the term "Property" shall initially mean and be a reference to all of the residential property within Top Flight Landing Phase I.

### Section 1.2 Additions To, and Withdrawal of, Property

(a) The Subdivision. Portions of the Subdivision property owned by Declarant, which have not yet been developed by Declarant as previous Phases of the Subdivision may be hereafter included from time to time by Declarant as part of the Subdivision and be made subject to the terms of this Declaration (or a similar declaration of covenants, conditions and restrictions acceptable to Declarant in its sole discretion), pursuant to a statement to such effect made by Declarant on the subdivision plat for any such portion of the Subdivision which is filed in the aforesaid Clerk's Office and/or by the filing of a declaration to such effect by Declarant in the aforesaid Clerk's Office. Upon the inclusion of any such subdivided section of the Subdivision subject to this Declaration, the recorded subdivision plat therefore shall be deemed a "Plat" under this Declaration and may include such information and matters as contemplated with respect to any Plat, the phase or section of the Subdivision evidenced thereby shall be deemed a "Phase" under this Declaration, and all residential lots and/or common area created pursuant thereto shall be deemed to be "Lots" and "Common Area", respectively, subject to this Declaration.

(b) Additions. Additional real property, whether owned by Declarant or others, which is not presently a part of Declarant's general plan and scheme of development of the subdivision, may be hereafter annexed to the conditions and restrictions acceptable to Declarant in its sole discretion and make subject to this Declaration, of another declaration of covenants, conditions and restrictions acceptable to Declarant in its sole discretion. All such additions to the Subdivision shall be made by filing a Declaration of Annexation in the aforesaid Clerk's Office with respect to such additional real property, which shall declare the annexation and addition of such real property to the Subdivision and shall extend the scheme of this Declaration to, or impose the scheme of such other declaration of covenants, conditions, and restrictions acceptable to Declarant on, such annexed real property. Upon the filing of any such Declaration of Annexation, the term "Property" as used in this Declaration shall automatically be deemed modified to include and be referenced to such additional real property, unless otherwise specified therein. Any such Declaration of Annexation extending the scheme of this Declaration to such annexed real property may contain additions and modified of the provisions of this Declaration as Declarant may elect and/or as may be necessary to reflect the different character, if any, of the annexed real property.

(c) Withdrawal. Declarant may from time to time elect in its discretion not to develop portions of the subdivision for which a Plat has not been recorded, or, if a Plat has been recorded, in which Phase evidenced thereby no Lots are then owned by other than Declarant, or any of its respective affiliates or related entities, and may withdraw such portions of the Subdivision from this Declaration, as applicable. Any such withdrawal shall be accomplished by the filing in the aforesaid Clerk's Office of a Notice of Withdrawal executed by the Declarant, and describing by adequate legal description the portions of the Subdivision, thereby withdrawn. Upon the filing of and such Notice of Withdrawal, the term "Property," as used in this Declaration shall be automatically deemed modified to exclude the real property thereby withdrawn.

### **Section 1.3 Supplemental Declarations.**

(a) Terms. Declarant may from time to time elect in its discretion, and without need for the consent of any other person or entity, to record with respect to any Phase a Supplemental Declaration of Covenants, Conditions and Restrictions (a "Supplemental Declaration") in the aforesaid Clerk's Office, pursuant to which Supplemental Declaration Declarant may impose on the Phase subject thereto rights, privileges, covenants, conditions, restrictions, limitations, reservations, expectations, equitable servitude's, easements, assessments, charges and liens, and provisions other than those set forth in this Declaration, which may be more or less restrictive than those set forth in their Declaration as Declarant may elect in its sole discretion and which shall control over the provisions of this Declaration, taking into account the unique and particular aspects of the proposed development of the Phase covered thereby, provided that any of the same imposed by such Supplemental Declaration shall not materially and adversely affect the existing single-family residential nature of the developed Phases of the Subdivision. Further, any such Supplemental Declaration may otherwise supplement the provisions of this Declaration with respect to the Phase subject thereto, and may otherwise contain such

additional information, specifications and other matters with respect to the Phase subject thereto as is contemplated by this Declaration. A Supplemental Declaration may further provide for a Subassociation (as hereinafter defined) for the right of such Subassociation to assess Lot owners within such Phase and to place liens upon the Lots therein for the purposes described in such Supplemental Declaration.

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

#### **Section 1.4      Cross-Easements.**

Declarant reserves the right to create cross-easements and to restrict all of the Property according to the terms of this Declaration. The "Common Area" initially covered by this Declaration and hereafter created pursuant to the Plat for any Phase, or as otherwise provided herein, shall be subject to the provisions of this Declaration and shall inure to the benefit of the owners of Lots within the Subdivision which hereafter become subject to this Declaration, or to another declaration of covenants, conditions and restrictions as approved by Declarant in its sole discretion which so provides, and the Common Area allocable to the owners of all such Lots within the Property shall inure to the benefit of the owners of Lots within the Property created pursuant to Plats recorded earlier, each to enjoy the Common Area of the other and to have and to hold the same as if each such Lot had been developed and subjected to this Declaration simultaneously. The Common Area subject to this Declaration, together with the "common area" as described and/or defined in or on any later Declarations and/or later Plats, is sometimes hereinafter collectively referred to as the Top Flight Landing Common Area. No portions of the Common Area or the Top Flight Landing Area may be partitioned by or for the benefit of any Lot owner.

### **ARTICLE II – USE RESTRICTIONS**

#### **Section 2.1      Primary Use Restrictions.**

##### **(a)      Single-Family Residential Use.**

(i.) Except as otherwise expressly provided in this Declaration, no Lot shall be used except for private single-family residential purposes. No structure shall be created, placed or altered or permitted to remain on any Lot except one single-family residence designed for the occupancy by one family (except that any reasonable number of Domestic servants living on the premises in accordance with applicable law shall be

permitted), not to exceed two and one-half stories in height, unless approved by Declarant in its sole discretion and permitted by applicable law, or otherwise provided in this Declaration.

(II) Each residence on a Lot shall include an attached garage (with garage doors) capable of housing at least two (2) vehicles, for the sole use of the owner and occupants of the Lot. A two (2) car garage will be allowed in a basement, upon approval by developer. If needed the garage doors can be on the front of the residence with approval by the developer.

(III) The Top Flight Landing Common Area and any facilities located within the Subdivision, whether operated and maintained by Declarant, its successors and assigns, or the Community Association (as hereinafter defined), shall be exempt from the use restrictions of this Section 2.1, but shall remain subject to the rules and regulations of the Community Association.

For the purpose of this Declaration, there shall be specifically excluded from the meaning of the phrase "private single-family residential purposes," and shall not be permitted on any Lot within the Subdivision, regardless of whether any of the same would otherwise be permitted by any applicable zoning regulations or other governmental laws, rules or regulations, any uses which constitute or relate to (1) boarding houses, (2) lodging houses, (3) fraternities or sororities, (4) clubs, (5) hotels, (6) residences or homes for social rehabilitation, (7) nursing homes, (8) residences or homes for the aged or infirmed, (9) programs with respect to which admission to residency in or occupancy of the promises is limited to or intended in whole or in part for persons in the custody of the criminal justice system or the juvenile justice system and/or persons engaged in the care, custody, nurturance or supervision of such persons, (10) any Exceptional Residential Use (as presently defined in Article 2 of the Regulations of the Spencer County Planning and Zoning Commission), and (11) any "group home" or other similar use as determined by Declarant and/or the Board.

(b) Lease Restriction. No vacant Lot may be leased, and no improved Lot may be leased for a term of less than six (6) months. At least three (3) business days (not including weekends or state or Federal holidays) prior to the commencement date of the lease of any improved Lot, the owner(s) of such Lot shall notify the Declarant in writing of the executions of such lease, which notice shall specify in full the names of the lessees thereunder and the names of such lessees' dependents and other family members who will reside at such Lots, and shall include a copy of the executed lease and shall confirm that such lease incorporates by reference the provisions of this Declaration; in addition to the Lessee's liability for all fees, charges and expenses owed to the Declarant, any of the Top Flight Landing and/or the Community Association by such lessees and/or their dependents, whether in connection with the use of the recreational facilities within the subdivision or otherwise. All such unpaid fees, charges and expenses, and all such fees, charges and expenses incurred by Declarant, any of the Spencer Co. Group, LLC and/or the Community Association in connection therewith, including, without limitation, reasonable attorney's fees and court costs, shall bear interest at the rate per annum

prescribed and/or permitted pursuant to Section 2.6(b) below and all such amounts, plus accrued interest thereon, shall constitute a charge and lien upon the Lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV of this Declaration.

(c) No Subdivision. No Lot shall be subdivided or its boundary lines changed, except with the prior written approval of the Declarant in its sole discretion, which approval may be arbitrarily and unreasonably withheld. All Lot owners are hereby notified that Declarant has the express right, in its sole discretion, to subdivide, re-plot and/or alter the boundary line of any Lot or Lots owned by Declarant, any of the Spencer Co. Group, LLC and/or any of their respective affiliated or related entities. Any such division, boundary line change, or re-plating of any Lots shall not be in violation of applicable subdivision and zoning regulations.

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

#### **Section 2.2 Nuisances.**

No noxious or offensive trade or activity shall be conducted or permitted to exist on any Lot, nor shall any Lot owner do anything on any Lot, or otherwise within the Subdivision, which may be or become an annoyance or nuisance to the residents of the Property.

#### **Section 2.3 Use of Other Structures and Vehicles.**

(a) Restrictions on Structures. No used or previously erected or temporary house shall ever be placed, erected or allowed to remain on any Lot, except for temporary tool sheds, field offices or sales offices used by Declarant, or by a Builder (as hereinafter defined) as Declarant may permit by written consent, which shall be removed by Builder when construction or redevelopment on a Lot is completed. Any such temporary structure shall be removed by a Builder within ten (10) days of receipt of written notice from Declarant.

(b) No Temporary Residences. No bus, mobile home, trailer, camping unit, camping vehicle, motor home, or other vehicle, or outbuilding, basement, tent, shack, garage or barn, or any structure other than the main residence erected on a Lot, shall at any time be used as a residence, temporarily or permanently, on any Lot or otherwise within the Property.

(c) Restrictions on Vehicle and Parking.

(1) No bus, mobile home, motor home, trailer, truck, motorcycle,

commercial vehicle, camper trailer, camping unit, camping vehicle or boat shall be parked or kept on any Lot at any time unless housed in a closed garage or basement, except as otherwise may be acceptable to Declarant in its sole discretion.

(II) Each Lot owner and resident of the Property is hereby advised that any other vehicle determined to be objectionable or unsightly by Declarant and/or the Board must upon notice from either Declarant or the Board, as applicable, be thereafter kept in a closed garage or basement or removed from the Property.

(III) No vehicle which is inoperable shall be habitually or repeatedly parked or kept on any Lot (except in the garage) or on any street in the Subdivision.

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

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

#### **Section 2.4 Animals.**

No animals, including, without limitation, reptiles, livestock, swine, (including miniature pot belly pigs), or poultry of any kind shall be raised, bred or kept on any Lot, except that a total of two (2), meaning one (1) dog or one (1) cat, or combination of, or other traditional household pets (meaning the domestic pets traditionally recognized as household pets) may be kept in the residence on a Lot, provided they are not kept, bred or maintained for any commercial or breeding purposes. No dog or other pet runs are permitted on any Lot, except for those the design, placement and landscaping of which have been approved in writing by Declarant in its sole discretion. The Lot owner keeping any such pets shall keep the Lot free of pet waste and feces, and any person in charge of a dog, cat or other pet in the Common Area shall dispose of any feces dropped by the pet in a prompt and sanitary manner; provided, that the foregoing shall not be construed to permit any person in charge of a pet or other animal to take the pet or animal on private property without the consent of the property owner. In addition to such other remedies as may be available, violation of this Section 2.4 by any Lot owner or resident of the Property may result in the suspension of the voting rights of a Lot owner in the Common Association and suspension of other rights set forth in this Declaration.

**Section 2.5 Clothesline: Fences and Walls: Tennis and Basketball Courts: Swimming Pools: Antennae and Receivers/Transmitters: Exterior Lighting: Play equipment.**

- (a) Clothes Lines. No outside clotheslines shall be erected or placed on any Lot.
- (b) Fences and Walls.

(I) All fences and walls are subject to prior written approval by Declarant in its sole discretion. No fence or wall of any nature may be extended toward the front or street side property line on any Lot beyond the front or side wall of the residence on any Lot (not including unenclosed porches), and all fences and walls shall be constructed so that the finished side thereof, as determined by Declarant in its sole discretion, shall face away from the Lot upon which such fence or wall is constructed. Chain link fences are not permitted on any Lot, except for tennis court fences permitted under Section 2.5(c) below.

(II) All owners and residents of Lots adjacent, bordering or backing up to, or in the near vicinity of (as determined by Declarant in its sole discretion), the real property constituting the Top Flight Landing golf course and facilities are advised that any perimeter fences and walls, and other fences and walls encompassing large areas of such Lots, will not be permitted on such Lots, nor shall any other fences or walls be permitted on such Lots, it being the concern and intent of Declarant that the view of the Top Flight Landing golf course and facilities not be unnecessarily blocked or impeded and that no fences be constructed within 30 feet of any Lot line, except as acceptable to Declarant in its sole discretion.

(c) Tennis Court Fences. No tennis court fences shall be erected on any Lot unless (I) the fencing is coated with black, green or other colored vinyl acceptable to Declarant, (II) the fence and court area are landscaped to screen views of the fencing and courts, and (III) the plans for such fence and landscaping have been approved by Declarant in writing pursuant to Section 3.1 hereof.

(d) Basketball Courts. No basketball goal shall be erected on or attached to any structure located on any Lot unless the location of such goal (I) is not visible from any road or (II) has been approved in writing by the Declarant.

(e) Aboveground Swimming Pools. No aboveground swimming pools shall be erected or placed on any Lot, although hot tubs and spas, the size, design, placement and landscaping of which have been approved in writing by Declarant in its sole discretion, shall be permitted.

(f) Antennae. No antennae, microwave, tower or other receivers and/or transmitters shall be erected or placed on any residence or Lot (except for small television antennas or receivers which are concealed and contained wholly within the interior of a residence and which are not viewable outside of such residence through any window or otherwise from



any vantage point or elevation determined by Declarant), unless its design and placement are approved in writing by Declarant, which approval shall be within the sole and absolute discretion of Declarant and may be arbitrarily and unreasonably withheld. The small exterior "satellite dishes" are permitted but must be conspicuously placed at the discretion of the Declarant.

(g) Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby Lots, as determined by Declarant. All Lot owners and residents of the subdivision are hereby advised that all exterior lighting, ornamental post lights and other ornamental yard decorations located or proposed to be located on any Lot are subject to the prior written approval of Declarant in its sole discretion.

(h) Play Equipment. All exterior or outside play equipment located on any Lot, including, without limitation, swing sets, jungle gyms and similar equipment, shall be subject to the prior written approval of Declarant in its sole discretion, and all Lot owners and residents of the Subdivision are advised to obtain the approval of Declarant prior to the construction or placement of any such equipment on any Lot.

#### **Section 2.6 Duty to Maintain Lot.**

(a) Declarant's Maintenance and Fees. From and after the date of purchase of a Lot until construction of a single-family residence is started thereon, Declarant shall have the exclusive right, but not the obligation, to perform all normal maintenance on the Lot which Declarant deems necessary, including, without limitation, mowing; provided, that Declarant shall have no obligation to remove damaged, dead or dying trees or limbs thereon, or fallen portions thereof, from the Lot, although Declarant may elect to do so in its discretion, and all of which the Lot owner shall promptly cut and remove from the Lot after falling, or otherwise after a determination and notice by Declarant or the Community Association to the Lot owner that any of the same constitute a danger or are unsightly. If Declarant decides, in its sole discretion, that any mowing or other maintenance is appropriate, each Lot owner shall be assessed an annual fee payable in advance upon notice, at the initial rate of \$30.00 per month; provided Declarant may assess each Lot owner at a greater or lesser amount as Declarant determines, in its sole discretion, is necessary to maintain the Lot as provided herein, or as may otherwise be stated in the applicable Supplemental Declaration and/or Plat for any Phase. Such maintenance fees shall be appropriately prorated for partial year ownership of a Lot conveyed by Declarant, and shall be paid by the Lot owner in any case within thirty (30) days of demand by Declarant. All such fees due and payable to Declarant from a Lot owner pursuant to the Terms of this Section 2.6(a) shall bear interest from the due date thereof until paid at a fixed rate of twelve percent (12%) per annum, or such lower rate as may constitute the maximum then permitted by applicable law, and such amounts shall, together with all interest accrued and unpaid thereon, and all costs of collection incurred in connection therewith, including, without limitation, court costs and reasonable attorney's fees, constitute a charge and lien for assessments provided for in Article IV below.

(b) PAGE 494 Lot Owner's Maintenance. From and after the date construction of a single family resident on a Lot is started, it shall be the duty of each Lot owner to keep the grass on the Lot Property cut, to keep the Lot free from weeds, waste or trash, including, without limitation, construction waste, and to keep it otherwise neat and attractive in appearance to the satisfaction of Declarant. Should any Lot owner fail to do so, then Declarant may take such action as it deems appropriate, including, without limitation, mowing in order to make the Lot neat and attractive, and the Lot owner shall, immediately upon demand, reimburse Declarant or other performing entity for all expenses incurred in so doing, together with interest at the rate of twelve percent (12%) per annum or such lower rate as may constitute the maximum then permitted by applicable law, and Declarant shall have a lien on that Lot and the improvements thereon to secure the repayment of such amounts, of equal priority to the lien for assessments provided for in Article IV of this Declaration.

(c) Indemnification By Lot Owner. Each Lot owner, by acceptance of a deed for the Lot, releases and shall indemnify and hold harmless Declarant from and against all losses or damages which may accrue to such Lot owner's Lot, and the vegetation thereon, arising from any activities of Declarant and/or the Lot owner pursuant to this Section 2.6.

#### **Section 2.7 Duty to Repair and Build**

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

Declarant or the Board, as applicable, upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and court costs, and all such costs and expenses shall constitute a charge on the Lot, and Declarant or the Board, as applicable, shall have a lien on such Lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV below.

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

#### **Section 2.8 Restrictions on Business and Home Occupations.**

No trade or business of any kind (and no practice of any profession, including, without limitation, medicine, dentistry, chiropractic, osteopathy, accounting, law and other like endeavors) shall be conducted on any Lot, nor shall anything be done thereon which constitutes or may become an annoyance or nuisance to the neighborhood or other residents in the Subdivision, as determined by Declarant or the Board. Notwithstanding

the provisions hereof or of Section 2.1 above, a new house may be used by the Builder thereof as a model home for display of the Builder's work in the Subdivision or for the Builder's own office, provided said use terminates within eighteen (18) months from completion of such house by the Builder or at such other time as may be determined by Declarant, and provided further that such use otherwise conforms to this Declaration and/or such rules as Declarant may from time to time issue.

Each Lot owner shall be limited to two yard or garage sales per calendar year.

### **Section 2.9 Signs.**

(a) Sign Limits. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, except one neat and attractive sign for advertising the sale or lease thereof, which shall not be greater in area than nine (9) square feet and shall be acceptable in condition, format, appearance and content to Declarant.

(b) Declarant's Signs. Each Lot owner and resident of the Subdivision is hereby advised that Declarant may elect from time to time (I) to erect larger signs when advertising the Subdivision, Top Flight Landing Country Club and/or its attendant facilities, or upcoming events at any of the foregoing, (II) to place signs on Lots designating the lot number of the Lots, and (III) following the sales of a Lot, to place signs on such Lot indicating the name of the purchaser of that Lot and/or the fact that it has been sold.

(c) Street Numbers. This section 2.9 shall not prohibit placement of occupant name signs and lot numbers as allowed by Declarant's guidelines (which may be included in the "Design Guidelines," as such term is hereafter defined, or otherwise) or as are otherwise acceptable to Declarant, and which signs and numbers are in compliance with applicable zoning regulations.

(d) Uniform Sign Program. Declarant shall have the unfettered right in its sole discretion to establish from time to time a uniform sales sign program for all Lots, whether improved or unimproved, from Declarant or any of its related entities or from a designated third party.

### **Section 2.10 Drainage.**

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

plumbing and building code requirements. No Hazardous Substances (as hereinafter defined) shall be dumped or introduced into the sanitary or storm sewer system for the Subdivision, or otherwise improperly stored or disposed of on any Lot.

(b) Golf Course Lots. All Lot owners and residents of the subdivision are hereby advised the Section 6.4 below imposes additional restrictions on drainage with respect to the golf course Lots.

**Section 2.11 Disposal of Trash: No Hazardous Substances.**

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

Hazardous Substances and/or Permitted Substances by such Lot owner or otherwise on such Lot owner's Lot during the ownership of the Lot by such Lot owner.

**Section 2.12 Utility Service.**

(a) Underground Service to Lots.

(I.) Each Lot owner's electric and telephone utility service lines shall be underground throughout the length of service from Salt River RECC, Kentucky Utilities and South Central Bell Telephone Company's respective points of delivery to a Lot, to the residence on such Lot; and title to the service lines shall remain in, and the cost of installation and maintenance thereof shall be borne by, the owner of the Lot upon which such service lines are located.

(II) Appropriate easements as shall be acceptable to Declarant, are hereby dedicated and reserved to Salt River RECC, K.U. and S.C. Bell, as applicable, together with the right of ingress and egress over abutting Lots or properties, to install, operate and maintain electric and telephone service lines from each Lot to S.C. Bell's respective termination points. Electric and telephone service lines, as installed from time to time in locations acceptable to Declarant, shall determine the exact location of said easements.

(III) The electric and telephone easements shown on the plat for any Phase, if any, including, without limitation, any of the same shown on the Phase I Plat, shall be maintained and preserved in their present condition, and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or Lot owner without the express written consent of Declarant, and Salt River RECC, K.U. and S.C. Bell, and their respective successors and assigns, as applicable.

(b) Additional Easements.

(I.) Easements for underground electric and telephone transmissions and distribution feeder lines, poles and equipment appropriate in connection therewith, are reserved over, across and under all spaces (including park, open and drainage space area) outlined or otherwise shown and designated on the Plat for any Phase, including, without limitation, the Phase I Plat, and over, across and under such portions of the Common Area as Declarant shall determine from time to time, for underground facilities. Declarant hereby reserves the right to grant such additional easements as may be necessary to facilitate electric service, gas service, water and sewer service, telephone and communications services, cable television and the like throughout the Subdivision.

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

(c) Cable Television Easements. The electric and telephone easements dedicated and reserved in this Section 2.12, and those as shown on the Plat for any Phase,

including, without limitation, the Phase I Plat, shall include easements for the installation, operation and maintenance of cable television service to the Lots and the Common Area including, the underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communications, telecommunications and energy transmission mediums.

**Section 2.13 Rules for Common Area.**

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

**Section 2.14 Exclusive Water and Sanitary Sewer Service.** Each Lot owner shall be obligated upon the construction of a residence on any Lot to connect to, and obtain service from, the central water and sewage disposal systems provided for the Subdivision respectively, or their respective successors and assigns. No other water or sewage system shall be permitted on or for any Lot.

**Section 2.15 Playgrounds.**

Any playground, tennis court, swimming pool or other play areas or equipment furnished by Declarant, the Community Association or any other owner of the Country Club or others with the consent of Declarant, upon the Common Area or otherwise within, or adjacent to, the Subdivision, shall be used at the risk of the user, and Declarant, the Spencer County Group, LLC, and the Community Association shall not be held liable to any person or entity for any claim, damage, liability or injury occurring thereon or related to use thereof.

**Section 2.16 Air Conditioning Units.**

Except as may be permitted from time to time by Declarant in its sole discretion, no window air conditioning units may be kept or used on any Lot.

**Section 2.17 Lighting.**

Except for seasonal Christmas/Holiday season decorative light, and attendant displays and decorations, which may be displayed from November 15 of each year

through the following January 10 and only as shall be accepted to Declarant in its sole discretion, all exterior lights must receive the prior written approval of Declarant.

**Section 2.18 Country Club Property.**

The Top Flight Landing Golf and Country Club is owned by Declarant. Any entry onto such property is made at the sole risk of such entering party, and Declarant, and all of their officers, directors, shareholders, agent and employees shall not be held liable to any person or entity for any claim, damage, liability or injury occurring thereon or related to use thereof.

**ARTICLE III – ARCHITECTURAL CONTROL**

**Section 3.1 Approval of Construction and Landscape Plans:**

(a) Grading and Construction Plans.

(I.) No clearing or grading of any Lot shall be permitted, and no structure may be erected, placed or altered on any Lot, until (A) the Lot owner has delivered to Declarant a \$250.00 curb damage deposit (the "Deposit") for each Lot, and (B) the Lot owner has submitted, and Declarant has approved, in writing, in its sole discretion, a Lot grading plan showing proposed clearing limits, grading and house location and location and size of the proposed driveway, sidewalks, fountains, pools and the like and any other proposed structures, and the construction plans and building specifications for all of the foregoing and any other structures, including, without limitations, (1) the location of all improvements and proposed improvements on the Lot and the minimum elevation of any proposed improvements, (2) the final grade elevation (including rear, front and side elevations) and first floor elevation, which must be in compliance with Declarant's drainage and grade plans for the Subdivision, (3) the type of exterior material (including delivery of samples thereof if requested by Declarant), and (4) the time frame within which all construction shall be completed. Declarant may further specify the requirements of such plans and specifications in the Design Guidelines (as defined below) or otherwise as shall be acceptable to Declarant. The Deposit shall be returned to the Lot owner by the Declarant at the completion of construction if no curb damage has occurred. If curb damage has occurred, then said deposit will be used to replace said curb. During the clearing of any Lot and the construction of, or addition to a residence thereon, each Lot owner shall cause to be placed, and maintained in good repair and condition, a fabric silt fence with a minimum height of eighteen inches (18") above-ground, and a minimum burial of six inches (6") underground, along that portion of the perimeter of the Lot bordering, backing up to or otherwise in the near vicinity of any developed Lot or Top Flight Landing Country Club Golf Course, in order to prevent silt and/or fill from migrating to and contaminating such Lot or golf course. The silt fence may be removed only upon sodding of the Lot or establishment of grass thereon.

(II) All driveways on any Lot shall be of concrete, brick, asphalt or other similar materials approved by Declarant, which shall be constructed in final finished form



no later than thirty (30) days subsequent to the substantial completion of any residence on a Lot, as determined by Declarant in its sole discretion, weather permitting.

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

(IV) All approved construction activities, and landscape activities contemplated by Section 3.1(b) below shall be completed by Lot owner within the time frame specified in the approved plans contemplated by this Section 3.1, such period not to exceed eight (8) months after the beginning (except for waivers granted by Declarant in its sole and absolute discretion). Upon completion of all such construction, the Lot owner shall, at the Lot owner's cost, furnish to Declarant upon request a written statement and certification of the Lot owner's Builder and/or an engineer acceptable to Declarant, to the effect that (1) the improvements constructed upon the Lot substantially conform to the plans and specifications approved pursuant to this Section 3.1, and (2) drainage of the Lot after improvements is in positive drainage compliance with the drainage plans for the Phase and the Subdivision.

(V) In the event any such structures or other improvements constructed on any Lot, and/or the final grade of any Lot, do not conform to the approved construction plans or drainage plans for the Phase and Subdivision, the Lot owner shall, within thirty (30) days after written notice from Declarant (or such greater period as Declarant shall specify in such notice), cause such non-compliance to be fully remedied to the satisfaction of Declarant. Further, in the event that the Lot owner shall fail to diligently proceed with and/or complete the construction of any improvements on a Lot within the time frame established pursuant to the construction plans and specifications approved by Declarant, the Lot owner shall, within thirty (30) days after written notice from Declarant, complete such improvements in a good, workmanlike and professional manner, or, if the existing status of the improvements on the Lot are such that the same cannot be reasonably completed within such thirty (30) day period, the Lot owner shall immediately commence and proceed with all due diligence and best efforts toward the completion of all such improvements, which shall in any case be completed within one hundred eighty (180) days of such notice from Declarant or within such other greater or lesser period as shall be reasonably specified by Declarant (which specification shall be deemed reasonable if confirmed in writing by at least two (2) Builders). Should such Lot owner fail to cure such non-compliance or to complete such construction within the applicable period provided above, Declarant may, in its sole discretion, elect to cause such non-compliance to be so cured, and may, in its sole discretion, elect to complete such construction on such Lot in accordance with the approved plans, and Declarant and/or Board, and their

respective <sup>PAGE 502</sup> agents, employees and contractors, may enter upon the Lot and all improvements thereon at any time and from time to time in connection therewith, without liability or obligation of any kind to such Lot owner or any resident or lessee of such Lot, and the Lot owner shall reimburse Declarant upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and court costs, and all such costs and expenses shall constitute a charge on the Lot, and Declarant shall have a lien on such Lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article IV below.

(IV) Any modifications to the existing grade of any Lot shall comply with all requirements of the Spencer County Group, LLC and any approved drainage plans for the Property.

(b) Landscape Plans.

(I). In addition to, and contemporaneously with, the plans and specifications referred to in Section 3.1(a), a landscape plan shall be submitted by each Lot owner to Declarant for its approval in writing, which plan shall show the trees, shrubs and other plantings then existing and/or to be planted on the Lot, and specify the time frame within which such landscaping shall be completed. Each landscape plan for a Lot submitted to Declarant shall show that the Lot has or will have prior to occupancy a minimum of two trees (at least 2-1/2 inches in diameter) in the front of the Lot and an additional two trees (at least 1-1/2 inches in diameter) elsewhere on the Lot, and shall further obligate, and this Declaration does so obligate, each Lot owner to install such approved landscaping, prior to occupancy or within such other period as permitted by this Declaration (to the extent the same are not already located on the Lot) and to maintain such approved landscaping in good health at all times thereafter, and to replace such approved landscaping as necessary, in the front and side yards of each Lot, readily visible from the street(s) adjacent to the Lot, if any. Further, any portion of the front yard of all Lots which are not landscaped pursuant to an approved landscape plan shall be sodded by the Lot owner to the satisfaction of Declarant.

(II). The Lot owner shall install all required landscaping for inspection by Declarant at its request at any time following commencement of occupancy of the residence on the Lot; provided, that when seasonal limitations prohibit, the approved landscaping on, and/or sodding of, the Lot must be installed with fifteen (15) days from the time planting operations can be feasibly undertaken as determined by Declarant. Moreover, when seasonal limitations do not permit planting, erosion control measures must be immediately implemented in accordance with generally accepted practices in the real estate development industry, as approved by Declarant in its sole discretion, and as otherwise may be required by applicable laws, rules, regulations and ordinances, and as otherwise provided in this Declaration. In no event shall any irrigation or other water system on any Lot be permitted to draw or otherwise use water from any lakes or waterways within the Subdivision, without the prior written consent of Declarant in its sole discretion. Declarant reserves the right to waive in its discretion all or any of the requirements of this Section 3.1(b) with respect to any Lot.

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

(c) Definitions.

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

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

(d) No Occupancy Before Completion. No occupancy of any residence shall be permitted prior to the completion thereof to the satisfaction of Declarant, and the compliance with the provisions of this Declaration, including, without limitation, this Article III, in connection with the construction thereof and other improvements on the Lot. No private water or sewage treatment systems shall be permitted in the Subdivision, except as maintained by Declarant or its affiliates or related entities, or their respective successors or assigns.

**Section 3.2 Building Materials: Roof: Architectural Standards and Design Guidelines,**

(a) Building Materials.

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

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

(b) Roof Pitch. The roof pitch of any residential structures shall not be less than a plane of 5 inches vertical for every plane of 12 inches horizontal for structures with more than one story, provided, however, the dormers on one and one-half story houses may have a roof pitch of less than 5 inches vertical for every 12 inches horizontal with the prior written consent of Declarant in its sole discretion, which consent may be arbitrarily and unreasonably withheld; and a plane of 7 inches vertical for every 12 inches horizontal for one story structures; or such other plane(s) as shall otherwise be specified in any Supplemental Declaration or on the Plat for any Phase. Declarant may waive the requirements of this Section 3.2(b) in its sole discretion in special cases where architectural design warrants or requires for proper perspective.

(c) Builder Approval. Declarant reserves the right of prior approval, in its sole and absolute discretion, of each general contractor, contractor, builder or other person or entity (collectively, as so approved, the "Builders," and individually, a "Builder") which proposes, or is contracted with, hired otherwise retained by or on behalf of any Lot owner, to construct a residence on any Lot, which approval must be obtained prior to the commencement of any such construction. No Lot owner, unless an approved Builder, may construct a residence on the Lot. Declarant reserves this right of prior approval because the Subdivision is a planned community of high aesthetic and construction quality with which the Declarant's name and reputation, and the name and reputation of

Declarant and that of its affiliated and related entities, shall continue to be associated and identified, and further in an attempt to ensure

- (I) the maintenance of a high quality of construction within the subdivision
- (II) that the economic value of other Lots and structures within the Subdivision will not be impaired by the construction of residential structures not of the same or comparable quality as now exist in the Subdivision.
- (III) the maintenance of the existing high aesthetic quality of the Subdivision, and
- (IV) a uniform subdivision, development, improvement and marketing program for the Subdivision. Nothing contained in this Section 3.2 or otherwise within this Declaration shall constitute or be deemed to be a representation or warranty by Declarant with regard to any matter whatsoever pertaining to any Builder, or of the value or quality of any Lot, or any residence or other structure or improvements constructed thereon or otherwise within the Subdivision.

(d) Architectural Standards. Declarant reserves the right to issue and modify from time to time architectural and other standards and designs as a part of the Design Guidelines to assist Lot owners in their initial design efforts prior to submitting plans and specifications for approval pursuant to Section 3.1 hereof. All Lot owners and their Builders and other contractors shall comply with the construction regulations portions, if any, of the Design Guidelines. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; work trailers; parking areas; outside storage; conduct and behavior of Builders, contractors, subcontractors and Lot owners; the conservation of landscape materials; and fire protection.

### Section 3.3 Minimum Finished Floor Areas.

The following shall be the minimum finished floor areas for homes to be constructed within each Phase (unless other minimum finished floor areas are otherwise specified with respect to any Lot in any Supplemental Declaration or on the Plat filed in the aforesaid Clerk's Office with respect to such Phase):

- (a) One-Story. the ground floor area of a one-story residence shall be a minimum of 1,450 finished and habitable square feet, exclusive of the garage, porches or decks.
- (b) One-and-One-Half-Story. The ground floor area of one-and-one-half story or Cape Cod residence shall be a minimum of 1,100 finished and habitable square feet, exclusive of the garage, and the residence shall contain a minimum of 1,800 finished and habitable square feet.

(c) Two-Story. The ground floor area of a two-story residence shall be a minimum of 1,100 finished and habitable square feet, exclusive of the garage and the residence shall contain a minimum of 1,800 finished and habitable square feet.

(d) Exceptions. **Lots 1 through 6 and Lots 132 through 178** shall contain a minimum 1,800 finished and habitable square feet on the first floor. Two story homes shall contain a minimum of 1,500 finished and habitable square feet on the first floor, exclusive of the garage and a minimum of 800 finished and habitable square feet on the second floor.

(e) Exclusions. Finished basement areas, garages and open porches are not included in computing minimum floor areas pursuant to this Section 3.3.

#### **Section 3.4 Setbacks.**

No structure shall be located on any Lot nearer to the front lot line, the side street line or other side lot lines, or to the rear lot lines, than the minimum building setback lines required by the applicable zoning regulations and (in addition to such regulations) shown or otherwise specified on the Plat of any Phase, or in any Supplemental Declarations recorded with respect to any Phase, except that reasonable (as determined by Declarant) bay windows, chimneys, roof overhangs and steps may project into said areas, and open porches may project into said areas not more than six feet, if permitted by applicable law and as shall be acceptable to Declarant. Declarant may from time to time vary the established building setback lines, and/or grant variances therefrom, in its sole discretion, where not in conflict with applicable zoning regulations or other applicable law.

No structure of **any type** shall be constructed within 30 feet of the high water mark around any pond or lake.

#### **Section 3.5 Garages: Carports.**

(a) Openings. The opening or doors for vehicular entrances to any garage located on a Lot shall include doors and shall not face the front lot line unless otherwise approved in writing by Declarant and its sole discretion. All Lots shall have at least a two-car garage. No detached garages are allowed. Garages as structures are subject to prior plan approval under Section 3.1.

(b) No Carports. No carports shall be constructed on any Lot.

#### **Section 3.6 Landscaping: Sidewalks: Driveways: Trees.**

(a) Sod. After the construction of a residence, the Lot owner shall grade and sod (the front yard) if the yard will not hold seed and straw, and seed and straw the side and rear yard, and shall otherwise landscape all remaining portions of the Lot in accordance

with the provisions of this Declaration and the landscape plan for such Lot which has been approved pursuant to Article III hereof, and each Lot owner shall thereafter maintain (and replace, as necessary) all of the same in good health and in a neat, attractive and well-kept condition satisfactory to Declarant. Declarant reserves the right to require, in addition to the requirement of Section 3.1(b), that the owner of any Lot sod;

(I) all slopes and

(II) the entire Lot if the condition of the seeded areas are unsatisfactory to Declarant in its sole discretion.

Mailboxes. All mailboxes shall be constructed of brick and shall clearly contain the house number of the residence.

Driveway. Each Lot owner shall concrete, brick or asphalt, or otherwise finish in a material or materials approved by Declarant, and thereafter maintain in good repair and condition, the driveway from the abutting street to the Lot within thirty (30) days after substantial completion of a residence on such Lot, as determined by Declarant. All driveways shall be on the side of the Lot as may be designated by Declarant for each Lot.

Trees. Each Lot owner shall cause to be planted on the Lot such trees as shall be required and otherwise approved pursuant to Section 3.1 hereof. No tree shall be removed from any Lot subsequent to the implementation of the approved initial lot grading plan for such Lot without prior written approval of Declarant in its sole discretion. No Lot owner shall cause or allow any placement or storage of any chemicals, solvents, material, construction machinery or temporary soil deposits within the drip line of any tree. The term "drip line" as used herein shall mean an imaginary perpendicular line that extends downward from the outmost tips of the tree branches to the ground. Except as permitted by Declarant in its sole discretion, no trenching shall be allowed within two thirds of the drip line of any tree having a trunk diameter of six inches or greater. Declarant reserves the right to establish, from time to time, regulations or rules relating to the preservation and planting of trees. In addition to its other remedies hereunder, Declarant may require any Lot owner to immediately replace all damaged or improperly removed trees with a new tree of equal type and size.

Default. Upon a Lot owner's failure to comply with the provisions of this Section 3.7, Declarant may take or cause to be taken such action as may be necessary in Declarant's opinion to cause compliance therewith, without liability of Declarant, Top Flight Landing, The Spencer County Group, LLC, the Community Association or any of their respective successors, assigns, officers, employees, stockholders, directors, partners, agents, servants and contractors, or affiliates or related entities (collectively, Top Flight Landing) to the Lot owner or others for trespass or otherwise, and the Lot owner shall immediately, upon demand, reimburse Declarant or other performing party for all expenses incurred in doing, including, without limitation, attorney's fees, together with interest at the same rate prescribed or permitted pursuant to Section 2.6(b) hereof, and Declarant shall have a lien on that Lot and the improvements thereon to secure the

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

#### ARTICLE IV – COMMUNITY ASSOCIATION; ASSESSMENTS

##### Section 4.1 Community Association.

The Declarant will establish a Community Association when said project is completed and all lots have been sold or at such time as the Declarant wishes to establish said Association.

#### ARTICLE V – NO WARRANTIES

##### Section 5.1 “AS IS” Sales.

All Lots within the property are sold by Declarant in their “AS IS”, “WHERE IS” condition. No warranty is made by Declarant of any kind, including, without limitation, any warranty regarding the market value of any Lot within the Subdivision or of any use of the Lot for any purpose. All Lots shall be offered and sold for future use in building a home and not as a business investment.

##### Section 5.2 Sewage Treatment.

As of the recording of the Plat, permanent sanitary sewer service is not available. However, the Declarant will be providing sanitary sewer service as soon as the facilities can be completed.

#### ARTICLE VI – TOP FLIGHT LANDING GOLF COURSE EASEMENTS AND DISCLAIMERS

##### Section 6.1 Semi-Private Country Club

(a) The Spencer Co. Group, LLC, a Kentucky Limited Liability Company, is developing adjacent to the Property a private golf course country club known as “Top Flight Landing Country Club” which is planned to be constructed around, and in the vicinity of portions of the Subdivision, and which shall include the Subdivision as Declarant may elect and convey from time to time. As a semi-private golf course and country club, private and limited membership and its attendant golf course and facilities shall constitute an amenity or recreational facility of the Subdivision, and will not be conveyed to, or otherwise made subject to the control or jurisdiction of, the Community Association, nor will the same be otherwise used in common by, or be for the right of enjoyment in favor of, Lot owners of any other lots in the Subdivision except as set forth herein. No Lot owner or any other person or entity shall be entitled to any membership or other right, title or interest, or right of enjoyment or use, in or to Top Flight Landing



Country Club or its facilities, including, without limitation, the Top Flight Landing Country Club golf course, simply by virtue of owning any Lot or Lots, membership in the Community Association or residence in the Subdivision.

(b) Golf Course Hazards: Disclaimer of Liability and Assumption of Risk

(I) All Lot owners and all other residents of the Subdivision, are hereby advised, and by acceptance of a deed for a Lot, and/or residence in the Subdivision, as applicable, hereby acknowledge and agree, that the Top Flight Landing Country Club golf course and its attendant facilities are situated adjacent to and within the Subdivision, and that such Lot owner or other person or entity is aware of and accepts and assumes the risks and hazards of a golf course and of residence within a community bordering and/or containing a golf course, and hereby releases from all such risks and hazards Declarant, The Spencer County Group, LLC, the Community Association, and all entities affiliated with or related to any of the foregoing, and all of the respective successors, assigns, officers, partners, employees, agents and contractors of all the foregoing (collectively the "Released Parties"). These risks and hazards include, by way of illustration and no limitation, the possibility of personal injury and/or property damage occasioned by stray or errant golf balls and/or trespass upon a Lot by golfers, and/or by the presence of persons or property in too near a vicinity to the irrigation system for Top Flight Landing Country Club golf course. Provided, that in no event shall the provisions of this Section 6.1(b)(I) be construed to relieve golfers from liability under Kentucky law for damage caused by or resulting from errant golf balls, and/or trespass without right. Further, all such persons and entities constituting the Release Parties shall have no responsibility or liability to any Lot owner or resident of the Subdivision for any claims or liability based upon or related to ( 1 ) the design, layout or construction of the Subdivision or the Top Flight Landing Country Club golf course or other facilities, ( 2 ) the rights, privileges, activities and/or acts contemplated by the provisions of the Errant Ball Easements and/or General Golf and Country Club Easements (as such terms are hereinafter defined) or other golf related easements reserved below, and/or on any Plat or in any Supplemental Declaration, or ( 3 ) the activities and/or acts or any golfers or other persons present on or using Top Flight Landing Country Club golf course or other facilities.

(II) Incorporation by Reference on Resale. In the event any Lot owner sells or transfers any Lot subject to this Declaration, the contract for sale thereof and any deed purporting to effect such transfer shall contain a provision agreed to by the purchaser of the Lot and acceptable to Declarant incorporating the terms of the foregoing Section 6.1 (b)(I); provided, however that the failure of any deed to so incorporate by reference such provision shall not affect the validity of such deed nor shall such failure be deemed to release the Lot conveyed, or the purchasers of such Lot, from the effect hereof or of the other provisions of this Declaration.

(III) Incorporation by Reference on Lease. In the event any Lot owner leases any improved Lot as permitted by this Declaration, the lease therefore shall contain a provision agreed to by the lessees of the improved Lot and acceptable to Declarant incorporating the terms of the foregoing Section 6.1(b)(I); provided however that the

failure of any such lease to so incorporate by reference such provisions shall not affect the validity of such lease if otherwise in compliance with the terms of this Declaration nor shall failure be deemed to release the improved Lot so leased, or the lessee of such Lot, from the effect hereof or of the other provisions of this Declaration.

## Section 6.2 Easements.

(a) Easements for Errant Golf Balls. Every Lot and the Common Area are hereby burdened with a perpetual easement in gross in favor of Declarant, its successors and assigns, the developers and succeeding owners of Top Flight Landing Country Club, and the members, guests, and other invitees of Top Flight Landing Country Club, and for the benefit of the land constituting Top Flight Landing Country Club golf course, permitting the flight of golf balls over, and permitting golf balls to come unintentionally upon the Common Area and such Lots from Top Flight Landing Country Club golf course and related golf facilities, and for golfers, at reasonable times and in a reasonable manner, to come upon the Common Area or exterior portions of a Lot, to retrieve, but not to play, errant golf balls ("Errant Ball Easement"); provided, however, if any Lot is properly fenced or walled in accordance with the provisions of this Declaration, such golfer must seek the Lot owner's permission, which shall not be unreasonably withheld, delayed or conditioned, before entry upon such fenced or walled portions of the Lot, in order to be availed of the rights and privileges under the Errant Ball Easement established pursuant to this Section 6.2(a). Entry upon any other Lot in accordance with this Section 6.2(a) or the existence of the Errant Ball Easement on a Lot does not relieve golfers for liability under Kentucky law for property damage or physical injury caused by errant golf balls.

(b) General Golf and Country Club Easement. Every Lot and Common Area, are hereby burdened with a perpetual easement in gross in favor of Declarant, its successors and assigns, the developer and succeeding owners of Top Flight Landing Country Club, and the members, guests, and invitees of Top Flight Landing Country Club, for the benefit of the land constituting Top Flight Landing Country Club facilities, to permit the doing of every act necessary or desirable and incident from time to time and commonly and usually associated from time to time with the playing of golf on the Top Flight Landing Country Club golf course and the maintenance, use and operation of Top Flight Landing Country Club golf course and its facilities. These acts shall include, without limitation, (I) the creation of the usual and common levels of noise associated with swimming pools, tennis and the game of golf (whether normal or tournament play) and the use of all such facilities and the maintenance of Top Flight Landing golf course and facilities, and (ii) the driving of machinery and equipment used in connection with the construction, maintenance and operation of Top Flight Landing golf course and facilities over and upon the streets and roads in Top Flight Landing, Common Area and facilities. Such noise may occur on or off the Top Flight Landing Country Club facilities.

(c) Prescription by Declarant. Declarant shall have the right to prescribe in writing from time to time, in its sole discretion, to the owner of Top Flight Landing Country Club the manner and extent to which the rights and easements provided for in

this Section 6.2 shall be exercised, and may in its sole discretion, limit or withdraw or prohibit certain of the acts, rights or easements so provided, and may limit in its sole discretion the manner and place of doing all or certain of the acts authorized by this Section 6.2.

**Section 6.3 No Private Golf Carts.**

The use of privately owned golf carts (other than golf carts owned by Declarant and/or the owner or manager of Top Flight Landing Country Club golf course, and their respective successors and assigns) is prohibited throughout the property.

**Sections 6.4 Construction Requirements.**

(a) **Erosion Control.** All construction plans and specifications submitted pursuant to Article III of this Declaration for approval with regard to any Lot adjacent to, bordering or backing up to Top Flight Landing Country Club golf course shall specify erosion control precautions to be used during construction of all improvements on such Lot for the entire duration of such construction, and each Lot owner shall prevent all construction materials and waste of any kind from blowing or otherwise being presented on Top Flight Landing Country Club or any other Lot during such construction. Notwithstanding the foregoing, during the clearing and/or grading of each Lot adjacent, bordering or backing up to any developed Lot or Top Flight Landing Country Club golf course, or Lots otherwise near the vicinity of any developed Lot or Top Flight Landing Country Club golf course as determined by Declarant, and during the duration of the construction of a residence on any such Lot, the Lot owner shall cause to be placed, and maintained in good repair and condition, a fabric silt fence with minimum height of eighteen inches (18") above ground, and a minimum burial of six inches (6") underground, along that portion of the perimeter of the Lot adjacent, bordering, backing up to or otherwise in the near vicinity of any developed Lot or Top Flight Landing Country Club golf course as shall be acceptable to Declarant in order to prevent silt, soil and/or fill, or other contaminants, from migrating to and contaminating any developed Lot or Top Flight Landing Country Club golf course. Such silt fence may be removed only upon sodding the entire lot or appropriate seeding and strawing is completed to the satisfaction of the Declarant.

(b) **Grading Requirements and Deposit.** In addition to the Requirements of Article III, prior to the commencement of any grading activities on any Lot adjacent to, bordering or backing up to any Lot or the Top Flight Landing Country Club golf course, the Lot owner, or such Lot owner's approved Builder, shall obtain from Declarant or its designee a detailed drawing of the existing and final permitted elevations for such Lot (the "Elevations"). Once the final grading of such Lot has been completed, the Lot owner or Builder shall promptly (and in any event within five (5) days thereafter) notify the Declarant, and Declarant and its engineer shall have the right and opportunity to inspect and survey such Lot to determine conformance to the Elevations. Any nonconformance shall be remedied by the owner of the Lot.

(c) Failure to Perform. If any Lot owner fails to comply with the provisions of this Section 6.4, the Declarant, its successors, assigns, officers, agents, employees and contractors, may, without notice, enter upon the Lot and take such actions as they deem necessary or appropriate in their discretion to cause such compliance, and all costs and expenses incurred in so doing will bear interest at the same rate per annum as is prescribed or permitted by Section 2.6 (b) above. All such costs and expenses, and all accrued interest thereon, shall constitute a lien and charge upon the Lot in favor of Declarant of equal priority to the lien for assessments provided for in Article IV above. The Declarant may further disqualify such Lot owner's Builder as an approved Builder for purposes of this Declaration, or with respect to such Lot, whereupon the Lot owner must obtain the services of another approved Builder for completion of construction or related activities.

**Section 6.5 Fence and Wall Restrictions.**

All fences and walls are subject to the prior written approval of Declarant in its sole discretion. No stockade or similar fences, or other solid fences or walls, as determined by Declarant in its sole discretion, shall be erected, constructed or placed on any Lot adjacent, bordering or backing up to, or in the near vicinity of (as determined by Declarant in its sole discretion), Top Flight Landing Country Club golf course and facilities ("Golf Course Lots"), it being the intention of the Declarant and this Declaration that the view of the Top Flight Landing Country Club golf course not be unnecessarily blocked or impeded, except as acceptable to Declarant in its sole discretion. Only fences of such design and construction as may be provided from time to time in the Design Guidelines, on any applicable Plat or in any applicable Supplemental Declaration, and in each case completely satisfactory to Declarant in its sole discretion, will be considered by Declarant for approval for Golf Course Lots; provided, the privacy fences and/or screens encompassing limited portions of patio, deck, pool and/or spa areas of Golf Course Lots may be permitted if acceptable to Declarant in its sole discretion. **All Lot owners are advised to consult with Declarant prior to and during the preparation of plans and specifications for proposed fences and/or walls.**

**Section 6.6 No Guaranty.**

Declarant does not represent, warrant or guarantee, and hereby expressly disclaims, that Top Flight Landing Country Club golf course and facilities, as a semi-private club, will remain open as a country club, private or otherwise, or will continue to be used for such purposes.

**ARTICLE VII – GENERAL PROVISIONS**

**Section 7.1 Enforcement.**

(a) Parties. Enforcement of these restrictions shall be by proceeding at law and/or in equity, brought by Declarant and/or the Community Association, or in the absence of any such action, by any Lot owner (although Declarant and/or the Community

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

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

(c) Owner Liability. Every Lot owner (other than Declarant) shall be responsible and liable for any violations made or caused by such Lot owner and every family member, agent, employee, contractor, material supplier, invitee, licensees and subleases and assigns of such lot owner.

(d) Declarant Written Waiver. Declarant reserves the right to waive any obligation or violation of any Lot owner under the terms of this Declaration upon Declarant's determination, in its sole and absolute discretion, provided that such waiver shall be expressed and in writing.

#### **Section 7.2 Severability.**

Invalidation of any provision of this Declaration of judgment or court order of a court of competent jurisdiction shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and such provisions so invalidated shall remain in full force and effect in all permitted contexts.

#### **Section 7.3 Declaration Runs With the Land.**

(a) Term: Amendment. Unless canceled, altered or amended under the provisions of this Section 7.3, the provisions of this Declaration shall run with the land and shall be binding on the Lots, the owners of each Lot and all parties claiming under them, for a

period of forty (40) years from the date this Declaration is recorded. After such forty (40) years, this Declaration shall be deemed extended automatically for successive periods of ten (10) years, unless and until at least seventy-five (75%) of the Lot owners of the Lots subject to this Declaration has been recorded in the aforesaid Clerk's Office, agreeing to change this Declaration in whole or in part and the term hereof. However, if Declarant, its designated successors or assigns, or the Spencer County Group, LLC, then owns any Lot, or any portion of the Subdivision, or if any portion of the Subdivision remains unplatted as a Phase, this Declaration may not be so changed in whole or part without prior written consent of Declarant in its sole discretion. From the date of this Declaration and for so long hereafter as Declarant, its designated successors and assigns, or Declarant as applicable, owns any Lot or any portion of the Property,

(I) this Declaration may hereafter be unilaterally amended by Declarant to bring the terms and provisions hereof in compliance with any applicable governmental law, rule, regulation, order, decree, judgment, or ordinance, and

(II) Declarant may otherwise unilaterally amend this Declaration as Declarant may elect in its sole discretion, provided, that any such amendment under this subpart (ii) shall not materially adversely affect the then existing single family residential nature of the developed Phases of the Subdivision. At such time as neither Declarant, its successors or assigns, nor any of the Spencer County Group, LLC owns any Lot or any portion of the Subdivision, or upon such earlier date as Declarant may elect in its sole discretion by written notice given to the Board, this Declaration may thereafter be canceled, altered or amended by the recordation of a document in the aforementioned Clerk's Office in which the Board certifies that such cancellation, alteration or amendment was executed by the owners of seventy-five (75%) of the Lots subject to this Declaration.

(b) Easements and Rights Unaffected. Notwithstanding any other provision of this Declaration no cancellation, alteration, or amendment of this Declaration shall in any event

(I) affect or impair the rights, privileges, or easements granted pursuant to this Declaration in favor of Declarant, its successors and assigns, the owner of Top Flight Landing Country Club golf course and facilities or any other person or entity other than the Lot owners, without the express written consent of the foregoing entities and such other persons and entities benefited thereby.

(II) change the method of assessment or the obligations or duties of the Community Association without the prior written consent of the Declarant in its sole discretion.

(c) Assignment of Rights and Grant of Proxy. Until the Declarant and the Spencer County Group, LLC, no longer owns and Lots or Phases of the Subdivision, and for so long as any portion of the Property not constituting a portion of Top Flight Landing Country Club golf course or other facilities remains unplatted as Phase by Declarant, or

until Declarant otherwise declares, each Lot owner, by the acceptance for a deed for such Lot, does automatically and irrevocably make the Declarant as the attorney-in-fact and proxy for such Lot owner, in the name and stead of such Lot owner, and as such,

(I) prevents such Lot owner from executing any document or taking any action to amend this Declaration and/or Articles or Bylaws of the Community Association, as applicable, and

(II) to otherwise exclusively exercise all right to such Lot owner's vote as a member of the Community Association on all matters coming before the members of the Community Association, and to cast such vote as Declarant sees fit in its sole discretion. All actions so taken by the Declarant as such attorney-in-fact and proxy shall be fully binding upon to Lot owner as taken by the Lot owner in his or her own stead acting through an attorney-in-fact and proxy. Such irrevocable appointment of Declarant as attorney-in-fact for each such Lot owner is a power coupled with an interest.

**Section 7.4 Amendments to Articles and Bylaws of the Community Association.**

Nothing in this Declaration reserves the right of the Community Association to amend, from time to time, its Articles and Bylaws.

**Section 7.5 Non-Liability of the Directors and Officers.**

Neither Declarant, its directors or officers, nor the directors or officers of the Spencer County Group, LLC or the Community Association, shall be personally liable to any of the Lot owners for any mistake of judgment or fact or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or actual fraud. The Lot owners shall indemnify and hold harmless each of the directors and officers of the Community Association and their respective heirs, executors, administrators, personal representatives, successors and assigns, for acts or omissions of any nature whatsoever while acting in their official capacity and otherwise in accordance with the Articles and/or Bylaws of the Community Association.

**Section 7.6 Binding Determination.**

In the event of any dispute or disagreements with or between any Lot owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation of application of the provisions of this Declaration or Articles or Bylaws of the Community Association, the determination thereof shall be

(a) by Declarant for so long as Declarant or any of the Spencer County Group, LLC owns any Lot or any portion of the Subdivision, and

(b) thereafter by the Board, and shall be final and binding on each and all such Lot owners.

**Section 7.7 Community Association Easements.**

Declarant hereby grants and conveys to the Community Association an easement in, on, over, above, across and through the entirety of the Property for the use and benefit of the Community Association in order to permit the Community Association in or upon such portions of the Property as are reasonably necessary to discharge the rights and obligations of the Community Association enumerated in this Declaration, which shall be exercised only to the extent reasonably necessary and appropriate to discharge those obligations.

**Section 7.8 Incorporation by Reference on Resale.**

Upon the sale or other transfer of any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, conditions, restrictions, charges, liens, assessments and other provisions set forth in this Declaration; provided, however, that the failure of any such deed to so incorporate by reference this Declaration shall not affect the validity of such deed nor shall it be deemed to release the Lot conveyed thereby from the effect to this Declaration.

**Section 7.9 Notices.**

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

**Section 7.10 Exhibits.**

All exhibits attached to this Declaration and referred to herein as designated Exhibits are hereby incorporated herein above the signature lines hereof.

**Section 7.11 Captions and Headings.**

All captions and headings used in, and the title page and table of contents of, this Declaration are for convenience of reference only and shall not affect the interpretation of the provisions hereof.



**Section 7.12 Additional Rights of Declarant.**

Notwithstanding any provisions contained in this Declaration to the contrary, so long as Declarant or any of the Spencer County Group, LLC owns any Lots or other portions of the Subdivision, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area and facilities thereon, such activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction, development, improvement and marketing of Phases and Lots within Top Flight Landing, and the Top Flight Landing Country Club and its facilities, including, without limitation, business offices and sales offices, and Declarant shall have an easement for access to such facilities. The right to maintain and carry on such activities shall include specifically the right to use any facility which may be owned by the Community Association or otherwise be located on the Top Flight Landing Common Area for such purposes. Further, no person or entity shall be entitled to use the words "Top Flight Landing", "Top Flight Landing Subdivision", "Top Flight Landing Community Association", "Top Flight Landing Country Club", or any derivative of any of the foregoing, or logos used in connection therewith, in any printed, radio or television advertisements or programming, or other promotional materials, without the prior written consent of Declarant in its sole discretion; provided that lot owners may use the terms "Top Flight Landing, "Top Flight Landing Subdivision" and the like in printed or promotional matter where such term is used solely to specify that a particular property is located within Top Flight Landing.

**Section 7.13 Reservation of Easement**

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

**Section 7.14 Declarant's Rights to Complete Development: Rezoning**

No Provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, sale and leasing of Lots developed from the Subdivision and other portions of the Subdivision, to construct or alter improvements on any real property owned by Declarant, any of the Spencer County Group, LLC, or any of their affiliated entities as determined by Declarant, within the boundaries of the subdivision; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant, Top Flight Landing or owned by the Community Association within the

boundaries of the Subdivision; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of the Subdivision. Nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approval for any matters whatsoever, including, without limitation, to:

(a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or replace any improvements on any portion of the Common Area or Top Flight Landing or Top Flight Landing's Common Area or any property owned by Declarant;

(b) use any structure on any portion of the Common Area or Top Flight Landing's Common Area or any property owned by Declarant as a construction, model home or real estate sales or leasing office; or

(c) rezone any portion of the Subdivision for any residential use or any new ratio of housing units per acre, including, without limitation, estate sections or patio homes. So long as Declarant owns any portions of the Subdivision, all owners of Lots shall support and join in any such rezoning and shall take no efforts to oppose such rezoning. Nothing in this Section 7.14 shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration, and Declarant shall be generally exempt from the application of the covenants, conditions and restrictions imposed by this Declaration except as it may from time to time elect in writing in its sole discretion.

**Section 7.15 Declarant's Approval of Convevances or Changes in Use of Common Areas.**

The Community Association shall not, without first obtaining the prior written consent of Declarant, convey, mortgage, change or alter the use of the Common Area or Top Flight Landing's Common Area.

**Section 7.16 Reservation of Additional Easements, Exceptions, and Exclusions.**

Declarant reserves to itself and hereby grants to the Community Association the concurrent right to establish from time to time, by Declaration or otherwise, utility and other easements, permits, or licenses over the Common Area or Top Flight Landing Common Area for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas and to create other reservations, exceptions, and exclusions consistent with the ownership of Top Flight Landing and the Property for the best interest of the Lot owners and the Community Association, in order to serve the Lot owners within Top Flight Landing as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of the Declarant, as long as it does not unduly hamper the enjoyment of the Lots by the Lot owners.

**Section 7.17 Drainage Easement.**

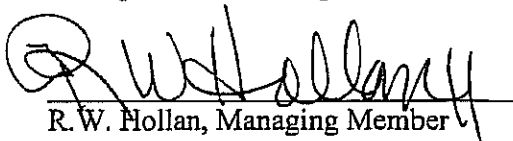
An easement is hereby reserved to the Declarant and granted to the Community Association, and their respective officers, agents, employees, successors, and assigns to enter upon, across, over, in and under all Lots and any portion of the Common Area as to improve the drainage of water on the Common Area. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the Lot owners of their Lots, to complete such drainage work promptly and expeditiously, and to restore any area affected by such work to sightly and usable condition as soon as reasonably possible following such work.

**Section 7.18 Joinder.**

Declarant and Top Flight Landing's Community Association join herein for purposes of acknowledging, consenting and agreeing to the terms and provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration of Covenants, Conditions and Restrictions as of the day, month and year first above written.

The Spencer Co. Group, LLC

  
R. W. Hollan, Managing Member

STATE OF KENTUCKY    )  
  )  
COUNTY OF SPENCER    )

I, undersigned Notary Public, for and in the State and County aforesaid, certify that the foregoing instrument of writing was produced before in said State and County

and the same was signed and acknowledged before me by R.W. Hollan, as Managing Member of the Spencer Co. Group, LLC, a Kentucky Limited Liability Company, to be his free act and deed and the free act and deed of said company.

WITNESS my hand and seal this 10<sup>th</sup> day of November, 2004.

Treasure A. Bryant  
Notary Public State at Large, Kentucky

My commission expires: 3/28/04

This instrument prepared by:

Ruth A. Hollan  
Ruth A. Hollan  
Attorney at Law  
P.O. Box 395  
Taylorsville, Kentucky 40071  
(502) 477-6300

DOCUMENT NO: 88945  
RECORDED ON: NOVEMBER 12, 2004 01:43:55PM  
TOTAL FEES: \$76.00  
COUNTY CLERK: JUDY PUCKETT  
COUNTY: SPENCER COUNTY  
DEPUTY CLERK: SHERRIE COULTER

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