

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS KINGSMILL SUBDIVISION, SECTION 1  
SPENCER COUNTY, KENTUCKY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KINGSMILL SUBDIVISION, ("Declaration) is made imposed and declared as of this 18<sup>th</sup> day of November 2008 by KINGSMILL, LLC, a Kentucky Limited Liability Company, with an address of 6130 Elk Creek Rd Taylorsville Ky 40071 ("Declarant").

WITNESSETH:

WHEREAS, Declarant owns that certain residential subdivision located in Spencer County, Kentucky known as "KINGSMILL SUBDIVISION, SECTION 1" on that certain subdivision plat recorded in Plat and Subdivision Book 4 Page 392, in the Office of the Clerk of Spencer County, Kentucky (the "Subdivision"), 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, the "Property" (as defined below), in accordance with this Declaration, and to subject and impose upon the Property certain rights, privileges, covenants, conditions and restrictions, and to reserve and/or dedicate certain easements, and to impose certain assessments, charges and liens, under a general and common plan and scheme of subdivision, development and improvement for the benefit of the Property, and for the benefit of Declarant, its successors and assigns, and purchasers of portions of the Property, and it is further intended that said rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, as applicable, and the other provisions of this Declaration, bind and benefit not only said persons and entities, but also their respective heirs, personal representatives, successors and assigns, as applicable, and that all of such real property should be owned, held, used, leased, sold, conveyed and occupied, subject to the covenants, conditions, restrictions~ easements, assessments, charges and liens set forth in. and the other provisions of, this Declaration; and

WHEREAS, 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

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 Property and all portions thereof conveyed to others to their mutual benefit by subjecting the Property to the rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens set forth in, and 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 Property shall be owned, held, used, leased, sold, conveyed and occupied subject to the rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens set forth in, and other provisions of, this Declaration, all of which are declared and agreed to be in furtherance of Declarant's common plan and scheme for the Subdivision, and the development, sale and improvement of the Property, 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 in, and other provisions of, this Declaration shall run with the Property, 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 1- PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1.1 The Property.** For purposes of this Declaration, the term "Property" shall mean and be a reference to all of the residential property within Kingsmill Subdivision, Section \_\_\_ which is more particularly described as follows:

BEING Lots 1 thru 30, inclusive, all as shown on the Plat of Kingsmill Subdivision Section I, of record in Plat and Subdivision Book 4, Page 292, in the Office of the Clerk of Spencer County, Kentucky.  
BEING a part of the same property acquired by Declarant by Deed of record in Deed Book 216, Page 394, in the Office of the Clerk of Spencer County, Kentucky.

#### **ARTICLE: 1 - 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 erected, placed or altered or permitted to remain on any Lot except one single-family residence designed for 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 stories in height, unless approved otherwise by Declarant in its sole discretion and permitted by applicable law, or except as 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

(iii) The Common Area and any facilities located within the Subdivision, whether operated and maintained by Declarant, its successors and assigns, or the Homeowners Association (as hereinafter defined) shall be exempt from the use restrictions of this Section 2.1.

(iv) For purposes 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 infirm, (9) programs with respect to which admission to residency in or occupancy of the premises is limited to or intended in whole or in part for person 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 defined in the Land Development Code) and (11) any "group home" or other similar use as determined by Declarant and/or the Homeowners

Association.

**(b) 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 and/or any of its affiliated or related persons or entities; provided that in no event may the number of Lots in the Subdivision be increased except by the development of additional land and annexation thereof to the Subdivision. Any such division, boundary line change, or re-platting of any Lots shall not be in violation of applicable subdivision and zoning regulations.

**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. No structure of a temporary character shall be permitted 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 in its sole discretion, which structure 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, shed, 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 Vehicles and Parking.**

**(i)** No bus, mobile home, motor home, trailer, camper trailer, camping unit, camping vehicle or boat shall be parked or kept on any Lot or on any street in the Subdivision except within a garage for any period in excess of two (2) days in any

365-day period (any portion of a day constitutes a day).

(ii) No commercial vehicle shall be parked or kept on any Lot, unless housed in a garage, or any street in the Subdivision in excess of four (4) hours in any 24-hour period or except when used as part of a temporary construction or repair activity on the Lot.

"Commercial vehicle" as defined as a vehicle meeting anyone of the following characteristics: having dual rear wheels, having a design load carrying capacity of more than one ton, being designed to carry more than nine passengers, including driver, being designed to carry business equipment on or in exterior racks or bins, but not including tool boxes, or advertising a business or containing on its exterior any business information in excess of the business name on the driver's side door of the vehicle.

(iii) No vehicle, motorized or otherwise, including, but not limited to, those set forth in and (c)(i) and (ii) above, shall be parked on any street or right-of-way of the Subdivision between the hours of 4:00 a.m. and 6:00 a.m., and no such vehicle shall be parked at any time except on a street, in a designated parking lot, on a legal driveway or in a garage.

(iv) No vehicle determined to be objectionable or unsightly by Declarant or its successors or assigns, including the Homeowners Association, and no vehicle which is inoperable, shall be parked at any time on any street or any portion of a Lot except in a garage.

(v) There shall be no habitation of any vehicle parked anywhere in the Subdivision.

**Section 2.4. Animals.** No animals, including, without limitation, reptiles, livestock or poultry of any kind, shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats or other traditional household pets (meaning the domestic pets traditionally recognized as household pets in Louisville, Kentucky vicinity) may be kept in the residence on a Lot, provided they are restrained on a Lot such that they are not allowed to wander onto other lots or onto the property of adjoining landowners and 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 Homeowners Association and suspension of other rights set forth in this Declaration.

**Clothes Lines, Fences and Walls; Tennis and Basketball Courts;**

**Antennae and Receivers/Transmitter's; Exterior Lighting; Play  
Section 2.5.**

**Swimming Pools; Equipment; Flags.**

(a) **Clothes Lines.** No outside clotheslines shall be erected or placed on any Lot.

(b) **Fences and Walls.** All fences and walls are subject to prior written approval by Declarant in its sole discretion and may not exceed forty-eight inches (48") in height. 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), unless specifically approved in writing by the Declarant, 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. No wire or chain link fences are permitted on any Lot.

(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.

(I) **Antennae.** No antennae or microwave or other receivers and/or transmitters shall be erected or placed on any residence or any Lot (except for small television antennas or satellite receivers, to be no bigger than 2.5 feet in diameter, unless approved by the Declarant in writing.

(g) **Exterior Lighting.** Exterior lighting attached to a main residential structure shall not exceed in height the eaves, trough located at the highest elevation. Freestanding lights located in front yards shall not exceed 12 feet in height. Freestanding lights located in back yards shall not exceed three feet in height. Any exterior lighting in

excess of three feet in height 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 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 located no closer than 5 feet to any lot line, and all Lot owners and residents of the Subdivision shall 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 Homeowners 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 \$150.00 per year for the calendar year \_\_\_\_\_, 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. Declarant shall have no obligation to cure or correct any unsafe conditions on the Lot. 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 amount 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 on the Lot in favor of Declarant to secure the repayment of such amounts, which lien shall be of equal priority to the lien of assessments provided for in Article 4 below.

**(b) Lot Owner's Maintenance.** From and after the date construction of a single-family residence on a Lot is started, it shall be the duty of each Lot owner to keep the grass on the Lot property cut, to keep the Lot free from weeds, waste and trash, 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 4 of this Declaration.

**(e) 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 hereon, arising from any activities of Declarant and/or any other party to maintain such Lot owner's Lot when such Lot owner fails, as noted above, to properly maintain his own Lot.

**Section 2.7 Duty to Repair, Rebuild and Maintain.**

**(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 owners Lot, keeping the same in first class condition and repair acceptable to Declarant and the Board of Directors of the Homeowners 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 therefore (or in the absence of approved plans, consistent with the requirements deemed necessary or desirable by Declarant or the Board, in their respective sole discretion). In the event any such residence or other structures on the Lot are not so repaired and maintained, the Lot owner shall, within thirty (30) days after written notice from Declarant or the Board (or such greater period



as Declarant or the Board shall specify in such notice), cause the same to be fully repaired and maintained to the satisfaction of 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 repaired and maintained within such thirty (30) day period, the Lot owner shall immediately commence and proceed with all due diligence and best efforts toward the completion of such repair and maintenance, which shall in any case be completed within sixty (60) days of such notice from Declarant or the Board or within such other period as shall be reasonably specified by Declarant or the Board (which specification shall be deemed reasonable if confirmed in writing by at least two (2) Builders). Should such Lot owner fail to complete such repairs and maintenance within the applicable period provided above, Declarant or the Board may, in their respective sole discretion, elect to cause such repairs and maintenance to be so completed to their respective satisfaction, and Declarant and/or the Board, and their respective agents, employees and contractors, may enter upon the Lot and all improvements thereon during the period from 8:00 A.M. through 6:00 P.M. each weekday (Louisville, Kentucky time) in connection with such repairs and maintenance, and may at all other times, store necessary materials on the Lot, without liability or obligation of any kind to such Lot owner or any resident or lessee of such Lot, and the Lot owner shall reimburse Declarant or the Board, as applicable, upon demand for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and all such costs and expenses shall constitute a charge on the Lot, and Declarant or the Board, as applicable, shall have a lien on such Lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article 4 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 any 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 therefore. In the event any such residence or other structure on any Lot are not so rebuilt, repaired or reconstructed, the Lot owner shall, within thirty (30) days after written notice from Declarant or the Board (or such greater period as Declarant or the Board shall specify in such notice), cause the same to be fully rebuilt, repaired or reconstructed to the satisfaction of Declarant or 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 and 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 so 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 PM. each weekday (Louisville, Kentucky time) in connection with such rebuilding, repairs or reconstruction, and may at all other times store necessary materials on the Lot, without liability or obligation of any kind to such Lot owner or any resident or lessee of such Lot, and the Lot owner shall reimburse Declarant or the Board, as applicable, upon demand for all costs and expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees and court costs, and all such costs and expenses shall constitute a charge on the Lot, and Declarant or the Board, as applicable, shall have a lien on such Lot to secure the payment thereof of equal priority to the lien for assessments provided for in Article 4 below.

**Section 2.8 Restrictions on Business and Home Occupations.** Except for "home occupations" as that term is strictly construed under the Land Development Code, no trade or business of any kind (and no practice of any profession, including, without limitation, medicine, dentistry, chiropody, 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.

**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 for advertising the sale thereof, which shall not be greater in area than nine square feet and shall be acceptable in condition, format, appearance and content to Declarant (this sign must be professionally made, no hand written signs to be allowed)..

(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, (ii) to place signs on Lots designating the lot number of the Lots, and (iii) following the sale of a Lot to place signs on such Lot indicating the name of the purchaser of that Lot and/or the fact that it has been sold.

**Section 2.10. Drainage.** Drainage of each Lot shall conform to the general drainage plans of Declarant for the Subdivision. No construction upon a Lot by Declarant or any others than Declarant shall cause storm water to drain upon any adjacent Lot or upon any land adjacent to the Subdivision Lot unless appropriate easements have been provided for such drainage or such drainage as otherwise allowed by local ordinances and permitted by Declarant. No storm water, drains, roof downspout or ground water shall be introduced into the sanitary sewage system. No Hazardous Substances (as hereinafter defined) shall be dumped or introduced into the storm sewer system for the Subdivision, or otherwise improperly stored or disposed of on any Lot.

**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, trash, or garbage or other waste or Hazardous Substances. Rubbish, trash, garbage or other waste shall not be kept on any Lot except for the normal household rubbish, trash, garbage and similar waste kept indoors within sanitary closed containers temporarily prior to collection. 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. There shall be no burning of trash or other refuse on any Lot. Declarant and the Association reserve the right, from time to

time, to establish and maintain a uniform and exclusive trash collection program for 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 this Declaration, the term "Hazardous Substances" shall include, without limitation, petroleum, its products' and by-products, and petrochemicals, and any compound containing any of the same, asbestos, radioactive substances, polychlorinated biphenals, any pollutant or contaminant and any hazardous, toxic, dangerous or flammable waste, substance or material, including any of the same defined as such in, for purposes of or otherwise regulated or classified by or pursuant to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERLA") (43 D.S.C. §9601. et seq.) and regulations promulgated there under, as amended, any so-called "superfund" or "super lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree (whether now existing or hereafter enacted, promulgated or issued) or any judicial or administrative interpretation of any of the same, and including "oil" and "oil waste" as defined in the Clean Water Act (33 U.S.C. §1251, et seq.), as amended. The definition of "Hazardous Substances" for purposes of this Declaration shall not include, however, small quantities of such substances described above which constitute or are included within normal household cleaning substances or other substances used in connection with normal single-family residential purposes which are in all cases kept within approved containers and stored, used and disposed of in accordance with all applicable governmental laws, rules and regulations and other applicable guidelines existing or established from time to time (such substances being hereinafter referred to as "Permitted Substances"). Each Lot owner shall indemnify and hold harmless Declarant, its officers, employees, stockholders, successors and assigns, the Board and the Homeowners Association from and against any and all liabilities, damages, actions' and causes of action, costs and expense 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 line from the applicable utilities' 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 Electric Company, Insight Communications, and Bell South Telephone Company ("Bell") and any other such utility, as applicable, together with the rights of ingress and egress over abutting Lots or properties, to install, operate and maintain electric and telephone and other utility service lines from each Lot to each such utility's respective termination points. Electric and telephone service and other utility 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, if any, 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 of the applicable utilities 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, 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 reasonably 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, shall

include, easements for the installation, operation and maintenance of cable television service to the Lots and the Common Area, including 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 Homeowners 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 upon such Common Area, and such rules, if not otherwise posted at any such facility or amenity, shall be furnished in writing to a Lot owner upon reasonable request. No Lot owner shall do or permit anything to be done or kept on or in the Common Area which might result in the cancellation of insurance on any part of Common Area, which would interfere with rights of other Lot owners, or which would be noxious, harmful or unreasonably offensive to other Lot owners as determined by Declarant or the Board in their respective sole discretion. No waste shall be committed by any Lot owner or resident of the Subdivision in the Common Area.

**Section 2.14 Exclusive Water 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 system provided for the Subdivision by the Taylorsville Water Company and respectively, or their respective successors and assigns. No other water shall be permitted on or for any Lot

**Section 2.15 Common Areas.** Any walkways or landscaped areas furnished by Declarant or the Homeowners Association or others with the consent of Declarant, upon the Common Area or otherwise within the Subdivision, shall be used, at the risk of the user, and Declarant, its affiliated persons and entities and the Homeowners Association shall not be liable to any person or entity for any claim, damage, liability or injury occurring thereon or related to use hereof.

**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.

### **ARTICLE 3 - 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 the Lot owner has submitted, and Declarant has approved, in writing, in its sole discretion, a Lot drainage plan in accordance with Section 2.10 and 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 instructions, including, without limitation, (1) the style, design and location of all 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. 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 the downhill sides of the Lot and any portion of the perimeter of the Lot bordering, backing up to or otherwise in the near vicinity of any developed Lot, in order to prevent silt and/or fill from migrating from such lot or from contaminating such developed Lot. 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, or other similar materials approved by Declarant, which shall be constructed in final finished form not later than thirty (30) days subsequent to the substantial completion of any residence on a Lot, as determined by Declarant in its sole discretion.

(iii) Declarant reserves the right to compile and modify, from time to

time, architectural and design review and/or construction standards manuals and guidelines or other written standards (collectively, "Design Guidelines"), for use by Lot owners for guidance in the construction of any structures and other improvements on the Lots, and for such other purposes as described in this Declaration, and all improvements addressed therein shall be constructed by Lot owners in accordance therewith and pursuant to the planes) therefore approved pursuant to this Article 3. 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. Nothing contained in this Section of this Article shall obligate adjoining landowners under this Declaration, including, without limitation, rights granted by Article 6 of this Declaration.

(iv) Construction of the residence and other improvements shall begin within 24 months after purchase of any Lot from Declarant and shall proceed expeditiously thereafter to completion (except for waivers granted by Declarant in its sole and absolute discretion). All approved construction activities, and landscape activities contemplated by Section 3.1 (b) below, shall be completed by the Lot owner within the time frame specified in the approved plans contemplated by this Section 3. I, such period not to exceed twelve(12) months after beginning (except for waivers granted by Declarant in its sole and absolute discretion).

(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 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 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 therefore 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 specifications shall be deemed reasonable if confirmed in writing by at least two (2) builders). Should such Lot owner fail to cure such noncompliance 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 therefore, and Declarant and/or the Board, and their respective agents, employees and contractors, may enter upon the lot and all improvements thereon at any time and from time to time in connection therewith, without liability or obligation of any kind to such Lot owner or any resident or lessee of such Lot, and the Lot owner shall reimburse Declarant upon demand for all costs and expenses incurred in connection therewith, including without limitation, reasonable 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 4 below.

**(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 such Lot owner to Declarant for its approval in writing, which plan shall show the trees, shrubs and other plantings then existing and/or to be planted on the Lot, and specify the time frame within which such landscaping shall be completed. This Declaration obligates 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 and appearance 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 to be landscaped pursuant to an approved landscape plan shall be sodded, or seeded and strawed 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 ninety (90) 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 therefore approved by Declarant, the Lot owner shall, within fifteen (15) days after written notice from Declarant (or within such greater period as specified by Declarant considering seasonal limitations in Declarant's sole discretion), cause such landscaping to be completed in a good, workmanlike and professional manner. Should such Lot owner fail to complete such landscaping within the applicable period provided above, Declarant may, in its sole discretion, elect to complete such landscaping on such Lot in accordance with the approved plans therefore (or, if such plans have not been submitted or approved, in accordance with the requirements of Declarant, in its sole discretion), 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 equal in priority to the lien for assessments provided for in Article 4 of this Declaration.

**(e) 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 Homeowners Association, which assignment the Homeowners Association hereby irrevocably agrees to accept when executed by Declarant.

**(ii)** References to "structure" in this Declaration shall include, without limitation, any buildings, residences, garages, fences, walls, antennae, microwave and other receivers and/or transmitters (including those currently called "satellite dishes"), decks, swimming pools, 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 compliance with the provisions of this Declaration, including, without limitation, this Article 3, 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 and assigns.

**Section 3.2 Building Materials; Roof; Builder; Architectural Standards and Design Guidelines.**

**(a) Building Materials.** The exterior building materials of all residences and structures on any Lot shall extend to ground level, and the exterior building materials of all residences shall be brick, stone, brick veneer, or stone veneer or a combination of same, or such other materials as shall hereafter be specified by Declarant. Declarant recognizes that the appearance of other exterior building materials (such as wood siding) maybe attractive and innovative and reserves the right to approve in writing the use of other exterior building materials. Exposed smooth or brick mold-poured concrete walls shall not be permitted. All homes must be "stick built" on site, no modular, manufactured, or any variation of non site built home is allowed. The Declarant reserves the right to not allow any type of construction they deem fit, to maintain the desired control of the subdivision. All exterior paint and stain finishes and combinations and prefinished exterior materials must receive prior written approval of Declarant.

**(b) Roof Pitch.** The roof pitch of all residential structure shall not be less than a plane of 8 inches vertical for every plane of 12 inches horizontal for all structures.

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 or otherwise retained by or on behalf of any Lot owner, to construct a residence on any Lot, which approval must be obtained prior to the commencement of any such construction. No Lot owner, unless an approved Builder may construct a residence on the Lot. Declarant reserves this right of prior approval because 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, (ii) 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 IMPROVEMENT CONSTRUCTED THEREON OR OTHERWISE WITHIN THE SUBDIVISION.

**Section 3.3 Minimum Finished.** Floor Areas. The following shall be the minimum finished floor areas for homes to be constructed within the Subdivision.

(8) **One-Story.** The ground floor area of a one-story residence shall be a minimum of 2,000 finished and habitable square feet, exclusive of the garage.

(b) **One-and-one-Half-Story.** The floor area of a one-and-half-story residence shall be a minimum of 1,650 finished and habitable square feet on the first floor and 2,300 finished and habitable square feet on the first and second floor, exclusive of the

garage.

(e) Two--Story. The floor area of a two-story residence shall be a minimum of 1,400 finished and habitable square feet on the first floor and 2,600 finished and habitable square feet on the first and second floor, exclusive of the garage.

(d) 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 rear lot lines, than the minimum building setback lines required by applicable zoning regulations and (in addition to such regulations) shown or otherwise specified on the Plat, 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 there from, in its sole discretion, where not in conflict with applicable zoning regulations or other applicable law.

**Section 3.5 Garages and Carports** All Lots shall have at least a two-car garage. The openings or doors for vehicular entrances to any garage located on a Lot shall include doors. Detached garages are allowed, and are subject to sole and absolute approval by Declarant. Garages, as structures, are subject to prior plan approval under Section 3.1. No carport shall be constructed on any Lot. All detached garages must be all brick, or brick and stone, and the size and location must be approved by the developers, at their sole discretion.

#### **Section 3.6 Trees**

(e) **Trees.** No tree shall be removed from any Lot subsequent to the implementation of the approved initial lot-grading plan for such Lot without the prior written approval of Declarant in its sole discretion. 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 outermost 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.

**(d) Default.** Upon a Lot owner's failure to comply with the provisions of this Section 3.6, Declarant may take or cause to be taken such action as may be necessary in Declarant's opinion to cause compliance therewith, without liability of Declarant, the Homeowners Association or any of their respective successors, assigns, officers, employees, stockholders, directors, partners, agents, servants or contractors, or affiliated or related persons or entities to the Lot owner or others for trespass or for any other reason, and the Lot owner shall immediately, upon demand, reimburse Declarant or other performing party for all expenses incurred in so doing, including, without limitation, attorney 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 4 of this Declaration.

**Section 3.7 Mail and Paper Boxes.** Any mailbox or paper holder (with uniform letters and number) must be approved by Declarant in writing in advance of installation. No other mailboxes or paper holders, whether temporary or otherwise, shall be permitted on any Lot.

**Section 3.8 Maintenance of Roads and Curbs.** Any Builder performing construction services on the Property, and any Lot owner purchasing such services, shall be jointly and severally liable for any damage caused by either party, or any subcontractors, material suppliers or other parties claiming by, under, or through such parties, to any portion of the Property, including, without limitation, the Common Areas, curbs, roadways and signage. All Builders and Lot owners shall take such measures as are necessary to avoid the deposit of any mud or dirt on roads within the Subdivision.

**Section 3.9 Temporary Window Treatments.** Any temporary window treatments, including, without limitation, sheets, canvas, plywood or other opaque or security coverings, shall not be permitted to remain more than fifteen (15) days except as may be permitted in writing by Declarant, in its sole discretion.

#### **ARTICLE: 4 - HOMEOWNERS ASSOCIATION; ASSESSMENTS**

**Section 4.1 Homeowners Association.** The Declarant shall, and hereby reserves the right to, assign certain of its rights hereunder to such Homeowners Association, such assignment to be effective upon recording by Declarant of an

assignment and notice of creation of the Homeowners Association. Until such assignment and recordation, all rights of the Homeowners Association as set forth in this Declaration shall run to the benefit of, and be exercised by, Declarant.

**Section 4.2 Easements of Enjoyment.**

**(a) Common Area.**

(i) Every lot owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot subject to the easements and other reservations set forth in this Declaration.

**Section 4.3 Right of Entry.** The officers, employees, agents and authorized representatives of Declarant, the Homeowners Association and the Board shall be entitled to reasonable access to the individual Lots as may be required (a) in connection with the preservation of property on an individual Lot or in the event of an emergency or in connection with the maintenance, repairs or replacements within the Common Area or the remainder of the Subdivision, of any equipment, facilities or fixtures affecting or serving other Lots and/or the Common Area, or to make any alteration required by any governmental authority and (b) in connection with and related to the exercise and performance by Declarant, the Homeowners Association or the Board of their respective rights and responsibilities pursuant to this Declaration, including, without limitation, the right of access to each Lot at reasonable times and intervals and in a manner which does not unreasonably interfere with the use thereof to inspect the Lot for purpose of verifying conformance with this Declaration, whether in connection with the construction of improvements thereon in accordance with Article 3 of this Declaration or otherwise.

**Section 4A Assessments: Lien and Personal Obligation.**

(a) Payment. Each Lot owner, except Declarant, by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, covenants and agrees to observe and conform to, and to cause the residents of the Lot to observe and conform to, the provisions of this Declaration, and such Lot owner further covenants and agrees, and incurs an obligation, to pay to the Homeowners Association, except as otherwise provided in this Declaration, (1) annual assessments or charges ("Annual Assessments"), and (ii) special assessments for capital improvements ("Special Assessments"), such assessments to be established and collected as provided in this Article 4. At the sale

discretion and direction of Declarant or the Board, however, the Homeowners Association may elect, from time to time, not to levy any assessment against one or more specific Lots conveyed to certain Builders (other than assessments with respect to such Builder's residence or sales office) until the first anniversary of such conveyance or the conveyance of the Lot by the Builder, whichever first occurs, or until such times as Declarant or the Board may elect.

**(b) Charge and Lien.** The Annual Assessments and Special Assessments, together with interest at the same rate prescribed or permitted under Section 2.6(b) hereof, or such other rate of interest as shall, from time to time, be determined by the Board not in excess of the maximum rate permitted by applicable law, and costs of collection and reasonable attorneys' fees (with such interest thereon), shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with reasonable attorneys' fees, costs and such interest, shall also be the personal obligation of the person or entity which was the Lot owner of such Lot at the time when the assessment fell due, and the personal obligation for delinquent assessments shall pass jointly and severally on to such Lot owner's successor in title, regardless of whether expressly assumed by such successor, and such delinquent assessments shall remain a charge on and continuing lien against the Lot, which may be foreclosed by the Declarant or the Homeowners Association in the manner prescribed by law.

**Section 4.5 Purpose of Assessments.**

**(a) Use.** The assessments levied by the Homeowners Association shall be used as provided in this Declaration and otherwise to promote the recreation, health, safety and welfare of the residents and Lot owners in the Subdivision, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, and for the improvement, maintenance, use and enjoyment of the Common Area including, but not limited to, the cost of repairs, replacements and additions, the cost of utilities, labor, equipment, materials, management and supervision and other services, payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Articles and/or Bylaws of the Homeowners Association the employment of attorneys to represent the Homeowners Association when necessary and such other needs as may arise, and for the improvement and maintenance of the Common Area. The Homeowners Association shall maintain, operate and repair, unless such obligations are assumed to the satisfaction of me



Declarant by any municipal or governmental authority or agency having jurisdiction thereof and are relinquished by the Homeowners Association, the Common Area including all open spaces, landscaping, entranceways streets, roadways, crosswalks, medians, storm drains, and basins.

(b) **Administration.** Until assignment of its rights hereunder to the Homeowners Association, Declarant or its nominee shall administer the assessments and receipts therefrom, which may only be used for purposes permitted in this Declaration and/or the Articles and Bylaws of the Homeowners Association.

**Section 4.6 Initial Annual Assessment.**

(a) **Initial.** For the calendar year 2008, the initial Annual Assessment shall be set at a rate of \$150.00 per year per Lot, and shall be thereafter increased or reduced for each year as shall be determined by the Board.

(b) **Payment.** The Board may fix the amount of the Annual Assessment from time to time as provided above and shall determine when the Annual Assessments shall be paid.

**Section 4.7 Special Assessments for Capital Improvements.** In addition to the Annual Assessments, the Homeowners Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area including personal property related thereto. Any such assessment shall have the assent of the members of the Homeowners Association in accordance with the Bylaws of the Homeowners Association.

**Section 4.8 Uniform Rate of Assessment.** Subject to Section 4.5 hereof, both Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Lots. The Board and/or Declarant may at its respective discretion waive any assessment in whole or in part for any year or part of a year for any Lot not occupied as a residence.

**Section 4.9 Date of Commencement of Annual Assessments: Due Dates.** The Annual Assessments shall begin as to any Lot at the time me Lot is initially conveyed by Declarant to a person or entity other than any of Declarant's affiliated persons or entities as determined by Declarant, unless otherwise provided in the deed for such Lot.

**Section 4.10 Elect of Nonpayment of Assessments. Remedies of the Homeowners Association.** Any Annual Assessment or Special Assessment not paid by the due date shall bear interest from the due date at the same rate prescribed or permitted

by Section 2.6(b) hereof. The Homeowners Association may bring an action against the Lot owner(s) and/or persons personally obligated to pay such assessments and/or may foreclose the lien against the Lot, and such interest, and costs and reasonable attorneys' fees of such action and/or foreclosure shall be added to the amount Of such assessments. No Lot owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Loft or by claim of set - off.

**Section 4.11 Subordination of the Lien to First Mortgage.** Annual Assessments and Special Assessments shall constitute a charge upon each Lo~ and the lien of such assessments shall be subordinate to the lien of any (*mt* mortgage encumbering a Lot in favor of a bona fide institutional lender, which mortgage encumbered the Lot prior to the due dates of any such assessments. Sale or transfer of any Lot shall not affect the assessment lien or other liens provided for in this Declaration.

**Section 4.12 Membership.** Declarant and every Lot owner of a Lot which is subject to an assessment shall be a member of the Homeowners Association, as provided herein and in the Articles and Bylaws of the Homeowners Association. Each such Lot owner and member shall abide by the Homeowners Association's Articles of Incorporation recorded in the corporation records in the Office of the Clerk of Jefferson County Kentucky ("Articles") and Bylaws, rules and regulations (as amended from time to time), shall pay the assessments provided for in this Declaration when duet and shall comply with decisions of the Board. Membership in the Homeowners Association shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

**Section 4.13 Exempt Property.** In addition to that property exempted above, the following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All easements or other interests therein dedicated and accepted by an applicable governmental authority or agency and devoted to public use; and
- (b) All of the Common Area.

**Section 4.14 Lot Owner's Negligence.** In the event that the need for maintenance, repair, or replacement of any property owned by Declarant, the Common

Area, or any portion thereof is caused through or by the negligent or willful act or omission of any Lot owner, or by any member of a Lot owner's family, or by a Lot owner's tenants, guests, contractors, subcontractors, agents, or invitees, then same shall be a personal obligation of such Lot owner; and, if not repaid to the Declarant or Homeowners Association, as the case may be, within thirty (30) days after the Declarant or Homeowners Association gives notice to the Lot owner of the total amount or amounts due from time to time, then the sums due shall become a charge upon and lien against the Lot owner's Lot of equal priority to the lien for assessments provided for in this Article 4, and may be enforced in accordance with applicable law.

**Section 4.15. Recorded Easements.** The Common Area, and all portion thereof, shall be subject to any easements shown on any recorded Plat affecting the Common Area, or any portion thereof, and to any other easements of record, which shall include without limitation, use for construction, installation and repair of utilities, maintenance, encroachment, drainage, and ingress and egress as of the date of recordation hereof.

**Section 4.16 Dedication.** No common areas, open space, private roadways or islands in the right-of-way shall be dedicated to an unit of local government without the acceptance of the unit of local governmental involved and the approval of the Louisville Metro Planning Commission. Anything to the contrary herein notwithstanding, the Homeowners Association and the Lot owners shall be responsible for the maintenance of all open space and Common Areas, so long as the Property is used as a residential subdivision or until properly dedicated to a unit of local government. The Homeowners Association cannot amend this Section 4.16 without approval from the Louisville Metro Planning Commission.

#### **ARTICLE 5 - 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 Utilities.** As of the recording of the Plat, certain of the utilities, including, permanent electricity, water and sanitary sewer service may not be available.

#### **ARTICLE 7 - GENERAL**

**PROVISIONS Section 7 at Enforcement.**

(a) **Parties.** Enforcement of these restrictions shall be by proceeding at law and/or in equity, brought by Declarant and/or the Homeowners Association, or, in the absence of any such action, by any Lot owner (although Declarant and/or the Homeowners Association shall at all times have the superior right to bring and/or assume and control the course of, as applicable, any such proceeding) against any party violating or attempting to violate any covenant or restriction or other provision of this Declaration, either to restrain violation, to direct restoration and/or to recover damages. Failure of any Lot owner, Declarant or the Homeowners 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 Homeowners Association enforcing this Declaration shall be entitled to recover all costs and expenses incurred in connection with such action from the defaulting party or parties, including, without limitation, court costs and reasonable attorney's fees. Any award of damages received by Declarant or the Homeowners Association in connection with any such action and interest hereon until paid, and all costs and expenses incurred by Declarant or the Homeowners Association in connection therewith, shall constitute a lien upon the Lot, of equal priority to the lien for assessments provided for in Article 4, and any award of damages received by any Lot owner in connection with any such action shall accrue to the sole benefit of the Homeowners Association.

(b) **Liens.** All liens created and/or imposed against any Lot pursuant to the provisions of this Declaration, including the lien set forth in paragraph A above, 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.** Each 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, licensee, tenant, sublessee and assignee of such Lot owner.

(d) **Waivers.** Failure of any party to demand or insist upon observance of any of these restrictions or covenants, or to proceed for a restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these

restrictions.

**Section 7.2 Severability.** Invalidation of any provision of this Declaration by 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 provision 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 cancelled, altered or amended under the provisions of this Section 7.3, and absent an express provision to the contrary contained in this Declaration, 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 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 an instrument signed by at least seventy-five percent (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; provided, however, that if Declarant, its designated successors or assigns then owns any Lot or any portion of the Subdivision, or if any portion of the Subdivision remains unplatted as a Section, this Declaration may be so changed in whole or in part without the 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 or assigns 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 (iii) shall not materially adversely affect the then existing private single-family residential nature of the developed Sections of the Subdivision and shall not be less restrictive than the then existing provisions of this Declaration. At such time as neither Declarant nor its designated successors or assigns 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 cancelled, altered or amended by the recordation of a document in the aforesaid Clerk's Office in which the Board certifies that such cancellation, alteration or amendment was executed by the

owners of seventy-five percent (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 utilities mentioned. (e.g., LG&E. MSD and Bell) or any other person or entity other than the Lot owners, without express written consent of the foregoing entities and such other persons and entities benefited thereby, or (ii) change the method of assessment or the obligations or duties of the Homeowners Association without the prior written consent of Declarant in its sole discretion.

**(c) Assignment of Rights and Grant of Proxy.** Until the Declarant or its successors or assigns, as the developer of the Subdivision, no longer owns any Lots, or until Declarant shall otherwise declare, each Lot owner, by the acceptance for a deed for such Lot, does automatically and irrevocable appoint the Declarant as the attorney-in-fact and proxy for such Lot owner, in the name and stead of such Lot owner, (i) to act for such Lot owner in executing any document or taking any action to amend this Declaration and/or the Articles or Bylaws of the Homeowners Association, as applicable, and (ii) otherwise to exclusively exercise all rights of such Lot owner to vote as a member of the Homeowners Association on all matters coming before the members of the Homeowners Association, and to cast such vote as Declarant sees fit in its sole discretion. All actions so taken by the Declarant as such attorney-in-fact and proxy shall be fully binding- upon the Lot owner as if taken by me Lot owner in its, his or her own name without acting through an attorney-in- fact and proxy. Such irrevocable appointment of Declarant as attorney-in-fact and proxy for each such Lot owner is a power coupled with an interest.

**Section 7A. Non-Liability of the Directors and Officers.** Neither Declarant, its directors or officers, nor the directors or officers of the Homeowners 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 owner shall indemnify and hold harmless each of the directors and officers of the Homeowners 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 Homeowners Association.

**Section 7.5. Binding Determination.** In the event of any dispute or disagreement with or between any Lot owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Homeowners Association, the determination thereof (a) by Declarant for so long as Declarant or any of its affiliated persons or entities owns any Lot or any portion of the Subdivision, and (b) thereafter by the Board shall be final and binding on each and all such Lot owners.

**Section 7.6 Homeowners Association Easements.** Declarant hereby grants and conveys to the Homeowners Association an easement in, on, under, over, above, across and through the entirety of the Property for the use and benefit of the Homeowners Association in order to permit the Homeowners Association in or upon such portions of the Property as are reasonably necessary to discharge the rights and obligations of the Homeowners Association enumerated in this Declaration, which shall be exercised only to the extent reasonably necessary and appropriate to discharge those obligations.

**Section 7.7 Incorporation by Reference on Resale.** Upon the sale or other transfer of any Lot, any deed purporting to effect such transfer shall contain an 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 nor shall it be deemed to release the Lot conveyed thereby from the effect of this Declaration.

**Section 7.8 Notices.** Upon purchase of any Lot, the purchaser thereof shall notify Declarant and the Homeowners Association in writing, sent to the address of Declaration set forth, above (or to such other address or to such other entity as shall be designated by Declarant and/or the Homeowners Association, whether by notice to lot owners or by the filing of a statement and/or declaration in the aforesaid Clerk's office), of such purchase and shall set forth in writing the then existing address of such purchaser and the Lot purchased. Any notice required to be sent to any Lot owner pursuant to the provisions of this Declaration shall be deemed to have been properly given upon personal delivery, or when mailed, by ordinary mail, post-paid, to the last

known address of the person or entity which appears as the Lot owner on the records of Declarant or of the Homeowners Association at the time of such mailing, or as specified on the deed of the Lot to such Lot owner.

**Section 7.11. Additional Rights of Declarant.** Notwithstanding any provisions contained in this Declaration to the contrary, so long as Declarant or any of its affiliated persons or entities owns any Lots, 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 Sections and Lots within the Subdivision, including, without limitation, business offices, signs and sales offices, and Declarant shall have an easement for access to such facilities

**Section 7.12 Reservation of Easement.** Declarant hereby reserves, grants and conveys unto itself, its successors and assigns, a perpetual easement five (5) feet in width within and along the boundaries of each Lot plus rights of ingress and egress and access on and over each Lot to such easement, for utility services, access, drainage, construction, grading and fill, and any other use as Declarant shall determine in its reasonable discretion, which easement is reserved granted and conveyed for the benefit of Declarant, its successor and assigns, and of any Lot or other portion of the Subdivision, and other persons or entities, selected by Declarant in its sole discretion; provided that sidewalks, driveways and other structures approved pursuant to Article 3 above, and utilities to serve such Lot, shall be permitted to cross such easement.

**Section 7.13. Declarant's Rights to Complete Development.** No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, sale and leasing of Lots developed from the Subdivision and other portions of the Subdivision; to construct or alter improvements on any real property owned by Declarant or any of its affiliated persons or 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 or owned by the Homeowners 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 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 to any portion of the Common Area or any property owned by Declarant; or (b) use any structure on any portion of the Common Area or any property owned by Declarant as a construction, model home or real estate sales or leasing office. Nothing in this Section 7.13 shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration, and Declarant and any successor or assign of Declarant acting in the same capacity as developer of the Subdivision 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 7.14 Declarant's Approval of Conveyances of Changes in Uses of Common Area.** The Homeowners Association shall not, without first obtaining the prior written consent of Declarant, convey, mortgage, change or alter the use of the Common Area.

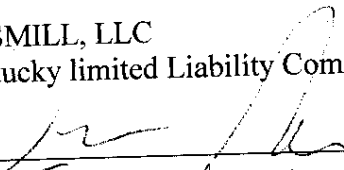
**Section 7.15 Reservation of Additional Easements, Exceptions, and Exclusions.** Declarant reserves to itself and hereby grants to the Homeowners Association the concurrent right to establish, from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions consistent with the ownership of the Subdivision and the Property for the best interests of Lot owners and the Homeowners Association, in order to serve the Lot owners within the Subdivision 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, exception, 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 7.16 Drainage Easement.** An easement is hereby reserved to the Declarant and granted to the Homeowners Association and their respective of officers,

agents employees, successors, and assigns to enter upon, across, over, in, and through all Lots and any portion of the Common Area for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Common Area so as to improve the drainage of water on the Common Area. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the Lot owners of their Lots, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and useable condition as soon as reasonably possible following, such work.


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

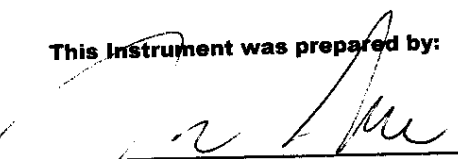
KINGSMILL, LLC  
A Kentucky limited Liability Company

  
By: Trevor Brown  
Title: Member

STATE OF KENTUCKY            )  
  )  
COUNTY OF Spencer        )       SS

I, a Notary public in and for the State and County aforesaid, do hereby certify that on this 24 day of November 2008, Trevor Brown of Kingsmill, LLC, appeared before me and before me acknowledged that he executed and delivered the foregoing instruments as his free and voluntary act and deed and as the free voluntary act and deed of Kingsmill, LLC, and Kentucky Limited Liability Company.

My Commission expires: 10/16/11   
NOTARY PUBLIC  
STATE AT LARGE, KENTUCKY

**This Instrument was prepared by:**  
  
Prepared By:  
Kingsmill LLC  
6130 Elk Creek Rd  
Taylorsville KY 40071

DOCUMENT NO: 121928  
RECORDED ON: NOVEMBER 24, 2008 02:31:43PM  
TOTAL FEES: \$106.00  
COUNTY CLERK: JUDY PUCKETT  
COUNTY: SPENCER COUNTY  
DEPUTY CLERK: SHERRIE COULTER  
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