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**DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
PENINSULA TOWNHOMES**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
PENINSULA TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the “Declaration”), is made and entered into this the 15th day of January, 2024, by **BALL HOMES, LLC**, a Kentucky limited liability company, 3609 Walden Drive, Lexington, Kentucky 40509 (hereinafter referred to as “Declarant”).

**W I T N E S S E T H:**

WHEREAS, Declarant is the owner of approximately 2.71 acres of real property and improvements located at 3230 Peninsula Way, Lexington, Fayette County, Kentucky, and being more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (herein the “Property”); and

WHEREAS, the Declarant desires to develop the Property with approximately thirty (30) single-family residential townhome units with common areas for access, parking, landscaping and passive open space; and

WHEREAS, Declarant desires to impose covenants, conditions and restrictions for the use, maintenance, preservation and enjoyment of said Property and the improvements thereon and to protect the value and desirability of the Property and the improvements thereon, more particularly described hereafter; and

WHEREAS, Declarant has caused to be incorporated under the laws of the Commonwealth of Kentucky a non-profit corporation known as Peninsula Townhomes Owners Association, Inc. (herein the “Association”), for the purpose of, among other this, maintaining and administering the Common Areas, as hereinafter defined, the common maintenance obligations and administering and enforcing the terms, conditions and covenants herein contained, including certain rights as to maintenance of the improvements and the collection of assessments and charges herein created.

NOW, THEREFORE, Declarant declares that the Property described in Exhibit “A” hereto and known as Peninsula Townhomes located in Fayette County, Kentucky, is and shall be held, transferred, sold, conveyed, occupied, mortgaged, and otherwise encumbered subject to all covenants, restrictions, easements, conditions, charges, and liens hereinafter set forth, all of which shall run with the title to the Property, and shall be binding upon all parties having, or hereafter acquiring, any right, title or any interest in the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

**ARTICLE I. DEFINITIONS**

The following words shall have the following meaning when used herein unless the context clearly prohibits the same:

**Section 1** "Access Easement" shall mean the easement(s), as more particularly shown on the "Plat" (as hereinafter defined) or otherwise provided for herein, which shall provide mutual and reciprocal unobstructed vehicular and pedestrian access across and to each of the "Lots" as hereinafter defined.

**Section 2** "Board of Directors" or "Board" shall be the elected body of the Association having its normal meaning under Kentucky corporate law.

**Section 3** "Bylaws" shall mean and refer to the Bylaws of Peninsula Townhomes Association, Inc., incorporated herein by reference, and as they may be amended from time to time.

**Section 4** "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint all members of the Board of Directors, as specified in Article III, Section 2, of the Bylaws.

**Section 5** "Common Area" shall mean all areas of the Property, as so designated on the Plat, which shall be for the use and benefit of the Association, its members, guests and invitees, and such other Persons as hereinafter provided. Notwithstanding the foregoing, Common Area shall also include any wall or fence constructed along the perimeter of the Property. Title to the Common Area shall be transfer to the Association prior to in association with the close of the Class B Control Period, at the Declarants sole discretion.

**Section 6** "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, for general purposes, including reasonable Reserve Allocations (as defined in Article VIII, Section 5), all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association.

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

**Section 8** "Courtyard" shall mean the open space associated with some or all of the Lot(s), whether or not covered by a building or structure, but which is enclosed on two sides of each Lot by a common fence, wall or hedge.

**Section 9** "Declarant" shall mean and refer to Ball Homes, LLC, a Kentucky limited liability company, or its successors or assigns, who take title to any of the unsold Lots for the purpose of sale and who are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

**Section 10** "General Assessment" shall mean and refer to assessments levied to fund Common Expenses for the benefit of all "Members" (as hereinafter defined) of the Association.

**Section 11** "Lot" or "Lots" shall mean any subdivided tract or tracts of land shown upon the final record plat of the Property. The term shall include all portions of the Lot owned, including any structure thereon.

**Section 12** "Member" shall mean and refer to a "Person" as hereinafter defined entitled to membership in the Association, as provided herein.

**Section 13** "Mortgage" shall mean and refer to a first mortgage and a deed that includes the reservation of a first priority vendor's lien.

**Section 14** "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

**Section 15** "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

**Section 16** "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Property, but excluding in all cases any Person who is a Mortgagee or holds an interest merely as security for the performance of an obligation.

**Section 17** "Person" shall mean a natural Person, a corporation, a partnership, a trustee or other legal entity.

**Section 18** "Plat" shall mean the final record subdivision plat of any of the Property recorded in the Fayette County Clerk's office, as the same may be amended from time to time.

**Section 19** "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto.

**Section 20** "Special Assessment" shall mean and refer to assessments levied in accordance with Article VIII, Section 3, of this Declaration.

## **ARTICLE II. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

### **Section 1 Membership**

Every Owner shall be a Member of the Association, provided that any Person or entity who holds an interest merely as security for the performance of an obligation shall not be a Member. Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the Bylaws. The membership rights of a Lot owned by a corporation, partnership or other legal entity shall be exercised by the individual designated in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the By-Laws.

## **Section 2 Voting Rights**

The Association shall have two (2) classes of voting membership:

CLASS A - All Members of the Association, with the exception of the Declarant, shall belong to this class and shall be entitled to one vote for each Lot in which they hold the interest required for membership. If more than one Person is an owner of any Lot, all such votes shall be exercised as they determine among themselves and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. In no event shall more than one vote be cast with respect to any individual Lot.

CLASS B - The Class B Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the Bylaws, are specified elsewhere in this Declaration and the Bylaws. The Class B Member shall be entitled to one vote for each Lot in which it holds the interest required for membership and, in addition, shall be entitled to appoint all members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2 of the Bylaws. The Class B membership shall terminate upon the expiration of the Class "B" Control Period and shall be converted to Class A membership as specified in Article III, Section 2 of the Bylaws.

## **ARTICLE III. EASEMENTS**

### **Section 1 Owner's Right to Ingress, Egress and Support**

Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Lot and shall have the right to lateral support for the townhome constructed on his or her Lot and such rights shall be appurtenant to and pass with the title to each Lot. In addition, each Owner shall have the right to ingress and egress over, upon and across any other Lot to the extent such access is provided for on the Plat covering the Property recorded in the Fayette County, Kentucky public records, or as otherwise provided for herein, and likewise shall have the benefits of all easements, notes and rights-of-way reflected thereon.

### **Section 2 Association's Easement for Sewers and Electric Service**

The Association shall have a right and easement over, upon, across and under the Lots and all structures thereon for the maintenance, repair and replacement of electric service lines, sanitary sewers and storm sewers for the use and benefit of the Association and of the Owners. Each Lot shall be subject to an easement in favor of the Association to use, maintain, repair and replace the electric service lines, sanitary sewer and storm sewer lines serving the Property and located in and beneath each Lot. The Association shall have a right of access to each Lot's improvements thereon to inspect the same and to maintain, repair or replace the electric service lines, sanitary sewer or storm sewer lines contained therein or elsewhere on the Property. The cost of such maintenance, repair and replacement shall be a Common Expense. Any Lot or improvements thereon shall be restored to the condition in which it existed immediately prior to such work by the Association as soon as practicable after the completion of such work.



Declarant hereby reserves the right to grant, on behalf of the Association and/or the Owners and without the consent of the Association, or any Owner, easements across, through, or under the Common Areas. Such easements, which shall be exclusive or non-exclusive, shall be limited to utility easements (including cable television), greenway easements, sign easements, access easements, or roadway easements. Declarant's rights under this Section shall terminate upon expiration of the Class "B" Control Period.

The Association, without the consent of any Owner, shall have the right at any time to grant easements as set forth in this Section.

### **Section 3      Easements of Encroachment**

There shall be reciprocal appurtenant easements of encroachment as between adjacent Lots due to the original construction of the improvements on the Lots by the Declarant and to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than two (2) feet as measured from any point on the common boundary between said adjacent Lots along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred subsequent to the original construction as described hereinabove due to willful and knowing conduct on the part of an Owner, tenant or the Association.

### **Section 4      Easement for Utilities, Etc.**

Each Owner is hereby granted a blanket easement upon, across, over and under all of the Common Area, and that portion of each Lot not containing a structure, residence or other improvements, for ingress, egress, installation, replacing, repairing and maintaining master cable television systems, security and similar systems, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said Property, except as may be approved by the Association's Board of Directors or as provided by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Property without conflicting with the terms hereof, which easement shall be subject to the consent of the Owner(s) of the affected Lot(s), which consent shall not be unreasonably withheld. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Property.

The cost of any such maintenance, replacement, installation or repair, including repair to the structure located on any Lot, necessitated by such maintenance, replacement, installation or repair, shall be borne by the Owner for whose benefit, or upon whose direction, such work was performed, and any Lot or improvement thereon damaged shall be restored to the condition in

which it existed immediately prior to such work as soon as practicable after the completion of such work.

#### **Section 5 Use of Common Area**

Except for the right of vehicular ingress and egress within the Access Easement, use of the Commons, and except for the use of the sidewalks in front of the structures located on the Lots, the Owners of the Lots are hereby prohibited and restricted from using any of the Common Area, except as may be allowed by the Board or as expressly provided in this Declaration. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of said Owners.

### **ARTICLE IV. MAINTENANCE**

#### **Section 1 Association's Responsibility**

The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Lots. The Association shall be responsible for the maintenance, upkeep and repair, including but not limited to snow removal, of all paved or concrete walkways, sidewalks, driveways and parking areas, even though located partially or wholly within the boundaries of a Lot. The Association shall maintain and keep in good repair all water, gas, electric, cable, telephone, and storm and sanitary sewer service lines or facilities which serve more than one (1) Lot, whether located within or without a Lot's boundaries and which are not maintained by a utility company or by the Lexington-Fayette Urban County Government.

The Association shall provide exterior maintenance upon Lots as follows: paint, stain, repair, replace and care for porches, roof surfaces and roof systems, gutters, downspouts, and all exterior building surfaces, including damage or repair caused by vandalism, except that the Association shall not be responsible for maintaining, repairing or replacing (except for painting or staining of) entry doors and door frames, windows and window frames, glass, and the appurtenant hardware of the foregoing. The cost of performing the foregoing maintenance shall be a Common Expense and shall be assessed against all Lots within the Property as a General Assessment and prorated among such Lots based on each Lot's "Percentage Interest" as hereinafter defined in Article V. The Association shall have a right of access to each Lot and the Improvements thereon in order to perform its maintenance responsibilities specified herein.

#### **Section 2 Owner's Responsibility**

Except as provided in Section 1 above, all maintenance of the Lot shall be the responsibility of the Owner thereof, including, without limitation, maintenance, repair and replacement (except painting or staining) of entry doors and door frames, windows and window frames, glass and the appurtenant hardware of the foregoing. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only his or her Lot, whether located within or without the Lot's boundaries (including all gas, all electricity, water, sewer and air conditioning pipes, lines, ducts, conduits, heating and air conditioning equipment and all other equipment and

apparatus serving only the Lot). Such maintenance shall be performed consistent with this Declaration.

### **Section 3 Party Walls and Party Fences**

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

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared, in equal proportions, by the Owners whose Lots are separated by the party wall or fence.

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

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

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

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

## **ARTICLE V. INSURANCE AND OBLIGATION TO REBUILD**

### **Section 1 Insurance**

The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain and continue in effect adequate blanket property insurance, in such form as the Board of

Directors deems appropriate, for one hundred percent (100%) of the replacement cost of all structures, including walls and fences located on Lots within the Property in the event of damage or destruction from any insured hazard, and shall charge the cost thereof as a Common Expense to the Owners of Lots within the Property as part of the General Assessment for each Lot based upon the actual cost to the Association for insuring the structure on each Lot. If the Board of Directors is unable to obtain a separate cost for each Lot, then cost of the premiums shall be apportioned among such Owners on a pro rata basis based on each Lot's "Percentage Interest" of the square footage of the structures as constructed on each of the Lots.

The Lot's pro rata share of the premiums shall be determined by multiplying the total cost of the premiums by the Lot's Percentage Interest.

The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties the deductible shall be allocated in relation to the amount each party's loss bears to the total.

The Board, or its duly Authorized Agent, shall have the authority to and shall also obtain as a Common Expense a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members, agents, family members, guests, invitees or occupants on the Property. If reasonably available, the public liability policy shall have at least a One Million Dollar (\$1,000,000.00) per occurrence limit as respects bodily injury and property damage, a Three Million Dollar (\$3,000,000.00) limit per occurrence aggregate, and a Five Hundred Thousand Dollars (\$500,000.00) minimum property damage limit. If policies in such amounts are not reasonably available, then the Board shall obtain policies in the next highest amount which is reasonably available, but at least a One Million Dollar (\$1,000,000.00) combined single limit.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, the Lot Owner and their Mortgagees as their interest may appear as further identified in subparagraph 1 below. Such insurance shall be governed by the provisions hereinafter set forth:

1. All policies on the Common Area shall be for the benefit of the Association, the Owners of Lots and their Mortgagees as their interests may appear.

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

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

4. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one (1) or more qualified Persons, at least one (1) of whom must be in the real estate industry and familiar with construction in the Lexington, Fayette County, Kentucky, area.

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

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

B. a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

C. that no policy may be cancelled, invalidated or suspended on account of any one or more individual owners;

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

E. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration;

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

G. all such policies shall provide for a certificate of insurance to be furnished to each Member insured and to such Member's Mortgagee.

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

It shall be the responsibility and obligation of each Owner to carry insurance on the contents and personal property located within or without the Lots in the event of damage, destruction, loss or theft of such contents or personal property, including but not limited to, any

improvements within or without the Lots for which such Owner is responsible for the maintenance and replacement thereof and personal liability coverage for damages or injuries occurring on all areas of a Lot exclusive of the Common Area.

To the extent feasible, each Owner shall consider obtaining such coverage from the same company from which the Board of Directors has obtained the insurance coverage upon the structures on the Lots and upon the Common Area.

## **Section 2      Damage and Destruction – Duty to Rebuild**

If all or any portion of any structure constituting a part of a Lot is damaged or destroyed by vandalism, malicious mischief, fire, windstorm, or other casualty, it shall be the duty of the Owner of said Lot to rebuild, repair, or reconstruct said Lot in a manner that will restore it substantially to its appearance and condition immediately prior to the casualty (allowing for any changes or improvements necessitated by changes in the applicable building code) unless: (i) seventy-five percent (75%) of the Owners of Lots within the Property, including the Owner(s) of the damaged Lot(s), and (ii) the Class "B" Member, during the Class "B" Control Period, shall decide within sixty (60) days after the casualty not to repair or reconstruct.

Immediately after the damage or destruction by fire or other casualty to all or any part of any structure constituting a part of a Lot covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed structures.

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

## **Section 3      Time Limitation**

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

## **Section 4      Disbursement of Proceeds**

If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. In the event the proceeds are insufficient to defray the cost of such repair or reconstruction, then the additional cost shall be

borne by the Owner for whose benefit, or upon whose direction such work was performed. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. No Mortgagee shall have any right to apply or have applied to the reduction of a Mortgage debt any insurance proceeds which, pursuant to the provision of this Article, are to be disbursed for reconstruction or repair. Notwithstanding anything set forth in this Declaration, no Mortgagee shall have any rights under this Declaration, unless such Mortgagee has notified the Board of the existence of its Mortgage and has been issued a certificate of insurance with respect to the Lot subject to such Mortgage.

### **Section 5      Damage and Destruction to the Common Area**

A.      Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the Class "A" votes of the Association and the Class "B" Member, during the Class "B" Control Period, shall decide within sixty (60) days after the casualty not to repair or reconstruct. Immediately after the damage or destruction to the Common Area, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

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

C.      If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. In the event the proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for General Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

## **ARTICLE VI. CONDEMNATION**

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

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, the Declarant, during the Class "B" Control Period, and Members, representing at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions of Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## **ARTICLE VII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

### **Section 1 Common Area**

In addition to its maintenance responsibilities provided for in Article IV hereof, the Association shall be responsible for the exclusive management and control of the Common Area and all improvements thereon, and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

### **Section 2 Rules and Regulations**

The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, the Common Area and the Commons, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association.

### **Section 3 Implied Rights**

The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the



existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## **ARTICLE VIII. ASSESSMENTS**

### **Section 1      Creation of Assessments**

There are hereby created assessments for Common Expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 6 of this Article. There shall be two (2) types of assessments:

- A.      General Assessments to fund expenses for the benefit of all Members of the Association; and
  
- B.      Special Assessments as described in Section 3 below.

General Assessments shall be levied on all Lots as hereinafter set forth. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of its deed, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay these assessments. The Declarant shall be obligated to pay these assessments as to its property subject to this Declaration in the same manner as all other Owners.

All assessments, together with interest at a rate not to exceed eighteen percent (18%) or the highest rate allowed by Kentucky law as computed from the date the delinquency first occurs, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and its grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except to the extent the lien securing same may have been extinguished by judicial proceedings.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment, any prospective purchaser of a Lot or any mortgagee, a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid and may be relied upon by any prospective purchaser or mortgagee. The Association may charge a fee for such service, or elect to engage a third party to process such requests and the requesting party shall be responsible to pay for the cost of the service.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual General Assessments for delinquents. Unless the Board otherwise provides, the General Assessment shall be paid in monthly installments which shall be due and payable on or before the first day of each month. Any installment not paid within ten (10) days of the due date shall be deemed delinquent without notice or demand.

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

Where a Mortgagee or the purchaser or purchasers of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage; or by voluntary conveyance in lieu of such foreclosure, said Mortgagee or purchaser shall not be liable for the share of assessments by the Board pertaining to such Lot which became due prior to acquisition of title by said Mortgagee or purchaser as a result of the foreclosure or voluntary conveyance in lieu of said foreclosure; provided, the Mortgagee or purchaser shall be liable for its share of assessments accruing after the acquisition of title by said Mortgagee or purchaser. Such unpaid share of assessments shall be deemed to be common expenses collectible from all of the other Lot Owners, including a successor or assign of the Mortgagee. The waiver of liability granted herein for the payment of past due assessments shall not apply to an Owner who takes back a purchase money mortgage, or to any other Mortgagee which is not an "institutional mortgagee." The term "institutional mortgagee" herein used shall mean a first mortgage holder which is a bank, savings and loan association, life insurance company, pension fund, trust company, credit union, or other similar institutional lender.

## **Section 2      Computation of Assessment**

It shall be the duty of the Board, at least sixty (60) days before the beginning of the calendar year and thirty (30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include reasonable Reserve Allocations (as defined below) as determined by the Board. The amount of the General Assessment to be levied for each calendar year against each Lot under Section 6 below shall be computed as of the 1st day of January of each calendar year for the succeeding calendar year based on the record ownership of each Lot as of such date and each Lot's Percentage Interest as set forth in Article V, Section 1 hereof. The General Assessment for each Lot shall be determined by multiplying the total operating budget for the Association by the Lot's Percentage Interest. The Board shall cause a copy of the budget and the amount of the General Assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the meeting by a vote of Members or their alternates representing at least a majority of the total Class "A" vote in the Association, and disapproved by the Class "B" Member, so long as the Class "B" membership exists. Anything to the contrary contained herein or in the Bylaws to the contrary notwithstanding, during the Class "B" Control Period the budget, assessment determinations and other management decisions for the

Association shall be the sole responsibility and purview of the Class "B" Member, and an there shall be no notice, review, meetings or approval of the Members required for same.

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

### **Section 3 Special Assessments**

In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, such assessment shall have the affirmative vote or written consent of Members or their alternates representing at least a majority of the Class "A" vote in the Association held by Members other than Declarant and the approval of the Class "B" Member, so long as the Class "B" membership exists.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and its Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws and the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

### **Section 4 Lien for Assessments**

The General and Special Assessments and all other sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred as provided herein, shall be secured by a continuing lien on such Lot in favor of the Association, which lien shall not be diminished in any way by a transfer, subdivision and/or consolidation that occurs after the 1st day of January of each calendar year. Such lien shall be prior and superior to all other liens and encumbrances on such Lot except:

- A. all taxes, assessments and other levies which by law would be superior thereto; and
- B. the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, to which first Mortgage the lien created herein shall be subordinate and inferior in all respects.

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

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period of time which a Lot is owned by the Association following foreclosure:

- A. no right to vote shall be exercised on its behalf;

B. no assessment shall be assessed or levied on it; and

C. each other Lot shall be charged, in addition to its usual assessment, an equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure.

Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and an opportunity for a hearing, the Board may temporarily suspend the voting rights of a Member who is in default in payment of any assessment.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest, then to delinquent assessments, then to any unpaid installments of the General Assessments or Special Assessments which are not the subject matter of suit, in the order of their coming due, and then to any unpaid installments of the General Assessments which are the subject matter of suit, in the order of their coming due.

#### **Section 5 Reserve Allocations**

The Board of Directors shall annually prepare a budget for the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall plan for reserve allocations in an amount sufficient to meet the projected maintenance and replacement needs of the Association (herein the "Reserve Allocations").

#### **Section 6 Date of Commencement of Assessments**

The assessments provided for herein shall commence as to each Lot at the time of the transfer of such Lot from the Declarant to another Owner that is not the Declarant or an affiliate of the Declarant. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year at the time assessments commence on the Lot. The Declarant is not obligated to pay dues during the Class "B" Control Period, but shall be responsible for subsidizing shortfalls of actual operating expenses from the budget during said period, as determined by the Board, in its sole discretion.

#### **Section 7 Capitalization of Association**

Upon acquisition of record title to a Lot by the first purchaser thereof other than the Declarant, such purchaser shall make an initial contribution to the working capital of the Association in an amount as determined by the Board, in its sole discretion. This amount may be used by the Association to meet unforeseen expenditures, purchasing equipment deemed necessary or desirable, or otherwise covering operating expenses properly incurred by the Association or paying the initial blanket insurance premium as appropriate. Such contributions shall in addition to any other assessments, and shall not be considered an advance payment of regular assessments.

#### **Section 8 Failure to Assess**

The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

**Section 9 Exempt Property**

Notwithstanding anything to the contrary herein, the Common Area shall be exempt from the payment of General Assessments and Special Assessments.

**ARTICLE IX. RESTRICTIONS**

The Association, acting through its Board of Directors, shall have authority to make, to modify and to enforce standards and restrictions governing the use of the Property, in addition to those contained herein. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by Members representing seventy-five percent (75%) of the total Class "A" votes in the Association and by the vote of the Class "B" Member, so long as such membership shall exist.

**Section 1 Occupants Bound**

All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot.

**Section 2 Single Family Residential Use – Hotel/Transient Uses Prohibited**

The Property shall be used for single family residential use only. No Lot may be used for hotel, bed and breakfast, short term rental or other such uses transient uses, including without limitation, uses in which the occupant is provided short term boarding and/or any customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to this Declaration and review and approval by the Board for compliance with this Declaration.

**Section 3 Trailers, Temporary Structures, and Commercial Vehicles**

Except as may be used by Declarant during initial construction on the Lots or during any repair or reconstruction of structures on Lots, no trailers, temporary structures or commercial vehicles of any type shall be permitted to remain on any portion of the Property.

**Section 4 Other Vehicles**

No boats, campers, trailers, recreational vehicles, or disabled vehicles shall be permitted on the Property unless stored inside the garage.

#### **Section 5 Unsightly and Unkempt Conditions**

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

#### **Section 6 Animals**

No animals, livestock or poultry of any kind shall be kept or maintained on the Property, except that dogs, cats and other household pets may be kept provided that they are not at any time kept, tied, or chained, leashed or restrained in any way in such a manner as to permit them to be outside the structure located on a Lot except that such pets may be kept in the Courtyard so long as they do not create a disturbance to other occupants.

There shall be no more than two (2) pets kept on any Lot. No breeding or raising of animals for commercial purposes shall be allowed on the Property.

#### **Section 7 Awnings; Projections; Window Treatments; Blinds**

No awning or other projections shall be erected on the Property or attached to or hung from the exterior of the structures on the Lots without the prior written approval of the Board.

All Owners shall be required to install mini-blinds, plantation blinds, plantation shutters or comparable window treatments in a neutral color on all of the windows in the townhome.

#### **Section 8 Clotheslines**

No drying or airing of any clothing or bedding shall be permitted outdoors.

#### **Section 9 Signs**

No sign, notice, advertisement or illumination shall be inscribed on, exposed at or projected from any window or other part of the Property without the prior written approval of the Board, except for the Declarant's right to erect and maintain signs as reserved herein at Article XI. Provided, however, one temporary real estate sign not to exceed six square feet in total area advertising that such Lot is for sale may be displayed.

#### **Section 10 Pools, etc.**

No pools, games or nets (e.g., volleyball, badminton, etc.) shall be permitted outside of the Courtyards.

## **Section 11 Gardens**

The Association shall install and maintain all landscaping in the Common Area and on each Lot between the townhome and the abutting right-of-way. No Owner may plant or maintain any garden or landscaping on a Lot except within the Courtyard or on a deck.

## **Section 12 Refuse Collection**

Garbage and refuse from each of the Lots shall be neatly and cleanly deposited by the Owner of such Lot within the common dumpster or individual cans or containers as provided by the Lexington-Fayette Urban County Government or, in the event public refuse collection is no longer available, as approved by the Association. There shall be no off-site garbage allowed on the Property.

## **Section 13 Parking**

Vehicles belonging to Members of the Association, their families, tenants and guests shall be parked in the garages or parking spaces constructed on each Lot. No parking shall be permitted within the Common Area.

## **Section 14 Artificial Vegetation; Exterior Sculpture and Similar Items**

No artificial vegetation shall be permitted on the exterior of any portion of any Lot. No further improvements of any nature (including, but not limited to, fencing, enclosures, temporary buildings or tents or trailers, decorative or recreational structures, landscaping, flowers, plantings, planters, sculpture, brick and concrete work and awnings) may be constructed, erected or placed on the exterior of any portion of any Lot without the prior written approval of the Board, provided that such approval is not required for the installation of such items within a Courtyard or on a deck.

## **Section 15 Exterior Changes**

No exterior changes, including, but not limited to, exterior lighting, structural additions, alterations, improvements, painting or re-painting walls, trim, or gutters, windows, shutters and/or doorways, may be made within any of the Lots (exclusive of Courtyards) without prior written approval of the Declarant or the Board, as hereinafter provided.

## **Section 16 Nuisance**

No noxious or offensive activity shall be conducted on the Property nor shall anything be permitted to be done thereon which may be or may become an annoyance or nuisance.

## **Section 17 Trees**

No trees shall be cut from any Lot without prior written permission from the Board of Directors.

**Section 18 Heating of Dwellings in Colder Months**

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

**Section 19 Antennas**

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

**Section 20 Subdivision of Lot**

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

**Section 21 Guns**

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



## **Section 22 Energy Conservation Equipment**

No solar energy collector panels or attendant hardware or other exterior energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure as determined in the sole discretion of the Board.

## **Section 23 Mail Boxes**

All mail boxes shall satisfy applicable postal regulations and shall conform to specifications established by the Board of Directors.

## **Section 24 Home Businesses**

Home businesses will not be permitted, except with the prior written approval of the Board of Directors. If permission for a home business is granted, the property owner is required to obtain all State and local agency requirements.

# **ARTICLE X. GENERAL PROVISIONS**

## **Section 1 Term**

The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Declarant, the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by seventy-five percent (75%) of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to terminate said covenants and restrictions, in which case this Declaration shall be terminated as specified therein.

## **Section 2 Amendment**

Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration during the Class "B" Control Period and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, and except as otherwise provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association; provided, however, that during the Class B Control Period any amendment must also be approved by a majority of the Board of Directors. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Fayette County Clerk's office, Lexington, Kentucky.

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

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

### **Section 3 Indemnification; Liability of Directors**

A. Each Person who is or was a member, director, trustee, committee member or officer of the Association, whether elected or appointed, and each Person who is or was serving at the request of the Association as a member, director, trustee, or officer of another corporation, whether elected or appointed, including the heirs, executors, administrators, or estate of any such Person, shall be indemnified by the Association to the full amount against any liability, and the reasonable cost or expense (including attorney fees, monetary or other judgments, fines, excise taxes, or penalties and amounts paid or to be paid in settlement) incurred by such Person in such Person's capacity as a member, director, trustee, committee member, or officer or arising out of such Person's status as a member, director, trustee, committee member or officer; provided, however, no such Person shall be indemnified against any such liability, cost, or expense incurred in connection with any action, suit, or proceeding in which such Person shall have been adjudged liable on the basis that personal benefit was improperly received by such Person, or if such indemnification would be prohibited by law. Such right of indemnification shall be a contract right and shall include the right to be paid by the Association the reasonable expenses incurred in defending any threatened or pending action, suit, or proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors of the Association) in advance of its final disposition; provided, however, that such advance payment of expenses shall be made only after delivery to the Association of an undertaking by or on behalf of such Person to repay all amounts so advanced if it shall be determined that such Person is not entitled to such indemnification. The members, directors, trustees, committee members and officers of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. Furthermore, the officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any repeal or modification of this Section 3 shall not affect any rights or obligations then existing. If any indemnification payment required by this Section 3 is not paid by the Association within 90 days after a written claim has been received by the Association, the member, director, trustee, committee member or officer may at any time thereafter bring suit against the Association to recover the unpaid amount and, if successful in whole or in part, such Person shall be entitled to be paid also the reasonable cost and expense (including attorneys' fees) of prosecuting such claim. The Association may maintain insurance, as a common expense, to protect itself and any member, director, trustee, committee member or officer against any such liability, cost, or expense, whether or not the Association would have the power to indemnify such Person against such liability, cost, or expense under the applicable law or under this Section 3, if such insurance is reasonably available. The

indemnification provided by this Section 3 shall not be deemed exclusive of any other rights which those seeking indemnification may have or hereafter acquire under the Association's Articles of Incorporation or any bylaw, agreement, statute, vote of members or board of directors, or otherwise. If this Section 3 or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then such invalidated portion shall be deemed amended such that it provides the greatest protection to members, directors, trustees, officers and committee members as the law permits and the Association shall nevertheless indemnify each such Person to the full extent permitted by any applicable portion of this Section 3 that shall not have been invalidated (including the provision invalidated to the extent it is deemed amended as provided above) or by any other applicable law.

B. The liability of each and all of the directors of this Association shall be and is hereby limited to the greatest extent permitted by law and no director of the Association shall be liable to the Association for monetary damages for breach of such director's duties as a director, except for the following (which exceptions shall be construed as narrowly as legally permissible):

1. For any transaction in which the director's personal financial interest is in conflict with the financial interests of the Association;
2. For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law; or
3. For any transaction from which the director derives an improper personal benefit.

In addition to the limitation on a director's liability stated hereinabove, no action taken as a director and no failure to take action as a director shall be the basis for monetary damages or injunctive relief unless:

4. The director has breached or failed to perform the duties of the director's office in compliance with the general standards for directors as set forth in KRS 273.215 or any successor statute; and
5. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.

If Chapter 273 of the Kentucky Revised Statutes (or any successor statutes) (the "Nonprofit Corporation Act") are amended after approval of this Section 3 in a manner further eliminating or limiting the personal liability of directors, then the liability of a director of the Association shall be deemed to be eliminated or limited by this provision to the fullest extent then permitted by the Nonprofit Corporation Act, as so amended. Any repeal or modification of this Section 3 shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification. In the case of a conflict between the provisions of this Section 3 and the provisions of the Association's Articles of Incorporation, as amended from time to time, and its

Bylaws, as amended from time to time, such Articles of Incorporation and Bylaws as they may be amended, shall control.

To the extent any Person is serving as an officer as a result of being a director, such Person's liability as an officer shall be limited to the same extent as such Person's liability as a director is limited.

#### **Section 4 Severability**

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

#### **Section 5 Right of Entry**

The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board and shall also include the right to enter upon the land comprising any Lot for the purpose of performing maintenance of, repairs or replacements within the Common Area, or any equipment, facilities or fixtures affecting or serving other Lots or the Common Area or to make any alteration required by any governmental authority. If a Lot is to be vacated for an extended period of time, the Owner or Occupant thereof shall make arrangements to make a key to the Lot available to the Association for its use in emergency situations contemplated hereunder pursuant to rules to be adopted by the Board.

#### **Section 6 Perpetuities**

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

#### **Section 7 Litigation**

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of two-thirds (2/3) of the Board of Directors. Any meeting called for such purpose shall be subject to the same notice and quorum requirements and other procedures as provided in the Bylaws for meetings of the membership. This Section shall not apply, however, to:

A. actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens),

- B. the imposition and collection of assessments as provided in Article VIII hereof,
- C. proceedings involving challenges to ad valorem taxation, or
- D. counterclaims and cross claims brought by the Association in proceedings instituted against it.

This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

**Section 8 Security**

The Declarant and/or the Association may, but shall not be obligated to, undertake certain measures designed to increase safety or security in the Property. Whether or not such measures are taken, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY AND NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT MAY NOT BE COMPRISED OR CIRCUMVENTED, THAT FIRE PROTECTION AND BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLDUP, OR OTHERWISE, NOR THAT FIRE PROTECTION AND BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, TENANT, GUEST OR INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, AND THE BOARD OF DIRECTORS ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THE BOARD OF DIRECTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN.

**Section 9 No Partition**

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

#### **ARTICLE XI. DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Fayette County Clerk's office, Lexington, Fayette County, Kentucky.

Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, and amendments thereto, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant, its successors and assigns, and any builder or Declarant approved by Declarant, to maintain and carry on sales and promotional activities on Lots owned or leased by Declarant, its successors and assigns, or such builder or Declarant; and to construct and operate business offices, signs, construction trailers, and sales offices on such Lots.

Declarant reserves the right to amend this Declaration unilaterally at any time during the Class "B" Central Period for any purpose, including but not limited to: (i) changes that may or may not affect the financial obligations of the Owners; (ii) changes that may or may not affect the easement and or other property rights of the Owners as defined herein; (iii) and changes that may or may not remove certain portions of the Property then owned by the Declarant or its affiliates or assigns or the Association from the provisions of this Declaration, without prior notice and without the consent of any Person other than the Owner thereof, to the extent such property was included originally in error or as a result of any changes whatsoever in the plans for the Peninsula Townhomes desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the general scheme of development for Peninsula Townhomes.

No rights, privileges and easements granted or reserved herein shall be merged into the title of the Property but shall be held independent of such title and no such right, privilege or easement shall be surrendered, conveyed or released except by delivery of a quitclaim deed from Declarant releasing such right, privilege or easement by express reference thereto.

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

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

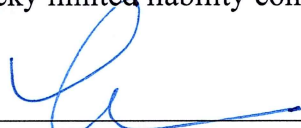
## **ARTICLE XII. CONSENTS AND APPROVALS**

Whenever the consent or approval of any party is required pursuant to this Declaration, such consent or approval shall not be unreasonably withheld.

*[remainder of page left blank intentionally; signature pages continue]*

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Covenants, Conditions and Restrictions for Peninsula Townhomes this 15<sup>th</sup> day of January, 2024.

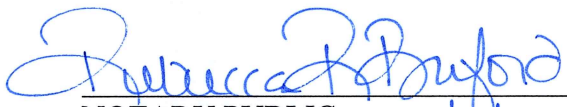
**BALL HOMES, LLC,**  
a Kentucky limited liability company

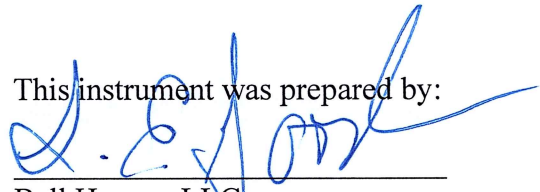
By:   
Lisa Ball, Vice President

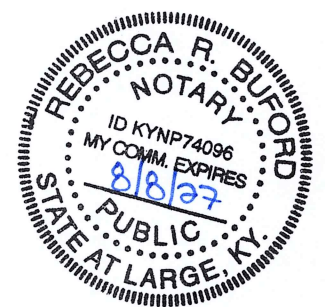
COMMONWEALTH OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of January, 2024, by Lisa Ball, as Vice President of Ball Homes, LLC, for and on behalf of said limited liability company.

  
NOTARY PUBLIC  
My commission expires: 8/8/27  
Notary ID #: KYNP74096

This instrument was prepared by:  
  
Ball Homes, LLC  
Lawrence E. Goodwin, Jr., General Counsel  
3609 Walden Drive  
Lexington, Kentucky 40517



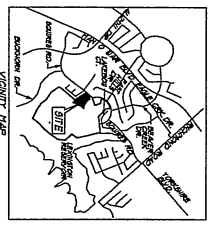


**Exhibit A**

BEING all of the consolidated Lot 2, consisting of 4.57 acres, as shown on that certain Consolidation Minor Subdivision Plat, The Peninsula Lots 2 & 4, of record in Plat Cabinet S, Page 320, in the Fayette County Clerk's office.

BEING the same property conveyed to Declarant herein by that certain Deed of Correction dated June 21, 2023, of record at Deed Book 4023, Page 505, in the aforesaid Clerk's office.

AND, BEING the same property that was then further subdivided as shown on that certain Amended Final Record Plat, The Peninsula, Lot 2, of record in Plat Book S, Page 443, in the aforesaid Clerk's office.



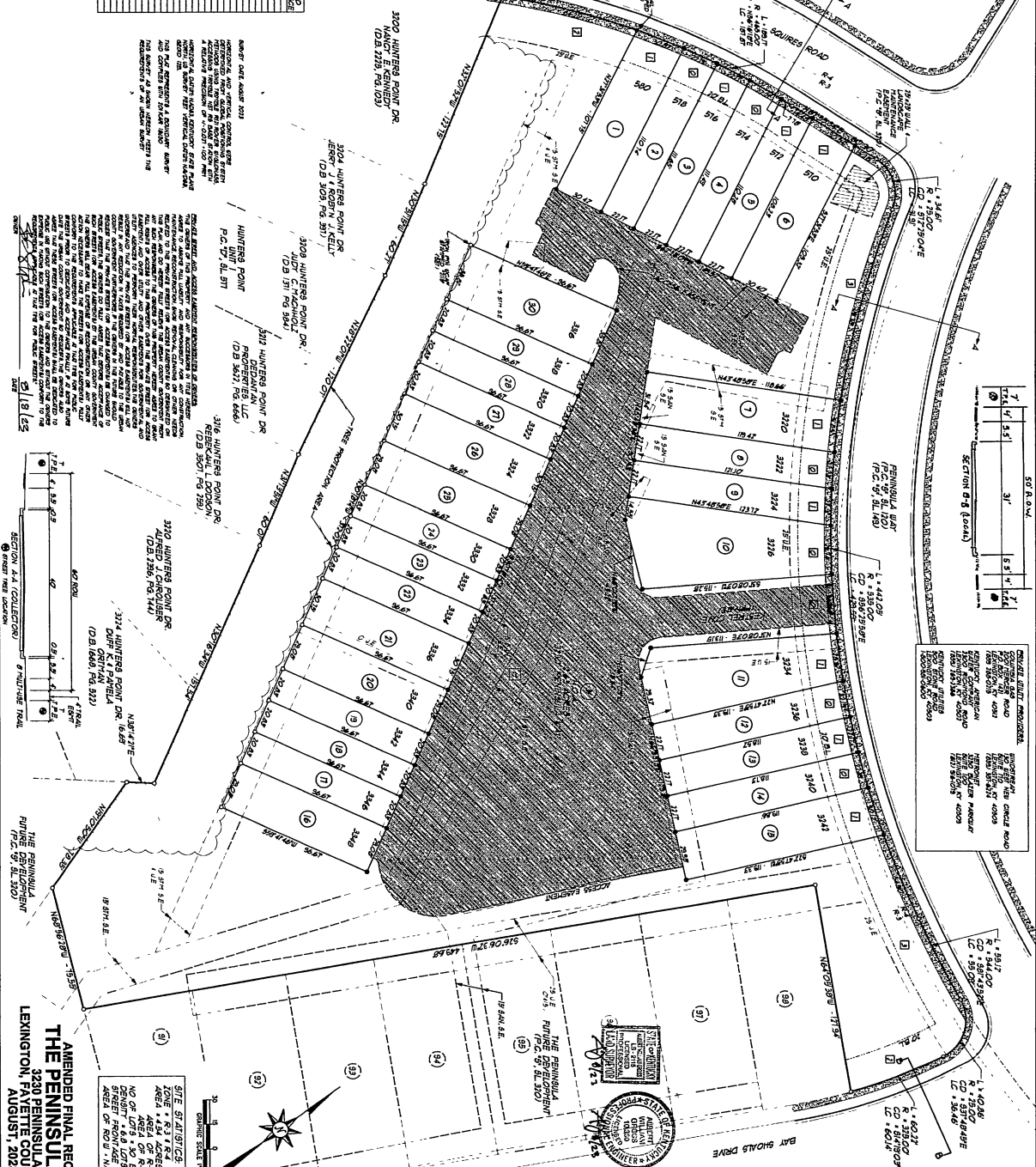
**NOTES:**

1. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION.
2. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.
3. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.
4. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.
5. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.
6. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.
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9. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.
10. THE PROPERTY IS SUBJECT TO THE PENINSULA SUBDIVISION PLAT, REC'D 08/11/10, AND THE PENINSULA AMENDMENT, REC'D 08/11/10.

FOUNDING UNIT #	AREA OF UNITS	UNITS	NO. OF UNITS	NO. OF UNITS
1	1.00	1	1	1
2	1.00	1	1	1
3	1.00	1	1	1
4	1.00	1	1	1
5	1.00	1	1	1
6	1.00	1	1	1
7	1.00	1	1	1
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100	1.00	1	1	1

**E4 Parkway, P10**

ONE HUNTERS POINT DRIVE, LEXINGTON, KY 40503  
 HUNTERS POINT DRIVE, LEXINGTON, KY 40503  
 HUNTERS POINT DRIVE, LEXINGTON, KY 40503



**AMENDED FINAL RECORD PLAT  
 THE PENINSULA, LOT 2  
 3230 PENINSULA WAY  
 LEXINGTON, FALETTE COUNTY, KENTUCKY  
 AUGUST, 2023**

**CONTRIBUTOR'S CERTIFICATION:**  
 I, the undersigned, being the owner of the above described property, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

**ENGINEER'S AND SURVEYOR'S CERTIFICATION:**  
 I, the undersigned, being a duly licensed Professional Engineer and Surveyor, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

**URBAN COUNTY ENGINEER'S CERTIFICATION:**  
 I, the undersigned, being a duly licensed Professional Engineer, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

**DATE:** 8/14/23

**PREPARED BY:**  
 HUNTERS POINT DRIVE, LEXINGTON, KY 40503  
 HUNTERS POINT DRIVE, LEXINGTON, KY 40503  
 HUNTERS POINT DRIVE, LEXINGTON, KY 40503

**SECTION 1-A-1 (COLLECTOR)  
 SECTION 1-A-2 (MUTUAL ROAD)**

**BOOK 2 PAGE 113**