

DECLARATION OF COVENANTS AND RESTRICTIONS

THE CLIFFS

A RESIDENTIAL SUBDIVISION

Sections 1 & 2

THE COMMONWEALTH OF KENTUCKY

COUNTY OF RUSSELL

THIS DECLARATION, made on the date hereinafter set forth by ABKA DEVELOPMENT, LTD. CO., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article III of this Declaration and desires to create thereon a residential community with designated "Lots," "Common Properties" and "Common Facilities" (as those terms are defined herein) for the benefit of the present and future owners of said Lots; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said Common Properties and Common Facilities, and, to this end, desires to subject the real property described in Article III, together with such additions as may hereafter be made thereto (as provided in Article III), to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Common Properties and Common Facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant shall cause a non-profit organization to be created under the Laws of the State of Kentucky, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that the real property described in Article III is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to herein collectively as "covenants and restrictions") hereinafter set forth.

ARTICLE I

Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to the nonprofit organization, which Declarant shall cause to be created as herein provided, its successors and assigns.
- (b) "The Subdivision" Shall mean and refer to The Cliffs, all subsequent sections of The Cliffs brought within the scheme of this Declaration, and any other real property (including specifically, but without limitation, all or portions of other subdivisions being or to be developed by Declarant or affiliated or subsidiary developed by Declarant or affiliated or subsidiary entities) brought within the scheme of this Declaration.
- (c) "The Properties" shall mean and refer to the properties described in Article III hereof which are subject to this Declaration.
- (d) "Subdivision Plats" shall mean and refer to the respective maps or plats of The Cliffs recorded in Map Records of Russell County, Kentucky.
- (e) "Lot" and/or "lots" shall mean and refer to each of the lots shown upon the Subdivision Plats. References herein to the "The Lots" (each lot) in "The Subdivision" shall mean and refer to Lots as defined respectively in this Declaration and all Supplemental Declarations.
- (f) "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plats, except the Lots and the streets shown thereon, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plats, and/or by virtue of prior grants or dedications by Declarant or References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration and all Supplemental Declarations.
- (g) "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of all Owners constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others), which is not a part of the Properties. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation, storage or protection of equipment; fountains; statuary; sidewalks; common driveways; landscaping; swimming pools; tennis courts; boat ramps and other similar and appurtenant improvements. References herein to "the Common Facilities (any Common Facility) in The Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations.

(h) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants and Restrictions bringing additional property within the scheme of this Declaration under the authority provided in Article III hereof. References herein

(i) "Owner" shall mean and refer to the record owner, or if such Lot is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. References herein to "the Owners in The Subdivision" shall mean and refer to Owners as defined in this Declaration and all Supplemental Declarations.

(j) "Member" and/or "members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 4 hereof, together with all the Owners in The Subdivision who are members of the Association as provided in all Supplemental Declarations.

ARTICLE II

Section 1. Existing Easements. The Subdivision Plats dedicate for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Subdivision Plats further establish dedications, limitations, reservations and restrictions applicable to the Properties. Further, Declarant and Declarant's predecessors in title have heretofore granted, created and dedicated by several recorded instruments, certain other easements and related rights affecting the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Properties are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes, (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Properties, along and on either or both sides of any side Lot line, which such easements shall have a maximum width of five (5) feet on each side of such side Lot Line.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer,

electric light, electric power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Properties, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 4. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on above, across and under the Properties within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Properties until approved by Declarant or the Association's Board of Trustees. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging tress, and shrubs located on portions of the Properties abutting such easements.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon the Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents employees and management personnel to enter the Properties to render any service.

Section 6. Electric Service. An electric distribution system will be installed within the Properties, which will be designated a Residential Subdivision, and which service area shall embrace all Lots in the Properties. The owner of each Lot in the Residential Subdivision shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company, at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot.

Section 7. Surface Area. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any suppliers of any utility or service using any easement area shall be liable to any Owner

or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repairs of any facility in any such easement area.

ARTICLE III

Property Subject to this Declaration

Section 1. Description. The real property, which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, consists of the following:

(a) Sections I and II of the Cliffs, being a part of the Cliffs community, according to the plat thereof recorded in Plat Cabinet 2, Slide 63-64 of the Map Records of Russell County, Kentucky, (or any subsequently recorded plat thereof);

All of which real property is sometimes hereinafter referred to as the "Existing Property".

Section 2. Mineral Exception. There is hereby excepted from the Properties and Declarant will hereafter except from all its sales and conveyances of the properties, or any part thereof, including the lots and Common Properties, all oil, gas, and other minerals in, on and under the properties, but Declarant hereby waives, and will waive in each such conveyance, its right to use the surface of such land for exploration for or development of oil, gas, and other minerals.

Section 3. Additions to Existing Property. Additional lands may become subject to the scheme of this Declaration in the following manner.

(a) **Additions by Declarant.** The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development (including, without limitation, subsequent sections of The Cliffs and all or portions of other subdivisions being or to be developed by Declarant or affiliated or subsidiary entities), upon the approval of the Board of Trustees of the Association, in its sole discretion. Any additions authorized under this and the succeeding subsection, shall be made by filing of record a supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property and the execution thereof by members of the Board of Trustees of the Association shall constitute all requisite evidence of the required approval thereof by such Board of Trustees. Such supplemental Declaration must impose an annual maintenance charge assessment on the property covered thereby, on a uniform, per lot basis substantially equivalent to the maintenance charge and assessment imposed by this Declaration, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands.

(b) Other additions. Upon the approval of the Board of Trustees of the Association, in its sole discretion, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions upon the satisfaction of the conditions specified in subsection (a) above.

(c) Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the other association as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration or any Supplemental Declaration.

ARTICLE IV

The Association

Section 1. Organization. The Declarant shall cause the Association to be organized and formed as a non-profit organization under the laws of the State of Kentucky.

Section 2. Purpose. The purpose of the Association in general shall be to provide for and promote the health, safety, and welfare of the Member, to collect the annual maintenance charges, and to administer the Maintenance Fund, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Properties and Facilities in the Subdivision and such other purposes as are stated in this Declaration and all Supplemental Declaration.

Section 3. Trustees. The Association shall act through a five (5) member Board of Trustees, which shall manage the affairs of the Association. The initial Trustees of the Association shall be selected by Declarant and shall consist of no less than three (3) owners. Each initial Trustee shall serve for an initial term of five (5) years and, thereafter, until his successor is duly elected and qualified. After the expiration of the term of the initial Trustees, the Members shall elect three (3) of the Board of Trustees and the Declarant shall appoint two (2) of the said Trustees. Any vacancy, from whatever cause, occurring in the Board of Trustees during the initial five (5) year term shall be filled by appointment made by the remaining Trustee or Trustees. The person appointed by the remaining Trustee or Trustees to fill such vacancy shall serve for the remainder of the Five (5) year term until his successor is duly elected and qualified.

Section 4. Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot

passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 5. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all the Members of the Association, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in The Subdivision in which they hold the interest required for membership by this Declaration or any Supplemental Declaration. When more than one person holds such interest or interests in any such Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but, in no event, shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to Five (5) votes for each Lot in the Subdivision in which it holds the interest required for membership by this Declaration or any Supplemental Declaration; provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier;

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(b) On January 1, 2010

From and after the happening of whichever of these events occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in The Subdivision in which it holds the interest required for membership by this Declaration or any Supplemental Declaration.

Section 6. Title to Common Properties. The Declarant may retain the legal title to the Common Properties and Common Facilities in The Subdivision until such time as it has completed improvements thereon and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until Declarant has conveyed title to such Common Properties and Facilities to the Association, Declarant shall be entitled to exercise all rights and privileges relating to such Common Properties and Facilities granted to the Association in this Declaration and all Supplemental Declarations.

ARTICLE V

Property Rights in the Common Properties and Common Facilities

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article V, every Member shall have a common right and easement of enjoyment in and to the Common Properties and Common Facilities in the Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each Lot in The Subdivision.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in its discretion, to charge reasonable admission and other fees for the use of the recreational Common Facilities, and to make, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Properties and Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Properties and Facilities by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Properties and Facilities or any part thereof at the same time; and

(b) The right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof to any public or governmental agency or authority or to any utility company for any service to The Subdivision or any part thereof; and

(c) The right of the Association to transfer title to any storm sewer line, sanitary sewer line, water line, or any other utility facility or equipment situated in any part of such Common Properties and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to The Subdivision or any part thereof; and

(d) The right of the Association to convey or dedicate such portions of such Common Properties as its Board of Trustees may deem appropriate to governmental authorities, political subdivision or other persons or entities for use as the location of schools, churches, and hospitals, or for other similar purposes related to the health, safety, and welfare of the Members; and

(e) The right of the Association to enter management and/or operating contracts or agreements relative to the maintenance and operation of such Common Properties and Facilities in such instances and on such terms as its Board of Trustees may deem appropriate; the right of the Association to operate recreational facilities and related concessions located on such Common Properties; the right of the Association to enter lease agreements or concession agreements granting leasehold, concession, or other operating rights relative to Common Facilities in such instances and on such terms as its Board of Trustees may deem appropriate; and

(f) The right of the Association to suspend the voting rights of a Member or his right to use any recreational Common Facility during the period he is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against his Lot; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies

which the Association may have in this Declaration and Supplemental Declaration or in its Bylaws or at law or in equity on account of any such default or infraction; and

(g) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II of this Declaration and the Supplemental Declarations; and

(h) The restrictions as to use of the Common Properties provided for in Article VIII hereof.

Section 3. Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Properties and Facilities in The Subdivision, together with all easement rights granted to Members in this Declaration and all Supplemental Declarations, to the members of his family, his tenants, or contract purchasers who reside on his Lot. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

ARTICLE VI

Section 1. The Maintenance Fund. All funds collected by the Association from the regular maintenance charges provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the Lots in The Subdivision by all Supplemental Declaration, shall constitute and be known as the "Maintenance Fund." The Maintenance Fund Shall be Held, used, and expended by the Association for the common benefit of all Members for the following purposes, to-wit: to promote the health, safety, recreation, and welfare of the Members, including, without limitation, the installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the Common Properties and Facilities in the Subdivision, and any other areas provided by this Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as shrubbery trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of The Subdivision by the Members, (including, but not limited to roads in subdivision.)

In the event Declarant shall designate Common Facilities for the use and benefit of all the Owners in the Subdivision which are situated on property owned by Declarant for affiliated or subsidiary entities, but which then has not been brought within the scheme of this Declaration under the authority provided in Article III hereof, the Association shall have the right and authority to allocate and expend such amounts from the Maintenance Fund for construction, repair maintenance, upkeep, beautification, improvement or replacement of such Common Facilities situated on Property then not subject to the scheme of this Declaration also are for the use and benefit of persons or entities other than the Owners in The Subdivision, the Association shall have the right and authority to enter agreements with other persons or entities enjoying the use and benefit of such Common Facilities (or their designee), in such instances and on such

terms as its Board of Trustees may deem appropriate and acceptable, obligating the Association to contribute, from the Maintenance Fund, a ratable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities, and providing for other agreements relative to the use and enjoyment of such Common Facilities (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

In the event Declarant shall operate any Common Facility in The Subdivision, or such Common Facility shall be operated by other on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant in connection with operating and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all costs actually incurred by Declarant in maintaining and operating such Common Facility in excess of the actual proceeds realized by Declarant from such operation, as such costs are incurred, to the extent that the balance of the Maintenance Fund from time to time existing exceeds the amount then designated by the Board of Trustees of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes fairly allocable to the Common Properties and Facilities and accrued Subsequent to the recordation hereof, and prior to the date on which title to such Common Properties and Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

Section 2. Covenant for Assessments. Notwithstanding anything to the contrary stated in this Declaration, the Declarant will be responsible for the maintenance of the Common Facility including roads until any Lots have been sold. After Ten (10) Lots have been sold, a maintenance charge as hereinafter set out shall be assessed and paid by each Lot owner on the Lots sold by the Declarant. Each and every Lot sold in the properties is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of One Hundred (\$100.00) Dollars per annum per Lot (hereafter sometimes referred to as the "full Maintenance charge") which shall run with the land, subject to increase and decrease and payable as provided in below. Declarant shall pay the cost of maintenance not covered by the maintenance charge until their Class "B" Membership is converted to Class "A" Membership as outlined in Article IV, Section 5 therein, at which time all Lots will be charged and assessed an equitable amount

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership, thereof, as the same shall become due and payable,

without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation to pay such assessment accrued, but no Member shall be personally liable for the payment for any assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Properties of Facilities, or any part thereof, or by abandonment of his Lot or his interest therein.

Section 3. The Annual Maintenance Charge. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Trustees to be the day of commencement. The first annual assessment shall be made for the balance of the calendar year in which it is made and shall be payable on the day fixed for commencement, or in equal monthly installments over the balance of the year, at the election of the Association. The assessments for each calendar year after the first year shall be due and payable to the Association in advance on January 1st each year, or in twelve (12) equal monthly installments over such year, at the election of the Association. Provided, however, that, upon the purchase of his Lot (as evidenced by the date of his term Contract of Sale or Deed, or his occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a prorated part of the applicable percentage (as determined pursuant to the terms hereof) of the regular annual maintenance charge assessed on such Lot, which shall bear the same ratio to the applicable percentage of the full annual maintenance charge as the number of full calendar months remaining in the year of purchase to twelve (12), and which shall be payable in full upon such purchase or in equal, monthly installments over the balance of the year of purchase, as the Association may elect.

The Board of Trustees of the Association may decrease or increase the amount of the regular annual maintenance charge or assessment provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing the annual maintenance charge assessment shall become effective prior to the expiration of ninety (90) days from date of its adoption, and the Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association the proportionate part of such increase for the balance of the year in which such resolution is adopted; provided, however, that no resolution of the Board of Trustees which fixes the amount of the regular annual maintenance charge or assessment in excess of Five Hundred (\$500.00) Dollars per year, or in excess of the annual maintenance charge or assessment last ratified by the Members of the Association in accordance with the provisions of this paragraph, whichever is greater, shall become effective unless and until such resolution is ratified either (i) by the written assent of the Members of the Association who in the aggregate then own at least fifty-one (51%) percent of the Lots in the Subdivision if no meeting of the membership is held for ratification, or (ii) by the assent of fifty-one percent of the votes of the Members of the Association who are present and voting in person or by proxy at a special meeting of the membership of the Association called for this purpose and at which a quorum is present. The written assent or the vote of the Members must be given prior to the effective date of the resolution of the Board of Trustees. No increase in the annual maintenance charge or assessment shall take effect retroactively.

If any resolution of the Board of Trustees which requires ratification by the assent of the Members of the Association as above provided shall fail to receive such assent, then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly charged in accordance with the above provisions. The Board of Trustees may decrease the amount of the annual maintenance charge or assessment without ratification by or assent of the Members of the Association.

Section 4. Duties of the Board of Trustees. The Board of Trustees of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Owner, as outlined in Section 2 above, for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5. Liens to Secure Assessments. The regular annual maintenance charges or assessments, as hereinabove provided for, shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements thereon, for the benefit of the Association and all Members. Subject to the conditions that the Association be made a party to any Court proceedings to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to

- (a) all liens for taxes or special assessments levied by the City, County, and State governments, or any political subdivision or special district thereof, and
- b) all liens securing amounts due or to become due under any term Contract of Sale dated, or any mortgage, vendor's lien, or deed of trust filed for record, prior to the date payment of any such charges or assessment become due and payable, and
- (c) all liens, including, but not limited to, vendor's liens, deeds of trust, and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Lot when the same is purchased from a builder or for any part of the cost of constructing, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosures shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 6. Effect of Non-Payment of Assessment. If any annual charge or assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest interest rate allowed under the laws of the State of Kentucky, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than ten (10%) percent of the amount owing, as attorney's fees. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his Lot. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 7. Collection and Enforcement. Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

ARTICLE VII

Construction Requirements

Section 1. Size of Residence. No residential structure with heated-floor space of less than the applicable minimum number of square feet set forth below, exclusive of the area of attached garages, porches, servants quarters, or other appurtenances or appendages, shall be erected on any Lot as follows:

<u>Type of Structure</u>	<u>Minimum Heated Floor Space</u>
(a) One story residence	1,800 square feet
(b) Multi-level residence	1,100 square feet of heated floor space on the main ground level and at least a total of 1700 square feet constructed above ground.

Section 2. Building Location. All buildings shall have at least a fifty (50) feet setback from the main road unless prior written permission from the Declarant is obtained to do otherwise. In addition, building shall be constructed in the center of the lot unless prior written permission from Declarant or The Association is obtained to do otherwise.

Section 3. Construction Material. All buildings will be constructed on sight, no prefabricated buildings, and all construction shall be completed within nine (9) months after construction begins. All outside walls shall be of stone, wood, brick, dryvit or concrete composite board such as Hardi board. All out buildings shall be of same construction with no

more than one outbuilding per lot. The location of the outbuilding must be approved by Declarant or Association in writing. Pier type foundations may be used for porches or decks. No open pier type foundations for a dwelling may be used. In addition, no metal roofing will be used, without prior written approval of Declarant or Association, and any outbuildings must be constructed on back portion of the lot opposite the location of the road. Aluminum or vinyl materials may only be used for trim on the house or outbuilding. No carports shall be allowed.

Section 4. Fencing. No woven wire or barbed wire or electric fence shall be erected. All fencing must be made of wood or masonry construction. No fence may be erected without prior written approval of the Association or Declarant.

Section 5. Roof Pitch. All houses must have a roof pitch of 6/12 or greater exclusive of porches and decks roofs, without the written approval of Declarant or Association.

ARTICLE VIII

Building and Use Restrictions

Section 1. Single Family Residential Use. In Sections I and II, each lot (including land and improvements) shall be used and occupied for single-family residential purposes only. No owner or other occupant shall use or occupy his lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family residence for the Owner or his tenant and their families. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments, or other apartment use, unless said lots are designated for such use in the original plot of the subdivision or original plots of additional sections of the subdivision. No lot shall be used or occupied for any business, commercial, trade or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not.

Section 2. Temporary and Other Structures. No structure of a temporary character, trailer, mobile, modular or prefabricated home, tent, shack, barn, or any other structure or building, other than the residence to be built thereon, shall be placed on any lot, either temporarily or permanently and no residence house, garage or other structure appurtenant thereto, shall be moved upon any lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, such facilities in and upon the Properties as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements in the Properties. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operations in the Properties, but in no event, shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last residence in the Properties.

Section 3. Nuisance. No noxious or offensive activity shall be carried on or permitted

upon any Lot or upon the Common Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Trustees of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than three quarters of a ton, motor vehicles not currently licensed, boats, trailers or other vehicles shall be permitted to be parked on any Lot, except in a closed garage. No vehicles shall be parked on any street. No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or other portion of the Common Properties. The use or discharge of firearms firecrackers, or other fireworks in the Properties is prohibited. No motor bikes, motorcycles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated on the Properties, if, in the sole judgment of the Board of Trustees of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance. However, four-wheelers and other recreational vehicles may be used on the streets and roadway for the sole purpose of ingress and egress to the residence of members. Members, or their guests may not use the subdivision, including common property and streets, other than to travel directly to and from said member's lot to the subdivision entrance. All such recreational vehicles must be stored in garage when not in use.

Section 3 A. Satellite Dishes. No satellite dishes larger than 18 inches shall be allowed on the Lots and should be located in a manner which will be as invisible from the roadway as possible.

Section 4. Signs. Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section 5 are expressly transferred, shall own any portion of the Properties, no sign of any kind shall be displayed to the public view on any Lot or the Common Properties, except:

- (a) Builders may display one (1) sign of not more than five (5) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period; and
- (b) Any Owner may display one (1) sign of not more than five (5) square feet on a Lot improved with a residential structure to advertise the Lot and residence for sale or rent.

Declarant or its agent shall have the right to remove any sign not complying with the provisions of this Section, and in so doing, shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on any portion of the Common Properties, except that dogs, cats, or other common household pets (not to exceed two (2) adult animals) may be kept, but they shall not be bred or kept for commercial purposes. All pets must be under control of their owner at all times.

Section 6. Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot

or from any portion of the Common Properties is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

Section 6A. View Easement. Declarant reserves the right to cut, trim or otherwise remove trees and other vegetation from all lots in a manner that will maximize the view of the lake for the common benefit of all members or lot owners in an area beginning fifty (50) feet behind the footer of a members house to the U.S. Corps of Engineers property line.

Declarant hereby notifies each and every potential buyer of a lot in this subdivision that, the water level of Lake Cumberland fluctuates with the seasons and variations in rainfall. During some months the water may not be visible from some of the lots.

Section 7. Garage and Refuse Storage and Disposal. All Lots and the Common Properties shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Properties shall be used or maintained as a dumping grounds for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic, or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. There is hereby reserved in favor of the Association the determination of the method of garbage disposal, which is whether it shall be through public authority or through private garbage disposal service. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot except during construction.

Section 8. Septic Tanks. All septic tanks shall be constructed in a manner approved by local and state regulations.

Section 9. Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Properties unless the express written consent of the Declarant or Association first shall have been obtained.

Section 10. Driveways and Culverts. Each Lot must be accessible to an adjoining street by a driveway suitable for such purposes before the residential structure located on any such Lot may be occupied or used. All driveways shall be of asphalt or concrete to be complete no later than the end of construction. No Owner may block any drainage ditch (including road ditches). The specifications for and construction of all drain tiles or culverts in any drainage ditch, whether to be installed in connection with a driveway or otherwise, must be approved by the Association.

Section 11. Utilities. Each residence situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line.

Section 12. Minimum Lot Area. No Lot shall be re-subdivided unless previously approved in writing by the Association or Declarant.

Section 13. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. Lot Maintenance. All Lots shall be mowed at least three (3) times yearly, first time between May 1 and June 31, the second time between July 1 and August 31 and the third time between September 1 and October 31. If the Lots are not mowed as provided above, the Association will mow the Lots and the land Owners will be billed. Failure of the Land Owner to pay the bill shall constitute a lien against the Property and the Land Owner will be subject to all of the stipulations and requirements as outlined in conjunction with the maintenance fee.

ARTICLE IX

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner or any land subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2030. During such initial term the covenants and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then Owners of fifty-one (51%) percent of the Lots in the Subdivision and property recorded in the appropriate records of Russell County, Kentucky. Upon the expiration of such initial term, said covenants and restrictions (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten (10) years extension periods, the covenants and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one (51%) percent of all the Lots in the Subdivision and properly recorded in the appropriate records of Russell County.

Section 2. Enforcement. The Association, as a common expense to be paid out of the maintenance fund, or any Owner at his own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments, and all other provisions set out in this Declaration. Failure of the Association or of any Owner to take any action upon any breach or default or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default.

Section 3. Amendments by Declarant. The Declarant shall have and reserves the right at any time and from time to time, without the consent of any other party to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall not be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

Section 4. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation, which is most nearly in accordance with the general purposes and objectives of this Declaration, shall govern.

Section 5. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 6. Notices. Any Notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notification as required by Section 6A shall be declared to have been properly sent, whether the receiver signs for the mail or not.

Section 7. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

Section 8. Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

ARTICLE X

Ratification: Declarant and Current Land Owner

IN WITNESS WHEREOF, the undersigned, being the Declarant, herein, and the current lot owner, herein, have executed this Declaration, to be effective, this the 11th day of April, 2002.

By:

Donald H. Byrum *Monogamy Member*
Declarant

Declarant

'02 APR 11 PM 1:22

State of Kentucky, County of Russell
I, Brigitte Popplewell, Clerk of Russell County, do
certify that the foregoing instrument was on the
11th day of APRIL, 2002, lodged in
my office for record, whereupon the same and this
certificate have been duly recorded. Witness my hand
this the 11th day of APRIL, 2002.

MISC RECORDS

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ATTEST: Brigitte Popplewell, Clerk

BY: John Burman

D.C.

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