

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
BALLYSHANNON**

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(ABOVE LINE FOR RECORDER'S USE ONLY)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
BALLYSHANNON**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR BALLYSHANNON ("Declaration") is made this 13<sup>th</sup> day of March, 2014, by LONGBRANCH DEVELOPMENT, INC., a Kentucky corporation (hereinafter referred to as "Declarant"), under the following circumstances:

A. Declarant is the owner in fee simple of certain real property located in Boone County, Kentucky, more particularly described in Exhibit A attached hereto (the "Property") and desires to create a commercial and residential community consisting of a shopping center, single family detached homes, condominium units and patio homes with permanent Common Elements (as hereinafter defined) for the benefit of said community; and

B. Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said Common Elements; and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners (as defined below) thereof; and

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association (as defined below) to which should be delegated and assigned the powers and duties of maintaining and administering the Common Elements and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

D. Declarant has formed or will form Ballyshannon Community Association, Inc., a Kentucky non-profit corporation (the "Association"), which shall be responsible for the maintenance, management and control of the Common Elements on the Property.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit A and such Additional Property as may be subjected to the provisions hereof, shall be held, sold and conveyed, subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE 1** **DEFINITIONS**

The words in this Declaration which begin with capital letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the meanings set forth in this Section.

1.1 Additional Lot Restrictions. "Additional Lot Restrictions" shall mean such additional restrictions that only apply to contain Lots as provided in Section 6.5.

1.2 Additional Property. "Additional Property" means other real property in the vicinity of the Property which is owned and/or acquired by Declarant, which may be annexed to the Property in accordance with Article 11 below.

1.3 Architectural and Maintenance Committee. "Architectural and Maintenance Committee" shall mean as defined in Section 6.2(a) below.

1.4 Architectural Guidelines. "Architectural Guidelines" as defined in Section 5.3 of this Declaration.

1.5 Areas of Common Responsibility. "Areas of Common Responsibility" shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way within or adjacent to the Property, may be part of the Areas of Common Responsibility.

1.6 Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, filed with the Secretary of the Commonwealth of Kentucky, incorporating Ballyshannon Community Association, Inc., as a non-profit corporation under the provisions of Chapter 273B of the Kentucky Revised Statutes, as the same may be amended from time to time.

1.7 Assessments. "Assessments" means Base Assessment, Special Assessment, Neighborhood Assessment, Individual Assessment and Working Capital Assessment, or any other assessments required by the Declaration or any Supplemental Declaration.

1.8. Association. "Association" means Ballyshannon Community Association, Inc., a Kentucky non-profit corporation, any successor organization which owns, operates and maintains the Common Elements.

1.9. Base Assessment. "Base Assessment" means the charge established by Section 4.2 of this Declaration.

1.10. Board of Directors. "Board of Directors" means the Board of Directors of the Association established pursuant to its Articles of Incorporation, Bylaws and this Declaration.

1.11. Builder(s). "Builder(s)" means Arlinghaus Builders, LLC, a Kentucky limited liability company, Fischer Attached Homes III, Ltd., a Kentucky limited partnership, and Fischer Single Family Homes III, Ltd., a Kentucky limited partnership, their successors and assigns, and such other persons and entities as may acquire one or more Lots from Declarant for the purpose of constructing improvements thereon for resale, but only to the extent of such Lots acquired.

1.12. Bylaws. "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time, pursuant to the Bylaws and the Kentucky Revised Statutes, a copy of which is attached hereto as Exhibit B and made a part hereof

1.13. Class A Members or Class A Membership. "Class A Members" or "Class A Membership" means those members of the Association consisting of all Owners except, during the Development Period, Declarant.

1.14. Class B Member or Class B Membership. "Class B Member" or "Class B Membership" means, during the Development Period, Declarant, as a member of the Association.

1.15. Commercial Lot. "Commercial Lot" shall mean and refer to any Lot zoned for commercial purposes and not a "Multi-Family Lot", "Single Family Lot" or "Patio Lot".

1.16. Commercial Lot Owner. "Commercial Lot Owner" shall mean and refer to the record owner whether one or more persons or entities of any Commercial Lot which is a part of the Property, including contract sellers, but excluding those having such interest in the Commercial Lot solely as security for the performance of an obligation.

1.17. Commercial Unit. "Commercial Unit" shall mean and refer to any portion of a building situated upon a Commercial Lot designated and intended for use and occupancy for commercial purposes.

1.18. Common Elements. "Common Elements" shall mean as described in Section 8.1 of this Declaration.

1.19. Common Element Lakes. "Common Element Lakes" shall mean any and all lakes and other water facilities located on the Common Elements.

1.20. Common Element Lake Restrictions. "Common Element Lake Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in Section 6.6 of this Declaration.

1.21. Common Expenses. "Common Expenses" shall mean as defined in Section 4.2 of this Declaration.

1.22. Common Private Driveway. "Common Private Driveway" shall mean and refer to any private road or driveway which is built or installed as part of the original construction or improvement of the Property by the Declarant to serve more than one (1) Lot; and which is situated on a dividing line between Lots or partly on one (1) Lot and partly on another Lot, together with any road or driveway which may be specifically designated by Declarant and/or Builder within a Common Private Driveway Easement, or a record plat and/or other recorded instrument.

1.23. Common Private Driveway Easement. "Common Private Driveway Easement" shall mean and refer to all private driveway easement(s) located on the Property as shown on any Record Plat. The areas within the easement(s) are sometimes referred to as the Common Private Driveway(s).

1.24. Community-Wide Standard. "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 by the Board of Directors and Declarant.

1.25. Conservation Easement. "Conservation Easement" shall mean and refer to all conservation easement(s) located on the Property as shown on any Record Plat or recorded Easement Plat.

1.26. Constituent Documents. "Constituent Documents" mean the Declaration, the Record Plat, the Bylaws, the Articles of Incorporation, the rules and regulations, if any, the management agreement, if any, entered into between the Association and any professional manager of the Property, and any other basic documents used to create and govern the Property.

1.27. Declarant. "Declarant" means Longbranch Development, Inc., a Kentucky corporation, its successors and assigns.

1.28. Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Ballyshannon, as the same may from time to time be amended in the manner prescribed herein.

1.29. Default. "Default" means any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

1.30. Development Period. "Development Period " means the period commencing on the date on which this Declaration is recorded in the Boone County, Kentucky Clerk's Office and terminating on the earlier to occur of (i) within sixty (60) days following the date when one hundred percent (100%) of the Units which may be built on the Property have been deeded by either Declarant and/or any Builder to a third party purchaser; or (ii) thirty (30) years from the date of recording of the Declaration.

1.31. Dwelling Unit. "Dwelling Unit" shall mean and refer to any portion of a building situated upon a Lot designated and intended for use and occupancy as a residence by a single family, including a townhouse, condominium unit, or patio home, whether detached or attached, located within the Subdivision.

1.32. Exclusive Common Elements. "Exclusive Common Elements" shall mean and refer to certain portions of the Common Element which are for the exclusive use and benefit of one (1) or more, but less than all, Neighborhoods, as more particularly described in Section 8.3 of the Declaration. Certain Recreational Facilities, including but not limited to, swimming pools, bathhouses, certain lakes, gazebos and walking trails, may be designated as Exclusive Common Elements.

1.33. General Common Elements. "General Common Elements" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

1.34. Individual Assessment. "Individual Assessment" means the charge established in Section 4.6 of this Declaration.

1.35. Landscape and Signage Easements. "Landscape and Signage Easements" shall mean and refer to all landscape easements, including structures, any entrance monuments, ponds or fountains located thereon as shown on any Record Plat or separately recorded easement document. The areas within the easements are sometimes referred to as Landscape Easement Areas or Signage Easement Areas.

1.36. "Lot(s)" shall mean and refer to any and all Residential Lot and/or Commercial Lot located on the Property.

1.37. Maintenance Standards. "Maintenance Standards" mean those standards adopted by Declarant and/or the Board pursuant to Article 7 of the Declaration as the same may from time to time be amended.

1.38. Members. "Members" means all Class A Members and the Class B Member.

1.39. Multi-Family Lot. "Multi-Family Lot" shall mean and refer to any Residential Lot zoned for multi-family purposes, including but not limited to condominium units. Each condominium unit shall be classified as a Multi-Family Lot.

1.40. Multi-Family Lot Owner. "Multi-Family Lot Owner" shall mean and refer to the record owner whether one or more persons or entities of any Multi-Family Lot which is a part of the Property, including contract sellers, but excluding those having such interest in the Multi-Family Lot solely as security for the performance of an obligation.

1.41. Neighborhood. "Neighborhood" shall mean and refer to each separately developed residential and/or commercial area comprised of one (1) or more housing/building types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or Common Elements and facilities which are not available for use by all Association Members.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Association (as defined in Article 9 hereof) having jurisdiction over the property within the Neighborhood. It shall not be necessary for any Neighborhood to be governed by a Neighborhood Association except in the case of a condominium or otherwise as required by law.

1.42. Neighborhood Assessments. "Neighborhood Assessments" shall mean assessments levied against the Dwelling Units and/or Commercial Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Section 4.4 of this Declaration.

1.43. Neighborhood Expenses. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Dwelling Units and/or Commercial Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

1.44. Occupant. "Occupant" means any person in possession of a Lot, Dwelling Unit, Commercial Unit whether or not such possession is lawful and shall include but not be limited to, an Owner's family members, guests, invitees, Tenants and lessees.

1.45. Open Spaces. "Open Spaces" shall mean and refer to all open spaces located on the Property as shown on any Record Plat, which are for the benefit of the Owners in the Subdivision.

1.46. Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such

term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.47. Patio Home. "Patio Home" shall mean and refer to any portion of a building situated upon a Patio Lot designated and intended for use and occupancy as a residence by a single family located within the Subdivision.

1.48. Patio Lot. "Patio Lot" shall mean and refer to any Residential Lot zoned for single family purposes and not a "Multi-Family Lot" or "Single Family Lot".

1.49. Patio Lot Owner. "Patio Lot Owner" shall mean and refer to the record owner whether one or more persons or entities of any Patio Lot which is a part of the Property, including contract sellers, but excluding those having such interest in the Patio Lot solely as security for the performance of an obligation.

1.50. Private Sanitary Sewer Easements. "Private Sanitary Sewer Easements" shall mean and refer to any easements shown on any Record Plat for the Subdivision and marked either "Private Sanitary Sewer Easement" or "Private Sewer Easement", which shall be maintained as provided for on the Record Plat.

1.51. Private Storm Sewer Easements. "Private Storm Sewer Easements" shall mean and refer to any easements shown on any Record Plat to provide surface drainage. These areas are for the benefit of all Lot Owners and any agency of Boone County, Kentucky having jurisdiction over drainage control.

1.52. Property. "Property" means that certain land in Boone County, Kentucky, more particularly described in Exhibit A to this Declaration. When portions of the Additional Property are subjected to this Declaration pursuant to Article 11 herein, those portions shall then be deemed part of the Property.

1.53. Record Plat. "Record Plat" means a plat of Ballyshannon as recorded in the Boone County, Kentucky Clerk's records, including any subsequent plats or replats.

1.54. Recreational Facilities. "Recreational Facilities" shall mean any facilities now or hereafter installed on the Property for the benefit of Owners and Occupants, which may include, but not be limited to, swimming pools, bathhouse, lakes, walking trails, gazebos, playgrounds, and surrounding areas and any portions of the Common Elements on which recreation activity is permitted. Certain Recreational Facilities, including but not limited to, the swimming pool, club house, certain lakes, gazebo and walking trails, may be designated as Exclusive Common Elements installed for the exclusive use of one or more Neighborhoods.

1.55. Residential Lot. "Residential Lot" shall mean and refer to any and all Multi-Family Lots, Patio Lots and Single Family Lots, which are zoned for residential purposes and shown upon any Record Plat for the Property, with the exception of any common area, common



open-space, streets, walkways or easements shown on any Record Plat. In the event any Residential Lot is increased or decreased in size by re-subdivisions, through recordation of new subdivision plats or adjoining land transfers, any such newly platted lot shall thereafter constitute a Residential Lot for the purposes of this Declaration.

1.56. Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, the Maintenance Standards and all notices, rules and regulations issued in accordance with this Declaration.

1.57. Retention and Detention Areas. "Retention and Detention Areas" shall mean and refer to any area designated on any Record Plat as such, which shall be used or designated to retain or temporarily detain surface drainage which Declarant, its successors and assigns have been required to construct or make use of in connection with surface drainage by any official agency of Sanitation District No. 1 ("SD1") in connection with the development of the Property and the Additional Property.

1.58. Shoreline Easements. "Shoreline Easements" shall mean as defined in Section 8.10 below. The areas within the easements are sometimes referred to as Shoreline Easement Areas.

1.59. Single Family Lots. "Single Family Lots" shall mean and refer to any Residential Lot zoned for single family detached housing purposes and not a "Multi-Family Lot" or "Patio Lot".

1.60. Single Family Lot Owners. "Single Family Lot Owners" shall mean and refer to the record owner whether one or more persons or entities of any Single Family Lot which is a part of the Property, including contract sellers, but excluding those having such interest in the Lot solely as security for the performance of an obligation.

1.61. Single Family Units. "Single Family Unit(s)" shall mean and refer to any portion of a building situated upon a Single Family Lot designated and intended for use and occupancy as a residence by a single family located within the Subdivision.

1.62. Special Assessment. "Special Assessment" means the charge established by Section 4.5 of this Declaration.

1.63. Structure. "Structure" means:

(a) any thing or object (other than landscaping), the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation, porch, shed, barn, storage facility, play structure, covered or uncovered patio, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement; and

(b) any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property.

1.64. Subdivision. "Subdivision" means all phases or sections of the Record Plat for Ballyshannon, a subdivision in Boone County, Kentucky, and consisting of all the property from time to time made subject to the provisions of this Declaration.

1.65. Supplemental Declaration. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects all or any portion of the Additional Property to this Declaration; imposes, expressly or by reference, additional restrictions and obligations on the land subject to this Declaration.

1.66. Tenant. "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

1.67. Unit. "Unit" shall mean and refer to any and all Dwelling Units and/or Commercial Units located on the Property.

1.68. Working Capital Assessment. "Working Capital Assessment" as defined in Section 4.7 of this Declaration.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The Property, each portion thereof, and all Units thereon shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

## **ARTICLE 3**

### **ASSOCIATION MEMBERSHIP, MEETINGS AND BOARD**

3.1. Formation of the Association. The Declarant has caused or will cause to be chartered in accordance with Chapter 273B of the Kentucky Revised Statutes, a nonprofit corporation to be known as Ballyshannon Community Association, Inc., a Kentucky not-for-profit corporation. The purpose of the Association is to provide for the administrative governance, maintenance, management and upkeep of the Property and to promote the general health and welfare of the Owners and Occupants of the Property.

3.2. Board of Directors. Until the fifth Annual Meeting, the initial Board shall consist of three (3) persons appointed by the Class B Member who shall serve until their respective successors are elected and qualified. Directors appointed by the Declarant need not be Members

of the Association. However, a Director elected by Class A Members shall be a Lot Owner or a spouse of a Lot Owner, except that if a Lot Owner is a corporation, partnership, joint venturer, or other entity, the Lot Owner may elect as a Director an officer, partner, joint venturer, or like individual affiliated with this Lot Owner.

At the fifth Annual Meeting, the Board of Directors shall expand from three (3) to five (5) Directors. At such meeting, the Class B Member shall appoint three (3) Directors for a two (2) year term. Thereafter, at each bi-annual meeting the Class B Member, until the Development Period Special Meeting (as hereinafter defined), shall appoint three (3) Directors for a two (2) year term.

At the fifth Annual Meeting, the Class A Members shall elect two (2) Directors. One of the Directors shall be elected for a two (2) year term and one (1) of the Directors shall be elected for a one (1) year term. At the expiration of the terms of such Directors, until such time as the Declarant shall transfer control of the Board to the Class A Members, the Class A Members shall, at the respective Annual Meeting, elect successor Directors for a two (2) year term.

Within ninety (90) days after the expiration of the Development Period, the President of the Association shall call a special membership meeting ("Development Period Special Meeting"). At the Development Period Special Meeting, all Declarant appointed Directors shall be deemed removed from office, and the Class A Members, including the Declarant if it is then an Owner, shall elect a Director to fill each vacancy on the Board. The terms of said elected Directors shall be from one (1) to two (2) years, as determined by the Board, so that in any one (1) year thereafter, the terms of no more than three (3) nor less than two (2) Directors shall expire. The three (3) Directors with the most votes shall be the Directors who shall serve the two (2) year term. Additionally, after the Development Period Special Meeting, all Directors, and their successors, shall be elected by Class A Members and shall be elected for a two (2) year term.

Notwithstanding anything above to the contrary, the Class B Member may, by written notice to the Board, at or before any Annual Meeting, relinquish to the Class A Members, the Class B Member's right to appoint one or more Directors at such Annual Meeting pursuant to this Section.

3.3. Membership. The membership of the Association shall at all times consist exclusively of Owners. All Owners shall be Members. Membership shall be appurtenant to and may not be separated from such ownership.

3.4. Members Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration and all amendments duly made hereto in accordance with the terms herein.

3.5. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent.

Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on sixty (60) days or less written notice.

#### **ARTICLE 4** **ASSESSMENTS**

4.1. Creation of Assessments. There are hereby created Assessments for Association 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 this Section. There may be up to five (5) types of Assessments which are as follows: (1) Base Assessments to fund Common Expenses for the benefit of all Members of the Association as described in Section 4.2 below; (2) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods as described in Section 4.4 below; (3) Special Assessments as described in Section 4.5 below; (4) Individual Assessments as described in Section 4.6 below; and (5) Working Capital Assessment as described in Section 4.7 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these Assessments.

(a) 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 Elements or abandonment of a Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off 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.

(b) Notwithstanding any provision of this Declaration, the Articles of Incorporation or Bylaws to the contrary, Declarant and Builder, until the expiration of the Development Period, shall not be required to pay any Assessment for any recorded, unoccupied Lot in which they have the interest otherwise required for Class A Membership.

4.2. Base Assessment. The Base Assessment shall be levied by the Association against the Owner of each Unit, as provided in Section 4.3 below, to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the General Common Elements, including, but not limited to, the payment of real estate taxes on those portions of the General Common Elements to which the Association is the record owner; casualty and liability insurance for the General Common Elements to which the Association is the record owner and fidelity bonds; the cost of repairing and maintaining the landscaping in the General Common Elements; the cost of supplying water to the General Common Elements; the cost of snow pushing in the Common Elements; mowing, edging and

fertilization of all grass on the General Common Elements; the cost of spring time mulching of landscape beds; the costs of operation, maintenance, improvement, and replacement of the non-exclusive Recreational Facilities, Open Spaces, General Common Element Lakes and Retention and Detention Areas; the cost of reasonable reserves for contingencies, replacements and working capital; management fees; organizational costs; legal costs for the enforcement of liens and covenants in this Declaration and all other costs incurred by Declarant or the Board in the exercise of its powers and duties pursuant to this Declaration (collectively "Common Expenses"). The Base Assessment shall be estimated initially in accordance with Section 4.3 of this Declaration. The obligation to pay the Base Assessment shall not in any manner be dependent on or discharged, or otherwise affected by the use or non-use of the Common Elements or Recreational Facilities, or the actual occupancy of any Lot, Dwelling Unit and/or Commercial Unit on the Property.

4.3. Computation of Base Assessment. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital reserve account for the capital replacement, as needed.

(a) The Base Assessment for all Units shall commence on the first day of the month following the conveyance of the first Unit in the Subdivision from either Builder or Declarant to an individual Owner of a Unit.

(b) The Base Assessment to be levied against each Unit for the coming year shall be determined by multiplying the total budgeted Common Expenses, including reserves, by a fraction, the numerator of which is the number "1," and the denominator of which is the total number of Units subject to Assessment under Section 4.3(a) above.

(c) Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessment determined pursuant to the above formula by taking into account.

(i) other sources of funds available to the Association; and

(ii) Assessments to be levied upon additional Units reasonably anticipated to become subject to Assessments during the fiscal year.

(d) So long as Declarant has the right unilaterally to annex Additional Property pursuant to Section 11.1 below, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy; provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years.

(e) The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least fifteen (15) days prior to the beginning of the fiscal year. If, in the event the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined by the Board, the budget in effect for the immediately preceding year shall continue

4.4. Computation of Neighborhood Assessments. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Any Neighborhood may require that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefited thereby and levied as a Neighborhood Assessment.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least fifteen (15) days prior to the beginning of the fiscal year. In the event that the Board fails for any reason so to determine the budget for any Neighborhood for any year, then and until such time as a budget shall have been determined by the Board, the budget in effect for the immediately preceding year shall continue.

4.5. Special Assessment. In addition to the other Assessments authorized herein, and to the extent that the reserve fund is insufficient, the Association may levy Special Assessments for the following reasons:

(a) The amount of any operating deficit incurred in any calendar year may be paid by means of a Special Assessment sufficient in an amount so as to allow the Association to satisfy such deficit in part or in whole, provided that any such Special Assessment shall have been approved in accordance with Section 4.5(c) below.

(b) To the extent that the capital budget is insufficient, the Association may levy Special Assessments to construct, structurally alter, or replace capital improvements which are a part of the Common Elements in any fiscal year.

(c) So long as the total amount of Special Assessments allocable to each Lot or Unit does not exceed One Hundred Percent (100%) of the Base Assessment for that fiscal year, the Board may impose the Special Assessment. Any Special Assessments which would cause the amount of Special Assessments allocable to any Lot or Unit to exceed this limitation shall be effective only if approved by a majority vote of the Members present and voting at a meeting duly called for such purpose. Special Assessments shall be paid as determined by the

Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

4.6. Individual Assessment. The Association after approval by a majority of the members of the Board shall have the right to assess an individual Lot or Unit for any of the following ("Individual Assessment"):

(a) any costs incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, tenants, guests or invitees, including attorney fees, court costs and other expenses incurred; and/or

(b) any costs associated with the enforcement of this Declaration or the Rules and Regulations, if any, of the Association, including, but not limited to attorneys fees, witness fees and costs, and court costs.

4.7. Working Capital Assessment. At the time of closing on the sale of each Lot from Builder or Declarant to a third party purchaser, the purchaser shall be required to pay the greater of six hundred and 00/100 Dollars (\$600.00), or the amount equal to the current annual assessment, as such purchaser's capital contribution to the working capital of the Association ("Working Capital Assessment"). Upon each resale of a Dwelling Unit to a subsequent purchaser, said subsequent purchaser shall be required to pay twenty-five percent (25%) of the current Working Capital Assessment as such purchaser's capital contribution to the working capital of the Association. This Working Capital Assessment and capital contribution shall be used by the Association for its operating expenses. Such Working Capital Assessment or subsequent sale capital contribution are not advance payments of the Base Assessment or any other Assessment established herein, and will not be held in any sort of trust or reserve account. Declarant and Builder shall not be required to pay any Working Capital Assessment as described in this paragraph.

4.8. Common Surplus. If the Base Assessment or Neighborhood Assessment collected in any given year is in excess of the actual Common Expenses or Neighborhood Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Base Assessment or Neighborhood Assessment for the following year; or (c) apply the Common Surplus to the reserve.

4.9. Payment. Unless otherwise established by the Board, the Base Assessment and Neighborhood Assessment shall be paid in advance in semi-annual installments not more than ten (10) days after the due dates established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules as it shall deem appropriate. Additionally, any Special Assessment or Individual Assessment imposed by the Board shall become due upon the date designated in the notice, but not less than thirty (30) days after the mailing of the notice to the Owner by United States mail. **At the time of closing on a Lot or Dwelling Unit from either Declarant or Builder to a third party**

**purchaser, and at the time of a resale closing of a Dwelling Unit to a subsequent purchaser, each purchaser of a Lot or Dwelling Unit shall be required to pay the Working Capital Assessment, or a percentage thereof, as provided in Section 4.7 above and a prorata share of the Base Assessment and Neighborhood Assessment, if applicable, for the balance of the semi-annual period in which the closing takes place.**

4.10. Operating Deficit. If during the Development Period the Association incurs an operating deficit, Declarant and/or Builder may, at its option, loan funds to the Association to fund the deficit. In the event that Declarant and/or Builder elects to fund the deficit, the Association shall execute a loan agreement and promissory note for the benefit of Declarant and/or Builder, as the case may be, the form of which shall comply with the terms and conditions set forth in Exhibit C attached hereto and made a part hereof. The Association shall be obligated to repay to the Declarant and/or Builder, as the case may be, any and all monies lent by such entity to the Association in accordance with this Section in order to fund any deficit. Such repayment of monies shall be in accordance with the terms and conditions of said loan agreement and promissory note.

4.11. Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners.

4.12. Penalty for Late Payment. For each Lot as to which any installment of any Assessments are not paid within the period provided by the Board, there shall be added to the installment a penalty of ten percent (10%) thereof, and interest at the rate of twelve percent (12%) per annum, or such other amount established by the Board (or, if less, the maximum rate allowable by law) from the due date on the amount of such installment plus penalty until paid.

4.13. Creation of Lien and Personal Obligation of Assessment. All Assessments shall be a charge and lien on each Lot to the extent and for the period provided in Section 4.13 below, and shall also be the personal obligation of the Owner of each Lot against which they are made.

4.14. Liens. If any Assessment on a Lot is not paid within the period established by the Board pursuant to Section 4.9 herein, the amount thereof together with any interest, costs, penalties and reasonable attorneys' fees thereon shall constitute a lien on such Lot in favor of the Association prior to all other liens and encumbrances whatsoever, excepting real estate taxes and assessments and liens of record in favor of the United States of America, the Commonwealth of Kentucky, and all other political subdivisions or governmental instrumentalities of the Commonwealth of Kentucky to the extent made superior by applicable law, and all bona fide recorded first mortgages and the rights of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. Assessments shall become a



lien on a Lot on the date the Board mails written notice of any such Assessment to the Owners of any Lot subject thereto. The Association may perfect the lien by recording a notice of lien with the Boone County, Kentucky Clerk's Office, in any legally recordable form. Nonpayment of any Assessment on a Lot shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate.

4.15. Evidence of Payment. Upon the request of the Owner or any mortgagee or Tenant of any Lot or any prospective purchaser, mortgagee, or Tenant thereof, the Board or its designated representative shall furnish written evidence of the amount of the Assessments with respect to such Lot for the current year and the amount of any unpaid Assessments, penalty and interest, if any. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Lot. The Board may impose a reasonable charge for furnishing such written evidence.

4.16. Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of the Commonwealth of Kentucky. In any such enforcement proceeding, the amount which may be recovered by the Association shall include all costs of such proceeding, including reasonable attorneys' fees. In any such foreclosure sale, the Association may become the purchaser.

4.17. Subordination of Lien to First Mortgage. The mortgagee of a first mortgage of record on a Lot shall have no obligation hereunder to collect any Assessments chargeable to such Lot. Failure of a Lot Owner to pay any Assessments imposed in this Declaration shall not automatically be deemed a default under the first mortgage of record on that respective Lot. In addition, when the mortgagee of a first mortgage of record, or other purchaser of a Lot as a result of judicial execution, acquires title to the Lot as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his, her or its heirs, successors and assigns, shall not be solely liable for the share of the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Any lien against such Lot shall be canceled and voided, and shall become unenforceable. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its heirs, successors or assigns.

## **ARTICLE 5** **ARCHITECTURAL REVIEW**

5.1. Alteration of Dwelling Unit, Commercial Unit and Structures. Except for initial construction of Dwelling Units, Commercial Units, accessory Structures and Common Elements by either Declarant or Builder, no building, fence, wall, deck or other Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot, nor shall any Dwelling Unit, Commercial Unit and/or Structure on any Lot be remodeled or altered or expanded in any way which changes the exterior appearance thereof, unless detailed plans and

specifications therefor shall have been submitted to and approved in writing by the Board. In addition, except for the initial grading and installation of landscaping installed by either Declarant or Builder, no change of grading of more than 1' or change/installation of landscaping (excepting routine maintenance thereof), shall be permitted unless detailed plans and specifications therefore shall have been submitted to and approved in writing by the Board. The foregoing referenced plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to, any or all of the following: a site plan; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; evidence of conformity with building codes; grading plan; and landscaping plan. The Board shall either approve the plans and specifications, disapprove them, or approve them with conditions or qualifications.

5.2. Approval of Plans and Specifications. The Board shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) if it finds that they comply with the requirements of Section 5.1 above, will further the purposes outlined in this Declaration and meets Architectural Guidelines adopted by the Board. Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Board and a copy bearing the written approval of the Board shall be returned to the applicant. Approval by the Board of plans and specifications with respect to any Lot shall not impair the Board's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Section). The Board's approval of any plans and specifications shall not constitute a representation or warranty as to the quality of the plans and specifications or their compliance with applicable laws and codes.

5.3. Architectural Guidelines. The Board may adopt reasonable architectural guidelines and rules relating to the construction, erection and placement of buildings, fences, walls and structures and the installation of landscaping and grading of land in order to fulfill its obligations under Article 5 (collectively, "Architectural Guidelines"). Such Architectural Guidelines may include but not be limited to building materials, minimum or maximum sizes, dimensions or heights, color schemes, material finishes, locations, setbacks, types of shrubs/trees, or other reasonable requirements.

5.4. Disapproval of Plans and Specifications. If plans and specifications (whether schematic, preliminary or detailed) submitted to the Board with respect to any Lot do not comply with the Architectural Guidelines, if any, and the requirements of Section 5.1 as to the information required to be included in the plans and specifications, the Board shall either disapprove such plans and specifications or approve them subject to such conditions and qualifications as the Board may deem necessary to achieve compliance.

5.5. Failure of the Board to Act. If the Board shall fail to act upon any plans and specifications submitted to it within ninety (90) days after submission thereof, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the Board shall be required. If construction of a Structure is not commenced on a Lot on or before

six (6) months from the date of submission of plans and specifications, then such "deemed approval" shall be automatically canceled and a new submission shall be required.

5.6. Violations. If any Dwelling Unit, Commercial Unit and/or Structure situated upon any Lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the approved plans and specifications, the Board shall give notice of a Default to the Owner of the Lot involved, provided, however, that the Board may, upon such conditions as it may determine, waive any such Default if it finds that such Default does not substantially conflict with the policies of the Board.

5.7. Enforcement. In the event of a violation of the provisions of this Article 5, the Association shall have the right to enforce this Section by any proceedings authorized in this Declaration, Bylaws or rules and regulations, if any, as well as any other relief available at law or in equity.

5.8. Right of Entry. The Board through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Dwelling Unit, Commercial Unit and/or Structure thereon is in compliance with the provisions of this Section, without the Board or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

5.9. Fees. The Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Association.

5.10. Approval of Plans by Declarant. Notwithstanding anything to the contrary in this Article 5, during the Development Period (which may still be in effect even after the Development Period Special Meeting as provided in Section above), the plans and specifications for the initial construction of a Dwelling Unit and/or Commercial Unit shall be subject only to Declarant's approval and do not need to be approved by the Board.

## **ARTICLE 6**

### **COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY**

6.1. Purposes. In order to promote the health, safety and welfare of all Owners, Members and Occupants, and to preserve, beautify and maintain the Property and all Structures thereon as a subdivision of high quality and to preserve and promote a good environmental quality, the following covenants, restrictions and limitations as to use and occupancy are hereby adopted, declared and established. These covenants and restrictions shall hereinafter burden and benefit all Lots on the Property, shall run with the land, be binding on current and successor Lot Owners, for the benefit of all Lot Owners and all Lots on the Property.

**THE FOLLOWING COVENANTS AND RESTRICTIONS CONTAINED IN SECTIONS 6.2, 6.3, 6.4 and 6.5 ARE NOT APPLICABLE TO ANY MULTIFAMILY AND COMMERCIAL LOTS AND ONLY APPLIES TO SINGLE FAMILY LOTS AND PATIO LOTS AS SET FORTH HEREIN.**

6.2. Covenants and Restrictions for the Single Family Lots and Patio Lots. The following are the covenants and restrictions and limitations as to use and occupancy to which only the Single Family Lots and Patio Lots are subject to:

(a) Land Use. Except as otherwise provided in this Declaration, no part of the Property other than Common Elements shall be used for other than residential housing and any Single Family Unit constructed on a Single Family Lot or Patio Home constructed on a Patio Lot shall be used only as a residence for a single family. To the extent permitted by law, an Owner of a Single Family Lot or Patio Lot may use a portion of a Single Family Unit or Patio Home located thereon for his/her office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or Occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of said Owner's respective Single Family Lot or Patio Lot. The foregoing notwithstanding, Declarant, its successors, assigns and affiliates, and any Builder may use Single Family Lots, Single Family Units, Patio Lots and Patio Homes for construction offices, sales purposes (i.e., including, but not limited to, model homes), and as offices to meet with prospective purchasers of Single Family Units and/or Patio Homes. In addition, during the Development Period, Declarant reserves the right to use a portion of the clubhouse for sales and marketing purposes in order to meet with prospective purchasers of Single Family Units and/or Patio Homes.

(b) Parking. All Single Family Lots or Patio Lots shall provide two (2) off-street parking spaces, exclusive of garage spaces. No parking spaces, streets or driveways nor any other part of the Common Elements, Single Family Lots or Patio Lots shall be used for parking of any trailer, truck, boat, or anything other than operative automobiles, motorcycles or scooters. Any of such vehicles may, however, be stored or parked in an enclosed garage provided such garage door is completely closed at all times when such a vehicle is parked therein. The word "trailer" shall include trailer coach, "RV", recreational vehicle, house trailer, mobile home, automobile trailer, boat trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pick-up truck, sports utility vehicle or van which is used as a principal vehicle by an Owner of a Single Family Unit or Patio Home or his/her family. Notwithstanding the restrictions in this Section, vehicles being used for the purpose of construction, delivery or repair work to or upon any Single Family Lot, Single Family Unit, Patio Lot or Patio Home may be permitted to be parked on any Single Family Lot or Patio Lot and street in the Subdivision.

(c) Nuisances. No noxious or offensive activity shall be carried on upon any Single Family Lot or Patio Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Single Family Lot Owner or Patio Lot Owner shall permit anything to be done or kept in a Single Family Unit or Patio Home or other approved Structure on any Single Family Lot or Patio Lot that would be in violation of any federal, state and local law. No waste shall be committed in or to any of the Common Elements.

(d) Oil and Mining Operations. No oil drilling, quarrying, or mining operations shall be permitted on any Single Family Lot or Patio Lot.

(e) Garbage and Refuse Disposal. Except for the immediate purpose of trash and garbage collection and removal, trash, garbage, or other waste shall not be kept upon a Single Family Lot or Patio Lot except in sanitary containers screened from visibility from the streets and drives of the Property. Yard waste may be composted in approved containers. No Single Family Lot or Patio Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste.

(f) Antennas. No apparatus, free standing antennas or satellite dishes shall be constructed or used on any Single Family Lot or Patio Lot; provided, however, that a satellite dish not exceeding thirty-nine inches (39") in diameter may be placed on a roof top of a Single Family Unit or Patio Home if not visible from the street in front of the Single Family Unit or Patio Home. All television and radio antennae, including CB radio antennae, must be enclosed within the Single Family Unit located on the Single Family Lot or Patio Home located on the Patio Lot. All telephone, electric and other wires of all kinds must be underground.

(g) Signs. No permanent sign shall be permitted on any Single Family Lot, Patio Lot or building in the Subdivision. In addition, no permanent or temporary sign shall be permitted to be placed on any surface that is visible within the Subdivision. An Owner of a Single Family Unit or Patio Home is permitted to place and maintain a standard "For Sale" or "For Rent" sign on his/her Single Family Lot or Patio Lot; provided, however it is of a typical size within the industry. An Owner must obtain the prior written consent of the Board in the event said Owner desires to maintain a "For Sale" or "For Rent" sign which is not of a typical size within the industry. This sign restriction shall not apply to signs used by Declarant and/or Builder or their assigns, while Declarant and/or Builder is selling Single Family Units and/or Patio Homes in the Subdivision, or to traffic, street names, Common Elements or subdivision identification signs. During the Development Period, Builders may place sales signage on Open Space Lots or on Common Elements with approval of Declarant.

(h) Animals. No animals of any kind shall be raised, bred, or kept on any Single Family Lot or Patio Lot including the Common Elements, except that dogs or other household pets not totaling more than three (3) in number, may be kept on a Single Family Lot or Patio Lot, subject to the Restrictions, provided that it is not kept, bred or maintained for any commercial purpose, and provided that it is kept subject to the rules and regulations, if any, of the Association, including, but not limited to, rules regarding weight limitations for certain types

of pets. Any such pet or pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon seven (7) days written notice from the Board. No such pets may be allowed to run unattended. Dogs, cats, or other household pets must be kept within the confines of the Owner's Single Family Lot or Patio Lot except when being held on hand leash by the person attending the animal. All Single Family Lot Owners and Patio Lot Owners shall be responsible for cleaning up after his/her household pet. Notwithstanding the foregoing, the Association shall have the right to promulgate rules and regulations pertaining to size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pet.

(i) Laundry or Rubbish. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Property. No clotheslines shall be located on any Single Family Lot or Patio Lot. The Property shall be kept free and clear of rubbish, debris and other unsightly materials.

(j) Rental of Single Family Units and Patio Homes. The Owners of the respective Single Family Units and Patio Homes or any first mortgagees in possession thereof shall have the right to lease the same subject to the covenants and restrictions in the Declaration and the Bylaws and rules and regulations, if any. However, neither a Unit Owner nor any first mortgagee in possession shall lease less than an entire Single Family Unit or Patio Home nor shall any Single Family Unit or Patio Home be leased for a term of less than six (6) months. The respective Single Family Unit or Patio Home shall not be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than six (6) months, or (ii) any rental if the occupants of the Single Family Unit or Patio Home are provided customary hotel service such as room service or food and beverage, maid service and furnishing of laundry and linen. All leases of any Single Family Unit or Patio Home shall be in writing. All such leases shall provide that they are subject to all the provisions of the Declaration, the Bylaws and the rules and regulations, if any, and that any failure of the lessee to comply with any such provision shall constitute a default under the lease. A copy of each such lease shall be given to the Association upon request of the Board.

(k) Building Setbacks. No building shall be located nearer to any street than the building setback line shown in the Record Plat of the Subdivision, except as constructed by Declarant or Builder.

(l) Lawns. No weeds, underbrush or unsightly growths or objects of any kind shall be permitted to remain on any Single Family Lot or Patio Lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner and shall be mowed on a regular basis. Lot areas left in a naturalized state by the Declarant and/or Builder may be left in such naturalized state by the Single Family Lot Owner, provided, however, that some naturalized areas on Patio Lots may be required by the Board to be left in a naturalized state.

(m) Obligation to Keep Lot in Good Condition. Each Single Family Lot Owner, Patio Lot Owner or Occupant shall keep each Single Family Lot, Patio Lot and all

Structures thereon in such maintenance, repair, appearance and condition as shall comply with the provisions of this Declaration and applicable laws and ordinances.

(n) Lot Grading. Neither the Single Family Lot Owner, Patio Lot Owner nor anyone claiming under the Single Family Lot Owner and/or Patio Lot Owner shall alter elevations and grades established by Builder for any building Lot without the prior written approval of Declarant and/or Declarant's designee during the Development Period; and, the prior written approval of the Board after the Development Period in accordance with Article 5 above. The purpose of this Restriction is to insure that the surface drainage plan originally established by Builder for sheet surface drainage and drainage swales over the yard areas of building Lots is not altered or impeded. Landscaping or plantings shall not be installed or maintained in such a manner as to impede sheet surface drainage or swale drainage.

(o) Additional Restrictions. As the Additional Property is annexed to the Property by means of a Supplemental Declaration, Single Family Units, Single Family Lots, Patio Homes and Patio Lots within specific Neighborhoods may be subject to additional covenants, rules and regulations established by Declarant at such time as such Single Family Units, Single Family Lots, Patio Homes and Patio Lots are annexed to the Property.

6.3. Additional Covenants and Restrictions for the Patio Lots. In addition to those provided for in Section 6.2 above, the following are covenants and restrictions and limitations as to use and occupancy to which only the Patio Lots are subject to:

(a) Architectural Approval Required. Except for original construction by the Declarant or as otherwise in these covenants provided, no building, landscaping, fence, wall or other structure, improvement or device, or replacement or alteration or repair thereof, shall be commenced, repaired, replaced, erected or maintained upon any Patio Lot, nor shall any exterior addition to or change or painting or other alteration in a single family detached structure be made until such plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Declarant, or its designee. Upon the expiration of the Development Period or upon the Declarant's written relinquishment of such approval authority, such approval authority shall pass to an Architectural and Maintenance Committee appointed by the Board of Directors composed of not less than three (3) Members of Owners of Patio Lots. Requests for approval shall be made in writing by the Patio Lot Owner to the Declarant, its designee or Architectural and Maintenance Committee as the case may be.

The Declarant, its designee or the Architectural and Maintenance Committee may designate the person or entity to whom an application must be submitted. An application will not be considered filed for approval until it is complete.

(b) Additional Covenants and Restrictions of Use and Occupancy. These following covenants and restrictions are in addition and shall complement the covenants and

restrictions set forth in Section 6.2 above. In the event of a conflict between covenants and restrictions listed in Section 6.2 above and the following covenants and restrictions, the following covenants and restrictions shall prevail.

(i) Building Type. No building or structure shall be erected, placed or permitted to remain upon any Patio Lot except one single-family residence not to exceed two (2) stories in height, which may include an attached garage. No other structure shall be erected, placed or permitted to remain on any Patio Lot, except as provided herein. Without limiting the generality thereof, the word "structure" as used herein means anything or object, the placement of which upon any Patio Lot may affect the appearance of such Patio Lot, including any building, garage, shed, barn, greenhouse, coop, cage, shack, trailer, swimming pool, outbuilding, swing sets, or any other temporary or permanent improvement on such Patio Lot. It is further provided, however, that the word "structure" does not include uncovered patios or decks.

(ii) Landscaping. Every Patio Home constructed on any Patio Lot shall be landscaped at the time of construction of the Patio Home. The landscaping shall be completed in accordance with the landscaping requirements of the Declarant. In the event the construction of the Patio Home is completed between the first day of March and the thirtieth day of September, this landscaping shall be installed no later than ninety (90) days after the completion of the Patio Home. In the event the construction of the Patio Home is completed between the first day of October and the last day of February, this landscaping shall be installed no later than the first day of the following June. No additional landscaping shall be installed by any Patio Lot Owner, except annual flowers that may be planted in any existing landscape bed on the Owner's Patio Lot, without written consent as required under Section 6.3(a) above.

(iii) Fences. No fences shall be erected or built on any part of any Patio Lot except that invisible fence shall be permitted. In no case shall the installation of an invisible fence destroy or otherwise disturb any landscaping area on any Patio Lot.

(iv) Swimming Pools. No in-ground swimming pools or above ground swimming pools shall be erected, constructed or permitted to remain on any Patio Lot.

(v) Hot Tubs/Spas. No hot tubs or spas of any kind shall be erected, constructed or permitted to remain on any Patio Lot, except hot tubs or spas shall be permitted on the covered deck or covered patio areas of the home only. The Board may require additional landscaping or other screening of any such hot tub/spa. Improvement Application required.



(vi) Mailbox/Post Lamps. Mailboxes and post lamps installed by the Declarant for each Patio Home shall be individually maintained and replaced as necessary by the Owners for whom they serve. Costs for such maintenance and/or replacement shall also be shared equally by the Owners the mailboxes and post lamps serve. Mailboxes or post lamps may not be altered or replaced without written consent as required under Section 6.3(a) above. The cost of the electricity for the post lamp shall be the sole responsibility of the Owner whose electric meter registers the post lamp's electrical usage.

(vii) Utility-Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Record Plat. Within these easements, no structure, planting or other material, other than driveways or sidewalks, shall be placed or permitted to remain upon any Patio Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Patio Lot and all improvements in the easement area shall be maintained by the Owner of the Patio Lot except as otherwise provided in the Declaration or supplements thereto and except for those improvements for which a public authority, utility company or the Association is responsible.

6.4. Additional Covenants and Restrictions for the Single Family Lots. In addition to those provided for in Section 6.2 above, the following are covenants and restrictions and limitations to the use and occupancy to which only the Single Family Lots are subject to:

(a) Additional Covenants and Restrictions of Use and Occupancy. These following covenants and restrictions are in addition and shall complement the covenants and restrictions set forth in Section 6.2 above. In the event of a conflict between covenants and restrictions, the following covenants and restrictions shall prevail.

(i) Additional or Other Structures. No structures of a temporary character, trailer, shack, garage, barn or other temporary outbuilding shall be used or erected on any Single Family Lot after the permanent residence on each Single Family Lot has been completed. Notwithstanding the foregoing to the contrary, structures may be placed on a Single Family Lot provided said Owner obtains the Board's written approval, as provided in Article 5 above.

(ii) Swimming Pools. No above ground swimming pools shall be constructed, erected, placed or permitted to remain on any Single Family Lot. In-ground swimming pools are permitted provided it is approved by the Board in accordance with Article 5 above. This Section shall not prohibit the construction, erection or placement of a diving board, slide or other equipment appurtenant to an otherwise conforming swimming pool.

(iii) Fencing. No fences shall be erected or built on any part of any Single Family Lot between the rear of the building constructed thereon and the street in front of the building. Fences erected on said Single Family Lot from the rear of the building and the back of the property line shall not be in excess of four (4) feet in height and shall be rustic rail, split rail, decorative PVC, ornamental iron, decorative wood, decorative metal or hedge, or other materials as may be approved by Declarant, provided however, that all fences constructed of the aforesaid materials shall be at least fifty percent (50%) open. Non-reflective metal fence may be installed as an integral part of a fence constructed of the aforesaid materials in order to provide a secure enclosure. Barbed wire, chain link or similar fences shall be prohibited. On a corner Single Family Lot, the sections or sections of fence running with the side street shall not extend closer to said side street at any point than the residence on said Single family Lot. Entrance designations, Recreational Facilities, fences and any other Structure erected by the Declarant, Builder and/or the Association are exempt from this restriction.

(iv) Trampolines, Swing Sets and Play Areas. Trampolines, swing sets and play areas may be erected on a Single Family Lot only after the location and materials of those Structures are approved in writing by the Board in accordance with Article 5 above.

(v) Mailboxes. Declarant or Builder reserves the right to establish a standard design for the mailboxes for the use of the Single Family Lot Owners. The decision of the type of material to be used by each Owner shall be at the sole discretion of the Declarant and/or the Builder. Declarant and/or Builder may designate different standard designs for each Neighborhood or area of homes within the Neighborhoods. Single Family Lot Owners shall be responsible for the maintenance of their individual mailboxes. Declarant and/or Builder may however, waive this right or establish the use of cluster mailboxes.

6.5. Additional Lot Restrictions. The following are the additional covenants and restrictions and limitations as to use and occupancy to which shall be applicable only to Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Ballyshannon Subdivision, Section 1, Phase 1 (the "Additional Lot Restrictions"). In the event of a conflict between the covenants and restrictions listed in Section 6.2 above and the following Additional Lot Restrictions, the following Additional Lot Restrictions shall prevail.

(a) With the exception of the original Dwelling Unit constructed by Builder and any deck constructed by the Builder or approved by the Builder at the time the original Dwelling Unit is constructed on the Lot, no Structure, including but not limited to, trampolines, fences, playsets or swimming pools may be erected on such Lots.

(b) The addition of awnings, roof hat vents, or other architectural elements to the Dwelling Unit on such Lots shall be prohibited without the approval of the Declarant, or the Board after the Development Period.

(c) All air conditioners or heat pumps shall be located on the side of the Dwelling Units constructed on such Lots towards the rear of such Dwelling Unit. Such air conditioners or heat pumps shall be shielded from view on the lake side of the Dwelling Unit.

(d) Original landscaping installed by the Builder on the rear of the Lots shall be continuously maintained and replaced if necessary by the Owner. Any landscaping so replaced by the Owner shall be of similar plant species from that being replaced. If unmaintained or unreplaced by Owner, the Association shall have the right, but not the obligation, to maintain or replace such landscaping and levy an Individual Assessment on the Owner for such expenses incurred by the Association. The Association, through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times and upon reasonable advance notice for the purpose of maintaining and/or replacing any such landscaping.

6.6. Common Element Lakes and Water Facilities. The use of lakes and other water facilities (collectively, hereinafter "Common Element Lakes") located on the Common Elements is governed by the following Restrictions (hereinafter "Common Element Lake Restrictions"):

(a) Use. Use and enjoyment of the Common Elements Lakes is limited to Owners and Occupants and to their tenants, guests and invitees and is subject to any Rules and Regulations which may be established by the Association in addition to provisions of this Section.

(b) Swimming/Diving. No swimming, snorkeling or scuba diving is permitted within the Common Element Lakes.

(c) Ice-skating. No ice-skating is permitted within the Common Element Lakes.

(d) Ice Fishing. No ice fishing is permitted within the Common Element Lakes.

(e) Pollution. No obnoxious, or offensive substance polluting the Common Element Lakes shall be discharged or be permitted to be discharged therein.

(f) Trash/Debris. No trash, debris or unsightly substances shall be placed or permitted to be placed in the Common Element Lakes.

(g) Withdrawal of Water. No water shall be withdrawn from the Common Element Lakes of such quantity as would materially lower the level thereof.

(h) Commercial Use. No commercial use of any kind shall be made of the Common Element Lakes. Only the Owners and Occupants shall be permitted to fish in the Common Elements Lakes - commercial fishing is prohibited.

(i) Boats/Vehicles. No one shall be permitted to use on, or in the Common Element Lakes, any motorized boat, or motorized vehicle designed or used for the conveyance, movement or locomotion of persons or things. Rowboats, canoes, paddleboats and other self-propelled similar boats may be used subject to Rules and Regulations established by the Association. Rafts and homemade contraptions shall, however be expressly prohibited.

(j) Boat Docks/Structures. No boat docks or other structures shall be constructed or placed into or on the Common Element Lakes by Lot Owners. This shall not prohibit Declarant or the Association from constructing recreational structures or other structures into or on the Common Element Lakes for the benefit of the Property.

(k) Shoreline. The shoreline of the Common Element Lakes shall be maintained in a neat, clean and attractive appearance by the Owner of the Lot upon which the shoreline is located. Additionally, without the prior written consent of the Association, no one shall alter the shoreline in anyway which shall cause or contribute to the erosion of the Common Element Lakes' perimeter or affect the size or water level of the Common Element Lakes, or alter the grade of the adjacent land so as to affect drainage into or out of the Common Element Lakes.

(l) Shoreline Structures. Within the Shoreline Easements, no Lot Owner shall erect any structure, sign, fence or wall, either permanent or temporary, park any vehicle, store any article, and/or maintain any tree, shrub, hedge, landscaping or planting, either natural or cultivated, except customary lawn grasses within said easement, unless specifically approved by the Board. This paragraph shall not apply to Declarant or the Association.

(m) Development/Maintenance. The Restrictions of this Section shall not prevent or restrict Declarant or Builder from constructing and developing improvements or buildings on, within or adjacent to the Common Element Lakes during the Development Period.

## **ARTICLE 7** **MAINTENANCE STANDARDS**

7.1. Adoption and Amendment. Declarant during the Development Period, and after the Development Period, the Board shall have the right to adopt, and may from time to time amend, Maintenance Standards pertaining to the maintenance, repair and appearance of all Lots, and the exterior of all Dwelling Units, Commercial Units and Structures thereon. If any provision of any applicable building inspection, or similar maintenance statute, ordinance, resolution, regulation or order of the Commonwealth of Kentucky, any other political subdivision or governmental instrumentality of the Commonwealth of Kentucky, or the Board, is more stringent with regard to a Lot than a comparable provision of the Maintenance Standards,

such more stringent provision shall be deemed incorporated in the Maintenance Standards. The Maintenance Standards shall provide, among other things, that:

(a) except as otherwise hereinafter provided, the Association shall be responsible for maintenance, repair and replacement of the Common Elements and all Structures thereon;

(b) each Owner shall maintain, repair and replace at his/her expense all portions of the Common Elements which may be damaged or destroyed by reason of his/her own intentional or negligent act or omission or by the intentional or negligent act or omission of any invitee, lessee, licensee, employee, agent, family member, guest, and/or pet(s) of such Owner;

(c) the obligation of the Association and of the Owners to repair, maintain and replace the portions of the Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Property;

(d) notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Association or by any Owner in performing its or his obligation hereunder; and

(e) except as otherwise provided above in Section 7.1(a), each Owner shall maintain, repair and replace at his/her expense all portions of each Dwelling Unit, Commercial Unit and Structure located on each Lot owned by him/her and all internal and external installations of such Lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the boundaries of or serving the Lot.

7.2. Obligation to Keep Premises in Good Repair. Each Owner during his/her period of ownership and, during his/her tenancy, each Tenant leasing a Lot, shall keep each Lot, Dwelling Unit, Commercial Unit and all Structures thereon owned or leased by him/her in such maintenance, repair and appearance as shall comply with the Maintenance Standards.

7.3. Periodic Inspection. Periodically as needed, the Association may inspect each Lot and the exterior of the Dwelling Unit, Commercial Unit and all Structures thereon to determine whether each complies with the Maintenance Standards. After each such inspection, the Association shall, if any defects are found, issue an inspection report to the Owner with a copy to the Tenant, if applicable, listing such defects, if any, and the reasonable time within which they may be corrected. Such Owner shall correct such defects or cause them to be corrected within such reasonable period as is stated in the inspection report.

7.4. Drainage Swales. Neither the Owner nor anyone claiming under the Owner shall, except in an emergency, alter the location or grade of any open storm water drainage way on any Lot without the prior written consent of the Association.

7.5. Right of Entry. Declarant and the Association, through its authorized officers, employees, and agents, shall have the right to enter upon any Lot and/or Structure at all reasonable times and upon reasonable advance notice for the purpose of making inspections required by this Section without Declarant or the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such entry or such action or actions. Any bona fide utility company, through its authorized officers, employees, and agents, shall have the right to enter upon the Common Elements or upon any utility easements located on any Lots, for the purpose of installing, repairing or servicing any of its equipment, or for reading meters, without Board approval; provided, however, that if any such activities by the utility require alteration to or displacement of any waterscaping, landscaping, grass, sidewalks, fences, garages, or other Structures outside of an easement area, then the prior approval of the Board shall be required.

7.6. Failure to Comply. Failure to comply with the Maintenance Standards or to correct the defects listed in any inspection report issued by the Association or to pay any fee hereunder shall constitute a Default, in which event Declarant or the Board shall have the right to enforce this Section by any proceedings authorized in this Declaration, Bylaws or rules and regulations, if any.

## **ARTICLE 8**

### **COMMON ELEMENTS AND EASEMENTS**

8.1. Description of Common Elements. The Common Elements in the Subdivision shall include, but not be limited to: the Recreational Facilities; Easements; Private Storm Sewer Easements; Retention and Detention Areas, Common Element Lakes, Landscape and Signage Easements; and any other easements for open space, landscaping areas and mounding, water retention/detention basins, Common Element utility easements, storm sewer and surface water drainage easements, water main easements, sanitary sewer easements, preservation areas, and private drainage easements; all as are or may be located, described and shown on the Record Plats (collectively, the "Common Elements"). Declarant and/or Builder may also create other Common Elements not now in existence but that might in the future be added, located and shown on any subsequent Record Plat to be recorded and creating additional Lots to be subjected to this Declaration.

8.2. Rights of Enjoyment in Common Elements. Except as herein otherwise provided, each Owner shall have a right and nonexclusive easement for use and enjoyment of the Common Elements, and such right and easement shall be appurtenant to, and shall pass with the title to his/her Lot. Each Tenant shall have a nontransferable right to use and enjoy the Common Elements, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

(a) The right of the Board, with the approval of sixty-seven percent (67%) of the Class A Members, and the Class B Member, to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Elements and in aid thereof to mortgage the Common Elements.

(b) The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Elements, including regulations limiting guests of Owners and Tenants who may use the Common Elements at any one time.

(c) The right of the Board to suspend the right of any Owner or the privilege of any Occupant to use such of the Common Elements that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Elements for a period not to exceed sixty (60) days for each such infraction, or for nonpayment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such nonpayment or delinquency.

(d) The right of the Declarant or the Association to designate certain Common Elements as Exclusive Common Elements.

(e) Such rights as the Board may have to grant easements or rights of way to any public utility corporation or public agency.

(f) All applicable provisions of valid agreements of the Association relating to the Common Elements.

(g) Such rights as the Board may have under the Declaration to convey or lease all or any part of the Common Elements.

(h) All other easements, restrictions and rights to which the Property is subject.

(i) The right of the Association to grant permits, licenses, and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

8.3. Exclusive Common Elements. Certain portions of the Common Elements may be designated as Exclusive Common Elements and reserved for the exclusive use of Owners and Occupants of Units within a particular Neighborhood or Neighborhoods. All costs associated with operation, maintenance, repair, replacement and insurance of Exclusive Common Elements shall be assessed as a Neighborhood Assessment, as defined herein, against the Owner of Units in only those Neighborhoods to which the Exclusive Common Elements are assigned. By way of illustration and not limitation, Exclusive Common Elements may include recreational facilities or

open space intended for the exclusive use of Owners within a particular Neighborhood or Neighborhoods and supported exclusively by Neighborhood Assessments.

Initially, any Exclusive Common Elements shall be designated as such and the exclusive use thereof shall be assigned in the deed conveying the Common Element to the Association; or on the Record Plat relating to such Common Element, or in a Supplemental Declaration. A portion of the Common Element may be assigned as Exclusive Common Element of a particular Neighborhood or Neighborhoods and Exclusive Common Element may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes within the Neighborhood(s) to which the Exclusive Common Elements are assigned, if applicable, and the Neighborhood(s) to which the Exclusive Common Elements are to be assigned.

8.4. Subordination to Mortgage or Other Lien. The rights and privileges provided in this Section shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Elements.

8.5. Additional Common Elements. Declarant may from time to time, during the Development Period, convey to the Association for nominal or other appropriate consideration and the Association may accept conveyance of any land owned by Declarant along with any Structure, improvement or other facility including related fixtures, equipment and furnishings located thereon.

8.6. Conveyance or Lease of Common Elements. Upon authorization by the Board and the Class B Member, the Association may at any time convey or lease all or a part of the Common Elements to any public agency, authority, or utility or to any private entity, upon such terms and conditions as shall be agreed upon by the other party and Board, including, without limitation, terms and conditions providing for the use of such Common Elements by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Elements and the assessments of Owners and/or Tenants for the costs of such maintenance and repair.

8.7. Use of Common Elements by Declarant and Builder. Declarant and Builder and its affiliates and associates shall have the same rights of use and enjoyment of the Common Elements as the Class A Members during the Development Period, and shall have the right to use the Common Elements for promotional, sales and similar purposes until all of the Dwelling Units and Commercial Units have been sold.

8.8. Easements.

(a) In the event that, by reason of the construction, settlement or shifting of any of the Dwelling Units, Commercial Units or other Structures located on Lots or by reason of the partial or total destruction and rebuilding of the buildings, any part of the Common Elements presently encroach or shall hereafter encroach upon any part of a Lot; or any part of a Dwelling Unit or Commercial Unit presently encroaches on or shall hereafter encroach upon any part of



the Common Elements or any other Lot; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Dwelling Unit and/or Commercial Unit presently encroach or shall hereafter encroach upon any part of any Dwelling Unit, Commercial Unit or Lot, valid easements for the maintenance of each encroachment and for the use of such adjoining space are hereby established. These easements shall exist during the term of this Declaration for the benefit of such Lot, Dwelling Unit or Commercial Unit and the Common Elements, as the case may be. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the willful conduct of said Owner.

(b) The Association may hereafter grant easements for utility purposes, including but not limited to, the right to install, lay, use, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Elements, and each Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge, deliver and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

(c) Declarant hereby reserves easements and the right to grant easements on, over and across certain Lots for open space, landscaping mounding and monument areas and for the installation, maintenance, use, repair and replacement of underground utilities, public utilities, water detention basins, storm sewer, sanitary sewer and surface water drainage easements, water mains, preservation areas and private drainage easements, and building setbacks, specifically as shown on the Record Plats now or hereinafter recorded for the Subdivision, and to cut and grade slopes in and along Lot boundaries at streets and drives built within the Property. The foregoing easements shall not be used for recreations purposes but are reserved for such aesthetic or utility purposes as indicated by the nature of the easement.

(d) A non-exclusive ingress and egress easement hereby created, for the benefit of all Owners of the Property, on, over and across any and all private roadways now or in the future located on the Property, which roadways shall be part of the Common Elements of the Association.

(e) All Lots shall be subject to and benefited by a maintenance easement in favor of the Association, the Declarant, the Builder and the adjoining Lot Owner(s) for the purposes of maintaining, cleaning, repairing, improving, replacing and otherwise dealing with the Unit situated on a Lot ("Maintenance Easement"). Such Maintenance Easement shall encompass the side yard building set back area along all common Lot lines. Said Maintenance Easement shall specifically permit an Owner to temporarily place a ladder or scaffolding within the easement area of the neighboring Lot in order to perform maintenance and repairs on the Owners' Unit.

(f) All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall

inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof. After the Development Period, the Association shall be deemed to be the successor of Declarant and, as such, shall be deemed to be the grantee of said easements provided in this Section, and shall hold such easements for the use, benefit and enjoyment of all Lot Owners in the Subdivision. All notes on the Record Plat that are pertinent to the specific easements set forth herein are incorporated herein by reference.

8.9. Landscape and Signage Easement. A non-exclusive and irrevocable easement is hereby created, for the benefit of the Association or its designees, on, over and across those Lots identified on any Record Plat as "Landscape and Signage Easement", for the sole purpose of installing, maintaining and replacing any and all landscaping, monuments, and signage located on the Landscape Easement Areas and Signage Easement Areas.

8.10. Shoreline Easement. A non-exclusive and irrevocable easement is hereby created, for the benefit of the Association or its designees, on, over and across a portion of certain Lots which are subject to the Shoreline Easement as shown on any Record Plat, for the sole purpose of maintaining the shoreline area and the Common Element. No Owner shall be permitted to construct any improvements within the Shoreline Easement Area

8.11. Common Private Driveway Easements. The Lots sharing a Common Private Driveway Easement shall be subject to and benefited by a perpetual non-exclusive easement for ingress and egress, drainage, water, sewer, electric and all utility services over the Common Private Driveway. The Owners of such Lots shall use the Common Private Driveway situated on the easements with due regard for the rights of any other Owner and its use of such driveway and utility lines. No Owner shall use or permit the use of the driveway in a manner which impairs the right of way of any other Owner to its use, nor shall any Owner park or store vehicles or personal property on, or obstruct or encroach upon, or permit the use of, or permit the obstruction of or encroachment upon, the Common Private Driveway in any manner whatsoever without the concurrence of all Owners entitled to use the Common Private Driveway.

The Owners using the Common Private Driveway shall from time to time elect one of the respective Owners to act as an agent for the group ("Agent") to provide for the property maintenance and repair of said Common Private Driveway and embankment and when necessary, restore said Common Private Driveway and embankment to its original condition as constructed, and including snow removal, weed and grass cutting. Said Agent shall assess all of said costs equally against said Lot Owners using the Common Private Driveway, who shall pay such charges to the Agent within thirty (30) days after billing. Any unpaid assessments shall become a lien against any such Lot in default upon certification by the Agent to the Boone County, Kentucky Clerk. Such certification shall contain a description of the Property, the name or names of the Owner, and the amount of the delinquent assessment. Said lien shall remain valid for a period of five (5) years and may be foreclosed by the Agent on behalf of the Lot Owners. The obligation of an Owner of a Common Private Driveway to share in the cost and

expense of maintaining a Common Private Driveway, is separate and distinct from the obligation of such Owner to pay the Assessments levied pursuant to Article 4 above.

8.12. Conservation Easement. A non exclusive and irrevocable easement is hereby created, for the benefit of the Declarant, the Association or its designees, on, over and across certain Lots and areas of the Property depicted on the Record Plat or recorded easement plats as "Conservation Easements" for the continual and perpetual conservation of streams and waterways located in the Conservation Easement areas. The purpose of the Conservation Easement is for the mitigation monitoring of all streams and waterways located in the Conservation Easement areas. No improvements of any kind may be built by any Owner in such easement areas. Vegetation established as part of the stream mitigation shall be maintained in its natural state by all Owners and the Association. No Owner or the Association shall allow any use of the land within the Conservation Easement areas that will impair or interfere with the preservation of the Conservation Easement areas in their condition following completion of construction mitigation. Such Conservation Easement Areas may be subject to additional recorded restrictions.

8.13. Easements to Other Residents. Declarant may designate that certain owners of real property outside of the Property and such other persons as Declarant may designate, shall have an easement of enjoyment in and over the Common Elements or specific Common Elements, and the facilities located thereon, to the same extent as any Owner, subject to the provisions of Section 8.2. Such individuals shall be subject to the Rules and Regulations of the Association concerning the use of said Common Elements, but shall not be subject to Assessments by the Association. The Association may, if appropriate, and at the sole discretion of the Board of Directors, charge a fee to such individuals for the use of such Common Elements, including the Recreational Facilities.

## **ARTICLE 9** **NEIGHBORHOODS**

Every Unit shall be located within a Neighborhood as defined in Article 1. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of another owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium or otherwise as required by law.

9.1. The Declarant hereby establishes Neighborhood "A" consisting of all the building lots recorded in the Ballyshannon Subdivision, Section 1, Phase 1, numbered Lots 1-14, 68-78, 160, Open Space Parcel 'A' and Open Space Parcel 'B', inclusive.

9.2. At such times as Declarant annexes portions of the Additional Property to this Declaration, Declarant shall specify in the Supplemental Declaration annexing such Additional Property the respective Neighborhood designation for each building Lot annexed. During the Development Period, Declarant reserve the right to add and/or establish additional

Neighborhoods as Declarant so requires in the marketing of the Property during the Development Period. Declarant further reserves the right to add, subtract or otherwise reclassify Lots and/or Neighborhoods provided such revisions are made by Supplemental Declaration during the Development Period.

9.3. Units or Lots within specific Neighborhoods may be subject to additional covenants, rules and regulations established by Declarant at such time as such Units or Lots are annexed to the Property. Such covenants, rules and regulations may require the Association to provide for higher levels of service and special services for the benefit of Units in such Neighborhood. In such event, the Association shall provide such services and the costs of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Section 4.4 hereof.

9.4. Each Neighborhood, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood. In such event, the Association shall provide such services and the costs of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Section 4.4 hereof. During the Development Period, such higher levels of service or special services shall only be provided if approved by Declarant.

## **ARTICLE 10**

### **MAINTENANCE**

10.1. Association's Responsibility. The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded as hereinafter provided. The Areas of Common Responsibility shall include, but need not be limited to entry, landscaping and signage easements; water retention/detention basins; Common Element Lakes, including the shorelines; Common Element utility easements, storm sewer and surface water drainage easements; preservation areas; all landscaping and other flora, structures, and improvements, including any private streets, situated upon the Common Elements; landscaped medians within public right-of-way throughout the Property; the hiker-biker pathway (walkway) located within both Open Space lots and public right-of-way throughout the Property; the Recreational Facilities; and such portions of any Additional Property included within the Areas of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or by a contract or agreement for maintenance thereof by the Association. The Association may maintain other property which it does not own or share in the maintenance of Property it does not own, including, without limitation, property dedicated to the public or property owned by another homeowners' association, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(a) There are hereby reserved to the Association blanket easements over the Property as necessary to enable the Association to fulfill responsibilities under this Section.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Areas of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, subject to the right of the Association to seek reimbursement from the Owner(s) of, or other persons responsible for, certain portions of the Areas of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the Owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Elements shall be a Neighborhood Expense assessed as Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Elements are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(c) The Association shall also be responsible for maintenance, repair and replacement of property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those that may be designated by any Supplemental Declaration. This assumption of responsibility may take place either where, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

10.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all Structures, and other improvements comprising the Unit. Owners of Units adjacent to any roadway within the Property shall maintain driveways serving their respective Units, whether or not lying within the Unit boundaries, and shall maintain landscaping on that portion of the Common Element, if any, or right-of-way between the Unit boundary and the back-of-curb of the adjacent street.

All maintenance required by this Section 10.2 shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood pursuant to any additional declaration of covenants applicable to such Unit. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may enter such Owner's property and perform the required maintenance. The costs and expense of such maintenance shall be charged to the Owner thereof as an Individual Assessment in accordance with Section 4.6; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

10.3. Neighborhood Responsibility. Upon resolution of the Board of Directors, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Areas of Common

Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any right-of-way and green space between the Neighborhood and adjacent public roads, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

10.4. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on sixty (60) days or less written notice.

## **ARTICLE 11**

### **COVENANT FOR STAGED DEVELOPMENT**

11.1. Staged Development. Declarant reserves the right at any time within the Development Period to remove any portions of the Property, annexed to the Property by Declarant, from the scope of the Declaration or to make subject to or annex any portion of the Additional Property to the Declaration without the consent of the Members of the Association. However, Declarant is not bound to annex any of the Additional Property to this Declaration, and until such time as any of the Additional Property is annexed, the same shall not be subject to the provisions of this Declaration.

11.2. Total Dwelling Units and Commercial Units. The total number of Dwelling Units, Commercial Units or Lots for the Property and the Additional Property shall not exceed the total number of Dwelling Units, Commercial Units and Lots authorized by the zoning authority having jurisdiction over the development of the Property.

11.3. Supplemental Declaration for Staged Development. Any annexations made pursuant to this Article 11, or otherwise, shall be made by recording a supplement to this Declaration with the Boone County, Kentucky Clerk's Office, which supplementary Declaration shall extend this Declaration to such annexed property. The supplementary Declaration may either waive some of the existing covenants, conditions and restrictions or contain additional covenants, conditions, restrictions, easements and liens with respect to that Additional Property being annexed therein as either Declarant shall deem appropriate for the purpose of completing the development of the Property. Owners of Lots subject to such supplemental Declaration shall be Owners as defined by this Declaration.

## **ARTICLE 12**

### **ENFORCEMENT**

12.1. Curing Defaults; Lien. In the event of any Default with respect to any Lot under this Declaration, the Board shall give written notice to the Owner thereof, with a copy of such notice to each Tenant in Default and a copy to any first mortgagee of the Lot who has requested

to receive such notices, setting forth with reasonable particularity the nature of such Default, and the specific action or actions required to remedy the Default. If the Owner or Tenant shall fail to take the specific action or actions within thirty (30) days after the mailing of the notice, the Board may, but shall not be required to exercise any or all of its rights hereunder. The Board may exercise without notice any of its rights hereunder with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot shall be a binding personal obligation of the Owner thereof which shall be payable on demand. If the Owner fails to pay such costs within thirty (30) days after demand, the Association shall enter the amount of the obligation, the name of the Owner as it appears on its records and the description of the Lot in a lien record book to be maintained by the Board at its main office, together with the date of such entry. The Association shall have a prior lien on such Lot for such amount until paid and such lien shall have priority from the date of such entry over all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments, liens of record as of the date of such entry and liens of the United States of America, the Commonwealth of Kentucky, and all other political subdivisions or governmental instrumentalities of the Commonwealth of Kentucky to the extent made superior by applicable law, all bona fide recorded first mortgages and the lien of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The lien provided in this Section shall be recordable and shall be enforceable as provided in Article 4 hereof.

12.2. Remedies. Nothing contained in this Article 12 shall be deemed to affect or limit the rights of Declarant, Builder, the Association, any Owner, Occupant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the restrictions, or recover damages for any Default. It is hereby declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.

12.3. Right and Easement of Entry. The Association, through its authorized officers, employees, and agents, shall have the right and easement to enter upon any Lot at all reasonable times and to do anything thereon necessary to perform the action or actions specified in the notice to the Owner to abate, remedy, extinguish, remove or repair a Default, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of each entry or such action or actions as are carried out in accordance with the provisions of this Article 12, provided that no summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.

12.4. No Waiver. The failure of Declarant, Builder, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to insist upon compliance with any of the Restrictions, or to exercise any right or

privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right or privilege, including the right to cure Default, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

12.5. Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations regarding the administration, interpretation and enforcement of the Restrictions (the "Rules and Regulations"). Each such rule and regulation shall be consistent with and designed to further the purposes outlined in this Declaration.

### **ARTICLE 13**

#### **REAL ESTATE TAXES AND ASSESSMENTS**

13.1. Real Estate Taxes. The Owner of a Lot shall be responsible for and shall pay all taxes and assessments, general and special, levied or imposed upon the Lot and its improvements.

13.2. Common Elements. Taxes and assessments, general and special, charged against the Common Elements which are owned in fee simple by the Association shall be deemed a Common Expense. Assessments, charged against the Subdivision shall be paid by the Owners as set forth in Article 4 hereof.

### **ARTICLE 14**

#### **INSURANCE**

14.1. Fire, Extended Coverage and Standard "All Risks" Insurance. The Association shall insure all buildings which are part of the Recreational Facilities and any other Common Elements, and may maintain insurance for all other structures and improvements now or hereinafter constructed on the Common Elements against any loss or damage by such hazards as are ordinarily insured by a comprehensive, extended coverage and "all-risks" policies issued in the amounts at all times sufficient to prevent the Association from becoming co-insurers under the terms of any applicable coinsurance clause or provision and in no event less than the actual replacement cost of such improvements, as determined from time to time by the insurer.

Any such insurance shall be obtained from a fire and casualty insurance company authorized to write such insurance in the Commonwealth of Kentucky which has a general policy holder rating of no less than A, as determined by the then latest edition of the Best's Insurance Reports or its successor guide, and shall be written in the name of the Association for the use and benefit of the Lot Owners and their mortgagees as their interests may appear. The Board of Directors and/or its authorized representatives shall have the exclusive right to negotiate and adjust all loss claims. Unless the Board of Directors determines otherwise, all such insurance shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers or Directors, and all Lot Owners and occupants.



14.2. Use of Fire Insurance Proceeds. Unless at least sixty-seven percent (67%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Declarant or Builder) of the individual lots have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement, improvement, or reconstruction of such Common Elements.

14.3. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all Common Elements, and other areas for which the Association is responsible, and insuring the Association, the Directors, and the Lot Owners and members of their respective families, tenants and occupants, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injury and/or property. This insurance shall include protection against liability for risks arising out of the maintenance of the Areas of Common Responsibility and such other risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim for a Lot Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Lot Owners, tenants, or occupants.

14.4. Other Insurance. In addition, the Board may purchase and maintain contractual liability insurance, directors' and officers' liability insurance, and such other insurance as the Board may deem desirable from time to time.

14.5. Insufficient Insurance. In the event the improvements forming a part of the Common Elements or any other area for which the Association is responsible, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots, and such Assessments shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the non-payment of Assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

14.6. Fidelity Bonds. The Board may obtain as a Common Expense to the Association fidelity bond coverage with respect to any person who either handles or is responsible for funds held or administered by the Association, in an amount no less than the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force; provided, however, the fidelity bond coverage must at least equal the sum of three months' Assessments on all Units on the Property, plus the Association's reserve funds. A management agent handling funds for the Association shall also be covered by its own fidelity bond, naming the Association as an additional obligee, at the sole cost of said agent.

**ARTICLE 15**  
**DURATION, AMENDMENT AND TERMINATION**

15.1. Duration. The Restrictions shall be covenants running with the land and shall bind the Property and every part thereof, and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by, the Board and each Owner and Tenant and their legal representatives, heirs, devisees, successors and assigns, and shall continue in full force and effect for thirty (30) years from the date on which this Declaration is recorded in the Boone County, Kentucky Clerk's Office. Thereafter the Restrictions shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article 15.

15.2. Amendment or Termination. Prior to the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by Declarant and approved by the Owners of at least sixty-seven percent (67%) of all Lots located in the Property. After the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by the Owners of at least sixty-seven percent (67%) of all Lots located in the Property.

The President of the Board shall determine whether the persons who have approved of any amendments or termination of this Declaration constitute Owners of at least sixty-seven percent (67%) of all Lots. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded the written instrument of amendment or termination executed in properly recordable form by the President of the Association and Declarant, if during the Development Period, and the certificate of the President of the Association that the Owners of at least sixty-seven percent (67%) of all Lots have approved such instrument.

The Board shall maintain such copies filed with it by the President as a permanent record and shall make copies thereof available to any Owner at a reasonable cost.

Notwithstanding anything above to the contrary, this Declaration may be amended at any time during the Development Period without the vote of Owners by a written instrument executed by Declarant for any purpose or reason whatsoever; provided, however, that no such amendment shall materially affect any Owner's interest in the Association or right, if any, to use the Common Elements. Each Owner and his or her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate the provisions of this paragraph.

**ARTICLE 16**  
**MISCELLANEOUS**

16.1. No Reverter. No covenant, condition, restriction or reservation or easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

16.2. Notices. Any notice required or permitted to be given to an Owner or Tenant by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to his or her last address as it appears on the records of the Association.

16.3. Construction. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

16.4. Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

16.5. Headings. The headings of the Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

16.6. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

16.7. Conflict. If there are conflicts or inconsistencies between the provisions of the laws of the Commonwealth of Kentucky, the Articles of Incorporation, this Declaration, the Bylaws, Architectural Guidelines and the Rules and Regulations, it shall be agreed that the provisions of the laws of the Commonwealth of Kentucky, this Declaration, the Articles of Incorporation, the Bylaws, the Architectural Guidelines and the Rules and Regulations (in that order) shall prevail.

16.8. Covenants Running with Land. This Declaration and all amendments hereto shall be, and shall be construed as, covenants running with the land, shall be binding upon Declarant, Builder, any mortgagee, the Association, its Members, each Owner, each Occupant and all claiming under each Owner or Occupant, and shall (regardless of whether or not any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by: (i) Declarant; (ii) Builder; (iii) the Association; and (iv) each Owner and all claiming under each Owner.

16.9. Availability of Documents. The Association shall make available to Members, Owners, and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies

of the Declaration, rules and regulations, if any, and other rules concerning the Property. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Association may charge a reasonable fee to cover the cost of the copies.

16.10. Right of Entry. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Property.

16.11. Condemnation. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Owner and the holder of the first mortgage, to the extent of their respective interests. Each Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

In the event the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

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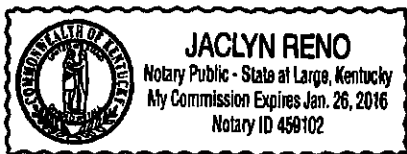
IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Ballyshannon to be executed by its duly authorized officer as of the day and year first above written.

LONGBRANCH DEVELOPMENT, INC.,  
a Kentucky corporation

By: Todd E. Huss  
Todd E. Huss, Vice President

COMMONWEALTH OF KENTUCKY     )  
  :SS:  
COUNTY OF BOONE                     )

The foregoing instrument was acknowledged before me on this 13<sup>th</sup> day of March, 2014, by Todd E. Huss, as Vice President of LONGBRANCH DEVELOPMENT, INC., a Kentucky corporation, on behalf of the corporation.



Jaclyn Reno  
Notary Public

This instrument prepared by:

Joseph L. Trauth, Jr. / Jody T. Klekamp, Esq.  
Joseph L. Trauth, Jr., Esq./Jody T. Klekamp, Esq.  
KEATING MUETHING & KLEKAMP PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, Ohio 45202  
513-579-6954

## CONSENT AND ACKNOWLEDGMENT

The undersigned, Fischer Single Family Homes III, Ltd., a Kentucky limited partnership ("Fischer Homes"), as fee owner of Lots 71, 76, and 78 of Ballyshannon, Section 1, Phase 1, as further described on the attached **Exhibit A** hereby consents to the execution and delivery of the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Ballyshannon (the "Declaration") and Bylaws of Ballyshannon Community Association, Inc. (the "Bylaws"), and to the filing thereof in the Boone County, Kentucky Clerk's Office. Prior to the recording of the Declaration and Bylaws, fee simple title to the lots was transferred to Fischer Homes. Therefore, Fischer Homes hereby agrees that the covenants, restrictions and conditions contained in the Declaration and Bylaws shall run with the land and bind Fischer Homes and each immediate and remote successor owner of the lots owned by Fischer Homes and its respective legal heirs and assigns.

IN WITNESS WHEREOF, Fischer Single Family Homes III, Ltd., a Kentucky limited partnership, has caused the execution of the Consent and Acknowledgement as of the 13<sup>th</sup> day of March, 2014.

FISCHER SINGLE FAMILY HOMES III, LTD.

a Kentucky limited partnership

By: FSFH III, LLC

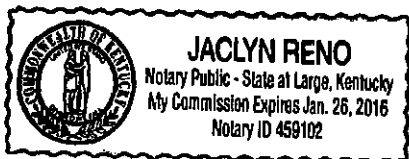
a Kentucky limited liability company

Its: General Partner

By: CF  
Name: Greg Fischer  
Title: EVP

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF BOONE )

The foregoing instrument was signed, acknowledged, subscribed and sworn to me before me this 13<sup>th</sup> day of March, 2014, by Fischer Single Family Homes III, Ltd., a Kentucky limited partnership, by its General Partner, FSFH III, LLC, by and through Greg Fischer, its Exec Vice President, duly authorized by resolution of its Board of Directors.



Jacklyn Rens  
Notary Public

## **EXHIBIT A**

### **THE PROPERTY**

Situated in Boone County, Kentucky and known as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 160, Open Space Parcel 'A' and Open Space Parcel 'B' of Ballyshannon Subdivision, Section 1, Phase 1, as recorded on the subdivision plat therefor recorded in Plat Cabinet 5, Slide 718 of the Boone County Clerk's Office at Burlington, Kentucky.

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**BALLYSHANNON COMMUNITY ASSOCIATION, INC.**

**ARTICLE 1.**  
**NAME AND LOCATION**

The name of the corporation is Ballyshannon Community Association, Inc., hereinafter referred to as the Association. The principal office of the Association shall be located at 3940 Olympic Boulevard, Suite 100, Erlanger, Kentucky 41018, but meetings of Members of the Association and Board of Directors may be held at such places within the Commonwealth of Kentucky as may be designated by the Board of Directors.

**ARTICLE 2.**  
**DEFINITIONS**

Each of the terms used herein shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Ballyshannon ("Declaration") made by Longbranch Development, Inc., a Kentucky corporation ("Declarant") dated March 13, 2014, and of record at the Boone County, Kentucky Clerk's Office. The Declaration may be, from time to time, amended or supplemented.

**ARTICLE 3.**  
**MEETING OF MEMBERS**

**Section 3.1** **Annual Meetings.** The first Annual Meeting of the Members shall be held within two (2) years from the date of incorporation of the Association, on such date as the initial Board shall determine. Each subsequent Annual Meeting of the Members shall be held in the Commonwealth of Kentucky, upon proper notice, at a date, time and place as may be reasonably set by the Board of Directors (hereinafter referred to as "Board" or "Director"). If the day for the Annual Meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. Each Annual Meeting shall be open to all Members.

**Section 3.2** **Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board. Special meetings shall be called by the President upon written request, delivered to the President in person or by certified mail, of Members having at least one-third (1/3) of the voting power of all Members. Upon receipt of this request, the President shall immediately cause written notice to be given of the special meeting to be held on a date not less than ten (10) nor more than thirty-five (35) days after receipt of this request. If written notice is not given to the Members within ten (10) days after the delivery of the request, the Members making the request may call the special meeting and give written notice of it.



Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days, but no more than thirty-five (35) days before such meeting to each Member entitled to vote thereat. The notice shall be addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the date, time and place of the meeting, and, in the case of a special meeting, the purpose of the meeting. Notice of the date, time and place, and purpose(s) of any meeting of Members may be waived by any Member, before or after the meeting, by a writing filed with the records of the Association. The attendance of any Member at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice, shall be deemed a waiver by the Member of notice of the meeting.

Section 3.4 Quorum; Adjournment. Except as may be otherwise provided by law, the Articles of Incorporation, the Bylaws or this Declaration, there shall be a quorum at any meeting of Members where Members who hold at least five percent (5%) of the total voting power of Members in good standing are present, in person or by proxy. For a vote on any matter to be valid, the quorum requirement must be met at the time of completion of that vote. If such quorum shall not be present or represented at any meeting, a majority of the Members entitled to vote thereat, shall have power to adjourn that meeting to a day which is not more than one (1) week from the day the original meeting was called. Notice of the adjournment may not be given if the time and place to which the meeting is adjourned are fixed and announced at the original meeting. When the meeting reconvenes, the quorum requirement shall be lowered to two percent (2%) of the total voting power of the Members in good standing which must be present, in person or by proxy.

Section 3.5 Proxies. At all meetings of Members, each Member may vote in person or by proxy. The person designated a proxy need not be a Lot Owner. All proxies shall be in writing and filed with the Secretary at least one (1) hour prior to the meeting, except that the Board may waive this time requirement for a particular meeting if the waiver would not delay the meeting and would otherwise be fair and reasonable. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his/her Lot, except as otherwise provided in the Declaration or the Articles of Incorporation, about the proxy given to the Declarant. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering a Lot, the presentation to the Board of Directors of a copy of the mortgage containing the proxy designation shall be notice of that designation, and, if the mortgage so states, of the irrevocability of that designation. A proxy shall be void if it is not dated or purported to be revocable without notice.

Section 3.6 Voting by Mail by Association Members. Any Association Member may cast his/her written vote by mail on any proposal voted upon at any meeting of the Members of the Association by sending such written vote to the Secretary of the Association for receipt of the Association within the period of twenty-four (24) hours before the date of the meeting. Such written votes shall be filed with the records of the Association and, in no event, shall any action be taken or approved by the Association with the approval of any less than the percentage of voting power required by the provisions of the Declaration or without the consent of any party

that is required by any of said provisions. Members who have voted by mail shall not be counted in determining whether the quorum has been met at a meeting of the Members.

Section 3.7 Members. Every Lot Owner shall be a Member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of any Lot. During the Development Period (as defined in the Declaration), the Association shall have Class A Members (being all Owners except Declarant) and a Class B Member (Declarant). At such time as the Class B Membership shall terminate, the Declarant, if it is then a Lot Owner, shall become a Class A Member and continue as such so long as it shall remain a Lot Owner. Class B Membership shall terminate upon the expiration of the Development Period.

Section 3.8 Voting. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Class A Member; provided that any Class A Member with respect to whom a notice of Default has been issued by the Board pursuant to the Declaration, or who has had his/her right or privilege of use and enjoyment of the Common Elements suspended pursuant to the Declaration, shall not be entitled to vote during any period in which any such Default or suspension continues; and further provided that if a Lot shall be owned by more than one (1) Lot Owner, such Lots Owners shall be deemed to constitute a single Class A Member as to such Lot for purposes of this Section. The Class B Member shall have seven (7) votes for each Lot in which the Declarant holds the interest otherwise required for Class A Membership multiplied by the number of Dwelling Units located or proposed by the Declarant to be located on such Lot, provided, however, that each Class B Membership shall terminate upon the expiration of the Development Period. At such time as Class B Membership shall terminate, the Declarant which, for any Lot, holds an interest therein otherwise required for Class A Membership, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member.

Unless otherwise expressly set forth by law, the Declaration, the Articles of Incorporation or these Bylaws, the affirmative vote of fifty-one percent (51%) of the voting power of the Members voting on any matter at a meeting of Members shall be sufficient to determine that matter, provided that any quorum requirement is met at the time of completion of that vote.

Section 3.9 Order of Business. The order of business at all meetings of Members shall be as follows: (1) calling of meeting to order; (2) roll call, determination of whether there is a quorum; (3) proof of notice of meeting or waiver of notice; (4) reading of minutes of preceding meeting; (5) reports of Officers; (6) reports of committees; (7) election of the Board of Directors (when appropriate); (8) unfinished and/or old business; (9) new business; and (10) adjournment.

Section 3.10 Action by Association Members Without a Meeting. Any action which may be authorized or taken at a meeting of the Members may be authorized or taken without a meeting in a writing or writings signed by all Members in good standing which writing or writings shall be filed with the records of the Association. Written notice of any action proposed to be taken by such written consent of Members shall be sent to all parties who are entitled to notices under the Declaration not less than ten (10) days prior to commencing the circulation of the action for written consent among the Members.

**ARTICLE 4.**  
**BOARD OF DIRECTORS-SECTION-TERM OF OFFICE**

**Section 4.1** **Number and Term of Office.** Until the fifth Annual Meeting, the initial Board shall consist of three (3) persons appointed by the Class B Member who shall serve until either the Class B Member replaces him/her with a different person or their respective successors are elected and qualified as provided below. Directors appointed by the Declarant need not be Members of the Association. However, a Director elected by Class A Members shall be a Lot Owner or a spouse of a Lot Owner, except that if a Lot Owner is a corporation, partnership, joint venturer, or other entity, the Lot Owner may elect as a Director an officer, partner, joint venturer, or like individual affiliated with this Lot Owner.

At the fifth Annual Meeting, the Board of Directors shall expand from three (3) to five (5) Directors. At such meeting, the Class B Member shall appoint three (3) Directors for a two (2) year term. Thereafter, at each bi-annual meeting the Class B Member, until the Development Period Special Meeting (as hereinafter defined), shall appoint three (3) Directors for a two (2) year term.

At the fifth Annual Meeting, the Class A Members shall elect two (2) Directors. One of the Directors shall be elected for a two (2) year term and one (1) of the Directors shall be elected for a one (1) year term. At the expiration of the terms of such Directors, until such time as the Declarant shall transfer control of the Board to the Class A Members, the Class A Members shall, at the respective Annual Meeting, elect successor Directors for a two (2) year term.

Within ninety (90) days after the expiration of the Development Period, the President of the Association shall call a special membership meeting ("Development Period Special Meeting"). At the Development Period Special Meeting, all Declarant appointed Directors shall be deemed removed from office, and the Class A Members, including the Declarant if it is then an Owner, shall elect a Director to fill each vacancy on the Board. The terms of said elected Directors shall be from one (1) to two (2) years, so that in any one (1) year thereafter, the terms of no more than three (3) nor less than two (2) Directors shall expire. The three (3) Directors with the most votes shall be the Directors who shall serve the three-year term. Additionally, after the Development Period Special Meeting, all Directors, and their successors, shall be elected by Class A Members and shall be elected for a two (2) year term.

Notwithstanding anything above to the contrary, the Class B Member may, by written notice to the Board, at or before any Annual Meeting, relinquish to the Class A Members, the Class B Member's right to elect one or more Directors at such Annual Meeting pursuant to this Section.

**Section 4.2** **Resignation; Removal, Vacancies.** A Director may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

A Director appointed by Declarant may be removed by Declarant at any time, with or without cause. An elected Director whose removal has been proposed by a Lot Owner shall be

given an opportunity to speak at an annual or special meeting of the Members, after which that Director may be removed, with or without cause, by a majority vote of the Members voting at a meeting of the Members.

If a vacancy is created because of resignation, removal, or death, a successor shall be appointed or elected to serve for the unexpired term of the departed Director. Declarant shall appoint a successor for any appointed Director, and the Members shall elect a successor for any elected Director using the procedure set forth in Section 4.1 above, at any Annual Meeting of the Members or at any special meeting of the Members called for the purpose of filling this vacancy.

Section 4.3 Compensation. No Director shall receive compensation for any service he or she may render to the Association, however, any Director shall be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## **ARTICLE 5.**

### **NOMINATION AND ELECTION OF DIRECTORS**

Section 5.1 Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the Annual Meeting of the Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board at least thirty (30) days prior to each Annual Meeting of the Members, to serve from the close of such Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among Members or non-members. Notwithstanding the foregoing, as long as Declarant has the right to appoint all Directors, Declarant also has the right to nominate all Directors.

Section 5.2 Election. Elections to the Board shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE 6.**

### **MEETINGS OF DIRECTORS**

Section 6.1 Annual Organizational Board Meeting. The Annual Organizational Board Meeting shall take place immediately after each Annual Meeting of the Members, at the time and place fixed from time to time by the Board.

Section 6.2 Regular Meeting. Unless waived by the Board regular meetings of the Board shall be held no less than quarterly, on the date and at the time and place fixed from time to time by the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.3 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by a majority of Directors.

Section 6.4 Notice of Meetings; Attendance by Members. Notice of the date, time, and place of organizational, regular, and special meetings of the Board shall be given to each Director by personal delivery, mail, electronic mail, facsimile, telegram or telephone at least three (3) days before the meeting. The notice need not specify the purposes(s) of the any meeting. Notice of the date, time and place of any meeting may be waived by a Director, before or after the meeting, by a writing filed with or entered upon the records of the meeting. Attendance of a Director at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice shall be deemed a waiver by the Director of notice of the meeting.

No notice need be given to non-Director Members of organizational, regular, or special meetings of the Board, however, a non-Director Member may attend any organizational, regular, or special meeting of the Board, but may not participate in any such meeting unless given permission to do so by the President or other officer of the Association who is presiding at the meeting. A non-Director Member may not vote at a meeting of the Board.

Section 6.5 Waiver of Notice. Any requirement of notice to a Director provided under this Article 6 may be waived by the Director entitled thereto by written waiver of such notice signed by the Director and filed with the Secretary of the Association. Attendance at a meeting is considered waiver of notice.

Section 6.6 Quorum; Adjournment. A simple majority of the Directors then in office shall constitute a quorum for any meeting, provided that the quorum requirement must be met at the time of completion of a vote on any matter for that vote to be valid. Whether or not a quorum is present, a majority of the Directors present at a meeting may adjourn that meeting. Notice of the adjournment need not be given if the time and place to which the meeting is adjourned are fixed and announced at the meeting.

Section 6.7 Voting Power. At any meeting of the Directors at which a quorum is present, all matters shall be determined by a majority vote of those voting on the matter, except as may be otherwise expressly provided in the Declaration and these Bylaws. The President may cast an additional vote to break a tie vote on any matter.

Section 6.8 Action Taken Without a Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting in a writing or writings signed by all the Directors, which writing(s) shall be filed with the records of the Board. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

## **ARTICLE 7.**

### **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 7.1 Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Declaration, that are not specifically and exclusively reserved to the

Members by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

(a) Adopt and publish Rules and Regulations (as hereinafter defined) governing the use of the Common Elements and the personal conduct of the Members, occupants and their guests thereon, and to establish penalties for the infraction thereof;

(b) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(c) Obtain insurance coverage not less than that required pursuant to the Declaration;

(d) Enforce the covenants, conditions and restrictions set forth in the Declaration;

(e) Repair, maintain, and improve the Common Elements;

(f) With the approval of sixty-seven percent (67%) of the Class A Members, and the Class B Member, to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Elements and in aid thereof to mortgage the Common Elements;

(g) Execute any loan agreement and/or promissory note for the benefit of Declarant, Developer (as defined in the Declaration) and/or Affiliated Entity (as defined in the Declaration), as the case may be, the form of which shall comply with the terms and conditions set forth in Exhibit C attached to the Declaration, which shall evidence any loan of funds made to the Association to fund a deficit;

(h) Authorize the repayment to the Declarant, Developer and/or Affiliated Entity, as the case may be, of any any and all monies lent by such entity to the Association in accordance with Section 4.9 of the Declaration in funding any deficit;

(i) Suspend the voting rights of a Member during any period in which such Member shall be in Default in the payment of any Assessment levied by the Association, as more fully provided in the Declaration;

(j) Employ a manager, an independent contractor and/or such other employees as it deems necessary, and to prescribe their duties; and

(k) Exercise for the Association all powers, duties and authority vested in or delegated to the Association by provisions of these Bylaws, the Articles of Incorporation, or the Declaration not specifically reserved thereby to others, including any powers necessary or convenient to carry out its duties and authority. The powers of the Board shall be construed to be as broad as possible.

Section 7.2   Duties. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the Annual Meeting of the Members, or at any special meeting when such statement is requested in writing by Members representing thirty percent (30%) of each class of Members who are entitled to vote;
- (b) Supervise all Officers, agents and employees of the Association, and to see that their duties are properly performed, with the Board having full power to hire and fire;
- (c) As more fully provided in the Declaration, to:
  - (i) Establish, enforce, levy and collect Assessments as provided in the Declaration;
  - (ii) Give written notice of each Assessment to every Member subject thereto within the time limits set forth therein;
  - (iii) Foreclose the lien against any property for which Assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Member(s) personally obligated to pay the same, or both;
  - (iv) Pay the Association's Common Expenses through the Assessments and/or the borrowing of funds as provided in the Declaration;
- (d) Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) Procure and maintain insurance as provided in the Declaration, and as the Board deems advisable;
- (f) Cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;
- (g) Cause the restrictions created by the Declaration to be enforced; and
- (h) Take all actions deemed necessary or desirable to comply with all requirements of law and the Declaration.

Section 7.3   Professional Management Contracts. The Association may delegate all or any portion of its authority, subject to the Board of Directors supervision, to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on sixty (60) days or less written notice.

Section 7.4 Rules and Regulations. The Board may adopt and amend rules and regulations (hereinafter, "Rules and Regulations") for the maintenance, use, conservation, and beautification of the Property and for the health, comfort, safety, and general welfare of Members and their families, tenants, and invitees. The Board, or any committee created by the Board, may impose fines on a Member who violates, or whose family members, tenants or invitees violate the Rules and Regulations. The Board may establish a schedule of fines for particular violations of the Rules and Regulations to be paid by any Member who violates such Rules and Regulations. Any fines assessed by the Board shall be due and payable on the date the next installment of any Assessment is due. In the event that a Member shall fail to pay when due any fines assessed by the Board under this Section, then the amount of the assessed fines, in addition to any and all expenses incurred by the Board in enforcing this Section, including reasonable attorneys' fees to the extent permitted by Kentucky law, may be levied as a Special Assessment against the Lot Owner in question and his or her Lot. The levying of a fine against a defaulting or delinquent Member shall not operate as a waiver of any other rights that the Board may have against such Member pursuant to the Declaration or these Bylaws. In the event such Rules and Regulations shall conflict with any provisions of the Declaration or these Bylaws, the provisions of the Declaration and of these Bylaws shall govern.

Section 7.5 Annual Review. The Board may arrange annually for a certified public accountant to review the Association's books. Upon written request, the Board shall provide a first mortgagee with a copy of any annual review report.

## **ARTICLE 8.** **OFFICERS AND THEIR DUTIES**

Section 8.1 Enumeration of Officers. The Association may have a President, Vice-President, Secretary and Treasurer. The Board may create other offices from time to time. The President, Vice-President, Secretary and Treasurer shall be Members, or representatives of the Declarant.

Section 8.2 Election of Officers. Prior to the Development Period Special Meeting, the Officers of the Association will be elected by the Board of Directors at the Annual Organizational Board Meetings. Thereafter, the Officers of the Association will be elected by the Board of Directors promptly after the Development Period Special Meeting and at each Annual Organizational Board Meeting and the persons so elected shall take office immediately upon election.

Section 8.3 Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year and until a successor is elected, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

Section 8.4 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.5 Resignation and Removal. The Board may remove any Officer at any time, with or without cause, by a majority vote of the Directors. Any Officer may resign at any



time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6 Vacancies. A vacancy in any office may be filled by appointment of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

Section 8.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall hold more than two (2) offices simultaneously. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4 above, or except by resolution of seventy-five (75%) percent of the Board of Directors. No Officer shall execute an instrument in more than one capacity if the signatures of two or more Officers are required by law, the Articles of Incorporation, the Declaration or these Bylaws.

Section 8.8 Duties. The duties of the Officers are as follows:

(a) President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and all meetings of the Board and shall see that orders and resolutions of the Board are carried out. The President may sign all legal instruments authorized by and on behalf of the Association.

(b) Vice-President. The Vice-President shall act in the place of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the names and addresses of Members; give each Member a copy of any Rules and Regulations or amendments thereto; and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; keep proper books of accounts, specifying the receipts and expenses, together with records showing the allocation, distribution, and collection of the common profits, losses, and expenses among and from the Members; and shall prepare an annual budget and annual statement of income and expenditures to be presented to the Members at the Annual Meeting, with a copy to be mailed or delivered to each Member.

(e) Reliance on Professional Advice. As long as the Directors and the Officers are acting in good faith, the Directors and Officers may rely upon the advice of professionals hired or retained to advise the Association. It is understood that the Directors and Officers will be unpaid volunteers.

**ARTICLE 9.**  
**COMMITTEES**

The Board may appoint and disband such committees as it chooses.

**ARTICLE 10.**  
**INDEMNIFICATION PROVISIONS**

In addition to any other right or remedy to which the persons hereinafter described may be entitled, under the Articles of Incorporation, Bylaws, Declaration, any other agreement, or by vote of the Members or otherwise, the Association shall indemnify any Director or Officer of the Association or former Director or Officer of the Association, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a Director or Officer of the Association, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except as to matters as to which the Director or Officer shall be finally adjudged in this action, suit or proceeding to be liable for willful misconduct or bad faith. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plead of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase insurance in the amount it deems appropriate to provide this indemnification, and the cost of this insurance shall be a Common Expense. In the event of a settlement, indemnification shall be provided only in connection with those matters covered by the settlement as to which the Association is advised by counsel that the Director or Officer has not been guilty of willful misconduct or bad faith as a Director or Officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which a Director or Officer may be entitled. All liability, loss, damage, cost and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as Common Expenses. Nothing in this Section shall be deemed to obligate the Association to indemnify any Member, who is or who has been a Director or Officer, with respect to any duties or obligations assumed or liabilities incurred by the Member as a Member rather than as a Director or Officer.

**ARTICLE 11.**  
**MISCELLANEOUS**

**Section 11.1** **Service of Notices on the Board of Directors.** Notice required to be given to the Board of Directors or to the Association may be delivered to any Directors or Officer of the Association either personally, via electronic mail with a read receipt requested, or by certified mail addressed to such Director or Officer at his/her residence or business address.

Section 11.2 Service of Notices on Devisees and Personal Representatives. Notice required to be given to any devisee or personal representative of a deceased Owner may be delivered either personally or by certified mail to such party at his, her or its address appearing on the records of the Court within the state of such deceased Owner is being administered.

Section 11.3 Nonwaiver of Covenants. No delay or failure on the part of the Board and/or on the part of any Officer in exercising any right, power or privilege or in failing to enforce a covenant, condition, obligation, or a provision contained in the Declaration, Articles of Incorporation, Bylaws, or Rules and Regulations shall be or be deemed to be a waiver thereof, or be or be deemed to be a waiver of any subsequent exercise of such a right, power, or privilege, or be deemed to be a waiver of any subsequent violation or breach of such covenant, condition, obligation, or privilege, nor shall any single or partial exercise of any right, power, or privilege preclude any other or future exercise thereof or preclude the exercise of any other right, power, or privilege. All rights, powers, and privileges given hereunder or at law or in equity are cumulative, and any one or more or all of such rights, owners, and privileges may be exercised simultaneously or consecutively.

Section 11.4 Board's Power to Bind. A lawful agreement or determination made by the Board or an Officer, in accordance with procedures established in the Declaration and Bylaws, shall bind all Members, their successors and their assigns.

Section 11.5 No Act of Business for Profit. These Bylaws shall not be construed to give the Association authority to conduct any act of business for profit on behalf of one or more Members.

Section 11.6 Books and Records. The books, records and papers of the Association shall at all time, during reasonable business hours, be subject to inspection by any Member. The Declaration, Articles of Incorporation, Bylaws and Rules and Regulations, if any, shall be available for inspection by any Member at the principal office of the Association or at such other reasonable place as the Board might direct, where copies may be purchased at reasonable cost.

Section 11.7 Fiscal Year. The fiscal year shall begin on the first day of January of every year, except that the first fiscal year of the Association shall begin at the date of incorporation. The commencement date of the fiscal year herein established may be changed by the Board of Directors.

Section 11.8 Execution of Corporation Documents. With the prior authorization of the Board of Directors, all notes, contracts and other documents shall be executed on behalf of the Association by either the President or the Vice-President, and all checks and other drafts shall be executed on behalf of the Association by such Officers, agents or other persons as are, from time to time, by the Board, authorized so to do.

Section 11.9 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 11.10 Amendments. These Bylaws may be amended from time to time, at any Annual Meeting or special meeting of the Members in accordance with the provisions set forth in the Declaration for amendment thereto. Notwithstanding the foregoing, the Declarant, or any person or entity whom the Declarant has designated, must consent in writing to the amendment before the amendment is effective if the amendment is passed during the Development Period.

Section 11.11 Governing Law. The Bylaws shall be interpreted and enforced under the laws of the Commonwealth of Kentucky.

Section 11.12 Perpetuities; Restraints on Alienation. If an option, privilege, covenant, or right created by the Bylaws shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) rule restriction restraints on alienation, or (c) any other statutory or common law rule imposing time limits, then that provision shall continue only until twenty-one years after the death of the last survivor of the now living decedents of George W. Bush.

Section 11.13 Severability. The invalidity of part or all of any provision of the Bylaws shall neither impair the validity of nor affect in any manner the Declaration, the Articles of Incorporation or the rest of the Bylaws.

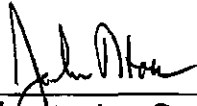
Section 11.14 Heirs, Successors and Assigns. These Bylaws shall be binding upon and shall inure to the benefit of the Association, the Declarant, Members and the Declarant's and Members' heirs, successors, and assigns.

Section 11.15 Interpretation. These Bylaws shall be interpreted reasonably and in good faith. They should not be applied so strictly so as to thwart justice or common sense. Kentucky law shall control. If the Bylaws or the Articles of Incorporation are silent on a subject, the Directors may follow the applicable corporation laws of Kentucky and shall have all powers given to a board of directors under the applicable corporation laws of Kentucky. These Section headings are for convenience only and shall not affect the meaning or construction of the Bylaws. A reference to a specific Section without a further identification of the document containing that Section is a reference to a Section in the Bylaws. Where the context requires masculine, feminine and/or neuter terminology shall include the neuter, feminine and/or masculine. Any capitalized terms used herein which are not otherwise defined, shall have the meanings as defined in the Declaration.

*[The Remainder of this Page is Intentionally Left Blank]*

ADOPTED this 13<sup>th</sup> day of March, 2014.

BALLYSHANNON COMMUNITY  
ASSOCIATION, INC., a Kentucky not-for-profit  
corporation

By: 

Name: JOHN HAAS

Title: PRESIDENT

## EXHIBIT C

Loan Agreement(s) and Promissory Note(s) to fund Operating Deficit(s) pursuant to Section 4.9 of Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Ballyshannon shall conform with the following provisions which shall govern the terms and conditions of said Agreement(s) and Notes(s):

1. Type of Note

The Note(s) may be issued in any of the following forms:

- (a) Demand Note  
This type of Note shall be payable on the date of demand by Lender; or
- (b) Open-end Note  
This type of Note shall permit additional borrowing and prepayment of principal, without penalty; or
- (c) Closed-end Note  
This type of Note shall not permit additional borrowing against this note; but prepayment of principal, without penalty, shall be permitted.

2. Method of Payment

Repayment of the loan(s) may be by any of the following methods:

- (a) Installment Plan  
This method of payment shall require payments, of both principal and interest, at regular intervals over the term of the loan; or
- (b) Lump Sum Payment  
This method of payment shall require Periodic payments, of both principal and interest, for a specified time and a lump sum payment at maturity to discharge the outstanding balance of the loan; or
- (c) Balloon Payment  
This method of payment shall require periodic interest payments for a specified time and a lump sum payment at maturity to discharge the outstanding balance of the loan.

3. Interest

The Interest Rate established by Lender shall be reasonable, but no greater than two (2) percentages points over the "prime rate" as published in the Wall Street Journal and shall be designated by lender to be either:

- (d) Fixed  
The Lender shall establish a rate of interest at the time of the making of the Note and this rate of interest shall remain constant over the term of the Note; or
- (e) Variable  
The Lender can periodically adjust the interest rate in accordance with fluctuations in the "prime rate" as published in the Wall Street Journal.

Furthermore, Interest shall be designated by Lender to be either:

- (f) Compound  
Interest shall be paid on both the principal and the previously accumulated interest; or
- (g) Simple  
Interest shall be paid on the principal only and not on accumulated interest.

4. Limit on Term

The Note(s) may be issued for a term up to, but not to exceed, ten (10) years.

5. Waiver of Defenses

Borrower shall waive presentment, demand, protest, and notice of demand, protest, non-payment and dishonor. Borrower shall also waive all defenses based on surety ship or impairment of collateral.

6. Agreement(s) and Note(s) shall contain clauses addressing the following issues:

- (h) Order of payment
- (i) Default
- (j) Expenses
- (k) Omission or waiver by Lender
- (l) Severability
- (m) Choice of law