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VILLAGE TERRACE COMMUNITY
COMMERCIAL

*DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND RESERVATION OF EASEMENTS
AND
DECLARATION FOR COMMERCIAL ASSOCIATION*

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THIS DECLARATION, made this 20 day of MAY, 2005, by TERRACE DEVELOPMENT COMPANY, LLC, a Kentucky Limited Liability Company, (hereinafter "Declarant").

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" hereof (the "Property") and desires to create and/or provide for the creation of a commercial/office development; and

WHEREAS, the Declarant desires to provide for the proper development and use of the said Property for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof, including the common and nonexclusive use and enjoyment of those portions of the said property constituting the Common Areas (as hereinafter defined), and to this end, desires to subject the said real 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 the Property and the subsequent Owners (as those terms are hereafter defined) thereof, their successors and assigns; and

WHEREAS, the Declarant has deemed it desirable, for the accomplishment of the said purposes, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the Common Areas and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created, and engaging in all other activities necessary and reasonable to fulfill the purposes set forth herein; and

WHEREAS, the Declarant has formed the "**Village Terrace Community Association, LLC.**", as a Kentucky Limited Liability Company under K.R.S. §275, et seq. for the purpose of carrying out the powers and duties aforesaid.

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

ARTICLE I.

DEFINITIONS

Section 1.1. Definitions The following words when used in this Declaration shall have the following meanings:

(a) "Articles" and "Articles of Organization" shall mean those Articles, filed with the Secretary of State of Kentucky, incorporating **Village Terrace Community**

Association, LLC. as a limited liability company under the provisions of Kentucky Revised Statutes, §et seq. as the same may be amended from time to time.

(b) “Association” shall mean and refer to the **Village Terrace Community Association, LLC.**, and its successors and assigns.

(c) “Operating Agreement” shall mean the Operating Agreement of the association, as the same may be amended from time to time.

(d) “Board,” “Board of Trustees” and “Board of Directors” shall mean the Board of Trustees of the Association as provided in the Articles of Organization and/or Operating Agreement of the Association.

(e) “Common Areas” shall mean and refer to all real property, or any interest therein (including greenbelt or landscape easements, easements for utilities, and easements for surface water collection and retention), together with improvements located thereon, for the common use, benefit and enjoyment of all of the Members of the Association. The “Common Areas” shall also include any areas that have been specifically designated by the Declarant on a recorded plat as “Common Areas.” Without limiting the generality of the foregoing, the Common Areas shall include: (i) the undedicated portion of any roadway or street, if any, (including but not limited to any service drive) conveyed to the Association; (ii) the landscape area along U. S. 42; the passive park, sign area and medians as shown on the Concept Development Plan; and (iii) all improvements and facilities located on the Common Areas (such as, but not limited to, utility lines and facilities, sprinkler systems, signage and entrance walls) which shall be devoted to the common use and benefit of the Members of the Association.

(f) “Common Expenses” shall mean and refer to all expenses (including reasonable reserves) incurred by the Association in connection with its ownership, maintenance and other obligations set forth herein.

(g) “Declarant” shall mean and refer to **Terrace Development Company, LLC, a Kentucky Limited Liability Company**, and its successors and assigns.

(h) “Developer” shall mean and refer to **Terrace Development Company, LLC, a Kentucky Limited Liability Company**, and it successors and assigns.

(i) “Development Criteria” shall mean and refer to design and development guidelines and application and review procedures promulgated in accordance with the provisions of Section 9.1(c) of this Declaration.

(j) “Development Period” shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of (a) Twenty Five (25) years from the date on which this Declaration is recorded, or (b) the day next following the day on which the Developer owns no part of the Property.

(k) “Lot” shall mean and refer to any plat of land shown upon any recorded subdivision plat of the Property (including an approved identification plat) or recorded re-subdivision thereof with the exception of the Common Areas and dedicated rights of way.

(l) "Member" shall mean any one of those Owners who are members of the Association as provided in Article IV hereof.

(m) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but expressly excluding those having such interest merely as security for the performance of an obligation.

(n) "Property" and "Properties" shall mean and refer to that certain real property hereinafter described in Section 2.1, and such additions thereto as may hereafter to annexed pursuant to Section 2.3.

(o) "Trustee" or Trustees" shall mean that person or those persons servicing, at the time pertinent, as a Trustee or Trustees or Director or Directors of the Association, and mean that same person or those persons serving in the capacity as a member of the Board of Trustees of the Association. Such individuals shall also be known as "Directors".

ARTICLE II.

PROPERTY DEVELOPMENT – ANNEXATION

Section 2.1. Property Subject to Declaration. The real property which is, and which shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved, subject to this Declaration is located in the County of **Boone**, State of **Kentucky**, and is more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

Section 2.2. Additional Property. Declarant reserves the unilateral right to subject additional property to the provisions of this Declaration. Such additional property shall be annexed to the real estate described in **Exhibit "A"** as provided in Section 2.3 hereof. Notwithstanding the above, nothing contained in this Declaration or in the Operating Agreement shall obligate the Declarant to annex any additional property to the property described in **Exhibit "A"**.

Section 2.3. Annexation of Additional Property. For a period of twenty five (25) years from and after the date of this Declaration is filed for record, additional property may be annexed to the above-described Property by the Declarant without the assent of the Members of the Association, if any. Thereafter, additional property may be annexed only with the consent of the Owners of fifty one (51%) percent of the total acreage of the Property who are voting in Person or by proxy at a meeting duly called for this purpose by written notice sent to all Owners at least thirty (30) days in advance setting forth the purpose of the meeting. Any additional property so annexed, however, must be adjacent to or in the immediate vicinity of the real estate then comprising the Property. The scheme of the within covenants and restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real estate then comprising the Property as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a supplement to this Declaration with the Clerk of **Boone** County, Kentucky, which

supplementary Declaration shall extend the scheme of the within covenants and restrictions to such annexed Property or by any other means sufficient to place a person on notice of the intent of the Developer to annex additional property. Such supplementary Declaration may contain such additional covenants, conditions, restrictions, easements, charges and liens as the Declarant shall deem appropriate for the purpose of completing the development of the Property.

Section 2.4. Additional Common Areas. Declarant shall have the right, from time to time, during the Development Period, to convey to the Association for nominal or other appropriate consideration, and the Association may accept conveyance of any property or interest in property owned by Declarant along with any structure, improvement, or other facility, including related fixtures, equipment and furnishings located thereon. Upon conveyance by the Developer of parcel(s) of real property designated for common area use, the property so conveyed shall constitute Common Areas hereunder.

Section 2.5. Reservation of Easements. During the Development Period, the Developer and any contractor engaged by the Developer shall have the right and an easement to carry on upon and to reserve and declare easements upon such portion of the Common Areas and unsold Lots of the Property as the Developer may deem necessary, such activities as, in the sole opinion of the Developer, may be reasonably required for the development and construction related to the Property. Such reserved easement shall specifically include, but shall not be limited to: (a) the right of access, ingress and egress, and vehicular and pedestrian traffic over and upon such parts of the Property; (b) the right to construct, install, and tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, maintain and repair any device which provides utility or similar services, including without limitation electrical, telephone, natural gas, water, sanitary sewer lines, storm sewer and drainage lines, sprinkler systems, and facilities constructed or installed, in, on, under or over the Property; (c) the right to carry on sales and promotional activities on the property; and (d) the right to construct and operate signs, construction trailers and sales offices on the Property. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference with the purposes of this Declaration.

Section 2.6. Buffer/Landscape Easement Areas. The Developer may elect to plant and install landscaping within the landscape common area easements, the passive park, sign area and medians as shown on the Concept Development Plan. Such initial planting elected to be done by the Developer shall be at Developer's sole cost and expense. Thereafter, such areas shall be maintained as a Common Area at the expense of the Association. The foregoing notwithstanding, within areas designated as buffer/landscape easement areas within any particular Lot, it shall be that Lot Owner's responsibility to install and maintain any proposed or required landscaping at their sole cost and expense. Lot Owners are responsible to install and maintain all necessary landscaping on their own Lot and in any right of way within their own Lot as may be required by the County, City or approved Concept Development Plan.

Section 2.7. Town Home/Condo Development Area. The Developer may elect to develop or sell adjacent land accessed through the Property for the development of a Town Home/Condo Development and subject same to the requirement that same shall share in paying any common area assessment fees charged to Owners of Lots as defined herein. Should

Developer so elect, then and in that event, the entire Town Home/Condo Development Area shall be deemed to required to pay 12.5% of any common area assessments as established pursuant to ARTICLE VI hereof, with the assessments of the Owners of lots being reduced by any contribution paid by the Town Home/Condo Development Area.

ARTICLE III.

LAND USE CRITERIA

Section 3.1. Allowable Land Use.

(a) The Property or any portion thereof shall be used only for those purposes as permitted under the zoning regulations of the City of **Florence**, Kentucky, the Conditions of Approval set forth in the Concept Development Plan, and the Kentucky Revised Statutes in force and effect on the date of this Declaration as the same may be hereafter from time to time amended, provided that any permitted use later excluded by amendment to said regulations and statutes shall continue to be a permitted use under the terms of this Declaration. In addition, any use variance to the Concept Development Plan or said regulations granted by the City of **Florence**, Kentucky, is hereby deemed a permitted use.

(b) The Developer reserves the right, however, to further limit or restrict the use of a particular Lot or Lots under the provisions noted throughout this Declaration, provided that any permitted use later excluded by the Developer under the provisions noted throughout this Declaration shall, to the extent that a Lot is used for such purposes prior to the date of such amendment, continue to be a permitted use under the terms of this Declaration.

Section 3.2. Prohibited Land Use.

(a) Notwithstanding anything else set forth herein, no use will be made of any Lot or any portion thereof or combination thereof or any building or structure thereon at any time, nor shall any materials or products be manufactured, processed or stored thereon or therein, which shall, under the underwriting standards of the Developer's insurer or in the opinion of an expert appointed by the Developer or the Association, cause an undue fire or health hazard or which shall constitute a nuisance or cause the emission of noxious odors or gases or smoke, or cause noises or other conditions which might violate this Declaration or the Development Criteria or which shall constitute a violation of any law of the United States, the Commonwealth of Kentucky, **Boone** County, or the City of **Florence**, or any regulation or ordinance promulgated thereunder.

(b) Notwithstanding anything else set forth herein, no operation or uses shall be permitted or maintained which cause or produce any of the following effects discernible outside any building or structure or affecting any adjacent property:

(i) Noise or sound that is objectionable to another Lot Owner because of its volume, duration, intermittent beat, frequency or shrillness;

(ii) Noxious, toxic or corrosive fumes or gasses;

- (iii) Dust or dirt; and
- (iv) Unusual fire or explosive hazards.

Section 3.3. Special Uses. Operations and uses which are not specifically authorized by this Declaration may be permitted in a specific case if reasonably related to a permitted use, and operational plan and specifications are submitted to and approved in writing by the Developer.

Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the occupants thereof. If the Developer fails either to approve or to disapprove such operational plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the Developer has disapproved said plans and specifications. Upon the request of an Owner, the Developer shall set forth in writing its reasons for disapproval of such Owner's operational plans and specifications.

The Developer shall not be liable in damages to anyone submitting operational plans and specifications to it for approval, or to any Owner of the Property or any portion thereof, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such operational plans and specifications. Every person who submits operational plans and specifications to the Developer for approval agrees, by submission of such plans and specifications, and every Owner of any portion of the Property agrees, by acquiring title thereto or an interest therein, that said Owner will not bring any action or suit against the Developer to recover such damages.

ARTICLE IV.

PROPERTY RIGHTS

Section 4.1. Owner's Right of Enjoyment in the Common Areas.

Every Owner shall have a right to an easement for the enjoyment of, in, and to the Common Areas, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

(a) All provisions of this Declaration and the Articles of Organization and Operating Agreement of the Association.

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration.

(c) The right of the Association or the Declarant to grant sewer, water and utility easements (including cable television), greenbelt easements or roadway easements over the Common Areas.

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against misuse or foreclosure.

(e) Rules and regulations governing the use and enjoyment of the Common Areas adopted by the Association.

(f) Restrictions contained on any and all plats of all or any part of the Common Areas or filed separately with respect to all or any part or parts of the Property by either the Developer or the Association.

Section 4.2. Owner's Right to Use Service Road(s). If, and to the extent that, such service road(s) (such road(s), together with all landscaping, pedestrian paths, shoulders and any other related improvements (hereinafter the "Service Road(s)"), which has been or will be constructed by Developer within the Property running to and from the various lots to be developed within the Property, and U. S. 42, is not dedicated for public use and accepted by all necessary governmental action (the Developer hereby reserving the right to dedicate such Service Road and related areas to public use), every Owner shall have a right to and easement for the use of the Service Road(s) for pedestrian and vehicular traffic, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

(a) All provisions of this Declaration and of the Articles of Organization and Operating Agreement of the Association (as hereinafter in Section 6.4(a) defined)

(b) The right of the Developer or Association to dedicate or transfer all or any part of the Service Road(s) to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration.

(c) The right of the Association or the Declarant to grant utility easements (including cable television), greenbelt easements or roadway easements over and/or adjoining the Service Road(s) or any portion thereof, whether or not such easements are within the right of way of such Service Road, it being understood that such utility and/or sewer easements may be located on the Lots adjoining the Service Road right-of-way.

(d) The right of the Association to take such steps as are reasonably necessary to protect the Service Road(s) against foreclosure.

(e) Rules and regulations governing the use and enjoyment of the Service Road(s) adopted by the Association.

(f) Restrictions contained on any and all plats of all or any part of the Service Road(s) or filed separately with respect to all or any part thereof by either the Developer or the Association.

Section 4.3. Delegation of Use. Any Owner may delegate, in accordance with the applicable Operating Agreement of the Association, its right of enjoyment in, and use of, the Common Areas and the Service Road(s) to tenants or contract purchasers who occupy any part of the Property.

Section 4.4. Title to Common Areas. Developer agrees to convey its interest in all of the Common Areas to the Association not later than sixty (60) days after Developer relinquishes control of the Board pursuant to Section 5.2(b). The title to any portion of the Common Areas that is to be owned by the Association in fee simple shall be conveyed to the Association free and clear of all liens and encumbrances; provided, however, that the Declarant shall have the right, from time to time, to reserve for the purpose of development of the Property all or any portion of the Property for various easements and rights of way, together with the right to dedicate or grant the same where necessary and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property and the construction, maintenance and repair of such sewer and utility lines. The Declarant's rights hereunder shall not unreasonably interfere with the Owner's easement of enjoyment.

Section 4.5. Restrictions upon Owners. The Owners of Lots subject to Common Areas shall not restrict, limit or otherwise interfere with the use and enjoyment of the Common Areas as permitted in this Article IV.

ARTICLE V.

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 5.1. Member. Every person, group of persons or entity who is an Owner of a portion of the Property, and in addition the Developer, as long as it owns any part of the Property, shall be a Member of the Association. Such membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 5.2. Voting Members.

(a) **Voting Rights:** Subject to the restrictions and limitations hereinafter set forth, each Member shall be entitled to one vote or fraction of a vote for each acre or fraction of an acre of Property in which it holds the interest required for membership. When more than one person holds such interest or interests in any Lot, they shall nominate one person to cast the vote(s) for such Lot as they, among themselves, determine. The total number of votes with respect to any Lot shall not exceed the total acreage of such Lot, except as provided in the following sentence. There shall be fractional voting and all such fractions shall be rounded off to the nearest one-tenth (.1) of an acre.

The votes for any Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required herein or by law, the affirmative vote of the Owners of a majority of acres represented at any meeting of the members duly called and at which a quorum is present, shall be binding upon the members.

(b) **Control of Board:** The affairs of the Association shall be managed by a Board consisting of three (3) Directors. All three (3) Directors shall be appointed initially by the Developer to hold office at the pleasure of the Developer until the sum of the acreage conveyed by the Developer exceeds sixty percent (60%) of the total acreage of the property described in Exhibit "A" (the "60% Benchmark"). Following the attainment of the 60% Benchmark, and so

long as the sum of the acreage conveyed by the Developer is less than ninety percent (90%) of the total acreage of the property described in Exhibit "A" (the "90% Benchmark"), the Developer will appoint two (2) of the Directors and the other Director will be elected by the Owners from among themselves. Following the attainment of the 90% Benchmark and so long as the sum of the acreage conveyed by the Developer is less than one hundred (100%) of the total acreage of the property described in Exhibit "A" (the "100% Benchmark"), the Developer will appoint one (1) of the Directors and the other two (2) Directors will be elected by the Owners from among themselves. Following attainment of the 100% Benchmark, all Directors will be elected by the Owners from among themselves. The Developer shall be deemed to have relinquished control of the Board on the date of the first annual election occurring after attainment of the 90% Benchmark. In the event the sum of the acreage percentage(s) conveyed by the Developer exceeds the referenced limits (i.e., 60%, 90%, 100%) during a period between annual meetings, the Director(s) appointed by the Developer shall remain on the Board until the next annual meeting when such Director(s) seat(s) shall be filled by the vote of the membership. The Developer, at its sole and absolute discretion, may increase the number of Directors elected by the Owners from among themselves and decrease the number of Directors appointed by the Developer beyond that provided for above. In no event shall the Developer decrease the number of Directors elected by the Owners from among themselves and increase the number of Directors appointed by the Developer beyond that provided for above.

(c) Directors and Officers: So long as the Developer shall have the right to appoint all three (3) Directors to the Board in accordance with Section 5.2(b), Directors need not be members of the Association. Thereafter, all Directors shall be members of the Association or agents of members of the Association. After attainment of the 60% Benchmark, elections shall be held as set forth herein. Election shall be by plurality vote. The term of the Directors so elected or appointed at each annual election shall be for one (1) year expiring at the next annual election following their election, and thereafter until their successors are duly elected and qualified, or until removal from office with or without cause by the affirmative vote of a majority of the voting Members which elected them. In no event can a Director appointed by the Developer be removed except by the action of the Developer. Any Director appointed by the Developer shall serve at the pleasure of the Developer, and may be removed from office, and a successor Director may be appointed, at any time by the Developer. At no time shall there be more than a total of three (3) Directors of the Association.

The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may, from time to time, by resolution, designate. Any two (2) or more offices may be held by the same person except the offices of President and Secretary. Officers shall be elected for one (1) year terms in accordance with the procedures to be set forth in the Operating Agreement of the Association.

(d) Disqualification: Members who have failed to make payments of any sums due to the Association, or failed to observe any requirements of the DRC (as hereinafter in Section 9.1(b) defined), shall not be entitled to vote until such payment has been made or such performance has been completed.

ARTICLE VI.

ASSESSMENTS

Section 6.1. Covenant for Assessments.

(a) Creation of the Lien and Obligation of Assessments: The Developer for each Lot owned by it, and each person, group of persons, or entity(ies) who becomes an Owner of a Lot by acceptance of a deed therefore (including any purchaser at a judicial sale), whether or not it shall be so expressed in any such deed (but subject nonetheless to Section 6.5), shall be deemed to covenant and agree to pay to the Association, (i) annual Common Area assessments as provided in Section 6.2, (ii) special Common Area assessments as provided in Section 6.3 and (iii) Individual Assessments as provided in Section 6.4. All such assessments shall be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the prime rate of interest, as shown, from time to time, in the Wall Street Journal, and costs of collection thereof (including court costs and reasonable attorney's fees) as hereinafter provided shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person, group of persons, or entity that was the Owner of such Lot at the time when the assessment fell due. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment.

(b) Purpose of Assessments: The annual, special and individual assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, security and welfare of the Owners of the Property; and in particular, for the improvement, landscaping, and maintenance of the Common Areas and of any easement in favor of the Association, as well as for such other purposes as are permissible activities of, and undertaken by, the Association.

(c) Uniform Rate of Assessment: Except as specifically provided in Section 6.4, all annual and special assessments shall be at a uniform rate for each acre and fraction thereof of each Lot in the Property.

(d) Duties of the Board: The Board shall fix the date of commencement and the amount of the assessment against each Lot for any assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of an assessment shall thereupon be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof. The mailing of such notice to the last known address of a Lot Owner shall be deemed sufficient notice to the Owner thereof, whether or not the Owner is the occupant of such Lot, unless the Owner has previously notified the Developer or the Board of an alternate address for all notices required under this Declaration, in which case the mailing of such notice to the alternate address shall be deemed sufficient notice to the Owner. Any annual assessment subsequent to the first annual assessment shall become a lien on January

1 of each year; and any special assessment shall become a lien at the time designated by the Board of Directors.

The Association shall, upon demand, furnish to any Owner liable for an assessment, a certificate in writing signed by an officer or other authorized agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

Section 6.2. Annual Common Area Assessments.

(a) Purpose of annual Assessments: To carry out the purposes expressed in Section 6.1(b), an annual Common Area assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision, and including, but not limited to, the maintenance, repair and landscaping of streets, right of ways, stamped asphalt designs within streets and signs.

(b) Amount of Annual Assessments: The Board shall fix the amount of the annual Common Area assessment, which shall be in amounts determined in accordance with the projected financial needs of the Association, as to which the decision of the Board shall be dispositive.

(c) Date of Commencement of Annual Assessments; Due Date: The annual assessments for which provision is made in this Section 6.2 shall commence on the date or dates (which shall be the first day of a month) fixed by the Board to be the date of commencement. The due date of any assessment shall be fixed in the resolution authorizing such assessment, and any such assessment shall be payable in advance in a monthly, quarterly, semi-annual or annual installments, as determined by the Board.

Section 6.3. Special Assessments for Capital Improvements and Major Repairs.

In addition to any annual assessments, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement as approved by the Developer, including the necessary fixtures and personal property related thereto, provided that no capital improvements considered generally to be a development cost shall be assessed, and further provided that any such assessment shall have the assent of the Owners of two-thirds (2/3) of the total acreage of the Property who are voting in person or by proxy at a meeting duly called for this purpose written notice of which shall be sent to all Owners at least thirty (30) days in advance and said notice shall set forth the purpose of the meeting.

All monies received by the Association as a special assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of such special assessment and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association.

Section 6.4. Individual Assessments. The Association shall have the power and authority to levy and collect an individual assessment against a particular lot for (i) the cost of maintenance, repair or replacements which the owner thereof has failed or refused to perform, and which failure or refusal has, in the opinion of the Association, endangered or impaired the use or value of other portions of the Property and (ii) any other cost of maintenance, repair or replacements that is applicable to one or more lots but not all lots. The Association, after ten (10) days written notice to a Lot owner who has failed to perform necessary maintenance, repairs and replacements, shall have a right of entry on each Lot to perform necessary maintenance, repairs and replacements, including the right to abate or eliminate any nuisance. The individual assessment may include an administrative fee charged by the Association in an amount to be determined by the Board of Directors in its discretion from time to time. All individual Assessments shall be collectible in such manner as the Association shall determine, including, but not limited to, in accordance with Section 6.5.

Section 6.5. Assessment of Developer. So long as Developer owns any part of the Property, it shall contribute, on an annual basis, to the Association, in lieu of the assessments provided for in this Article VI, an amount equal to 50% of the applicable assessment for each undeveloped acre that it owns. In the event that Developer owns any developed Lot(s) that is improved with a building, it shall pay assessments on the same basis as any other Owner.

Section 6.6. Non-Payment of Assessment. The lien of the Association upon a Lot shall be effective from and after recording in the Office of the Boone County Clerk at Burlington, Kentucky, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner, the amount and the date when due. Such claim of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, cost, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be released of record.

If the assessment is not paid within thirty (30) days after the delinquency date, which shall be set by the Board, the assessment shall bear interest from the date due at the prime rate of interest, as shown, from time to time, in the Wall Street Journal, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot(s) in like manner as a foreclosure of a mortgage on real property, or collection suit against the Owners(s), and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action including a reasonable attorneys' fee and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

Section 6.7. Subordination of Lien to Mortgage. The lien of the assessments provided for in this Declaration shall be subordinate to any prior first Mortgage lien. Such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No sale or other transfer shall relieve any Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

The written opinion of either the Developer or the Association that a lien is subordinate to a mortgage shall be dispositive of any questions of subordination.

Section 6.8. Development Sign Assessment.

Any Lot Owner with dedicated space upon the Development Sign shall be charged for their pro-rata portion of the maintenance and repair based on Lot Owner total square footage used in relation to the total sign area.

ARTICLE VII.

INSURANCE

Section 7.1. Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance covering the Common Areas, insuring the Association, its Directors and officers, and the Owners, their 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 damage. This insurance shall include protection against such risks as are customarily covered with respect to a commercial development similar in construction, location and use to the Property, as determined by the Board.

Section 7.2. Casualty Insurance. The Association shall obtain and maintain fire, lightning and extended coverage or similar insurance in an amount of not less than one hundred percent (100%) of the replacement costs thereof on all Common Areas. This insurance shall include protection against such risks as are customarily covered with respect to a commercial development similar in construction, location and use to the Property, as determined by the Board. Said insurance shall be payable to the Association and the proceeds from which shall be used to restore or replace any Common Area damaged or destroyed by any peril covered by said insurance.

Section 7.3. Other Insurance; Allocation. In addition, the Association shall obtain and maintain Directors' and Officers' liability insurance and such other insurance as the Board may deem desirable from time to time.

Section 7.4. Insufficient Insurance. In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril which shall not be covered by the policies of insurance then in effect, or if the proceeds of such insurance 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 for whose benefit the amount was so advanced, and such assessment shall have the same force and effect as an assessment levied under Section 6.3, and if not paid may be enforced in the same manner as provided in Article VI for the nonpayment 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.

Section 7.5. Fidelity Bonds. The Board shall obtain fidelity bond coverage, naming the Association as an insured, with respect to any person or agent handling Association

funds in an amount of not less than Five Thousand Dollars (\$5,000.00) as determined by the Board.

ARTICLE VIII.

MAINTENANCE AND OPERATION

Section 8.1. Maintenance Requirements. Each Owner shall, at all times, maintain its premises, buildings, improvements and appurtenances in good order and repair and in a safe, clean, neat and sanitary condition. Such maintenance includes, but is not limited to the following: (i) keeping all buildings in good condition and repair and adequately painted or otherwise finished; (ii) prompt removal of all litter, trash, refuse and wastes; (iii) lawn mowing; (iv) tree and shrub pruning; (v) watering and fertilizing; (vi) keeping exterior lighting and mechanical facilities in working order; (vii) keeping lawn and garden areas alive, free of weeds and attractive; (viii) keeping parking areas, driveways and roads in good repair; (ix) complying with all government health and police requirements; (x) striping of parking areas and repainting of improvements as needed; and (xi) repairing exterior damages to improvements.

Section 8.2. Association's Right to Perform Maintenance.

(a) Exterior Maintenance. The Association may act to provide maintenance to any Lot, when necessary in the Board's opinion to avoid blight and to preserve the beauty, quality and value of the Lot. Such action may include, but is not hereby limited to, painting, repairing or replacing the roof, gutters, downspouts, signage, signs, and exterior building surfaces, parking lot and driveway pavement and, in addition, yard cleanup or landscaping. Except in an emergency, no action shall be taken by the Association under the terms of this Section 8.2(a) unless the Association has given to the Owner written notice of the problem and the intended repair, and the Owner has failed to make the necessary repair within thirty (30) days after such notice was given. In addition, no action shall be taken by the Association under the terms of this Section 8.2(a) if the Owner cannot complete the necessary repair within thirty (30) days of the Association's said written notice, so long as repair has commenced within said period and the Owner diligently pursues same to completion.

(b) Assessment of Costs: The cost of any maintenance performed pursuant to Section 8.2(a) shall become a special assessment against the Lot upon which such maintenance is performed (or if performed on more than one Lot, the assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board, or if no such allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area). Any such exterior maintenance assessment shall have the same force and effect as an assessment levied under Section 6.3, and if not paid may be enforced in the same manner as provided in Section 6.5 for the non-payment of assessments.

(c) Access at Reasonable Hours: For the purpose of performing the maintenance authorized by Section 8.2(a), the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any improvements thereon at reasonable hours on any day, subject to the security needs, confidentiality and operating requirements of the Lot occupant or occupants.

Section 8.3. Construction.

(a) **Construction Maintenance:** During construction, it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. The Owner shall also insure that any mud and dirt associated with construction be kept off of adjacent streets and roadways. In the event mud is deposited on streets, the Owner or its agents shall see that it is removed promptly.

(b) **Completion of Construction: Temporary Structures:** After commencement of construction of any building or other improvement (“Structure”), and except as otherwise agreed by the Developer, the Owner shall diligently prosecute the work thereon, to the end that the Structure shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof and in no event longer than eighteen (18) months from the date of the conveyance.

(c) **Repurchase Rights:** In the event any Owner shall not have substantially completed the construction of a permanent building upon a Lot within eighteen (18) months of the date of the execution of a deed by the Developer conveying title to said Owner, the Developer shall have an option to repurchase said Lot for the original purchase price and may enter into possession of said Lot. This option to repurchase must be exercised in writing within ninety (90) days after the expiration of the eighteen (18) month period following the execution of the deed referred to above. Settlement of the repurchase shall take place within sixty (60) days of the exercise of the option to repurchase and shall be at a location designated by the Developer. All costs of recording, transfer taxes, documentary stamps and all other excise taxes arising from said closing will be paid for by said Owner.

Section 8.4. Outdoor Storage. No materials, supplies or equipment shall be stored on a Lot, except within an enclosed building. Company-owned or operated vehicles (temporarily parked), and trash and garbage receptacles shall be stored only behind a visual screen, specifically approved in writing by the Developer or the Association, screening such areas from the view of adjoining properties and public right-of-ways.

Garbage and refuse containers shall be concealed from the view of adjoining properties and public right-of-ways by means of a screening wall of material similar to and compatible with that of the building. These screening elements shall be integral with the concept of the building plan, and shall be designed and located in the most inconspicuous manner possible.

No storage tanks, including, but not limited to, those used for storage of water or propane gas or other fuel or chemical, shall be permitted on any part of the Property.

No trailer shall be used for storage purposes on any Lot, except during the period of construction of buildings and related improvements thereon.

Section 8.5. Rules and Regulations. The Board shall propose rules and regulations for adoption by a two-thirds (2/3) vote of the Members. Written notice of any meeting to consider proposed rules and regulations or any amendments thereto shall be given in

writing to all Members at least twenty (20) days in advance and shall set forth the purpose of the meeting.

ARTICLE IX.

DEVELOPMENT CRITERIA

Section 9.1. Architectural and Development Standards.

(a) Authority of Board: The Board of Trustees shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Design Review Committee as established in Section 9.2. No construction (which term shall include within its definition staking, clearing, excavation, grading and other site work) and no landscape plantings or removal of plants, trees or shrubs shall occur except in strict compliance with the provisions of this Article.

(b) Design Review Committee: The Design Review Committee (the "DRC") is hereby authorized, and it shall have exclusive jurisdiction over all original construction upon and development of Lots and Common Areas, subsequent modifications, additions or alterations thereto, extensions of time limitations and appropriate variances. Until the attainment of the 90% Benchmark, all three (3) members of the DRC shall be appointed by the Developer. The Developer, at its sole and absolute discretion, may increase the number of members appointed by the Board and decrease the number of members appointed by the Developer beyond that provided for above, in no event shall the Developer decrease the number of members appointed by the Board and increase the number of members appointed by the Developer beyond that provided for above. Members of the DRC do not have to be Members of the Association, except that at least one member of the DRC shall be a Member of the Association.

(c) Development Criteria: The Design Review Committee shall prepare and shall promulgate design and development guidelines and application and review procedures, all of which shall be designated and referred to herein as the "Development Criteria." A copy of the initial Development Criteria, which may be amended by the DRC, is attached hereto as **Exhibit "B"**. Copies of the Development Criteria, as amended, shall be made available by the Design Review Committee to Owners. The Design Review Committee may waive any design and development guidelines or compliance with this Article.

Construction (including alteration) of all Structures on the Property or any part thereof shall be performed in accordance, and shall comply, with the requirements of all applicable Building, Zoning and other Codes and Regulations of the City of **Florence**, Kentucky, and all other applicable governmental authorities ("Codes"). Any violation of a Code shall be deemed to be a violation of the Development Criteria for purposes of determining the rights of the Developer and/or the Association with respect thereto.

No Waiver of Future Approvals: The approval by the Design Review Committee of any proposals, plans and specifications or in connection with any other matter requiring the approval and consent of the Design Review Committee shall not constitute a waiver, estoppel or binding precedent affecting or bearing upon any similar proposal, plan or specification or matter subsequently or additionally submitted for approval or consent.

Section 9.2. Design Review Committee Approval.

(a) Powers: The Design Review Committee shall be empowered to enforce, alter, modify, waive and administer all provisions of the Development Criteria.

(b) Procedures: Upon purchase of a Lot, or prior to purchase if requested by a prospective Owner, the DRC shall hold a pre-design conference with the Owner or prospective Owner. Each Owner shall pay a submission fee as determined from time to time by the Board of Directors solely for the purpose of defraying the cost of review.

(c) Submission of Plans and Specifications: No Structure on any Lot shall be remodeled or altered in any way which materially changes the exterior appearance thereof, involves the erection of a new Structure or otherwise increases the area under roof of any Structure unless detailed plans and specifications therefore shall have been submitted to and approved by the DRC. The plans and specifications shall be in such form and shall contain such information as the DRC may reasonably require but shall, in all cases, unless waived by the DRC, include:

(i) A topographical plot showing existing and proposed contour grades, site drainage, and all improvements, structures, walks, patios, driveways, fences and walls;

(ii) Exterior elevations;

(iii) Exterior materials, colors, textures and shapes;

(iv) Structural design;

(v) Landscaping plan, including walkways, elevation changes, watering systems, vegetation and ground cover;

(vi) Parking area and driveway plan, including loading and service areas;

(vii) Screening, including size, location and method;

(viii) Utility connections;

(ix) Exterior illumination, including location and method;

(x) Fire protection system; and

(xi) Signs, including size, shape, color, location, method of illumination and materials.

Prior to submission of detailed plans and specifications for any Structure proposed for a Lot, the DRC may require, and any applicant may submit for tentative approval by the DRC, schematic or preliminary plans and specifications for any phase or stage thereof. The DRC shall

either (i) approve the plans and specifications, (ii) disapprove them or (iii) approve them with conditions or qualifications.

(d) Approval of Plans and Specifications: The DRC shall approve any plans and specifications (whether schematic, preliminary, or detailed) submitted to it with respect to any Lot if it finds that they (a) comply with the requirements of this Article IX and (b) conform to any additional standards or policies promulgated by the DRC and the Association. Upon final approval thereof, a copy of the detailed plans and specifications shall be deposited for permanent record with the DRC. After the receipt of such final approval by the applicant, the DRC shall not revoke such approval. Approval by the DRC of detailed plans and specifications with respect to any Lot shall not impair the DRC's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Article IX).

(e) Disapproval of Plans and Specifications: If plans and specifications (whether schematic, preliminary or detailed) submitted to the DRC with respect to any Lot do not comply with the requirements of this Article IX as to the information required to be included in the plans and specifications, the DRC shall either disapprove such plans and specifications or approve them subject to such conditions and qualifications as the DRC may deem necessary to achieve compliance.

(f) Failure of the DRC to Act: If the DRC shall fail to act upon any plans and specifications submitted to it within forty-five (45) days after submission thereof, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the DRC shall be required. If construction 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.

(g) Violations: If any Structure situated upon any Lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the approved detailed plans and specifications, the Board shall notify the Owner of the Lot of the violation and the Board shall have the remedies provided for in Section 10.4. The Board may, however, waive any violation if it finds that such does not substantially conflict with the policies of the Board.

(h) Right of Entry: The Board and the DRC, 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 structure thereon is in compliance with the provisions of this Article, without the Board, the DRC or such officers, employees or agents being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

(i) Fees: In addition to the submission fee provided for in Section 9.2(b), 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.

(j) Basis of Approval: Approval by the DRC shall be dependent upon its evaluation of the conformity and harmony of the proposed structure with the site and its natural

features and other development; of the effect of the location and use of the improvements upon neighboring Lots; and of the conformity of the plans and specifications to the purpose and general intent of this Declaration and the Development Criteria.

Section 9.3. No Liability for Approval or Disapproval. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals and standards shall, in no event, be construed as representing or guaranteeing that any structure built in accordance therewith will be built in a good and workmanlike manner. Neither the DRC nor the Association shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article IX, any loss or damage to any person arising out of the approval or disapproval of any plans or specifications, and loss or damage arising from the non-compliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

ARTICLE X.

MISCELLANEOUS

Section 10.1. Duration. Except where permanent or perpetual easements or other permanent rights or interests are herein created the terms and provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which this Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless (a) a governmental entity or other similar permanent organization shall assume the maintenance and all other obligations relating to the Common Areas so as to transfer the requirement and necessity for maintenance and other obligations to such entity or organization, and (b) an instrument agreeing to terminate this Declaration shall have been signed by the then Owners of two-thirds (2/3) of the total acreage subject to this Declaration, and such instrument shall have been recorded.

Section 10.2. Assignment. Any or all of the rights, powers and obligations, easements and estates reserved by or granted to the Developer or the Association may be assigned by the Developer or the Association, as the case may be. Any such assignment or transfer shall be made by an appropriate instrument, in writing, in which the assignee or transferee shall join for the purpose of evidencing its consent to such assignment and its acceptance of the rights and powers, duties and obligations therein contained. Such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to the Developer and/or the Association. After such assignment, Developer or the Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates. Developer may also, from time to time, delegate any or all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 10.3. Amendment. The Declaration may be amended, from time to time as follows:

(a) By Declarant: The Declarant reserves the right and power, and each Lot Owner, by acceptance of a deed to a Lot, is deemed to consent to and does with an interest, which shall run with the title to the Lot, and is irrevocable except by Declarant, until such time as the sum of the acreage conveyed by the Developer exceeds Seventy-five (75%) percent of the total acreage of the Property, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, without the approval of the Lot(s) Owners, or to the extent necessary to enable Declarant or any other Developer to meet any other reasonable need or requirement in Order to complete the development of the property and to facilitate the making of first mortgages upon any of the Lots and/or the marketing of any of the Lots. Any amendment must be recorded and shall take effect only upon recording. It shall not be necessary to obtain the consent of any other Lot Owners or any mortgagee of any Lot to any amendment adopted pursuant to this Section 10.3(a).

(b) By Owners: The Declaration may be amended, in whole or in part, from time to time, by a vote of the Owners of two-thirds (2/3) of the total acreage of the Property, which two-thirds (2/3) majority must include the Developer so long as the Developer owns any part of the Property. Any such amendment must be evidenced by an instrument signed by persons or entities entitled to exercise such two-thirds (2/3) voting power (including Developer for so long as Developer owns any part of the Property), and shall take effect only upon recording. It shall not be necessary to obtain the consent of any mortgagee of any Lot to any amendment adopted pursuant to this Section 10.3(b).

Section 10.4. Violations.

(a) Deemed to Constitute a Material Violation: The result of every action or omission whereby any covenant or agreement herein contained is violated in whole or in part is hereby declared to be, and to constitute, a material violation, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such result and may be exercised by the Developer or by the Association.

(b) Enforcement: The covenants and agreements herein contained shall be jointly and severally enforceable by the Developer and by the Association. Violation or breach of any of the same shall give the Developer and/or the Association, in addition to all other remedies available hereunder or at law or in equity, the right (but not the obligation) to enter upon the Lot on which such violation or breach exists and summarily to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the Owner, which expense shall be a lien on such Lot which, if not paid, may be enforced in the same manner as provided in Section 6.5 for the non-payment of assessments. Notwithstanding the foregoing, except in an emergency, no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after written notice of such violation or breach is given to the Owner of the Lot on which the violation or breach has occurred. A copy of any written notice of a violation or breach will also be sent to any first mortgage holder of which the Developer or the Association, as the cases may be, has notice. Notwithstanding the above provisions of this Section, it shall be understood that any lien obtained pursuant to the provisions hereof shall be subordinate and inferior to the prior lien of bona fide mortgages or deeds of trust secured by that Lot to the end and intent that any purchaser at a foreclosure of the

lien secured by a mortgage or deed of trust shall take title free of any lien from past due payments arising pursuant to the provisions of this Section; however, said purchaser at foreclosure shall be bound by the provisions of this Declaration including assessments assessed and levied after the foreclosure sale, and shall take title subject to this Declaration.

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

(c) **Failure to Enforce not a Waiver of Rights:** Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location on the Property or any other provision of this Declaration. The failure of the Developer or the Association to enforce any covenant or agreement herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other covenant or agreement.

Section 10.5. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by certified mail, postage prepaid, to the last known address of the person who appears as such Member or Owner on the records of the Association at the time of such mailing.

Section 10.6. Severability. Invalidation of any one of the covenants or restrictions set forth herein by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.

Section 10.7. Conflicts. In the case of any conflict between this Declaration and either the Articles of Organization or the Operating Agreement of the Association, this Declaration shall control so long as said conflict is not in violation of Kentucky law.

Section 10.8. Condemnation. In the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or otherwise 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 appropriate Members.

Section 10.9. Non-Liability of Declarant or Developer. Neither Declarant nor Developer or their representatives or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to them by or pursuant to this Declaration or the Operating Agreement, whether or not such claims shall be asserted by an Owner, occupant, the Association, or by any person or entity claiming through any of them; or shall be liable on account of injury to person or damage to or loss of property wherever located and however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof becoming out of repair or by reason of any act or neglect of any Owner, occupant, the Association and their respective agents, employees, tenants and invitees or by reason of any

neighboring property or personal property located on or about the Property, or by reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.), except as provided by any written warranty provided by the Developer to an owner or the Association.

Section 10.10. Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other forms of business organizations, or individuals, men or women, shall in all cases be assumed as though in such case fully expressed. Section headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular Sections to which they refer.

Section 10.11. Rights of Mortgagees. All covenants and other provisions herein contained shall be deemed subject and subordinate to all mortgages and deeds of trust now or hereinafter executed upon Lots subject to this Declaration, and none of the covenants and agreements contained herein shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust; provided, however, that if any portion of the Property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, or by a deed in lieu of foreclosure or sale by a trustee in bankruptcy or any other sale under distress, any purchaser at such sale, and his successors and assigns, shall hold any and all of the Property so purchased subject to all of the covenants and other provisions of this Declaration, including any and all assessments levied on the Property or portion thereof after said foreclosure sale.

Section 10.12. Mutuality, Reciprocity; Runs with Land. All covenants, conditions and agreements contained herein, as amended, are made for the direct, mutual and reciprocal benefit of each and every Lot in favor of every other Lot, shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all grantees of said Lots, their heirs, successors and assigns; and shall, as to the Owner of such Lot, its heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots.

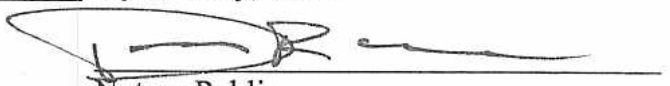
IN WITNESS WHEREOF, the said Terrace Development Company, LLC has hereunto set its signature on the day and year first written above, by and through Triangle Design Group, Inc., its Managing Member pursuant to a duly passed resolution of its Members.

**TERRACE DEVELOPMENT COMPANY,
LLC, a Kentucky Limited Liability Company,
By Triangle Design Group, Inc., its managing
member**

BY: 
Phil Drees, President

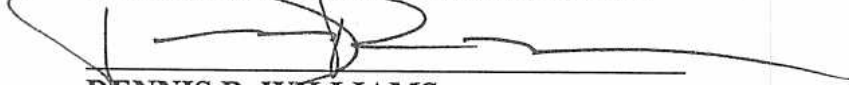
STATE OF KENTUCKY)
) :ss
COUNTY OF KENTON)

Acknowledged, subscribed and sworn to before me by **TERRACE DEVELOPMENT COMPANY, LLC** by and through Triangle Design Group, Inc., its Managing Member, by and through its President, Phil Dress on this the 20 day of May, 2005.



Notary Public
My Commission Expires: 10-25-08

THIS INSTRUMENT PREPARED BY:



DENNIS R. WILLIAMS
ADAMS, STEPNER, WOLTERMANN &
DUSING, P.L.L.C
40 W. Pike Street
Covington, Kentucky 41012
(859) 394-6200

EXHIBIT "A"

LEGAL DESCRIPTION

GROUP NO. 4702

Being all of Lots 1, 2, 3, 4, 5 and 6, Village Terrace, as shown on Plat recorded in Plat Cabinet 5, Page 182 of the Boone County Clerk's records at Burlington, Kentucky.

Exhibit B Initial Development Criteria

Village Terrace Design Guidelines (Preliminary)

The purpose of establishing design guidelines is to reinforce the theme and character of Village Terrace. The guidelines will protect each commercial and residential user as well as enhance the physical features and amenities within the overall environment.

Note: the Village Terrace Design Review Committee must approve all site and building plans.

Architectural Building Guidelines: Commercial

Roof:

- At least 20% of the Roof line has to pitched (mansard roof line is acceptable)
- Pitched roof has to be metal or equivalent (Medium Bronze - Berridge Color Finishes)
- If roof is used over pick-up or drive-thru windows then pitched roof is required

Exterior of Building:

- Brick material has to be on 80% of the Building (WatsonTown Brick Co.- Fifth Avenue Velour I/S – Iron Spot Series or Manhattan Series) or (Carolina Ceramics – Heritage Wirecut)
- Arch walkways or Arch windows to be incorporated into building. Arch concrete lintels (on similar looking material) to be used where practical
- Use beige colored band trim, belt course or cornice line at or above window height (Brick Color – WatsonTown Brick Co – Carleton – Manhattan Series or Carolina Ceramics ‘Shadow Gray’ wirecut)
- Mortar Color – Tan 1 lb. (Kosmortar Kolor) or Standard color mortar (grey – no additives)
- Colors and accents to match other commercial users within development
- Stamp concrete or color concrete sidewalks (if used) to match pattern for development (Color and pattern to be determine)

No temporary buildings including trailers, incomplete buildings, tents, or shacks shall be permitted on the property except during construction.

Village Terrace Design Review Committee reserves the right to waive any of these requirements when, in its sole judgment, the waiver provides for a more appropriate design of a building and does not compromise the integrity of the development.

Commercial site design requirements:

Outdoor Storage/Trash

- Outdoor storage and trash location must be concealed using the primary building design requirements

Parking and Lighting

- No solid concrete islands in parking lot allowed, landscaped islands to be used unless approved Streetscape materials used.
- Light post and fixture (selection yet to be determine)
- Light post base to use brick or stone (color/type same as buildings or entry monument)
- Connectivity with other parking areas must be made
 - If "Stamp" concrete or color concrete sidewalks is used to connect (pattern to match development selection)
 - *Coordinate and blend parking lot entrances and exits with adjacent users*

Landscaping

- A separate landscape plan shall be submitted prior to building construction. Village Terrace Design Review Committee must approve plant materials and landscape construction that is to be installed on the lot.
- All unpaved areas of each site not utilized for parking or buildings shall be landscape,
- Landscape shall be used to mark entrance points and parking areas.
- Landscape shall be used to enhance building scale and forms.
- Landscape treatment shall not interfere with sight line requirements at street or driveway intersections. All landscaping shall be designed for reasonable maintenance, and all landscape areas shall be maintained in a quality manner at all times. Paving or terracing may be used in areas where excessive maintenance would otherwise be required.

Signage

- All exterior signs shall be approved by Village Terrace Design Review Committee
- No sheet metal signs, flat wood painted, or exposed fluorescent lights signage allowed.
- The location, size, and construction of signs will be in keeping with the character of the development.
- Ground mounted signs shall not have a gross area of more than Seventy (70) square feet and shall not exceed eight feet (8') in height and shall be connected to the ground along the base length. All changeable copy shall be manual.
- Development sign at the entrance of "Village Terrace" containing major tenants shall not have a gross area of more than One Hundred (100) square feet and shall not exceed ten (10') in height and shall be connected to the ground along the base length. No changeable copy allowed.
- Illuminated signs shall be rear lighted or lighted from a nonapparent light source
- Other signs allowed may be of a directional nature or temporary signs indicating "For Sale" or For Lease"
- All permitted signs shall be of a design and material consistent with the building and/or developers monumentation itself.

OPERATING AGREEMENT
OF
VILLAGE TERRACE COMMUNITY ASSOCIATION, LLC
A KENTUCKY LIMITED LIABILITY COMPANY
EFFECTIVE AS OF MAY 5, 2005

NOTE: THE SALE OR TRANSFER OF INTERESTS IN THIS LIMITED LIABILITY COMPANY IS SUBJECT TO THE RESTRICTIONS SET FORTH IN ARTICLE X OF THIS LIMITED LIABILITY COMPANY AGREEMENT.

This Operating Agreement is made and entered into as of **May 5, 2005**, by and between the Members and the Company, whose signatures appear on the signature page hereof.

RECITALS:

WHEREAS, the Articles of Organization for **VILLAGE TERRACE COMMUNITY ASSOCIATION, LLC**, were filed with the Secretary of Commonwealth of Kentucky on **May 2, 2005**, by the Developer for the purpose of creating the Company to own, manage and maintain the Common Areas and pay and manage Common Expenses and to act as the commercial owners association and enforce the restrictions and covenants known as the Village Terrace Community Commercial Declaration of Covenants, Conditions and Restrictions and Reservation of Easements and Declaration for Commercial Association of record with the Boone County Clerks office as of May 23, 2005.

The Members wish to enter into this Operating Agreement.

The Members agree as follows:

DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein);

- (a) **The "Act"** shall mean the Kentucky Limited Liability Company Act at KRS Chapter 275.
- (b) **"Articles of Organization"** shall mean the Articles of Organization of **VILLAGE TERRACE COMMUNITY ASSOCIATION, LLC**, as filed with the Secretary of Commonwealth of Kentucky as the same may be amended from time to time.
- (c) **"Board," "Board of Trustees" and "Board of Directors"** shall mean the Board of Directors of the Company which shall serve as the Manager as provided in Article V of this Operating Agreement. References to the Board of Directors shall be also mean and include the Manager.
- (d) **"Capital Account"** as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to the date in question pursuant to Article VIII.
- (e) **"Capital Contribution"** shall mean any contribution to the capital of the Company in cash, property or services by a Member whenever made.
- (f) **"Initial Capital Contribution"** shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement.
- (g) **"Capital Interest"** shall mean the proportion that a Member's positive Capital

Account bears to the aggregate positive Capital Accounts of all Members whose Capital Accounts have positive balances as may be adjusted from time to time.

(h) **"Code"** shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws and the Treasury Regulations promulgated thereunder.

(i) **"Company"** shall refer to VILLAGE TERRACE COMMUNITY ASSOCIATION, LLC.

(j) **"Common Areas"** shall mean and refer to all real property, or any interest therein (including greenbelt or landscape easements, easements for utilities, and easements for surface water collection and retention), together with improvements located thereon, for the common use, benefit and enjoyment of all of the Members of the Association. The "Common Areas" shall also include any areas that have been specifically designated by the Declarant on a recorded plat as "Common Areas." Without limiting the generality of the foregoing, the Common Areas shall include: (i) the undedicated portion of any roadway or street, if any, (including but not limited to any service drive) conveyed to the Company; (ii) the landscape area along U. S. 42; the passive park, sign area and medians as shown on the Concept Development Plan; and (iii) all improvements and facilities located on the Common Areas (such as, but not limited to, utility lines and facilities, sprinkler systems, signage and entrance walls) which shall be devoted to the common use and benefit of the Members of the Company.

(k) **"Common Expenses"** shall mean and refer to all expenses (including reasonable reserves) incurred by the Company in connection with its ownership, maintenance and other obligations set forth herein.

(l) **"Declarant"** shall mean and refer to **Terrace Development Company, LLC, a Kentucky Limited Liability Company**, and its successors and assigns.

(m) **"Declarations"** shall mean and refer to the restrictions and covenants known as the Village Terrace Community Commercial Declaration of Covenants, Conditions and Restrictions and Reservation of Easements and Declaration for Commercial Association of record with the Boone County Clerks office as of May 23, 2005.

(n) **"Deficit Capital Account"** shall mean with respect to any Member, the deficit balance, if any, in such Member's Capital Account determined in accordance with Other Comprehensive Basis of Accounting and the Code.

(o) **"Depreciation"** means, for each fiscal year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such fiscal year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such fiscal year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such fiscal year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes

of an asset at the beginning of such fiscal year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager(s).

(p) "**Distributable Cash**" means all cash, revenues and funds received by the Company, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; (iii) such Reserves as the Managers deem reasonably necessary to the proper operation of the Company's business.

(q) "**Economic Interest**" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets pursuant to this Operating Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

(r) "**Economic Interest Owner**" shall mean the owner of an Economic Interest who is not a Member.

(s) "**Entity**" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

(t) "**Event of Disassociation**" shall mean sale or transfer of the Lot owned by a Member or the assignment by a Member of such Member's Interest following which the assignee of such interests becomes a Member pursuant to Section 10.4. No Member shall have the right to withdrawal and no Member may be removed or expelled as a Member.

(u) "**Fiscal Year**" shall mean the Company's fiscal year, which shall be January 1 to December 31.

(v) "**Former Member**" shall mean a member whose actions, conduct or status has resulted in an Event of Disassociation, and therefore such Person is no longer a Member.

(w) "**Gross Asset Value**" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager(s), provided that the initial Gross Asset Values of the assets contributed to the Company pursuant to Section 8.1 hereof shall be hereof shall be maintained by the Company's accountant, and provided further that, if the contributing Member is a Manager, the determination of the fair market value of any other contributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Capital Account of such contributing Member);

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager(s) as of the following times: (a) the acquisition of an additional interest by any new or existing Member in exchange for more than a de minimis contribution of property (including money); (b) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for a Membership Interest or Economic Interest; and (c) the liquidation of the Company within the meaning of the Code: provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Manager(s) reasonably determine(s) in accordance with OCBOA that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager(s), provided that, if the distributee is a Manager, the determination of the fair market value of the distributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Capital Account of the distributee Member); and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to OCBOA and the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to the Code; provided, however, that Gross Asset Values shall not be adjusted pursuant to this definition to the extent the Manager(s) determine(s) that an adjustment pursuant to subparagraph (ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (i), (ii) or (iv) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

(x) **Lot** shall mean and refer to any plat of land shown upon any recorded subdivision plat of the real property described in paragraph 2.1 of the Declarations, and such additions thereto as may hereafter be annexed pursuant to Section 2.3 of the Declarations.

(y) **"Majority Interest"** shall mean one or more Membership Interests of Members which taken together exceed fifty-one percent (51%) of the aggregate of all Membership Interests.

(z) **"Majority in Interest"** shall mean a Majority Interest and more than 50% in number of the Members.

(aa) **"Manager"** shall mean the Board of Directors elected from time to time in accordance with the Article V of this Operating Agreement. The Board of Directors shall be permitted to delegate responsibilities to committees of the Board of Directors or the Officers as

specified in this Operating Agreement and the Declarations. References to the Manager shall be also mean and include the Board of Directors. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine, feminine or neuter reference, as the case may be.

(bb) "**Member**" shall mean and refer to each Person who is an Owner under the Declarations owning fee simple title to one or more of the Lots and each of the parties who may hereafter acquire a Lot. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be.

(cc) "**Membership Interest**" shall mean a Member's entire interest, quantified in Units, in the Company including such Member's Economic Interest and such other rights and privileges that the Member may enjoy by being a Member, as identified in Article IV and as changed from time to time by the vote of the members owning a Majority Interest. The total Membership Interests of a Member are based upon the amount of acreage of each Lot subject to the Declarations owned by the Member.

Members' Membership Interests shall be subject to the following voting restrictions: Subject to the restrictions and limitations set forth in the Declarations, each Member shall be entitled to one vote or fraction of a vote for each acre or fraction of an acre of Property in which it holds fee simple title. When more than one person holds such interest or interests in any Lot, they shall nominate one person to cast the vote(s) for such Lot as they, among themselves, determine. The total number of votes with respect to any Lot shall not exceed the total acreage of such Lot, except as provided in the following sentence. There shall be fractional voting and all such fractions shall be rounded off to the nearest one-tenth (.1) of an acre. The votes for any Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required herein or by law, the affirmative vote of the Owners of a majority of acres represented at any meeting of the members duly called and at which a quorum is present, shall be binding upon the members.

(dd) "**Net Profits**" and "**Net Losses**" shall mean for each taxable year of the Company an amount equal to the Company's net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with OCBOA and the Code.

(ee) "**Operating Agreement**" shall mean this Operating Agreement as originally executed and as amended from time to time.

(ff) "**Other Comprehensive Bases of Accounting (OCBOA)**" Any one of the following basis for accounting that is not Other Comprehensive Basis of Accounting, as issued from time to time in the Statement on Standards for Accounting and Review Services issued by the Accounting and Review Services Committee of the AICPA:

(i) A basis of accounting that an entity uses to comply with the requirements

or financial reporting provisions of a governmental regulatory agency to whose jurisdiction the entity is subject;

(ii) A basis of accounting that an entity uses or expects to use to file its income tax return for the period covered by the financial statements;

(iii) The cash receipts and disbursements basis of accounting, and modifications of the cash basis having substantial support, such as recording depreciation on fixed assets or accruing income taxes; or

(iv) A definite set of criteria having substantial support that is applied to all material items appearing in financial statements (such as the price level basis of accounting).

(gg) "**Person**" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

(hh) "**Reserves**" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(ii) "**Treasury Regulations**" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

(jj) "**Unit**" shall mean the basic standard of quantity of measure of Member's Membership Interest in the Company.

ARTICLE II

FORMATION OF COMPANY

2.1 **Formation.** On **May 2, 2005** the Company was organized as a Kentucky Limited Liability Company by the execution and deliverance of Articles of Organization to the Kentucky Secretary of State in accordance with and pursuant to the Act.

2.2 **Name.** The name of the Company is VILLAGE TERRACE COMMUNITY ASSOCIATION, LLC.

2.3 **Principal Place of Business.** The principal place of business of the Company within the Commonwealth of Kentucky shall be **40 W. Pike Street, Covington, Kentucky**. The Company may locate its places of business and registered office at any other place or places as the Manager or Managers may from time to time deem advisable.

2.4 **Registered Office and Registered Agent.** The Company's initial registered office shall be at the office of its registered agent at **40 W. Pike Street, Covington, Kentucky 41011** and the name of its initial registered agent at such address shall be **ASWD SERVICE COMPANY, LLC**. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Kentucky Secretary of State pursuant to the Act.

2.5 **Duration.** The Company shall commence as of the date of filing of the Articles of Organization and shall continue until dissolution in accordance with either the provisions of Article XII of this Operating Agreement or the Act.

ARTICLE III

BUSINESS OF COMPANY

3.1 **Permitted Businesses.** The business of the Company shall be:

3.1.1 The exclusive business of the Company shall be to own, manage and maintain the Common Areas and pay Common Expenses of the Company in accordance with the Declarations and to enforce the restrictions and provisions of the Declarations.

3.1.2 To accomplish any lawful business necessary to carry out the purposes identified in paragraph 3.1(a) above, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets;

3.1.3 To exercise all other powers necessary to, or reasonably connected with, the Company's business which may be legally exercised by limited liability companies under the Act; and

3.1.4 To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

ARTICLE IV

NAMES, ADDRESSES AND MEMBERSHIP INTERESTS OF MEMBERS

The names, addresses and respective Membership Interests (in Units) of the Members are as follows:

<u>NAME</u>	<u>MEMBERSHIP ADDRESS</u>	<u>INTEREST (IN UNITS)</u>
TERRACE DEVELOPMENT COMPANY, LLC	467 Erlanger Road Erlanger, Kentucky	100

All changes to this Article IV shall be set forth in attached Exhibit 4.1.

ARTICLE V

MANAGEMENT OF THE COMPANY

5.1 **Management.** The business and affairs of the Company shall be managed by its Manager. The Company’s Manager shall be the Board of Directors. The Manager shall direct, manage and control the business of the Company to the best of its ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waivable provisions of applicable law, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. The entire Board of Directors shall constitute the Manager and no action of the Manager shall be valid unless it is approved and authorized by the Board of Directors as provided herein. No single member of the Board shall have authority to act unless authorized by the Board of Directors.

5.2 **Number, Tenure and Qualifications of the Board of Directors.** The Board of Directors shall consist of three (3) Directors. All three (3) Directors shall be appointed initially by the Developer to hold office at the pleasure of the Developer until the sum of the acreage conveyed by the Developer exceeds sixty percent (60%) of the total acreage of the property described in Exhibit “A” of the Declarations (the “60% Benchmark”). Following the attainment of the 60% Benchmark, and so long as the sum of the acreage conveyed by the Developer is less than ninety percent (90%) of the total acreage of the property described in Exhibit “A” of the Declarations (the “90% Benchmark”), the Developer will appoint two (2) of the Directors and the other Director will be elected by the Members from among themselves. Following the attainment of the 90% Benchmark and so long as the sum of the acreage conveyed by the Developer is less than one hundred (100%) of the total acreage of the property described in Exhibit “A” of the Declarations (the “100% Benchmark”), the Developer will appoint one (1) of the Directors and the other two (2) Directors will be elected by the Members from among themselves. Following attainment of the 100% Benchmark, all Directors will be elected by the Members from among themselves. The Developer shall be deemed to have relinquished control of the Board on the date of the first annual election occurring after attainment of the 90% Benchmark. In the event the sum of the acreage percentage(s) conveyed by the Developer exceeds the referenced limits (i.e., 60%, 90%, 100%) during a period between annual meetings, the Director(s) appointed by the Developer shall remain on the Board until the next annual

meeting of the Members when such Director(s) seat(s) shall be filled by the vote of the Members. The Developer, at its sole and absolute discretion, may increase the number of Directors elected by the Members from among themselves and decrease the number of Directors appointed by the Developer beyond that provided for above. In no event shall the Developer decrease the number of Directors elected by the Members from among themselves and increase the number of Directors appointed by the Developer beyond that provided for above.

So long as the Developer shall have the right to appoint all three (3) Directors to the Board in accordance with Section 5.2(b), Directors need not be members of the Association. Thereafter, all Directors shall be members of the Association or agents of members of the Association. After attainment of the 60% Benchmark, elections shall be held as set forth herein. Election shall be by plurality vote. The term of the Directors so elected or appointed at each annual election shall be for one (1) year expiring at the next annual election following their election, and thereafter until their successors are duly elected and qualified, or until removal from office with or without cause by the affirmative vote of a majority of the voting Members which elected them. In no event can a Director appointed by the Developer be removed except by the action of the Developer. Any Director appointed by the Developer shall serve at the pleasure of the Developer, and may be removed from office, and a successor Director may be appointed, at any time by the Developer. At no time shall there be more than a total of three (3) Directors of the Association.

Disqualification: Members who have failed to make payments of any sums due to the Company, or failed to observe any requirements of the Design Review Committee (as defined in Section 9.1(b) of the Declarations), shall not be entitled to vote for Directors or as a Director until such payment has been made or such performance has been completed.

5.3 **Meetings of the Board of Directors.** The Board of Directors shall meet at such times and places as shall be determined by a majority of the Board of Directors, but at least one (1) such meeting shall be held each year commencing with 2005. Special Meetings of the Board of Directors may be held at any time upon call by the President or two (2) members of the Board of Directors. Written notice of the time and place of such meeting shall be given to each member of the Board of Directors either by personal delivery or by mail, telegram, facsimile, electronic mail or telephone at least three (3) days before the meeting, which notice shall specify the purposes of the meeting. Attendance of any member of the Board of Directors at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing either before or after the holding of such meeting by a member of the Board of Directors, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any meeting.

5.4 **Quorum, Adjournment and Manner of Acting.** A quorum of the Board of Directors shall consist of a majority of the members of the Board of Directors then in office; provided that a majority of the members of the Board of Directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned or fixed is announced at such meeting. At each meeting of the Board of

Directors at which a quorum is present, all questions and business shall be determined by a majority vote of those present and qualified to vote, except as may be otherwise expressly provided in the Declarations or this Operating Agreement. The Board of Directors may also act through execution of a unanimous written action statement.

5.5 **Officers.** The officers of the Company shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may, from time to time, by resolution, designate and authorize to conduct various acts on behalf of the Company. Any two (2) or more offices may be held by the same person except the offices of President and Secretary. The officers shall be elected and appointed by the Board of Directors at the annual regular meeting of the Board of Directors. All officers shall be Members or representatives of Members, except that officers representing the Developer until the 100% Benchmarks are not required to be members or representatives of Members. The officers shall hold office for a term of one (1) year or until their successors are elected, except in the case of resignation, removal from office or death. The Board may remove any officer at any time with or without cause by a majority vote of the Board of Directors then in office.

5.5 **Certain Powers of Manager.**

5.5.1 Without limiting the generality of Section 5.1, the Manager (or any officer if authorized by the Board of Directors), shall, subject to the restrictions contained in Section 5.6, have power and authority, on behalf of the Company:

5.3.1.1 To acquire property from any Person as the Manager may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

5.3.1.2 To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Manager or Members in any amount without the consent of the Members, on such terms as the Manager deems appropriate, subject to the provisions of Section 13.17 of this Agreement and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;

5.3.1.2 To purchase liability and other insurance to protect the Company's property and business;

5.3.1.3 To hold and own any Company real and personal properties in the name of the Company;

5.3.1.6 To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale;

leases; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company;

5.3.1.7 To employ accountants, legal counsel, managing agents, management companies or other experts to perform services for the Company and to compensate them from Company funds;

5.3.1.7 To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve which is consistent with the purpose of the Company and the Declarations; and

5.3.1.8 To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's purpose and the Declarations' intent.

Unless authorized to do so by this Operating Agreement or by the Manager of the Company, no attorney-in-fact, officer, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

5.4 **Restrictions on Authority of the Manager(s).**

5.4.1 The Manager shall not have the authority to, and covenants and agrees that it shall not, do any of the following acts unless such acts are consistent with the Declarations and the consent of a Majority Interest of the Members:

5.4.1.1 Cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company as set forth in Section 3.1 hereof;

5.4.1.2 Knowingly do any act in contravention of this Operating Agreement or the Declarations;

5.4.1.3 Knowingly do any act which would make it impossible to fulfill the purpose of the Company, except as otherwise provided in this Operating Agreement;

5.4.1.4 Possess property, or assign rights in specific property, for other than a Company purpose;

5.4.1.5 Knowingly perform any act that would cause the Company to conduct business in a state which has neither enacted legislation which permits limited liability companies to organize in such state nor permits the Company to register to do business in such state as a foreign limited liability company;

5.1.4.6 Cause the Company to voluntarily take any action that would cause a bankruptcy of the Company;

5.1.4.7 Cause the Company to acquire any equity or debt securities of any Member or any of its Affiliates, or otherwise make loans to any Member or any of its Affiliates;

5.1.4.8 Cause a significant change in the nature of the Company's purpose;

5.1.4.9 Cause the Company to admit any additional Members other than pursuant to Article XI hereof;

5.5 **Standard of Care.** The Manager (which shall include each member of the Board of Directors and each officer of the Company) shall perform his duties as Manager in good faith, in a manner he reasonably believe to be in the best interests his of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties as Manager shall not have any liability by reason of being or having been a Manager of the Company. The Manager does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a wrongful taking by the Manager. In performing his duties, a Manager shall be entitled to rely upon such information, opinions, reports, or statements, including financial statements or other financial data, presented or prepared by (1) any of the Company's other Managers or employees who such Manager reasonably believes are reliable and competent in the matters prepared or presented, or (2) any other Person, including without limitation lawyers or accountants, as to matters which such Manager reasonably believes are within such Person's professional or expert competence.

5.6 **Limitation of Liability.** A Manager (which shall include each member of the Board of Directors and each officer of the Company) shall not be personally liable to the Company in monetary damages for breach of a duty to the Company unless it is proved by clear and convincing evidence in a court of competent jurisdiction that his or her action or failure to act (1) was not in good faith, (2) was undertaken with deliberate intent to cause injury to the Company or undertaken with reckless disregard for the best interests of the Company, (3) resulted in an improper personal benefit to such Manager or any of his or her Affiliates at the expense of the Company, (4) constituted fraud or deceit, or (5) was a knowing violation of law.

5.7 **Indemnification.**

5.7.1 The Company shall indemnify any person 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, (other than an action by or in the right of the Company) by reason of the fact that he or she is or was a Member, Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, manager, employee or agent of another corporation,

partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea 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 or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

5.7.2 The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he or she is or was a Member, Manager, partner, employee or agent of the Company, or is or was serving at the request of the Company as a director, partner, trustee, member, manager, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company.

5.7.3 Expenses (including attorneys' fees) incurred by a Member, Manager in defending any civil, criminal, administrative, or investigative action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Member, Manager to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Members deem appropriate.

5.7.4 The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Section 5.7 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, agreement, vote of Members, Managers, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

5.7.5 The Company shall have power to purchase and maintain insurance on behalf of any person who is or was a Member, Manager, employee or agent of the Company, or is or was serving at the request of the Company as a director, trustee, Member, manager, partner, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability under the provisions of this section.

5.7.6 For purposes of this Section, references to "the Company" shall include, in addition to the resulting entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger with the Company which, if its separate existence had continued, would have had power and authority to indemnify its directors, trustees, partners, managers and employees or agents so that any person who is or was a director, partner, trustee, member, manager, employee or agent of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, partner, manager, employee or agent of another corporation, partnership, limited liability company joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 5.7 with respect to the resulting or surviving entity as he or she would have with respect to such constituent entity if its separate existence had continued.

5.7.7 For purposes of this Section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a Member, Manager, employee or agent of the Company which imposes duties on, or involves services by, such Member, Manager, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Section 5.7.

5.7.8 The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 5.7 shall continue as to a Person who has ceased to be a Member, Manager, director, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5.8 **Managers and Members Have No Exclusive Duty to Company.** The Manager (which shall include each member of the Board of Directors and each officer of the Company) shall not be required to manage the Company as his or her sole and exclusive function and he or she (and any Manager or Member) may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Manager or Member or to the income or proceeds derived therefrom. No Manager nor any Member shall incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture.

5.9 **Bank Accounts.** The Manager may from time to time open bank accounts in the name of the Company and designate the officers as signatories thereon.

5.10 **Compensation.** The Manager (which shall include each member of the Board of Directors and each officer of the Company) shall not receive compensation for its duties hereunder.

5.14 **Right to Rely on the Manager(s).**

5.14 Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

5.14.1 The identity of any Director, officer, Manager or any Member;

5.14.2 The existence or nonexistence of any fact or facts which constitute a condition precedent to acts by any Manager or which are in any other manner germane to the affairs of the Company;

5.14.3 The Persons who are authorized to execute and deliver any instrument or document of the Company; or

5.14.4 Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 **Limitation of Liability.** Each Member's liability shall be limited as set forth in this Operating Agreement, the Act and other applicable law.

6.2 **Company Debt Liability.** A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions except as provided in Section 6.6 herein or as otherwise required by law.

6.3 **List of Members.** Upon written request of any Member, the Manager shall provide a list showing the names, addresses and Membership Interests and Economic Interests of all Members and Economic Interest Owners.

6.4 **Company Books.** In accordance with Section 9.9 herein, the Managers shall maintain and preserve, during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member and Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's and Economic Interest Owner's expense.

6.5 **Priority and Return of Capital.** Except as may be expressly provided in Article IX, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.
Liability of a Member to the Company.

A Member who receives the return in whole or in part of its contribution or any other distribution is liable to the Company only to the extent now or hereafter provided by the Act.

ARTICLE VII

MEETINGS OF MEMBERS

7.1 **Annual Meeting.** The Members of the Company shall meet annually. The annual meeting of the Members shall be held at such time as shall be determined by resolution of the Managers, commencing with the year **2005**, for the purpose of the transaction of such business as may come before the meeting.

7.2 **Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Manager or by any Member or Members holding at least 10% of the Capital Interests.

7.3 **Place of Meetings.** The Members may designate any place, either within or outside the Commonwealth of Kentucky, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in the Commonwealth of Kentucky.

7.4 **Notice of Meetings.** Except as provided in Section 7.5, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

7.5 **Meeting of all Members.** If all of the Members shall meet at any time and place, either within or outside of the Commonwealth of Kentucky, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.6 **Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.7 **Quorum.** Members holding a Majority Interest, represented in person or by

proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Membership Interests whose absence would cause less than a quorum.

7.8 **Manner of Acting.** If a quorum is present, the affirmative vote of the Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by this Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Capital Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

7.9 **Proxies.** At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

7.10 **Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

7.11 **Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII

CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 **Members' Capital Contributions.** Each Member has received its Interest in conjunction with its acquisition of a Lot and its initial capital contribution shall be determined by the Company's accountant.

8.2 **Additional Contributions.** Members shall be required to make annual payments to the Company for Common area Assessments in accordance with the Declarations. In addition the Members shall be required, from time to time, as approved by the Manager, to make payments to the Company for Special Assessments as provided in the Declarations. All assessments of Members shall be treated as Capital Contributions. The Company may specifically enforce any such assessment.

8.3 **Capital Accounts.**

8.3.1 A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased or decreased as required pursuant to OCBOA and Subchapter K of the Code for allocation and of Net Profits and Net Losses made to each such Capital Account.

8.3.2 In the event of a permitted sale or exchange of a Membership Interest or an Economic Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Interest in accordance with Subchapter K of the Code.

8.3.3 The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Subchapter K of the Code and provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

8.3.4 Upon liquidation of the Company (or any Member's Membership Interest or Economic Interest or Owner's Economic Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members and Economic Interest Owners, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid in accordance with Section 12.3(b). The Company may offset damages for breach of this Operating Agreement by a Member or Economic Interest Owner whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

8.3.5 Except as otherwise required in the Act (and subject to Section 8.1 and 8.2), no Member or Economic Interest Owner shall have any liability to restore all or any portion of a deficit balance in such Member's or Economic Interest Owner's Capital Account.

8.4 **Withdrawal or Reduction of Members' Contributions to Capital.**

8.4.1 A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

8.4.2 A Member, irrespective of the nature of its Capital Contribution,

has only the right to demand and receive cash in return for its Capital Contribution.

ARTICLE IX

ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 **Allocations of Profits and Losses from Operations.** The Net Profits and Net Losses of the Company for each fiscal year will be allocated in accordance with each Members' Membership Interest. Notwithstanding the previous sentence, if there are special allocations of net Profits and Net Losses of the Company for each fiscal year such Net Profits and Net Losses shall be allocated in accordance with OCBOA and Subchapter K of the Code.

9.2 **Special Allocations to Capital Accounts and Certain Other Income Tax Allocations.** Notwithstanding Section 9.1 hereof, special allocations to Capital Accounts and certain other income tax allocations shall be allocated to each Member in accordance with Subchapter K of the code and OCBOA.

9.3 **Distributions.** Except as required by Section 8.3, all distributions of Distributable Cash shall be made to the Members in accordance with their Membership Interest.

9.4 **Limitation On Distributions.** No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company, valued at fair market value, are in excess of all liabilities of the Company, except liabilities to Members on account of their contributions.

9.5 **Accounting Principles.** The profits and losses of the Company shall be determined in accordance with OCBOA applied on a consistent basis. It is intended that the Company will elect those accounting methods which provide the Company with the greatest tax benefits.

9.6 **Interest On and Return of Capital Contributions.** No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

9.7 **Loans to Company.** Nothing in this Operating Agreement shall prevent any Member or Manager from making secured or unsecured loans to the Company by agreement with the Company.

9.8 **Accounting Period.** The Company's accounting period shall be January 1 to December 31.

9.9 **Records, Audits and Reports.** At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

9.9.1 A current list of the full name and last known business, residence, or

mailing address of each Member, Economic Interest Owner, Manager and Officer, both past and present;

9.9.2 A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

9.9.3 Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years;

9.9.4 Copies of the Company's currently effective written Operating Agreement and copies of any writings required with respect to the Members contributions, obligations to make additional contributions, and rights to distributions.

9.9.5 Copies of any financial statements of the Company for the three most recent years;

9.9.6 Minutes of every annual, special meeting and court-ordered meeting;

9.9.7 Any written consents obtained from Members for actions taken by Members without a meeting.

9.10 **Returns and Other Elections.** The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

All elections permitted to be made by the Company under federal or state laws shall be made by the Manager in his sole discretion, provided that the Manager shall make any tax election requested by Member owning a Majority Interest.

ARTICLE X

TRANSFERABILITY

10.1 **General.** A Member or an Economic Interest Owner shall only be permitted to transfer its Membership Interest or Economic Interest to a non-member in the event it is done with the sale or transfer of a Lot. Except as provided in the previous sentence, neither a Member nor an Economic Interest Owner shall have the right to:

10.1.1 sell, assign, transfer, exchange or otherwise transfer for consideration, (collectively, "sell" or "sale"); or,

10.1.2 gift, bequeath or otherwise transfer for no consideration, whether or not by operation of law, (collectively "gift"), all or any part of its Membership Interest or Economic

Interest, except as otherwise provided herein.

Each Member and Economic Interest Owner hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests and Economic Interests imposed by this Operating Agreement in view of the Company purposes and the relationship of the Members and Economic Interest Owners. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member or Economic Interest Owner pledges or otherwise encumbers any of its Membership Interest or Economic Interest as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this Operating Agreement.

10.2 **Restriction on Withdrawal.** No Member shall have the right or power to voluntarily withdraw including, but not limited to resignation or retirement from Membership from and cease to be a Member in the Company, in any manner whatsoever except in the event such Member is transferring its Lot. Any purported voluntary withdrawal in violation of this Agreement shall be void and ineffectual and shall not operate as a voluntary withdrawal from and cessation of Membership in the Company.

10.3 **Assignee as Member.** Notwithstanding anything contained herein to the contrary, no assignee of all or any part of the Membership Interests of an Member shall become a Member unless (i) the assignee is acquiring the assignor's Lot; (ii) the assignor has stated such intention in the instrument of assignment, and (iii) the assignee has signed all necessary documents to adopt this Operating Agreement. If an assignee is not admitted as a Member, such assignee shall only have such rights as are assigned to it in the Distributions and Allocations to which the assignor would have been entitled. No assignment of Membership Interests, whether or not such assignee is to be admitted as a Member, shall be effected, unless the assignee has executed an instrument satisfactory in form and substance to the other Members, whereby such assignee accepts and agrees to be bound by all of the terms and provisions of this Agreement. At the time of assignment of any Membership Interests, the Company may require the payment of sum to reimburse it or advance it funds for the payment of any reasonable expenses, including attorney fees, in connection with such assignment.

10.4 **Effect of Transfer.**

10.4.1 Any permitted transfer of all or any portion of a Member's Membership Interests in the Company consented to hereunder by all of the other Members shall take effect on the first day of the month following receipt by said Member of written notice of the consent of the Members holding a Majority Interest to the transfer. Any transferee of Membership Interests in the Company shall take subject to the restrictions on transfer imposed by this Agreement.

10.4.2 Upon any attempted transfer of a Member's Membership Interests in the Company in violation of this Agreement, the purported transferee shall not be entitled to vote on matters coming before the Members, to participate in the management of the business and affairs of the Company, to become a Member, to act as an agent of the Company, to receive any share of profits or other compensation by way of income and the return contributions to which the

transferor of such Membership Interests in the Company would otherwise be entitled, or have any other rights in or with respect to the Membership Interests.

ARTICLE XI

ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity that acquires a Lot shall become a Member in this Company either by the issuance by the Company of Membership Interests, or as a transferee of a Member's Membership Interest or any portion thereof in association with the acquisition of such Member's Lot, subject to the terms and conditions of this Operating Agreement. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager may, at his option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Subchapter K of the Code.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 Dissolution.

12.1.1 The Company shall be dissolved upon the occurrence of any of the following events:

12.1.1.1 by the unanimous vote of the Members;

12.1.1.2 upon the entry of a decree of judicial dissolution to
KRS 275.290;

12.1.1.3 upon the filing of a certificate of dissolution
pursuant to KRS 275.295(1),(2) or (3); or

12.1.1.4 upon the release of all of the Lots from the
Declarations.

12.1.2 As soon as possible following the occurrence of any of the events specified in this Section 12.1 effecting the dissolution of the Company, the appropriate representative of the Company shall execute a certificate of dissolution in such form as shall be prescribed by the Secretary of State that includes the name of the Company and the effective date of its dissolution, and file same with the Secretary of State's office.

12.2 Effect of Filing of Certificate of Dissolution. Upon the filing by the Secretary of State of a certificate of dissolution, the Company shall continue its existence until

the winding up of its affairs is completed.

12.3 **Winding Up, Liquidation and Distribution of Assets.**

12.3.1 Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Manager(s) shall immediately proceed to wind up the affairs of the Company, unless the remaining Members, by an affirmative vote of the remaining Members holding at least three-quarters of the Membership Interests, direct the managers to continue the business of the Company for a period in order to maximize its value as a going concern for eventual sale.

12.3.2 If the Company is dissolved and its affairs are to be wound up, the Manager(s) shall:

12.3.2.1 Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Manager(s) may determine to distribute any assets to the Members in kind),

12.3.2.2 Allocate any Net Profit or Net Loss resulting from such sales to the Members' and Economic Interest Owners' Capital Accounts in accordance with Article IX hereof,

12.3.2.3 Discharge all liabilities of the Company, including liabilities to Members and Economic Interest Owners who are also creditors, to the extent otherwise permitted by law, other than liabilities to Members and Economic Interest Owners for distributions and the return of capital, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such Reserves shall be deemed to be an expense of the Company),

12.3.2.4 Distribute the remaining assets in the following order:

12.3.2.4.1 If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and Economic Interest Owners shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Operating Agreement to reflect such deemed sale.

12.3.2.4.2 The positive balance (if any) of each Member's and Economic Interest Owners's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind, as determined by the Manager(s), with any assets distributed in kind being valued for this purpose at their fair

market value. Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Subchapter K of the Code.

12.3.2.5 Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Subchapter K of the Code of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

12.3.2.6 Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

12.3.2.7 The Manager(s) shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.4 **Return of Contribution Nonrecourse to Other Members.** Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 **Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

13.2 **Books of Account and Records.** Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall be at all times be maintained at the principal executive office of the Company

and shall be open to the reasonable inspection and examination of the Members Economic Interest Owner's or their duly authorized representatives during reasonable business hours.

13.3 **Application of Kentucky Law.** This Operating Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the Commonwealth of Kentucky, and specifically the Limited Liability Companies Act.

13.4 **Waiver of Action for Partition.** Each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

13.5 **Amendments.** This Operating Agreement may not be amended except by the unanimous written agreement of all of the Members.

13.6 **Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

13.7 **Construction.** Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.8 **Headings and Pronouns.** The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof. All pronouns and only variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural as the identity of the Person or Persons may require.

13.9 **Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.10 **Rights and Remedies Cumulative.** The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.11 **Severability.** If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.2 **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal

representatives, successors and assigns.

13.3 **Creditors.** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.4 **Counterparts.** This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13.5 **Rule Against Perpetuities.** The parties hereto intend that the Rule Against Perpetuities (and any similar rule of law) not be applicable to any provisions of this Operating Agreement. However, notwithstanding anything to the contrary in this Operating Agreement, if any provision in this Operating Agreement would be invalid or unenforceable because of the Rule Against Perpetuities or any similar rule of law but for this Section 13.15, the parties hereto hereby agree that any future interest which is created pursuant to said provision shall cease if it is not vested within twenty-one years after the death of the survivor of the group composed of (all who are currently Members) and their issue who are living on the date of this Operating Agreement and their issue, if any, who are living on the effective date of this Operating Agreement.

13.6 **Investment Representations.** The undersigned Members and Economic Interest Owners, if any, understand (1) that the Membership Interests and Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, Kentucky securities laws or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemptions from the registrations requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the Membership Interests and Economic Interests were acquired by a Member with a view to distribution.

Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that such Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for such own Member's and Economic Interest Owner's account, for investment and not with a view to the resale or distribution thereof. Each Member and Economic Interest Owner agrees not to transfer, sell or offer for sale any of portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist such Member or Economic Interest Owner in complying with any exemption from registration under the Acts if such Member or Economic Interest Owner should at a later date,

wish to dispose of the Membership Interest or Economic Interest. Furthermore, each Member realizes that the Membership Interests and Economic Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by such Member or Economic Interest Owner for at least three years.

Prior to acquiring the Membership Interests and Economic Interests, each Member and Economic Interest Owner has made an investigation of the Company and its business and have had made available to each such Member and Economic Interest Owner all information with respect thereto which such Member needed to make an informed decision to acquire the Membership Interest or Economic Interest. Each Member and Economic Interest Owner considers herself, himself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's or Economic Interest Owner's investment in the Membership Interest or Economic Interest.

13.17 **Certain Transactions.**

13.17.1 The Company may enter into a contract, action, or transaction between the Company and one or more of its Members, or Manager or their spouse or any lineal descendant (including adoptive children) or between the Company and any other Person in which one or more of its Members, or Managers or their spouse or any lineal descendant (including adoptive children) are directors, trustees, managers or officers, or have a financial or personal interest, only if either of the following apply:

13.17.1.1 The material facts as to his, her or their relationship or interest and as to the contract, action, or transaction are disclosed or are known to the Members and Members authorize the contract, action, or transaction by the affirmative vote of a majority of the disinterested Members, even though the disinterested Members constitute less than a quorum of the Members; or

13.17.1.2 The contract, action, or transaction is on terms no less favorable than those which could be obtained in an arm's-length transaction with a Person who is not an affiliate of the Company.

13.17.2 Interested Members may be counted in determining the presence of a quorum at a meeting of the Members that authorizes the contract, action, or transaction.

13.17.3 By the affirmative vote of a majority of the Members, and irrespective of any financial or personal interest of any of them, the Members shall have authority to establish reasonable compensation, which may include pension, disability, and death benefits, for services to the Company by Managers.

13.17.4 For purposes of division (a) of this Section 13.17, a Manager is not an interested Manager solely because the subject of the contract, action, or transaction may involve or affect a change in control of the Company or his continuation in office as a Manager

of the Company.

13.17.5 One or more interested Members may participate in or vote at a meeting of the Members that authorizes any contract, action, or transaction under this Section 13.17.

13.18 **Conflict Between Documents**. It is the intent of the parties hereto that this Operating Agreement and the Declarations shall be read as consistent, but in the event of an actual conflict between this Operating Agreement and the Declarations the Declarations shall govern any dispute.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

CERTIFICATE

The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, consisting of 29 pages, excluding this certification page and the Exhibits, constitutes the Operating Agreement of **VILLAGE TERRACE COMMUNITY ASSOCIATION, LLC**, executed on _____, **2005**.

**VILLAGE TERRACE COMMUNITY
ASSOCIATION, LLC, a Kentucky Limited
Liability Company**

BY: _____

MEMBER:

**VILLAGE TERRACE DEVELOPMENT COMPANY,
LLC, a Kentucky Limited
Liability Company**

**BY: TRIANGLE DESIGN GROUP, INC.
MANAGER, BY AND THROUGH**

Philip Drees, President

COPY

**Declaration of Covenants
and Restrictions and Grant of Easements**

THIS DECLARATION is made this 20 day of May, 2005, by TERRACE DEVELOPMENT COMPANY, LLC, a Kentucky Limited Liability Company, hereinafter referred to as Owner.

1. Statement of Facts

(a) Owner is the owner in fee of that certain real property in the City of Florence, County of Boone, State of Kentucky, sometimes hereinafter referred to as the VILLAGE TERRACE development consisting of Seven (7) Lots as shown on the record Plat of record with the Boone County Court Clerk's Office at Burlington, Kentucky, which is more specifically described in Exhibit A, including the four (4) contiguous Commercial Lots, more particularly described in Exhibit B as Lots 1, 2, 3 and 4.

(b) Owner has or intends to improve portions of the property,

(c) Owner is about to, or may hereafter, sell, dispose of, convey, lease, or hypothecate a portion or portions of the property.

(d) Owner desires to subject each and every portion of the property to the easements, covenants, conditions, restrictions, reservations, liens, and charges hereinafter set forth pursuant to a general plan of improvement of the property.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

2. Common Plan

(a) Owner declares it has established a plan for the protection, maintenance, and improvement of said property, and does hereby fix certain easements, covenants, and reservations upon all lots and portions thereof of said VILLAGE TERRACE development, which shall be used, held, leased, or sold, or conveyed by the Owner, whether by operation of law or otherwise, and each and all of which is and are for the benefit of said property, and of each owner of land therein, whether present or future, and which shall inure and pass with said property, and each and every Lot of land therein, and shall apply to and bind the Owner, its heirs, executors, administrators, and successors in interest.

(b) The easements, covenants and restrictions set forth in this Declaration and affecting the Lots as set forth herein are for the benefit of each Lot; and whenever one Lot is the servient tenement, the other Lots shall be the dominant tenement. The easements, covenants and restrictions affecting a Lot are for the benefit of the other Lot or Lots.

3. The Property. The property which is legally described in Exhibit A is likewise shown upon the plat attached hereto and made a part hereof, marked Exhibit B, which has or shall be recorded with the Boone County,

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COUNTY CLERK: MARILYN Y. KROUSE
BOONE COUNTY CLERK
DEPUTY CLERK: DONNA COLLINS

Kentucky, County Clerk's Office at Burlington, Kentucky. The VILLAGE TERRACE development is divided into a total of seven (7) Lots, including the four (4) contiguous commercial Lots, which are described on Exhibit B as Lot 1, Lot 2, Lot 3 and Lot 4. These four (4) contiguous commercial Lots, which are described on Exhibit B as Lot 1, Lot 2, Lot 3 and Lot 4 are divided into two categories of general use and are hereinafter referred to as "Building Areas" and "Common Easement Areas."

4. Other Definitions

(a) *Persons*. The word person or persons means and includes individuals, partnerships, firms, associations, limited liability companies and corporations, or any other form of business entity.

(b) *Building Areas*. All areas permitted for construction of building structures by the appropriate governmental authorities will be referred to as a Building Area.

(c) *Lot*. The word Lot means Lot 1 - 7 of the VILLAGE TERRACE development, as the context requires.

(d) *Common Easement Areas*. The phrase Common Easement Areas refers to the sidewalks, service drives, parking aisles, driveways, streets, parking areas, and landscaped areas within the boundaries of any Lot effected by this Declaration; those areas within the VILLAGE TERRACE development that are open to the public generally; and all other areas except those areas that are occupied from time to time by building structures and appurtenances.

(e) *Village Terrace Community Association, LLC* The Village Terrace Community Association, LLC, is a Kentucky non-profit corporation, formed by The Terrace Development Company, LLC., a Kentucky limited liability company (the Owner) for purposes of administering the duties associated with these Declaration of Covenants and Restrictions and Grant of Easements and the Declarations and Covenants, as of record in book 1024, page 450 of the Boone County Clerk's Office, Burlington, Kentucky, as same are applicable to the VILLAGE TERRACE development Lots.

5. Common Easement Areas Easements

(a) Non-exclusive easements appurtenant to and for the benefit of each Lot are hereby created over, in, upon, and across the Common Easement Areas of the other Lots. Non-exclusive easements appurtenant to and for the benefit of each Lot are hereby created over, in, upon, and across any future parking and driveway areas built on any other Lot. These easements are for the following purposes:

(1) The pedestrian and vehicular traffic of the owners of the respective dominant Lots and their respective heirs, successors, grantees, mortgagees, tenants, and subtenants and all persons who now own, hold, or hereafter own or hold portions of real property within one of the dominant Lots or

leasehold estate, or any interest therein, or building space thereon; and their respective tenants and subtenants thereof; and the officers, directors, concessionaires, employees, customers, visitors, and other licensees and invitees of any of them;

(2) The ingress, egress, and regress of any of the above designated persons, and their passenger vehicles, to any and from any portion of the Common Easement Areas and public streets adjacent thereto so long as the areas are constructed for such general use;

(3) The ingress, egress, and regress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the entire VILLAGE TERRACE development, for the delivery of goods, wares, merchandise, and the rendition of services to said owners and their respective heirs, successors, grantees, and assigns, and all persons, who now own or hereafter own or hold portions of any Building Area or any leasehold estate, or any other interest therein, or building space thereon, and their respective tenants, and subtenants; and the officers, directors, concessionaires, agents, employees, and licensees of any of them.

(4) No raised curbing, fence, division, rail, hedge, walls, or obstructions of any type or kind shall ever be placed, kept, permitted, or maintained along the common boundary lines between the Common Easement Areas of the Lots, except as shall be approved by the then applicable governmental authority in approving any site plan or development plan.

6. Shared Parking Easement Lot 3 and 4.

(a) Non-exclusive easements appurtenant to and for the benefit of Lot 3 and 4 are hereby created over, in, upon, and across the Common Easement Areas of Lots 3 and 4. Non-exclusive easements appurtenant to and for the benefit of each Lot are hereby created over, in, upon, and across any future parking and driveway areas built on either Lot for the benefit of the other Lot. These easements are for the following purposes: The parking of passenger vehicles of the owners of the respective dominant Lot and their respective heirs, successors, grantees, mortgagees, tenants, and subtenants and all persons who now own, hold, or hereafter own or hold portions of real property within one of the Lots or leasehold estate, or any interest therein, or building space thereon; and their respective tenants and subtenants thereof; and the officers, directors, concessionaires, employees, customers, visitors, and other licensees and invitees of any of them;

7. Restricted Retail Uses.

(a) No lot in the VILLAGE TERRACE development nor any part of it, except Lot 1 will be used for (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind (this restriction shall not apply to doctors or dentists licensed to prescribe medicinal drugs operating a doctor or dentist's office); (ii) the operation of a business in which more than one hundred square feet of floor area is devoted to the sale of so-called health and/or beauty aids and/or drug sundries; (iii) the operation of a business in which more than one hundred square feet of floor area is devoted to the sale or display of greeting cards and/or gift wrap; (iv) the operation of a business in which prepackaged food (excluding ice cream and ice cream products) shall be sold for off premises consumption (not, however, to exclude the sale of food prepared on the premises as a part of the operation of a restaurant, whether or not prepared for off premises consumption); (v) the operation of a medical diagnostic lab except when operated as part of a doctor or dentist's office; and/or (vi) the operation of a business in which photofinishing services and/or photographic film are offered for sale. The Restrictions in (i) thru (vi) of this subparagraph only apply if Lot 1 remains as a Walgreen's Pharmacy Store.

(b) No lot in the VILLAGE TERRACE development nor any part of it except Lot 2 will be used for a restaurant use the primary business of which is the sale of hamburger, hamburger products, or chicken sandwiches which account for twenty percent (20%) or more of it's gross sales, exclusive of taxes, beverage and dairy product sales, consists of sales of hamburgers, hamburger products and/or chicken sandwiches. This restriction shall burden and run with the restricted parcels for a period of twenty (20) years from date of Lot 2 being purchased for use as a Wendy's Old Fashioned Hamburger Restaurant. This Restriction only apply if Lot 2 remains as a Wendy's Old Fashioned Hamburger Restaurant.

(c) No lot in the VILLAGE TERRACE development, Lots 1-7, nor any part of it, except Lot 3 will be used for a state or nationally chartered banking institution, unless Lot 3 is not originally developed as a state or nationally chartered banking institution. In the event that Lot 3 is not originally developed as a state or nationally chartered banking institution, then this restriction shall not apply. Provided, however, in no event shall more than one (1) Lot in the VILLAGE TERRACE development, consisting of Lots 1 - 7, ever be used for a state or nationally chartered banking institution as at the same time. The foregoing restriction shall not prohibit the following uses on any of Lots 1-2 and Lot 4-7, so long as such activities remain incidental to the primary use of such Lots: (a) the cashing of checks or the sale of money orders or pre-paid credit cards, (b) accepting payment

for goods or services sold on a Lot by check, credit card, debit card or any other means and (c) the operation of an automatic teller machine inside buildings.

(d) No lot in the VILLAGE TERRACE nor any part of it except Lot 4 will be used for the operation of a ice cream store whose primary business is the sale of dip or soft served ice cream products which account for twenty (20%) percent or more of it's gross sales, exclusive of taxes. This Restriction only apply if Lot 4 is originally used as a Graeter's Ice Cream store and continued to be used as a Graeter's Ice Cream store.

(e) No lot in the VILLAGE TERRACE nor any part of it except Lot 6 will be used for the operation of a Child Daycare/learning facility. This Restriction only applies if Lot 6 is originally used as an Abby's Child Enrichment Center and continued to be used as a Daycare/learning facility. Lot 6 is not restricted from operating as a medical diagnostic lab.

8. Maintenance of Common Easement Areas. All Common Easement Areas shall be maintained by the owner of the Lot on which said areas are located, at such owner's sole cost and expense, in good order and repair and in an adequate, sightly, and serviceable condition. Said maintenance shall include, without limitation, keeping the same reasonably free and clear of foreign objects, papers, debris, obstructions, standing water, snow, and ice; and, to assure the foregoing, the owner of each respective Lot shall cause the common facilities to be thoroughly cleaned as often as necessary to prevent the above mention conditions, and snow shall be properly removed on every occasion where it impedes the use of said facilities. The owner of each respective Lot shall also cause the painted lines on all service drives, parking aisles, driveways, streets, and parking areas to be repainted once every five years.

9. Enforcement

(a) *Entitlement to Enforcement.* The right of enforcement of the terms, covenants, and easements herein shall belong to the owners of each benefited Lot and, in addition, each Lot owner agrees that The Village Terrace Community Association, LLC, is hereby granted the right to enforce the terms of this Declaration as part of its commercial lot owner association's duties.

(b) *Injunctive Relief.* In the event of any violation or threatened violation of any of the terms, restrictions, or covenants provided herein, any person entitled to enforce this Declaration will have in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

(c) *Excuse for Nonperformance.* If performance of any act or obligation of any party is prevented or delayed by act of God, war, labor disputes, or other cause or causes beyond the reasonable control of such party, the time

for the performance of the act or obligation will be extended for the period that such act or performance is delayed or prevented by any such cause.

(d) *Substantial Performance.* Substantial performance of the provisions of this Declaration shall be sufficient to discharge all duties and obligations thereof.

(e) *Attorney's Fees.* In the event that any suit is brought for the enforcement of any provision of this Declaration or as the result of any alleged breach thereof or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect reasonable attorney's fees from the losing party or parties, and any judgment or decree rendered shall include an award thereof.

(f) *Breach Will Not Permit Termination.* It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

(g) *Breach Will Not Defeat Mortgage.* A breach or violation of any of the terms, covenants, or restrictions of this Declaration will not defeat or render invalid the lien of any first mortgage or first deed of trust, made in good faith and for value, but such term, covenant, or restriction will be binding on and effective against anyone whose title to the property or any portion of such is acquired by foreclosure, trustee's sale, or otherwise.

(h) *Remedies Cumulative.* The specified remedies to which any person entitled to enforce this Declaration may resort under the terms of this Declaration are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce this Declaration may be lawfully entitled in case of any breach or threatened breach of any provision of this Declaration. Failure to insist in any one or more cases upon the strict performance of any of the covenants of this Declaration or to exercise any remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

10. Duration. Each easement, covenant, and restriction will continue in full force and effect in perpetuity unless otherwise stated herein.

11. Modifications. This Declaration and any provision, covenant, or restriction contained within it, with the exception of the exclusive use restrictions, may be terminated, extended, modified, or amended with the written consent of the owners of not less than Seventy-Five per cent (75%) of the owners of the Lots in VILLAGE TERRACE development. No termination, extension, modification, or amendment will be effective unless a written instrument setting forth its terms has been executed, acknowledged, and recorded in the Boone County Clerk's Office, at Burlington, Kentucky.

No such amendment, modification, extension, or termination (collectively referred to as "change") will affect the rights of any mortgagee under a mortgage constituting a lien on a Lot in the VILLAGE TERRACE development at the time of such change unless the mortgagee consents to such, nor will any change be effective against such mortgagee subsequent to its securing title to its encumbered Lot by foreclosure, or deed in lieu of foreclosure, unless the mortgagee has consented in writing.

No lessee, licensee, or other person having a possessory interest, other than an owner of a Lot or portion thereof, will be required to join in the execution of or consent to any act taken in accordance with this section.

12. Not A Public Dedication. Nothing contained in this Declaration will be deemed to be a gift or dedication of any portion of the Lots in the VILLAGE TERRACE development to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Declaration will be strictly limited to and for the purpose expressed herein.

13. Severability. If any clause, sentence, or other portion of the terms, covenants, and restrictions of this Declaration becomes illegal, null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

14. Mechanics' Liens. Wherever under the terms of this Declaration any owner of a Lot is permitted to perform any work upon the Lot of another person, it is expressly understood and agreed that such owner will not permit any mechanics', materialmen's, or other similar liens to stand against the Lot on which such labor or material has been furnished in connection with any work so performed. Such owner may bond and contest the validity and the amount of such lien, but such owner will immediately pay any judgment rendered, with all proper costs and charges, and will have the lien released at his expense.

15. Dominant and Servient Estates. Each and all of the easements and rights granted or created here are appurtenances to the applicable Lots of the VILLAGE TERRACE development and none of the easements and rights may be transferred, assigned, or encumbered except as an appurtenance to such Lot. For the purposes of the easements and rights, the property benefited will constitute the dominant estate, and the particular area of the Lot in VILLAGE TERRACE DEVELOPMENT, which, respectively, is burdened by such easements and rights will constitute the servient estate.

16. Covenants Run With Land. Each and all of the covenants, restrictions, and provisions contained in this Declaration (whether affirmative or negative in nature) (a) are made for the direct, mutual, and reciprocal

benefit of each Lot of land in the VILLAGE TERRACE development; (b) will create mutual equitable servitudes upon each Lot of land in the VILLAGE TERRACE development in favor of the land benefited; (c) will bind every person having any fee, leasehold, or other interest in any portion of the VILLAGE TERRACE development at any time or from time to time to the extent that such portion is affected or bound by the covenant, restriction, or provision in question, or that the covenant, restriction, or provision is to be performed on such portion; and (d) will inure to the benefit of the parties and their respective successors and assigns as to their respective Lots of land in the VILLAGE TERRACE development.

17. Compliance with Laws. The owner of each Lot shall comply promptly with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders, and directives now exist or may hereafter provide concerning the use or safety of such owner's Lot and, at such owner's sole expense, make or cause to be made any repairs, changes, or modification in, on, or to his Lot required by any of the foregoing.

18. Headings. The caption headings of the various sections of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

19. Exhibits. All exhibits referred to herein and attached hereto are a part of this Declaration.

20. Gender and Number. The neuter gender includes the feminine and masculine, and the singular includes the plural.

In witness whereof Terrace Development Company, LLC has set its hand the day and year first noted above.

TERRACE DEVELOPMENT COMPANY, LLC

By and through its Managing Member

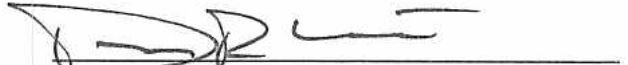
Triangle Design Group, Inc.

A Kentucky Corporation

By: 
Phil Drees, President

STATE OF KENTUCKY)
) :ss
COUNTY OF KENTON)

Acknowledged, subscribed and sworn to before me by **TERRACE DEVELOPMENT COMPANY, LLC** by and through Triangle Design Group, Inc., its Managing Member, by and through its President, Phil Dress on this the 20 day of May, 2005.



Notary Public
My Commission Expires: 10-25-08

THIS INSTRUMENT PREPARED BY:



DENNIS R. WILLIAMS
ADAMS, STEPNER, WOLTERMANN &
DUSING, P.L.L.C
40 W. Pike Street
Covington, Kentucky 41012
(859) 394-6200

223415.1
5/20/2005

EXHIBIT "A"

GROUP NO. 4702

Being all of Lots 1, 2, 3, 4, 5, 6 and 7, Village Terrace, as shown on Plat recorded in Plat Cabinet 5, Page 182 of the Boone County Clerk's records at Burlington, Ky.

EXHIBIT "B"

GROUP NO. 4702

Being all of Lots 1, 2, 3 and 4, Village Terrace, as shown on Plat recorded in Plat Cabinet 5, Page 182 of the Boone County Clerk's records at Burlington, Ky.