

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HIGHLAND PRESERVE

Jefferson County, Kentucky

This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is made as of _____, 2020, by **HIGHLAND PRESERVE LLC**, a Kentucky limited liability company, 2806 Newburg Road, Louisville, Kentucky 40205 ("Developer").

PRELIMINARY STATEMENTS

A. Developer is the owner of certain real property in Jefferson County, Kentucky, as set forth in Article I below, to be developed as a residential subdivision.

B. Developer hereby declares that all of the property described in this Declaration ("Highland Preserve Subdivision") shall be held, owned, mortgaged, used, occupied, sold and conveyed subject to the easements, restrictions, covenants, conditions, rights and obligations set forth in this Declaration, all of which are for the purpose of protecting the value and desirability of the real property. The easements, restrictions, covenants, conditions, rights and obligations shall run with the real property and be binding on and inure to the benefit of all persons and entities having any right, title or interest in the real property, and their heirs, successors and assigns, and shall inure to the benefit of each owner.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1

The Property. The real property which is hereby made subject to this Declaration is located in Jefferson County, Kentucky, and is more particularly described as follows:

BEING Lots 1 through 16 inclusive (each a "Lot" and collectively the "Lots") and Open Space Lot 17, HIGHLAND PRESERVE, Record Plat of which is recorded in Plat and Subdivision Book _____, Pages _____ and _____, in the office of the Clerk of Jefferson County, Kentucky.

BEING the property acquired by Highland Preserve LLC, by Warranty Deed dated March 15, 2019, of record in Deed Book 11369, Page 28, in the office of the Clerk of Jefferson County, Kentucky.

ARTICLE II

USE RESTRICTIONS

SECTION 1

Primary Use Restrictions. No Lot shall be used except for private single-family residential purposes. No structure shall be erected, placed, altered or permitted to remain on any Lot except for

one single-family dwelling designed for the occupancy of one family. Single-family dwelling are designed for the occupancy of one family (including domestic servants living on the premises), not to exceed two and one-half stories in height, having a single kitchen, and containing a garage for the sole use of the owner and occupants of the Lot.

For purposes of this Declaration, there shall be specifically excluded from the meaning of the phrase “private single-family residential purposes” and shall not be permitted on any Lot within Highland Preserve Subdivision, regardless of whether the same would otherwise be permitted by any applicable zoning regulations or other governmental laws, rules, or regulations, any uses that constitute or relate to (a) boarding houses, (b) lodging houses, (c) fraternities or sororities, (d) clubs, (e) hotels or motels, (f) residences or homes for social rehabilitation, (g) nursing homes, (h) residences or homes for the aged or infirm, (i) programs with respect to which admission or residency in or occupancy of the premises is limited to or intended in whole or in part for persons in the custody of the criminal justice system and/or persons engaged in the care, custody, nurturance or supervision of such persons, and (j) any “group home” or other similar use as determined by Developer or the Community Association (defined below).

SECTION 2

Nuisances. No noxious or offensive activity shall be conducted on any Lot, nor shall anything be done which may be or become an annoyance or nuisance to Highland Preserve Subdivision.

SECTION 3

Use of Other Structures and Vehicles

- A. No structure of a temporary character shall be permitted on any Lot, except temporary tool sheds or field offices used by a builder or Developer, which shall be removed when construction or development is completed; it being provided, however, that nothing herein contained shall prevent any Lot owner from construction, erecting or maintaining any recreational structure (such as a gazebo, small playhouse, swing set, jungle gym or the like) on any Lot provided that the plans for such have been approved in writing by Developer under Article III prior to the construction of any such recreational structure.
- B. No outbuilding, trailer, basement, tent, shack, garage, barn, or structure other than the main residence erected on the Lot shall at any time be used as a residence, either temporarily or permanently.
- C. No trailer, truck, motorcycle, commercial vehicles, camper trailer, camping vehicle, boat or similar vehicle shall be parked or kept on any Lot at any time unless housed in a garage or basement. No automobile that is inoperable shall be habitually or repeatedly parked or kept on any Lot (except in the garage) or on any street in Highland Preserve Subdivision. No

trailer, boat, truck, or other vehicle, except an automobile, shall be parked on any street in Highland Preserve Subdivision in excess of twenty-four (24) hours in any one calendar year.

- D. No automobile shall be continually or habitually parked on any street or public right-of-way in Highland Preserve Subdivision.
- E. All garage doors shall remain closed at all times except when required to be open for the entrance or exit of a vehicle housed therein.

SECTION 4

Animals. No animals, including reptiles, livestock or poultry of any kind, shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in the Louisville, Kentucky area) may be kept, providing they are not kept, bred or maintained for any commercial purposes. All household pets, including dogs and cats, shall at all times be confined to the Lot occupied by the owner of such pet or shall be restrained by a leash.

SECTION 5

Clothes Lines, Tennis Courts, Swimming Pools, Antennae and Receivers/Transmitters, Yard Ornaments

- A. No outside clotheslines shall be erected or placed on any Lot.
- B. No wall, hedge or fence shall be placed or planted on any Lot unless its design, materials and placement of planting are approved in writing by Developer or by any person or association to whom or to which Developer may assign this approval right. Fence material is to be of masonry, brick, black aluminum, or possibly wrought iron and shall be landscaped. Fencing for children, small pets, or swimming pool enclosures may be considered. Chain link fences will not be approved except as provided in Section 5.C below. Privacy screens for patios shall not be considered fences for purposes of this Section 5.B; however, no patio privacy screen shall be placed or erected on any Lot unless its design and placement are approved by Developer or by any person or association to whom or to which Developer may assign this approval right.
- C. No tennis court and fence shall be erected on any Lot in Highland Preserve Subdivision unless the fencing is coated with black or green vinyl acceptable to Developer and the plans for such tennis court and fence have been approved by Developer in writing pursuant to Article III.
- D. No in ground swimming pool shall be erected or placed on any Lot unless approved in writing by Developer or by any person or association to whom

or to which Developer may assign this approval right. No aboveground swimming pool shall be erected or placed on any Lot.

- E. No antenna (except for a standard small television antennae) or microwave and other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any Lot unless (i) of appropriate size [small digital satellite dishes of eighteen (18) inches or less shall probably satisfy this subsection (i)]; (ii) the device is adequately screened or buffered by mature shrubbery or trees, by terrain, or by fences or other structures; and (iii) its design and placement are approved in writing by Developer or by any person or association to whom or to which Developer may assign this approval right, all as provided in Article III. By granting permission to one or more Lot owners to erect receivers or transmitters, Developer or the Community Association shall not be deemed to have waived this restriction as it applies to other Lots in Highland Preserve Subdivision.
- F. No ornamental yard objects, statuary, sculpture, or similar items may be placed on any Lot unless the design and placement are approved in writing by Developer or by any person or association to whom or to which Developer may assign this approval right, all as provided in Article III.
- G. Developer, for itself and the Community Association, reserves the right place, replace and/or repair a wood fence on part of the perimeter of Highland Preserve Subdivision. Any such fence will be the responsibility of the Community Association for maintenance and repair. Each Lot owner grants to Developer and the Community Association an easement for such fencing, including an easement for access to the fence for maintenance and repair purposes.
- H. No basketball goals or other goals, nets, skateboard ramps, or any other sports equipment of any nature whatsoever shall be placed on any Lot unless the design or placement are approved in writing by Developer or by any person or association to whom or to which Developer may assign this approval right.
- I. Artificial trees are not permitted on any Lot.
- J. Firewood shall not be stored in a location that is visible from the front of the Lot on which it is stored.
- K. Except for holiday season decorative lights and attendant displays, which are permitted from November 15 of each year through the following January 10, all holiday or other decorations must be approved by Developer (or the Community Association after Developer assigns this approval right to the Community Association).

SECTION 6

Business; Home Occupations. No trade or business of any kind (including any practice of medicine, dentistry, chiropractic, osteopathy and other like endeavors) shall be conducted on any Lot other than personal business that does not increase traffic in Highland Preserve Subdivision, and that does not create an annoyance or nuisance to other Lot owners in Highland Preserve Subdivision. Notwithstanding the provisions hereof or of Section 1 of this Article II, a new house may be used by a builder thereof as a model home for display or for the builder's own office provided such use terminates within eighteen (18) months after completion of the house or within such additional period of time as may be expressly agreed to in writing by Developer.

SECTION 7

Signs. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, except one sign by a builder and one sign by a real estate agent or Lot owner advertising the sale thereof, which sign shall not be greater in area than nine (9) square feet; provided, however, Developer shall have the right (i) to erect larger signs when advertising Highland Preserve Subdivision, (ii) place signs on Lots designating the lot number of any Lot, and (iii) following the sale of a Lot, place signs on such Lot indicating it has been sold and the name of the purchaser of that Lot. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

SECTION 8

Drainage, Erosion, Sediment Control.

- A. Drainage of each Lot shall conform to the general drainage plans of Developer for Highland Preserve Subdivision. No storm water drains, roof downspouts, ground water or other water shall be introduced into the sanitary sewage system. Connections on each Lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.
- B. It shall be the responsibility of each Lot owner to prevent mud, dirt, silt, gravel or other debris from washing, draining or being otherwise deposited on any street, stream, or swale in Highland Preserve Subdivision. This requirement is in keeping with the federal Clean Water Act that has been adopted by the Commonwealth of Kentucky and the Erosion Prevention and Sediment Control Ordinance or similar ordinances adopted by Louisville/Jefferson County Metro government.
- C. Upon request, Developer will make available to each Lot owner a detailed drainage plan for each Lot, and each Lot owner shall conform any construction on any Lot to such drainage plan. It shall be the responsibility

of each Lot owner to ensure that grading of the owner's Lot complies with the drainage plan. If drainage is blocked or altered, then the Lot owner shall correct the problem at the Lot owner's expense. If any Lot owner fails to do so, Developer (or the Community Association) may perform the corrective work and charge the cost thereof to the Lot owner. Developer (or the Community Association) may place a lien on the Lot to ensure payment of those costs in addition to other lawful rights they have to collect the cost from the Lot owner.

SECTION 9

Disposal of Trash. No Lot shall be used or maintained as a dumping ground of rubbish, trash, or garbage. No trash or garbage or other waste shall be kept except in sanitary containers. No trash, garbage or other waste in sanitary containers shall be kept or allowed to remain outside, except same may be placed outside after 5:00 p.m. of the evening before any regular trash or garbage collection day, and until same is collected on said day. If trash and/or recycling removal is not provided by Louisville Metro Government, each Lot owner shall use the waste disposal and/or recycling company or companies designated by Developer (or by the Community Association after Developer assigns this right to the Community Association), if any, and the Community Association may provide for a contract with a waste disposal company for Highland Preserve Subdivision. No Lot owner may use another company or companies without the express written approval of Developer or the Community Association.

SECTION 10

Utility Services.

- A. Each Lot owner's electric utility, gas, sewer, telephone service, cable television, internet access and other telecommunication lines shall be underground at locations designated by Louisville Gas & Electric (LG&E) and other service providers, throughout the length of service from the point of delivery to customer's building, and title to the service lines shall remain in and the cost of installation or maintenance thereof shall be borne individually by the respective owner upon which said service line is located. Above ground electric transformers, splice boxes, and pedestals may be installed at appropriate locations.
- B. Appropriate easements are hereby dedicated and reserved to Louisville Gas & Electric (LG&E) and other service providers, together with the rights of ingress and egress over abutting Lots or properties to install, operate and maintain utility service lines to the provider's termination points. Electric and other service lines, as installed, shall determine the exact location of said easements. Developer reserves the right to grant easements on, under or over Lots as may be necessary to facilitate utility and telecommunications services where described and directed by Developer, and each Lot owner shall confirm in a recordable instrument any such additional easement grant

upon request. The electric, telephone and other easements shown on the Record Plat of Highland Preserve Subdivision shall be maintained and preserved in their present condition and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or owner without the express written consent of the easement holders, and their respective successors and assigns. Easements for electric transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including open and drainage space area) outlined by appropriate lines on the Record Plat and designated for underground and overhead facilities. In consideration of bringing service to the property, service providers are granted the right to make further extensions of its lines from all overhead and underground distribution lines. The easements set forth herein or as shown on the Record Plat of Highland Preserve Subdivision, shall include easements for the installation, operation and maintenance of cable television service to the owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission mediums, including but not limited to internet lines.

SECTION 11

- A. From and after the date of purchase of a Lot until construction of a single-family residence is begun on that Lot, the Community Association will perform maintenance on the Lot, including but not limited to mowing.
- B. From and after the date construction of a single-family residence on a Lot is begun, it shall be the duty of each Lot owner to keep the Lot free from trash and to keep it otherwise neat and attractive in appearance.

SECTION 12

Obligation to Construct or Re-convey. If within twenty-four (24) months after the conveyance by Developer of a Lot without a residence thereon the Lot owner has not begun in good faith the construction of a single-family residence approved according to this Declaration, Developer may (without obligation) elect to repurchase the Lot or Lots on which construction has not commenced in good faith for an amount equal to the original purchase price paid to Developer. If Developer elects to repurchase, the Lot owner shall upon demand and tender of the purchase price, execute and deliver to Developer a special warranty deed to the applicable Lot, subject to no liens, encumbrances, easements, restrictions or stipulations other than those in effect at the time of the conveyance of the Lot from Developer to the Lot owner, and with property tax proration made and closing costs paid customary to practice in the Louisville, Kentucky area. The obligations, duties and requirements of this Section 12 shall run to and benefit Developer only, may be waived or extended by Developer, and shall not pass to or extend to the Community Association.

SECTION 13

Duty to Repair and Rebuild.

- A. Each Lot owner shall, at the owner's sole cost and expense, repair the owner's Lot and residence and keep it in good, first class order and condition, excepting normal wear and tear.
- B. If all or any portion of a residence is damaged or destroyed by fire or other casualty, then the owner shall, with all due diligence, promptly rebuild, repair or reconstruct such residence in a manner which will substantially restore it to the condition which existed immediately prior to the casualty.

ARTICLE III ARCHITECTURAL CONTROL

SECTION 1

Approval of Construction and Landscaping Plans.

- A. No modular units, styrofoam formed poured concrete walls, or any other type of off-site pre-fabricated structures will be allowed. All structures will consist of frame walls and roofs that are "stick built" on site and will consist of dimensional lumber. Developer reserves the right to approve trusses that may be required due to spans and loads as shown on approved plans.
- B. No structure may be erected, placed or altered on any Lot until the construction plans, building specifications, plot plan and builder checklist are submitted showing (i) the location of improvements on the Lot; (ii) views of the house (front, rear, and side elevations), (iii) the relationship of the finished grade of the front or side yard to the top of the curb, (iv) the direction of the drainage on the Lot; (v) the type of exterior material (including delivery to Developer of a sample thereof, if requested); (vi) the color of paint or stain to be applied to any exterior surface (including delivery to Developer of a sample thereof, if requested); (vii) the location and size of the driveway (which shall be exposed aggregate concrete and/or brick or stone); and (viii) such other data as the Developer may request, and then until all such plans and information shall have been approved in writing by Developer.
- C. References to "Developer" shall include any entity, person, or association to whom or to which Developer may assign the right of approval. References to "structure" in this Section shall include, but not be limited to, any building (including a garage), fence, wall, privacy screen, antennae (except for a standard small television antennae), microwave and other receivers and

transmitters (including those currently called "satellite dishes"), swimming pool, and tennis court.

SECTION 2

Building Materials, Roof, Builder, Paint Colors, Foundation, Fences.

- A. The exterior building material of all residences and structures shall be either brick, stone, brick veneer, stone veneer, or a combination of same, and shall extend to ground level. However, Developer recognizes that the appearance of other exterior building materials (such as wood siding, stucco or stucco like materials, cement board, or the like) may be attractive and innovative and reserves the right to approve in writing the use of other exterior building materials. Depending on the overall design of the structure, Developer may approve the use of siding in limited areas such as gables, garage eaves, cantilevers and the like.
- B. The roof pitch of any residential structure shall not be less than a plane of nine (9) inches vertical for every plane of twelve (12) inches horizontal.
- C. Prior to commencement of any construction on any Lot, the general contractor constructing such structure shall have the plans approved in writing by Developer. Developer makes this requirement to maintain high quality of construction within Highland Preserve Subdivision.
- D. No wall, hedge or fence shall be placed or planted on any Lot unless its design, materials and placement of planting are approved in writing by Developer or by any person or association to whom or to which Developer may assign this approval right. Fence material is to be of masonry, brick, black aluminum, or possibly wrought iron and shall be landscaped. Chain link fences will not be approved except as provided in Section 5.C of Article II. Privacy screens for patios shall not be considered fences for purposes of this Section; however, no patio privacy screen shall be placed or erected on any Lot unless its design and placement are approved by Developer or by any person or association to whom or to which Developer may assign this approval right.

SECTION 3

Minimum Floor Areas; Elevations. The following shall be the minimum floor areas for houses to be constructed after this Declaration is recorded. For clarification, there is an existing house on Lot 1 and that existing house does not have to comply with the following minimum floor areas. If that house is destroyed by fire or other casualty such that it cannot be repaired but must be rebuilt in entirety, then the following minimum floor areas shall apply to the newly constructed house.

- A. The ground floor area of a ranch (one-story) house shall have a total minimum floor area of 2,200 square feet, exclusive of the garage.
- B. The ground floor area of a one and one-half story house shall be a minimum floor area of 1,750 square feet on the first floor with a total minimum floor area of 2,600 square feet, exclusive of the garage.
- C. The ground floor area of a two-story house shall be a minimum floor area of 1,300 square feet on the first floor with a total minimum floor area of 2,600 square feet, exclusive of the garage.
- D. The total floor area of all other types of houses shall be a minimum floor area of 2,600 square feet, exclusive of the garage.
- E. Finished basement areas, garages and open porches are not included in computing floor areas.

SECTION 4

Irrigation. Not later than completion of construction of a house and prior to placement of sod and landscaping, the Lot owner shall install an irrigation system that will provide irrigation for grass and trees on the Lot.

SECTION 5

Setbacks. Sills, belt courses, bay windows, cornices, eaves, porte-cocheres, or canopies may project a distance not to exceed 18 inches into the required yard (if permitted by applicable zoning regulations and other applicable laws, ordinances and codes). An open, unenclosed porch or paved terrace may project into a required front yard for a distance not to exceed 10 feet (if permitted by applicable zoning regulations and other applicable laws, ordinances and codes).

SECTION 6

Garages; Carports. All Lots shall have at least a two-car attached garage. Front entries to garages are permitted only if pre-approved by Developer in Developer's sole discretion. Garages, as structures, are subject to prior plan approval under Section 1 of this Article III. No carport or detached garage shall be constructed on any Lot in Highland Preserve Subdivision.

SECTION 7

Landscaping; Sidewalks; Driveways; Trees.

- A. Within thirty (30) days after final completion of construction of a residence, the Lot owner shall grade, sod, and landscape all yards of the Lot (i.e. front,

side and rear yards). Developer, in its sole discretion, may extend or postpone this 30-day period to allow for weather conditions.

- B. Each Lot owner shall provide an exposed aggregate concrete and/or brick or stone driveway on the Lot upon completion of a single-family dwelling. No asphalt driveway will be permitted on any Lot.
- C. Upon final completion of construction of a residence, the Lot owner shall cause to be planted at least two (2) trees on the Lot, at least one (1) in the front yard and at least one (1) in the rear yard, and each of which shall be at least one and three quarters (1-3/4) inches in diameter.
- D. Upon a Lot owner's failure to comply with the provisions of this Section 7, Developer may take such action as necessary to cause the owner to comply therewith and the Lot owner shall immediately, upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with a 15% administrative fee, and together with interest at 12% per year (unless that rate is judged unlawful, in which even at the highest lawful interest rate). Developer may file a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

SECTION 8

Mailboxes. Developer anticipates that the United States Postal Service will require so-called "cluster mailboxes" in a common location or locations. If so, then no mailboxes are allowed on any Lot. If mailboxes are permitted on separate Lots by the United States Postal Service, then the mailboxes shall be of a uniform size and style designated by Developer (or the Community Association after Developer assigns this approval right to the Community Association) and shall be installed and maintained at the Lot owner's expense. No paper holders or boxes are permitted.

ARTICLE IV COMMUNITY ASSOCIATION; COMMON AREAS AND YARD SERVICES

SECTION 1

Community Association. The "Highland Preserve Community Association, Inc." (the "Community Association") has been created to maintain common areas (which includes opens spaces and certain other community facilities) and to provide other functions set forth herein. Every owner of a Lot shall be a member of the Community Association. Such owner and member shall abide by the Community Association's Articles of Incorporation, Bylaws, rules and regulations, shall pay the assessments provided for in this Declaration when due, and shall comply with decisions of the Community Association's Board of Directors. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

SECTION 2

Lot Owners' Easements of Enjoyment. Every Lot owner in Highland Preserve Subdivision shall have a right and easement of enjoyment in and to the Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Lot. The term "Common Areas" means and refers to (a) the area designated as "OPEN SPACE" Lot 17 on the Record Plat of Highland Preserve Subdivision, including without limitation the detention basin and drainage facilities locate thereon, (b) the private street in Highland Preserve Subdivision named "Highland Preserve Way" (the "Private Street"), (c) areas shown on the Record Plat of Highland Preserve Subdivision variously as 'VARIABLE PRIVATE ACCESS PUBLIC UTILITY EASEMENT' and as "40' PRIVATE ACCESS AND PUBLIC UTILITY EASEMENT", in which easement areas the Private Street is located and in which easement areas there is a median, retaining wall and six common parking spaces within the median area, and (d) other areas and facilities intended or designated by Developer for the common use and enjoyment of Lot owners (such as but not limited to signature entrances, security gate, street lights, perimeter fencing, and common cluster mailboxes in Highland Preserve Subdivision), whether or not so designated on the Record Plat. The easement and right of enjoyment are subject to the following provisions.

- A. The right of the Community Association to borrow money for the purpose of improving the Common Areas or for constructing, repairing or improving any facilities located or to be located thereon, and to give a security for the payment of any such loan a mortgage on all or part of the Common Areas and/or a pledge of assessments.
- B. The right of the Community Association to suspend the voting rights and the right to use and enjoy the Common Areas (except for the Private Street) by any Lot owner for any period during which assessments against the owner's Lot remains unpaid, and for a period of time for any infraction of its published rules and regulations.
- C. The right of the Community Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Community Association. Developer may dedicate utility or service easements at its sole discretion so long as Developer owns any Lots in Highland Preserve Subdivision.
- D. The right of the Community Association to make rules and regulations governing the use of the Common Areas. The Community Association shall have the right to establish reasonable fines for violations of its rules and regulations or violations of this Declaration; provided, no fines shall be assessed until 30 days after notice has been given to Lot owners as to the rate of fines and the violations for which fines are assessed.
- E. The six common parking spaces in the median area referred to above are only to be used for short-term parking for guests and visitors of Lot owners

and are not to be used to park vehicles of any sort owned by or used by Lot owners or residents of Highland Preserve Subdivision.

SECTION 3

Delegation of Use. A Lot owner may delegate, in accordance with and subject to the Community Association's bylaws or rules and regulations, the Lot owner's right of enjoyment to the Common Areas and facilities to the members of the Lot owner's family or to tenants or contract purchasers who reside on that owner's Lot. Membership in the Community Association may not be conveyed separately from ownership of the Lot.

SECTION 4

Community Association's Right of Entry. The authorized representative(s) of the Community Association or its Board of Directors shall be entitled to reasonable access to the individual Lots as may be required in connection with the preservation of property on an individual Lot or in the event of an emergency or in connection with the maintenance of, repairs or replacements within the Common Areas, or any equipment, facilities or fixtures affecting or serving other Lots or the Common Areas or to make any alteration required by any governmental authority.

SECTION 5

Pre-Occupancy Assessment. From and after the date of purchase of a Lot until a single-family residence is occupied on that Lot, the Lot owner shall pay to the Community Association a maintenance assessment at the rate of \$100.00 per month, which the Community Association will use to defray (a) the costs of maintenance of the Lot as provided for in Section 11.A of Article II, and (b) the costs of maintaining the Common Areas. That \$100.00 per month shall cease when regular annual assessments begin as set forth in Section 10 of this Article IV.

SECTION 6

Annual and Special Assessments for Common Areas and Yard Services. Each Lot owner, except Developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Community Association (a) annual assessments or charges, and (b) special assessments (as set forth in Section 9 of this Article IV), such charges and assessments to be fixed, established and collected as provided in this Article and/or the Community Associations' Bylaws. The assessments, together with interest, costs and reasonable attorney fees, shall be a charge on each owner's Lot and improvements thereon and shall be a continuing lien (the "Lien") upon the Lot against which assessments is made. The assessments, together with interest, cost and reasonable attorney fees, shall also be the personal obligation of the person or entity who or which was the owner of such Lot at the time when the assessments fell due. The personal obligation for delinquent assessments shall pass to successors in title and the lien shall remain effective against a Lot for delinquent assessments notwithstanding any transfer of the Lot.

SECTION 7

Purpose of Assessments.

- A. The assessments levied by the Community Association shall be used exclusively to promote the health, safety and welfare of the residents, including maintaining, repairing, managing and improving the Common Areas, providing the Yard Services (defined below), and in connection therewith the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes, including but not limited to the cost of labor, equipment, materials, utilities, irrigation, management and supervision, payment of taxes assessed against the Common Areas, the procurement and maintenance of insurance in accordance with the Bylaws of the Community Association, the employment of attorneys, accountants, and other professionals to represent and advise the Community Association, the engagement of a property management company, and such other needs as may arise.
- B. In addition to or in furtherance of the above purposes and obligations, the Community Association shall be responsible for the maintenance of landscaping the Common Areas, which shall include shrubs, trees, flowers, and ground cover, which shall be regularly maintained by the cutting of grass, trimming and, where necessary, replacement of shrubs and trees.
- C. Until Class B membership ceases and is converted to Class A membership pursuant to Section 13 of this Article IV, Developer or its nominee shall administer the assessments and receipts of the Community Association, which may only be used for the purposes set forth in this Declaration.
- D. The Community Association shall be responsible for mosquito abatement on the Common Areas, including treating accumulations of water in which mosquito larvae breed or have the potential to breed with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This requirement may be amended or released only with the prior written, recorded approval of the Louisville Metro Planning Commission.
- E. To the extent that the Record Plat of Highland Preserve Subdivision, and/or the preliminary plan for Highland Preserve Subdivision, and/or any landscape plan for Highland Preserve Subdivision shows or provides for any Tree Canopy Protection Area, that Tree Canopy Protection Area shall be permanently preserved in a natural state, and no clearing, grading or other land disturbing activity shall occur in any Tree Canopy Protection Area, except (i) there may occur supplemental landscape planting, pruning to improve the general health and safety, and clearing of under story brush to remove a public health or safety threat, and (ii) there may occur clearing and grading for any public utilities. If any tree or shrub is removed in

violation of this restriction, the person or entity who or which removed it shall replace it within thirty (30) days. Each improperly removed tree shall be replaced by a tree with a diameter equal to that of the removed tree. Each improperly removed shrub or under story shall be replaced with comparable native species. This restriction may be amended or released only with the prior written, recorded approval of the Louisville Metro Planning Commission. This restriction may be enforced by the Louisville Metro Planning Commission.

SECTION 8

Annual Assessment. For a period ending December 31, 2021, the annual assessment shall be set at a rate not to exceed **[\$TBD]** per month per Lot. Thereafter, the annual assessment may be increased each year not more than twenty percent (20%) above the assessment for the previous year without a vote of two-thirds of each Class of members pursuant to the Bylaws.

SECTION 9

Special Assessments. In addition to the annual assessments authorized above, the Community Association may levy, in any assessment year, a special assessment (which shall be part of the assessments) 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 upon the Common Areas, including fixtures and personal property related thereto, or to cover shortfalls resulting from unanticipated expenses

SECTION 10

Payments of Assessments. The Community Association shall fix the due date and the amount of the assessments against each Lot, with notice of the assessment amount and due date to be given at least thirty (30) days in advance of the due date. The Community Association shall determine when the assessments shall be due, and whether the assessments shall be paid monthly, quarterly or annually. The Community Association may establish from such assessments a reserve account. The Community Association shall prepare and maintain a roster of Lot owners and assessments applicable to each Lot. Upon request, the Community Association shall furnish to any Lot owner a certificate in writing signed by an officer of the Community Association setting forth whether such Lot owner's particular assessments have been paid. Annual and special assessments shall not be made against a Lot until it has been occupied as a residence. Otherwise, both annual and special assessments shall be fixed at a uniform rate for all Lots. The first annual assessment once a Lot has been occupied as a residence shall be adjusted according to the number of months remaining in the calendar year when that event occurs.

SECTION 11

Effect of Non-Payment; Lien Foreclosure and other Remedies. Any assessments not paid by the due date shall bear interest from the due date at a rate of interest established from time to time by the Board of Directors of the Community Association. Until such rate is established, the

interest rate shall be 12% (unless such rate is judged illegal under applicable law, in which event the interest rate shall be automatically deemed to be the maximum rate allowed by applicable law). The Community Association may record a notice of the Lien in the office of the Clerk of Jefferson County, Kentucky (provided, the Lien remains in effect regardless whether a notice thereof is recorded), may bring an action at law against the owner personally obligated to pay the assessments, and/or the Community Association may foreclose the Lien against a nonpaying Lot owner's Lot and improvements thereon, and interest, cost and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments by nonuse of the Common Area, non-use of the Yard Services, or abandonment of a Lot.

SECTION 12

Lien Subordinate to Mortgage. The Lien of the assessments provided for in this Declaration shall be subordinate to the lien of any bona fide mortgage or mortgages now or hereafter placed upon any Lot subject to assessments, provided that such subordination shall apply only to the assessments that have become due and payable prior to a sale or transfer of such Lot pursuant to judicial enforcement or any proceeding in lieu of foreclosure and not to any assessments that became due thereafter.

SECTION 13

Membership. The Community Association shall have two classes of voting membership:

- A. Class A members shall be all Lot owners, with the exception of Developer (until conversion of the membership as set forth below).
- B. The Class B member shall be Developer. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the events set forth in Subsection C below.
- C. Each member shall have one vote with respect to each Lot owned by such member, but Class A members shall not be permitted to exercise any vote until the earliest of:
 - (i) when, at its discretion, Developer so determines;
 - (ii) January 31, 2026.

SECTION 14

Quitclaim of Common Areas; Certain Limitations.

- A. Developer quitclaims the Common Areas, including the open space and all related improvements, including without limitation signature entrances and gate features, to the Community Association. If for any reason this Declaration is terminated, cancelled, amended or modified, or if the

Community Association ceases to exist, then the Lot owners acting together shall continue to be obligated to maintain the Common Areas unless and until the Common Areas have been transferred to and accepted by a unit of local government. This provision shall not be amended.

- B. Common Areas, including open space, the Private Road, and signature entrance and gate shall not be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the Louisville Metro Planning Commission, or its successors or assigns. The Community Association may not amend this restriction without approval from the Louisville Metro County Planning Commission, or its successors or assigns.

SECTION 15

Yard Services. In addition to the maintenance and other services provided by the Community Association for the Common Areas, the Community Association will also maintain certain yard portions of Lots (the "Yard Services"), as set forth in this Section 15.

- A. The Community Association will provide regular lawn maintenance, including mowing grass and weed treatment and providing other lawn treatment services determined from time to time by the Community Association, on all lawns of all Lots (except any portion that is fenced without an unlocked gate as required by this Declaration or that is otherwise not reasonably accessible to the Community Association). The Community Association will not maintain the irrigation system installed on each Lot. The Community Association will provide mulching and weed treatment for each Lot but will not provide gardening services. Each Lot owner permits the Community Association to enter onto the Lot to provide the Yard Services. If any Lot owner has fenced part of the owner's Lot and locked any gate that fence, that owner shall provide a key to the Community Association to permit entry into fenced areas; failure to provide a key or other reasonable access shall absolve the Community Association from its responsibility to perform the Yard Services but will not reduce the amount of assessments against the Lot.
- B. The Community Association may provide other services to some but not necessarily all Lot owners, for additional fees, but only upon agreement between the Community Association and the requesting Lot owners.
- C. Each Lot owner shall maintain all portions of the owner's Lot not expressly covered by the provisions of this Section 15. Also, any Lot owner may perform maintenance of areas covered by this Section 15 if a Lot owner desires a higher standard of maintenance or care than is provided by the Community Association, but no such maintenance by a Lot owner in any way limits or relieves any Lot owner performing such additional

maintenance from the obligations to pay the full amount of the assessments.

ARTICLE V GENERAL PROVISIONS

SECTION 1

Enforcement. Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity, brought by any Lot owner, by the Community Association, or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Failure of any Lot owner, the Community Association, or Developer to demand or insist upon observance of any of the restrictions or covenants in this Declaration, or to proceed for restraint of violations, shall not be deemed a waiver of a violation, or the right to seek enforcement, and the exercise of any remedy provided in this Declaration, or at law or in equity, shall not preclude the exercise of any other remedy provided in this Declaration, or at law or in equity. If any Lot owner, the Community Association, or Developer engages legal counsel to enforce any of the provisions of or restrictions in this Declaration, the party violating a provision of or restriction in this Declaration shall pay all legal expenses, including court costs and attorney fees, incurred by the party enforcing this Declaration. The party enforcing this Declaration shall have the Lien to secure payment of all such legal expenses, which Lien may be enforced as the Lien for Common Area Expenses is enforced, as set forth in Article IV.

SECTION 2

Severability; Modification. The provisions of this Declaration are severable. While the covenants, conditions or restrictions set forth above are considered to be reasonable in all circumstances, it is recognized that covenants, conditions or restrictions of this nature may fail for reasons unforeseen, and accordingly it is hereby declared that if any of such covenants, conditions or restrictions shall be adjudged void as going beyond what is reasonable in all circumstances, the said covenant, condition or restriction shall apply with such modifications as may be necessary to make it valid and effective. In the event any provision or portion of this Declaration shall be held or adjudged invalid or unenforceable and incapable of reasonable modification to make it valid and effective in accordance with this Section, the remaining provisions or portions of this Declaration shall not be invalidated thereby, but shall remain in full force and effect.

SECTION 3

Run with Land; Amendment. Unless canceled, altered or amended under the provisions of this Section 3, the provisions of this Declaration are to run with the land and shall be binding on all parties claiming under them for a period thirty (30) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by at least 75% of the Lot owners prior to the date of extension is placed of record in the Jefferson County Clerk's office canceling such automatic extension. Until Developer no longer owns any Lot in Highland Preserve Subdivision (including future sections or phases), this Declaration may not be amended without the consent of Developer. After Developer no longer owns any Lot in Highland Preserve Subdivision (including future

sections or phases), this Declaration may be canceled, altered or amended at any time by the affirmative vote of the owners of seventy-five percent (75%) of the Lots subject to this Declaration, as may have been amended or supplemented. No cancellation of, alteration of or amendment to any covenant, condition or restriction shall take effect until the owners of seventy-five percent (75%) of the Lots subject to these restrictions file in the Office of the Jefferson County Clerk an Amendment to the Declaration describing such cancellation of, alteration to or amendment to such provision herein. Until Developer no longer owns any Lot in Highland Preserve Subdivision (including future sections or phases), Developer may unilaterally amend this Declaration (i) to bring the terms and provisions hereof into compliance with any applicable governmental law, rule, regulation, order, decree, judgment, or ordinance; and (ii) Developer may otherwise unilaterally amend this Declaration as Developer may elect, in its sole discretion, provided that such amendment under this clause (ii) shall not materially and adversely affect then existing nature of Highland Preserve Subdivision as a single-family residential subdivision. Each owner of a Lot, by accepting a deed to the Lot, shall be deemed to have granted to Developer a power of attorney to make such amendments, coupled with an interest, running with Highland Preserve Subdivision and Lots, and binding upon the successors or assigns of the Lot owner, with that power of attorney not being affected by the death or disability of any principal or by the lapse of time.

SECTION 4

Amendments to Articles and Bylaws. Nothing in this Declaration shall limit the right of the Community Association to amend, from time to time, its Articles of Incorporation or Bylaws.

SECTION 5

Non-Liability. Neither Developer nor directors or officers of the Community Association shall be personally liable to the Lot owners for any mistake or judgment or for any acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The Lot owners shall indemnify and hold harmless the directors or officers of the Community Association and their respective heirs, executors, administrators, successors and assigns from and against any damage, costs and/or other expenses (including reasonable fees of counsel of the indemnified party's choice) arising out of or in connection with any actions taken in good faith in accordance with this Declaration.

SECTION 6

Board's Determination Binding. In the event of any dispute or disagreement between any Lot owners relating to this Declaration or Highland Preserve Subdivision, or any questions of interpretation or application of the provisions of this Declaration or the bylaws, the determination thereof by the Board of Directors of the Community Association shall be final and binding.

SECTION 7

General. This Declaration shall be governed by and construed under the laws of the Commonwealth of Kentucky. Captions and headings in this Declaration are for convenience only and do not affect or limit the interpretation of the substantive provisions.

