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Main

DECLARATION OF MASTER DEED
FOR
SWAN POINTE CONDOMINIUM

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DECLARATION OF MASTER DEED

HILLS COMMUNITIES, INC., an Ohio corporation, hereby expressly declares, through the recordation of this Declaration of Master Deed, which sets forth the particulars enumerated by KRS 381.835, its desire to submit its property described herein, to the regime established by KRS 381.805 to 381.910.

ARTICLE I

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

- (a) "Annual Organizational Board Meeting" means the annual organizational board meeting of the Board which shall take place immediately after each Annual Meeting of the Members.
- (b) "Annual Meeting" means the annual meeting of the Members held in the Commonwealth of Kentucky, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.
- (c) "Common Areas" are the general common elements of the Condominium Project and shall mean and include, if actually built in the Condominium Project and except as otherwise provided or stipulated in the Declaration, including any amending or supplementing documents, the following:
 - (i) the land on which the building or buildings stand;
 - (ii) the foundations, main walls, roof, roof truss space, columns, girders, beams, supports, main and supporting walls (excluding walls included in the definition of a Unit), the space between perimeter walls of adjoining Units, halls, corridors, stairs and stairways;
 - (iii) landscaping, yards, gardens and grassy areas;
 - (iv) facilities for recreation or administration or maintenance of the Condominium Project;
 - (v) compartments or installations for central services such as for energy, communications or utilities;
 - (vi) pumps, motors, fans, compressors, ducts;

- (vii) all devices, installations and equipment existing for common use;
- (viii) facilities and easements available for the common use, in part or in whole;
- (ix) roadways and driveways;
- (x) sidewalks, walkways and pavement;
- (xi) balconies, patios, patio area wells, entrances and exits of buildings, front stoops, porches, screened-in and/or enclosed porches, decks, fire escapes, communication ways;
- (xii) parking areas and parking spaces;
- (xiii) garages and garage spaces;
- (xiv) storage closets located outside of Units;
- (xv) all water supply, utility, sewer, mechanical, electrical, plumbing service and other types of equipment, systems, lines, pipes, wires and conduits (except those which are a part of any Unit as defined herein); and
- (xvi) all other elements of or on the Condominium Property rationally of common use or necessary to the existence, upkeep, and safety of the Owners and of the Condominium Project.

(d) "Condominium Documents" means the Declaration, the recorded Floor Plans for the Condominium Property, the Bylaws, the Articles of Incorporation, the Rules and Regulations, if any, the management agreement, if any, entered into between the Council and any professional manager of the Property, and any other basic documents used to create and govern the Property.

(e) "Common Expenses" shall mean, refer to, and include all charges, costs and expenses incurred by the Council for and in connection with the administration of the Project, including, without limitation thereof, operation of the Project, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas and Limited Common Areas (which are not the responsibility of a Unit Owner as provided in Section 12.2 below), the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Project; all costs incurred in acquiring a Unit pursuant to judicial sale; and all administrative, accounting, legal, and managerial expenses. "Common Expenses" shall also include the cost of operation, maintenance, improvement, and replacement of any Recreational Facilities. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements

of the Project, including, but not limited to roof replacement, and road, driveway and parking lot resurfacing. "Common Expenses" shall also include all reserve funds or other funds established by the Council. "Common Expenses" shall be construed broadly.

(f) "Condominium Project" or "Project" shall mean and refer to the Swan Pointe Condominium.

(g) "Council" is the Council of Co-Owners and shall mean and refer to Swan Pointe Council of Co-Owners, Inc., a Kentucky corporation and its successors and assigns.

(h) "Declaration" or "Master Deed" shall mean and refer to the instrument establishing the condominium regime. It includes, also, amending and supplementary instruments as from time to time recorded.

(i) "Default" means any violation or breach of, or any failure to comply with, this Declaration or any of the other Condominium Documents.

(j) "Developer" is Hills Communities, Inc., an Ohio corporation, its successors and assigns. It is the original and initial developer, but it may designate, in writing, a successor developer.

(k) "Development Period" means the period commencing on the date on which this Declaration is recorded in the Boone County, Kentucky Clerk's Office and terminating on the earlier to occur of (i) the Developer no longer owns a Unit in the Condominium; (ii) the Developer gives up, in writing, the right to appoint any and all Directors; or (iii) seven (7) years has passed since the date of recording of the Declaration.

(l) "Limited Common Areas" or "Limited Common Elements" means and refers to those Common Areas which are reserved by this Declaration, by the floor plans, by the Developer, or by agreement of all of the Owners, for the exclusive use of a particular Unit or Units, to the exclusion of the other Units. Limited Common Areas may include, if any, designated garage spaces which have been assigned to a particular Unit, driveways located in front of designated garage spaces, designated parking spaces which have been assigned to a particular Unit, walkways, storage spaces located outside Units, balconies, patios, patio area wells, porches, screened-in and/or enclosed porches, decks, front stoops, any heat pumps, air conditioning pads and all other apparatus and installations built or set up to serve only a certain Unit or a certain group of Units. All electrical fixtures (other than light poles), utility pipes and lines, wires, conduits, ducts, faucets, shower heads, plugs, connections or fixtures, as defined by the laws of the Commonwealth of Kentucky, and all replacements thereof which are a part of or are located in the Common Areas, but which are entirely for the benefit of or to serve one Unit, shall also be limited. Each Unit Owner shall be entitled to an apportionment interest in and the exclusive use and possession of those Limited Common Areas, if any, reserved to that Owner's respective Unit or to the group of Units to which that Owner's Unit belongs. The fee ownership of all Limited Common Areas, however, is vested in all Owners.

(m) "Manager" means the management agent or person or company if any, selected by the Council, to assist the Council in running the Project.

(n) "Member" shall mean and refer to all those Owners who are Members of the Council as provided in Article 4 below.

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

(p) "Parcel 1" shall mean and refer to the real estate described in Exhibit A attached hereto and made a part hereof.

(q) "Parcel 2" shall mean and refer to the real estate described in Exhibit B attached hereto and made a part hereof.

(r) "Post Development Period" shall mean that period after the termination of the Development Period.

(s) "Recreational Facilities" shall mean and refer to the common community and recreational facilities, including, but not limited, to a swimming pool, clubhouse and tennis court.

(t) "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Council.

(u) "Unit" or "Condominium Unit" shall mean and refer to any Condominium Unit shown upon any recorded floor plans of the building or buildings located on the Condominium Property. "Unit" or "Condominium Unit" shall further mean an enclosed space as measured from interior unfinished perimeter surfaces consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, provided, the Unit has a direct exit to a thoroughfare or to a given Common Area or space leading to a thoroughfare. "Unit" or "Condominium Unit" includes any halls, stairs, stairways or basements located within the perimeter boundaries of a Unit and serving only that Unit. Notwithstanding that some of the following might be located in the Common Areas or Limited Common Areas, mechanical, electrical, the plumbing, heating and air conditioning equipment (including all ducts and pipes), electrical wiring and equipment, built-in bathroom cabinets and kitchen cabinets, smoke detectors, built-in fireplaces, built-in appliances, refrigerators, ranges, and any other finishing material(s) or items applied to the interior surface of any perimeter walls, interior walls, floors and ceilings, and the perimeter wall itself if it adjoins a perimeter wall of another Unit, telephone, communication equipment, security equipment, window panes, garbage disposal, storm and screen doors and windows, doors and door frames, all parts of any sliding glass doors, windows and window frames, interior/exterior windows trim and molding, the plasterboard (i.e. "drywall") and the finished surfaces, including paint, lacquer,

varnish, wallpaper, tile paneling, carpeting, utility and service lines, if any, and other equipment located within or connected to the Unit for the purpose of serving that Unit, are part of that Unit, and the maintenance, repair and replacement of these items are the responsibility of the Unit Owner.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

ARTICLE 2

Section 2.1 Parcel 1. Developer is the owner in fee simple of Parcel 1. It is the desire and intention of Developer to enable Parcel 1, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind situated on Parcel 1, and all easements, rights, appurtenances and privileges belonging to Parcel 1, including, without limitation thereto, all easements now or hereafter benefiting Parcel 1 and subject to easements and restrictions of record (the "Condominium Property"), to be owned under and pursuant to that certain type of ownership commonly known as a "Condominium" and to subject and submit the "Condominium Property" to the provisions of KRS 381.805 to 381.910. The Condominium Project will initially include four (4) Units in one (1) separate building and the Recreational Facilities. A description of Parcel 1, of the Recreational Facilities, and of the building in which the Units are located, is contained in Exhibit A attached hereto and incorporated herein by reference. Exhibit A also expresses the respective area of Parcel 1, of the Recreational Facilities, and of the building. Additional Property may be brought into the Project pursuant to Section ? below.

Section 2.2 Description and Number of Units. The general description and the number of each Unit, expressing its area, location, and any other data necessary for its identification, is contained in Exhibit C, attached hereto and incorporated herein by reference. Additional Units may be brought into the Project pursuant to Section ? below.

Section 2.3 Floor Plans. Simultaneously with the recording of this Declaration, there has been filed in the office of the Jefferson County, Kentucky Clerk, a set of floor plans of the clubhouse and of the building, showing the layout, location, unit numbers, and dimensions of the Units; stating the name of the Project (property); and bearing the verified statement of a registered architect or professional engineer certifying that the plans fully and accurately depict the layout, location, Unit number, and dimensions of the Units as built. The floor plans are of record at A.O.B. Book 714, Pages 3-5 in the office of the Jefferson County, Kentucky Clerk, a copy of which are attached hereto as Exhibit D and incorporated herein by reference.

Section 2.4 Percentage of Common Interest. Appurtenant to each Unit is that Unit's percentage of interest in the Common Areas, as set forth in Exhibit C attached hereto and incorporated herein by reference. This percentage is computed by taking as a basis the floor area of the individual Unit in relation to the floor area of all the Units. The Developer and the Council reserve the right to round-up or round-down the percentages of ownership in the Common Areas for any one or more Units in order that the total percentages of ownership equal one hundred percent

(100%). Except as otherwise stated in this Declaration and except as otherwise provided by Kentucky law, the percentage of common interest is permanent and shall not be altered without the acquiescence of the Owners representing all the Units of the building. IF THIS PROJECT IS EXPANDED PURSUANT TO SECTION 2.5 BELOW, THE PERCENTAGE OF COMMON INTEREST APPURTENANT TO EACH UNIT MAY BE ALTERED WITHOUT THE ACQUIESCENCE OF THE OWNERS REPRESENTING ALL OF THE UNITS OF THE BUILDING OR BUILDINGS, PURSUANT TO THE POWER OF ATTORNEY GIVEN IN THIS DECLARATION. ALSO A UNIT IS NOT SOLD BY THE SQUARE FOOTAGE SIZE. FINALLY, THE ADVERTISED SQUARE FOOTAGE SIZE OF A UNIT MAY BE LARGER SO AS TO ALLOW CONSUMER COMPARISON WITH TRADITIONAL HOUSING, LANDMINUM-TYPE HOUSING AND APARTMENTS, WHICH ARE MEASURED DIFFERENTLY FROM A CONDOMINIUM.

Section 2.5 Expandable Project. THIS IS AN EXPANDABLE CONDOMINIUM PROJECT. In other words, additional buildings and land may become a part of this Project at the option of the Developer, its successors and assigns, as follows:

- (a) The entire Project, at the current time, would not have more than three hundred twenty (320) Units.
- (b) If the Developer elects to expand the Condominium Property currently owned by the Developer, each additional section will come out of Parcel 2.
- (c) The entire Project, at the current time, would not have more than thirty-eight (38) sections.
- (d) The percentage of common interest appurtenant to each Unit for each given proposed stage (Section) of development, for one possible scenario, shall be approximately that shown in Exhibit E, attached hereto and made a part hereof.
- (e) The percentage of common interest appurtenant to each Unit in the Project, shall be redistributed on an as-built basis upon completion of all Units in a given section. The redistribution shall be done by amendment or supplement to this Declaration.
- (f) The Developer hereby reserves for itself, its successors and assigns, during the Development Period, the right to execute on behalf of all contract purchasers, Unit Owners, mortgages, other lienholders or parties claiming a legal or equitable interest in the Project, including any and all expansions of the Project, any such agreements, documents, amendments, or supplements which may be so required to expand the Project. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Condominium Units and be binding upon the successors and assigns of any of the foregoing parties. Further, the power of attorney shall not be affected by the death or disability of any principal. The Developer, for itself and for its successors, reserves from

the date hereof, an interest in any real estate, including every Unit in the Project, including any expansions to the Project. This interest reserved by the Developer shall only be such as is necessary to make the power of attorney run with the land and be irrevocable during the Development Period. The power of attorney includes the right to amend, within the limits elsewhere set out in this Section, the percentage of common interest appurtenant to each Unit. The power of attorney shall be effective and binding whether or not it is specifically reserved in any deed or other instrument. This power of attorney also runs in favor of Council for such purposes, as set out elsewhere in this Declaration or other Condominium Documents.

(g) Parcel 2 shall not be considered a part of the Project or in any way subject to this condominium regime, until it has been specifically submitted to the Condominium Property by the recording of an amended or supplemental Declaration or other annexation instrument (or by this Declaration) signed by the Developer, particularly describing that portion of Parcel 2 to be submitted. Each such instrument shall be filed in the same County Clerk's office as was filed this Declaration. The Developer has no obligation to add any land, additional Condominium Units or other improvements to the Condominium.

ARTICLE 3

Section 3.1 Easement for Encroachments. The building(s), all utility lines, and all other improvements as originally constructed shall have an easement to encroach upon any Unit and upon any deviations in construction from the condominium plans contained in this Declaration as a result of the location of the building, utility lines and other improvements across boundary lines between and along Units and/or the Common Areas, or as a result of building or improvement movement or alterations or additions from time to time, providing that such alterations or additions have complied with the requirements of this Declaration.

If by reason of the construction, settlement or shifting of the building(s) or by reason of the partial or total destruction and rebuilding of the building(s), or improvements constituting a part of the Condominium Property, any part of the Common Areas shall encroach upon any part of a Unit, or any part of a Unit shall encroach upon any part of the Common Areas, or any part of a Unit shall encroach upon any part of any other Unit; or if by reason of the design or construction or rebuilding of the utilities system within the Condominium Project any pipes, ducts, or conduits serving a Unit shall encroach upon any other Unit, easements are hereby established, granted and reserved, for the maintenance of any such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and/or Council, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any Unit if such encroachment occurred due to the willful conduct of such Owner.

Section 3.2 Unit's Utility Easements. Easements are granted in favor of each Unit to and throughout the Common Areas and, if necessary, Limited Common Areas and/or Units, as may be

necessary for the use of water, gas, sewer, power and other utilities and services including power and communication, now or hereafter existing.

Section 3.3 Utility Easements. Easements are reserved and/or granted hereby in favor of the Developer and/or the Council through each Unit and the Limited Common Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components through the walls, floors and ceilings of each Unit and throughout the Limited Common Areas and Common Areas. Each Unit Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Developer, or the Council, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Unit Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section. The easements may be assigned and/or granted by the Developer and/or the Council to any utility or service company.

Section 3.4 General Easement. An easement is hereby reserved and/or granted in favor of the Developer and/or the Council in, on, over and through the Common Areas, the Limited Common Areas and Units for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Areas, Limited Common Areas and Units, including all improvements thereon.

Section 3.5 Access Easement. Appurtenant to each Unit is an easement over any Common Area and/or Limited Common Area for necessary pedestrian and vehicular ingress and egress to and from any such Unit over the Common Areas and/or Limited Common Areas, to and from a thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Developer and/or the Council.

Section 3.6 Use of Easement. Any use of the rights and easements granted and reserved in this Article shall be reasonable. If any damage, destruction, or disturbance occurs to a Unit, a Limited Common Area, or Common Area as a result of the use of any easement or right, the Unit, Limited Common Area, or Common Area shall be restored by the Council promptly in a reasonable manner at the expense of the person or persons making the use of the easement or right that resulted in the damage, destruction or disturbance. Before beginning work, Council may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. No easement may be granted across, through, over, or under any Unit, Limited Common Area, or Common Area, which materially restricts ingress and egress to the Unit, Limited Common Area, or Common Area, unless reasonable alternate ingress and egress is provided or unless the restrictions is only temporary.

Section 3.7 Reservation of Access Easement by Developer. The Developer reserves an easement for itself, its grantees, successor and assigns, to enter upon the Condominium Property for

access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way and that portion of Parcel 2 which has not been submitted to the condominium regime. The easement shall be over the streets, sidewalks, bridges and other access ways of the Condominium Property. The Developer further reserves the right to connect, at Developer's expense, to any street, roadway, walkway or other means of access that are located on the Common Areas of the Condominium Property. This reservation of access easements and the right of connection should be construed liberally in favor of the Developer, in order to facilitate the development of all or any portion of Parcel 2 in the event it is not submitted to the condominium regime.

Section 3.8 Reservation of Utility Easements by Developer to Benefit Parcel 2. To benefit all or any portion of Parcel 2 which may never be submitted to the condominium regime, the Developer reserves any and all sanitary sewer lines, storm sewer lines, telephone lines, electricity or other power lines, cable television lines and/or any other lines and/or the accompanying easements located on or benefiting the Condominium Property. Developer further reserves the right to connect, at Developer's own expense, to any such lines and/or easements. The Developer further reserves easements and/or grants over any Common Areas of the condominium regime at a reasonable location to be designated by Developer, for utilities and/or other services to benefit all or any portion of Parcel 2 not submitted to the condominium regime. These reservations of easements shall be construed broadly in favor of Developer to facilitate the development of any portion of Parcel 2 not submitted to the condominium regime.

Section 3.9 Reservation of Easement for Use of Recreational Facilities. To benefit land that may or may not ever be brought under the condominium regime, the Developer reserves an easement to use and enjoy the Recreational Facilities on any real estate subject to the condominium regime. This easement includes access rights. This easement shall, without limitations, specifically allow Developer to use the clubhouse as a sales office. The Developer may grant the right to the use of the Recreational Facilities to no more than the total number of units projected in Section 2.5(a) above. For the purposes of this Section, a unit means and includes not only a condominium unit but also an apartment or single-family dwelling.

Section 3.10 Reservation of Construction Easement by Developer. The Developer reserves the right to temporarily go upon the Condominium Property in order to develop other neighboring land. This easement should be construed broadly in favor of the Developer, including giving the Developer the right to store temporarily construction materials, equipment or dirt. After the construction is finished, the Developer must, at the Developer's cost, repair any damage done to the Condominium Property including to any landscaping. All debris, equipment, materials and dirt must also be removed from the Condominium Property, as soon as reasonably possible, by the Developer after the Developer has completed construction on the neighboring land.

Section 3.1.1 Developer's Easements: General.

(a) The easements and grants reserved for the Developer also benefit and bind any heirs, successors and assigns of Developer and their respective guests, invitees or lessees.

(b) The easements and grants reserved for Developer bind and affect any real estate now or hereafter brought under the condominium regime, whether or not the easement or grant is specifically reserved in any present or future instrument bringing the real estate under the condominium regime.

(c) Any easement and/or grant reserved to the Developer is non-exclusive, if the facilities within the easement or grant were constructed for or under the condominium regime. Any improvement which Developer constructs to benefit mainly real estate which is not part of the condominium regime shall be exclusively for the benefit of Developer.

(d) All use of Common Area improvements, such as roadways and Recreational Facilities, by or through persons who do not own a Unit or Units in the condominium regime shall be governed as follows:

(i) The use shall be subject to the same rules and regulations, as far as applicable, related to the use of the roadway and Recreational Facilities, as apply to the Unit Owners. If necessary, the Council may make reasonable and fair additional rules and regulations that apply to use by or through persons who are not Unit Owners, and these rules and regulations shall be posted in a reasonable manner.

(ii) The owners of real estate which are not part of the condominium regime but which has the right to use certain improvements belonging to the Condominium Project, are obligated to pay to the Council upon demand a fee for the right of use of such improvements located thereon. The fee shall be approximately equal to a proportionate part of the Common Expenses, as determined by the Board, including, without limitation, appropriate reserves, attributable to the improvements used. The fee shall be enforced and collected in approximately the same manner as the assessments are enforced and collected against the Unit Owners.

(iii) The same owners of real estate which is not part of the condominium regime, but which are subject to a fee, shall be entitled to vote along with the Unit Owners on any matter substantially affecting the amount of the fee. The voting power of any such non-unit owner shall be determined by Council in a reasonable and fair way.

(iv) The Council shall have broad powers to enforce its Rules and Regulations and to collect its fees against non-unit owners. The powers of Council include the right to deny a non-unit owner access to any condominium facility; to fine any non-unit owner; to deprive any non-unit owner of a vote; and/or to file a continuing lien against the real estate of any non-unit owner, which lien shall be in the amount of not only the fee due to the Council but also of any collection costs, including reasonable attorneys' fees. The Council may also enforce any right which it has against any non-unit owner, in court, and may collect court costs, reasonable attorneys' fees and interest. The rights of Council should be construed broadly in favor of Council so that it can protect the Condominium Project in its dealings with non-owner users of condominium facilities. It is the obligation of non-owner users to keep Council informed of their respective current addresses; and Council cannot be held at fault for failing to notify a non-owner of any rights or obligation, if Council has not been provided with the non-owner's current address.

(v) It is understood that many of the easements and grants reserved for the Developer by this Article are for the use of and benefit of real estate which may never come under the condominium regime.

(vi) Notwithstanding Section 3.11(d)(iii) above, a non-unit owner, other than the Developer, shall not have any voting power until the expiration of the Development Period, except with the written consent of the Developer.

Section 3.12 Private Roadway Easements. Developer has filed or will file a Declaration of Covenants, Easements and Restrictions (the "Roadway Declaration") substantially in the form of attached Exhibit F, which grants or will grant all Unit Owners, the non-exclusive right of ingress and egress on, over and across a certain private roadway located on or to be located on the Condominium Property and the Additional Property, which private roadway extends or shall extend from the Condominium Property and the Additional Property, to both Ellingsworth Road and Tucker Station Road, publicly dedicated streets (the "Roadway"). The Roadway Declaration requires that the Unit Owners pay their proportionate share for the maintenance and repair of the Roadway as a common expense of the Association. The Developer hereby reserves the right to amend the Roadway Declaration to add additional property to the Roadway. Developer reserves the right to have all or any part of the Roadway dedicated as a public street; and if and when such Roadway or part thereof is dedicated, the Roadway Declaration shall terminate automatically as to the entire Roadway or the portion thereof so dedicated. In addition, the Developer reserves the right to have all or part of the Roadway submitted to this Declaration, and upon such submission, the Roadway or part thereof so submitted to this Declaration shall become part of the Condominium Property, and shall be deemed to be and shall be Common Areas.

Section 3.13 Additional Easements. Additionally, the proposed Condominium Property and the Additional Property are currently encumbered by certain easements and agreements of record

including, but not limited to a certain Certificate of Water Drainage/Detention Easement Rights Agreement dated November 13, 1997 and recorded November 14, 1997 in Deed Book 6962, Page 841 of the Jefferson County, Kentucky Clerk's Office, a copy of which is attached hereto as Exhibit G and made a part hereof, whereby Developer, its successors and assigns agree to be responsible for the cost of constructing and maintaining the Detention and Drainage Easement (as defined therein). The Unit Owners shall be responsible for their proportionate share for the maintenance and repair of the Detention and Drainage Easement as a common expense of the Association.

Section 3.14 Application and Contract for Underground Electric Service. The Condominium Property and Additional Property are subject to a certain Application and Contract for Underground Electric Service Extension in Multiple-Occupancy Residential Projection, whereby the Louisville Gas and Electric Company has agreed to extend its electric service to certain Units located or to be located on the Condominium Property and Additional Property, a copy of which is attached hereto as Exhibit H and made a part hereof. The Unit Owners shall be responsible for their proportionate share of any costs required to be maintained by Applicant (as defined therein) as a common expense of the Association.

Section 3.15 Easement to Run with Land. All easements and rights described in this Article are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Condominium Project, or any part or portion of it.

Section 3.16 Reference to Easements and Deeds. Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

ARTICLE 4

Section 4.1 Voting; Developer's Proxy Rights.

(a) Each person, group of persons, or entity who is a record owner of a fee interest in any Unit shall be a Member of the Council provided, however, that any such record Owner who holds such interest solely as security for the performance of an obligation shall not be a Member. Members shall be entitled to one vote for each Unit in which they hold the interest required for membership. In the event that more than one person, group of persons, or entity is the record Owner of a fee interest in any Unit, then the vote for each such Unit shall be exercised as the record Owners among themselves determine. In no event shall more than one vote be cast with respect to any Unit. Membership arises automatically upon the beginning of ownership of a Unit and ceases automatically upon termination of ownership of a Unit. Ownership is not effective for voting, unless

it is reflected properly of record in the office of the County Clerk in which this Declaration is recorded and unless the Council has actual notice of the ownership of the Unit.

(b) Notwithstanding the foregoing paragraph or any other provision of this Declaration, the entire administration and operation of the Condominium Project, including but not limited to the adoption and amendment of the Bylaws of Swan Pointe Council of Co-Owners, Inc. (the "Bylaws") a copy of which is attached hereto as Exhibit L, the adoption and amendment of the Rules and Regulations, the assessment and levy of Common Expenses, and all other matters relating to the administration, operation and governing of the Project, shall be vested in the Developer until the earlier to occur of: (i) the Developer no longer owns a Unit in the Condominium, (ii) seven (7) years from the date of the recording of this Declaration, or (iii) the Developer voluntarily surrenders in writing Developer's special rights under this Section. Until that event/date occurs, the Developer shall constitute the Council of Co-Owners and the Board of the Council, and shall possess the irrevocable proxy from each Unit Owner to cast the vote of that respective Unit Owner. EACH UNIT OWNER GRANTS THE DEVELOPER THIS IRREVOCABLE PROXY BY ACCEPTING A DEED TO A UNIT. THIS PROXY POWER MAY NOT BE USED BY THE DEVELOPER TO AMEND THIS DECLARATION OR THE BYLAWS EXCEPT (1) TO MAKE SUCH AMENDMENTS AS ARE NECESSARY OR DESIRABLE TO EXPAND THE CONDOMINIUM PROJECT WITHIN THE LIMITS SPECIFIED ELSEWHERE IN THIS DECLARATION, AND (2) TO MAKE SUCH CHANGES TO THE DECLARATION AS PROVIDED FOR IN SECTION 16.2 BELOW. THE PROXY RIGHTS OF THE DEVELOPER MAY BE ASSIGNED BY THE DEVELOPER WITHOUT NOTICE TO OR THE CONSENT OF THE UNIT OWNERS OF THE COUNCIL.

ARTICLE 5

Section 5.1 Covenant for Assessments. The proportionate share of each Unit Owner in the common surplus and the common expenses of the Condominium Project is equal to the percentage of common interest appurtenant to the Unit of that Owner. Such percentage of common interest appurtenant to each Unit has been set out in Exhibit C to this Declaration. Each person and/or entity who becomes an Owner of a Unit whether or not it shall be so expressed in any such deed or other form of conveyance, shall be deemed to covenant and agree to pay to the Council the Unit's share of assessments as fixed, established, and collected from time to time as hereinafter provided. All assessments, together with interest thereon at the rate of ten (10%) percent per annum and cost of collection (including a lien preparation charge, filing fees, court costs, and reasonable attorney's fees) shall be a charge and a continuing lien upon the Unit against which the assessment is made, and shall also be the personal obligation, jointly and severally, of the Owner or Owners of the Unit at the time when the assessment fell due.

Section 5.2 Determination of Regular Assessment; Reserves; Special Assessments; Individual Unit Assessments; Fine Assessments; Expansion; Start Up Assessment.

(a) The Council shall, from time to time, but not less than once every twelve (12) months, determine the amount of the regular total assessment necessary to defray the Common Expenses for a given period not to exceed twelve (12) months. When setting the regular total assessment, the Council should include both (i) those funds required during the period for general operating purposes, and (ii) those reserve funds estimated to be necessary for future capital improvements. All funds required for general operating purposes under (i) above may be held in the name of the Council. All funds required for reserves for capital improvements under (ii) above shall be held in an account in the name of the Council, for the benefit of all of the Units Owners in the Condominium Project. Each Unit Owner, by the acceptance of his, her or its deed, does authorize the disbursement of any and all of the escrow funds solely upon the written authorization of the Council. The funds held in reserve are appurtenant to each Unit according to the percentage of common interest appurtenant to the given Unit.

(b) Each Unit Owner is liable to pay that percentage of the regular total assessment that is equal to his Unit's percentage of the common interest, as determined by Council. Notwithstanding the foregoing sentence, for an unoccupied Unit owned by the Developer, the Developer is only liable for eighty (80%) percent of the assessment which it would otherwise have to pay for the Unit. If the Unit becomes occupied, the Developer must thereafter begin paying a full assessment for that Unit.

(c) In addition to levying regular assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may levy special assessments to construct, structurally alter, or replace improvements which are a part of the Common Areas, provided that funds shall not be assessed for any capital improvement in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) for any one item or in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) in the aggregate in any one calendar year ("Capital Expenditure Limit") without the prior written consent of a majority of the voting power represented at a meeting of the Unit Owners duly called for that purpose or unless expressly stated in the annual budget. The Board of Directors shall have the authority to adjust the Capital Expenditure Limit annually to account for inflation, which adjustment shall be effective each January (hereinafter referred to as the "Adjustment Date") commencing with January 1, 2001, the Capital Expenditure Limit shall be increased from the Capital Expenditure Limit on the date of this Declaration ("Effective Date") by a percentage equal to the percentage increase, if any, in the Consumer Price Index, All Urban Consumers ("CPI-U"), (1982-1984=100), All Items, as compiled and published by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI") Date. If after the date of this Declaration the CPI is converted to a different standard reference base or otherwise revised or ceases to be available, the determination of any new amount shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by any other nationally recognized publisher or similar statistical information reflected by the Board. However, the Board is not limited by these provisions in any way in restoring or replacing damaged or obsolete portions of the Common Areas. Until the expiration of the Development Period, Developer shall be one of the consenting Unit Owners, or the capital improvement shall not be made. The Board of Directors shall calculate each Unit's proportionate share of the special assessment for the capital improvements, and shall give the Unit Owner(s) written notice of the proportionate share and of the date(s) which the assessment is due and payable.

(d) The Board of Directors may levy an assessment against an individual Unit or Unit Owner, to reimburse the Council for those costs incurred in connection with that Unit or Unit's properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs which are the responsibility of a Unit Owner). Any such assessment shall become due and payable on such date as the Board determines and gives written notice to the Unit Owner subject thereto.

(e) If the Project is expanded during a given year and additional Units are brought into the Project, the new Unit shall pay the same assessment per square foot as the existing Units are paying for that assessment year. If in the Council's sole discretion, such a rate would not be reasonable, the Council may adjust the rate up or down for those new Units until the next annual assessment is made. Payment shall begin as stated in Section 5.3 below.

(f) The Council may levy a reasonable assessment, as a fine or penalty for violation of this Declaration. A lien may be filed for this assessment and this assessment may be enforced by foreclosure and otherwise treated as a regular assessment.

(g) If the Council is paying the water bill for the Project or any Units within the Project, the Council may assess each Unit benefitted for its share of the water bill. Each Unit shall bear an equal share of the bill, but the Council can assess an extra amount against a Unit to recover the cost of any extraordinary amount of water used by that Unit. "Extraordinary" shall be as determined by the discretion by the Board of Directors. The assessment for water shall be part of the annual regular assessment and shall be considered a Common Expense.

(h) A special assessment, due immediately, arises against a Unit upon the initial transfer of record of the Unit from the Developer (or successor developer or designated developer) to the Unit Owner (other than a successor developer or designated developer). The special assessment shall be in the amount of the sum of two (2) months of the full regular assessment. It shall be collected at closing and paid to the Council for use by the Council for Common Expenses. This special assessment is in addition to the regular assessment. Any reduced assessment on the Unit ends as of the first day of the month immediately following the month in which title was transferred of record from the Developer.

Section 5.3 Billing. The Council shall inform each Unit Owner of the amount of the total annual assessment due from the Owner of that particular Unit. This annual assessment may be paid in monthly installments or as otherwise required by the Council. The Owner of each Unit must pay his Unit's required assessment in advance each month. Payment is to be made to such person at such an address as Council determines. Payment shall be due on the first day of each month, unless Council otherwise directs. Special assessments are due thirty (30) days after the bill for the special assessment has been mailed or otherwise sent out by Council, unless Council otherwise directs. If the Project is expanded and additional Units are brought into the Project during a given assessment year, those additional Units shall begin paying an assessment on the first day of the month immediately following the month after the Units were brought, of record, under the condominium

regime. The initial Units in the Project shall begin paying an assessment as of the first day of the first month following the month in which the Declaration is recorded.

Section 5.4 Limited Common Area Assessment. An additional assessment may be made by the Council against any Unit to pay any expense resulting from a Limited Common Area, benefiting that Unit. The assessment must be reasonable. The assessment should be apportioned among the Units using the Limited Common Area in a fair and reasonable manner. The assessment shall be a regular assessment and may be billed and included as part of the regular assessment described in Section 5.2 above.

Section 5.5 Assessment Certificate. The Council shall, upon demand, at any reasonable time, furnish to any Owner liable for assessment a certificate in writing signed by an Officer or other authorized agent of the Council, setting forth the status of said assessment; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Council for each certificate.

Section 5.6 Non-Payment of Assessment. Any assessments (including special assessments and individual Unit assessments) levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Unit which shall bind the Unit in the hands of the then Owner and the Owner's successors and assigns.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at a reasonable rate of ten percent (10%) per year or at such other reasonable rate set by Council in its minutes, and the Council may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Unit, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each assessment. No Owner may waive or otherwise escape liability for the assessments by non-use or waiver of use of the Common Areas or by abandonment of his Unit.

The lien of the Council is against not only the Unit but also the percentage of common interest in the Common Areas appurtenant to the Unit, including any funds held for the benefit of the Unit.

Section 5.7 Priority of Council Lien. The lien provided for in this Article shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record before notice of this lien has been filed of record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Council. The Council is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Council shall be entitled to become a purchaser at the foreclosure sale.

Section 5.8 Disputes as to Common Expenses; Adjustments. Any Owner who believes that the portion of Common Expenses chargeable to his Unit, for which an assessment lien has been filed by the Council, has been improperly charged against his or her Unit, may bring action in an appropriate court of law. Council in its reasonable discretion may, in order to prevent manifest injustice, adjust (increase or decrease) the assessment for any Unit based upon a consideration of the following factors; the floor area of the Unit; the number of occupants in the Unit; the demand on public utilities by the occupants of the Unit; the accessibility of the Unit to Limited Common Areas. Units which are substantially the same size may be charged the same amount. Numbers may be reasonably rounded. The Council in its reasonable discretion may abate or reduce a Unit's assessment for a reasonable period of time, during which a Unit is uninhabitable, through no fault of the Owners, as a result of damage or destruction.

Section 5.9 Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Council. Any purchaser of a Unit at a foreclosure sale shall automatically become a Member of the Council and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 5.10 Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. When the mortgagee of a first mortgage of record or other purchaser of a Unit acquires title to the Unit as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his, her or its successors and assigns, shall not be solely liable for the share of the Common Expenses or other assessments by the Council chargeable to such Unit which became due prior to the acquisition of title to the Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Units, including that of such acquirer, his, her or its successors or assigns. Therefore, a lien filed against a certain Unit for Common Expenses or other assessments shall be extinguished upon the foreclosure of a first mortgage for any amount due prior to the foreclosure sale, but shall not relieve any subsequent Owner of the subject Unit from paying future assessments.

Section 5.11 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Unit, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Council setting forth the amount of all unpaid assessments (including current assessments) against the grantor due the Council. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent assessments, but such delinquent assessments, along with interest, late charges, costs and reasonable attorneys fees shall be a lien against the Unit in accordance with Sections 5.6 and 5.7 herein.

Section 5.12 Late Charge. The Council may impose a charge against any Unit Owner who fails to pay any amount assessed by the Council against his Unit within ten (10) days after such assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the Commonwealth of Kentucky to contest such assessment in such an amount which is the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the

delinquent amount, or such other amount as may be determined by the Council from time to time. Additionally, if a Unit Owner shall be in Default in payment of an installment upon an assessment or of a single monthly assessment, the Council has the right to accelerate all monthly assessments remaining due in the current fiscal year. The total of such assessments, together with the delinquent assessments shall then be due and payable by the Unit Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Unit Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such acceleration amount is not paid by the due date, the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 5.13 Miscellaneous.

(a) The Council may change the interest rate due on delinquent assessments, except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all assessments then delinquent.

(b) The Owner has the sole responsibility of keeping the Council informed of the Owner's current address if different from the Unit owned. Otherwise notice sent by Council to the Unit is sufficient for any notice requirement under this Declaration.

(c) The lien under this Article 5 arises automatically, and no notice of lien need be recorded to make the lien effective.

(d) The assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Council in enforcing or collecting the assessment.

(e) If any Common Area, including any Limited Common Area, is intentionally or negligently damaged or destroyed through the act or omission of any Owner, the Council may make an individual assessment against the Owner and the Owner's Unit for the expenses involved in making repairs and in making and/or enforcing the assessment, including reasonable attorneys' fees.

(f) Any assessment otherwise payable in installments, shall become immediately due and payable in full without notice upon default in the payment of any installment. The acceleration shall be at the discretion of the Board.

(g) No Owner of a Unit may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Unit.

(h) This Section 5.13 applies to every type of assessment.

ARTICLE 6

Section 6.1 General Insurance. The Council shall carry a master policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and if required by law, workmen's compensation insurance with respect to the Project and the Council's administration thereof in accordance with the following provisions:

(a) The master policy shall be purchased by the Council for the benefit of the Council, the Unit Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Bylaws. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.

(b) All buildings (excluding insurance on Improvements as that term is defined below), structures, common elements of the Project or other improvements now or at any time hereafter constituting a part of the Condominium Property shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one hundred (100%) percent of the replacement value thereof, with a deductible agreed to by the Board of Directors, exclusive of the cost of the land, foundations, footings, excavation, and architect's fees, without deduction for depreciation, but inclusive of the cost of the following improvements and betterments (hereinafter and hereinafter "improvements") to any Unit, added by the Developer: any partitioning, trim, drywall, and other improvements or betterments. The policy shall have cost of demolition, water damage (excluding floods, backing up of sewers and drains, the running off of surface water, and the overflow of a body of water), and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board of Directors, after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement cost thereof (subject to the deductible provisions described above) and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Unit Owner as hereinafter permitted. Such policy shall also contain either a waiver by the insurer of any increased hazard clause, a severability of interest endorsement, or a provision stating that the coverage will not be affected by the act, omission or neglect of any person unless such act, omission or neglect is within the knowledge and control of the Council prior to the occurrence of the loss. Such policy shall not provide coverage for any items of personal property installed by or for any Unit Owner.

(c) Such master policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Council and to any mortgagee or mortgagees of any Unit not less than thirty (30) days prior to any expiration, substantial modification or cancellation of such coverage.

(d) Such insurance by the Council shall be without prejudice to the right of the Owner of a Unit to obtain individual contents or chattel property insurance, which policy may cover the Improvements as defined above, but no Unit Owner may at any time purchase individual policies of insurance covering any item which the Council is required to insure. If any Unit Owner does purchase such a policy, he or she shall be liable to the Council for any damages, expenses or losses which it suffers or incurs as a result thereof, and the Council shall have the same lien rights provided by Section 5.6 hereof for Common Expense payments with respect to any such damages, expenses or losses not paid to it by such Owner.

(e) The insurance coverage required under this Section 6.1 shall be reviewed at least annually by the Board of Directors, and if any of such insurance coverage becomes impossible or impractical to obtain, the Council shall obtain coverage which most closely approximates the required coverage with the deductible provisions as determined by the Board of Directors.

(f) If the required insurance coverage under this Section 6.1 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Council; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Condominium Property; and shall be due and payable to the mortgagee by the Council immediately. The repayment of this obligation shall be secured by a special assessment against all Unit Owners under Article 5 of this Declaration and shall not require a vote of the Members of the Council, anything to the contrary in this Declaration notwithstanding.

(g) The Council shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Unit Owners, individually and as a group (arising out of their ownership interest in the common elements), to another Unit Owner. The amount of the public liability insurance shall be reasonably determined by Council.

Section 6.2 Fidelity Insurance. The Council must have fidelity coverage against dishonest acts on the part of Officers and employees. Members of the Council, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Unit Owners. The fidelity bond or insurance must name the Council as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the insured's total annual assessment (Article 5, Section 5.2) plus all accumulated reserves and all other funds held by the Council either in its own name or for the benefit of the Unit Owners.

Section 6.3 Directors' and Officers' Errors and Omissions Insurance. The Council shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which she is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the

Council; or to obtain such fuller protection and indemnification for Directors and Officers as the law of Kentucky permits. The policy or policies shall be in an amount to be reasonably determined by the Council.

Section 6.4. Premiums. All premiums upon insurance purchased by the Council shall be Common Expenses. Notwithstanding the foregoing, the Unit Owners may be responsible for certain deductibles to the insurance policies purchased by the Council as outlined in Section 6.7 herein.

Section 6.5. Proceeds. Proceeds of all insurance policies owned by the Council shall be received by the Council for the use of the Unit Owners and their mortgagees as their interest may appear; provided, however, the proceeds of any insurance received by the Council because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise be permitted by this Declaration.

Section 6.6. Power of Attorney. Each Unit Owner shall be deemed to appoint the Council as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Council. Without limitation on the generality of the foregoing, the Council as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds and to distribute the same to the Council, the Unit Owners and their respective mortgagees as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Unit Owners and the Project as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Council in regard to such matters.

Section 6.7. Responsibility of Unit Owner. The Council shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit nor the liability of any Unit Owner for injuries therein not caused by or connected with the Council's operation, maintenance or use of the Project. Each Unit Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his or her Unit and Limited Common Areas reserved for the exclusive use of his or her Unit. In addition, each Unit Owner shall maintain fire and extended coverage insurance on the contents of his Unit, including appliances, and on the improvements and betterments not installed by the Developer which are located in his Unit. The Council may request the Unit Owner to provide a copy of the policy(s) to the Council evidencing this insurance coverage at any time.

Each Unit Owner agrees that if Owner(s) damages a building or other improvements now or at any time hereafter constituting a part of the Condominium Property which is covered under the Council's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Council's insurance policy; or (b) the cost to repair and/or replace any damage to a building or other improvement, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Unit Owner(s) or twenty (20) days of mailing of such

notice by certified mail, whichever occurs first. In the event a Unit Owner refuses or fails to pay the insurance deductible or replacement/repair cost in the time period provided in the preceding sentence, the amount thereof may be advanced by the Council an the amount so advanced by the Council shall be assessed such Owner as an individual Unit assessment. Such individual Unit assessment shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the nonpayment of the monthly assessment.

Section 6.8 Release. All policies purchased under this Article by either the Council or the individual Unit Owners shall provide for the release by the issuer, thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owners, member of their family, their employees, their tenants, servants, agents and guests, the Council, any employee of the Council, the Board, or any occupant of the Condominium Project, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 6.9 Approximate Coverage. If any of the required insurance coverage under this Article becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Council shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

Section 6.10 Additional Policy Requirements. All such insurance coverage obtained by the Council shall be written in the name of the Council, for the use and benefit of the Council, the Unit Owners and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) Exclusive authority to adjust losses under policies in force on the Project obtained by the Council shall be vested in the Council provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (b) In no event shall the insurance coverage obtained by the Council hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Council shall be primary.
- (c) All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.
- (d) The Council shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (i) a waiver of subrogation as discussed in Section 6.8 of this Article;

- (ii) that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;
- (iii) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Council or its duly authorized manager without prior demand in writing delivered to the Council to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Council, its manager, any Owner or mortgagee; and
- (iv) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

Section 6.11 Other Insurance Requirements. If this Project is intended to be qualified under the requirements of FHLMC, FNMA, HUD, FHA, VA or other similar program, the insurance requirements of that program are incorporated herein by reference. IF ANY INSURANCE COMPANY IS UNSURE OF THE COVERAGE INTENDED, IT SHOULD ASK FOR AN INTERPRETATION FROM THE BOARD. OTHERWISE, THE BROADEST COVERAGE SHALL BE PRESUMED, IF THERE IS AN AMBIGUITY.

ARTICLE 7

Section 7.1 FHLMC. The following provisions are included herein for the benefit of the holders of first mortgages on any Unit in the Condominium Project which is subject to the provisions of this Declaration, in order to permit compliance with the requirements of Federal Home Loan Mortgage Corporation (FHLMC) as a condition to the purchase of loans on Units in the Condominium Project. The covenants and provisions hereinafter set forth shall run in favor only of the first mortgage holders, and the provisions hereinafter set forth may be altered, amended, revised or rescinded by actions of the Council without approval of the Unit Owners but only without such approval to the extent that such alteration, amendment, revision, or rescission is necessary to comply with the requirements of FHLMC.

Section 7.2 FHLMC Requirements. In addition to any other requirements of this Declaration, or the Bylaws of the Council, it is provided as follows:

- (a) Unless at least fifty-one percent (51%) of the Eligible Mortgages (as hereinafter defined) (the "Required Eligible Mortgage Vote"), and seventy-five percent (75%) of the individual Unit Owners (other than the sponsor, Developer, or builder) have given their prior written approval, the Council shall not be entitled to:
 - (i) by act or omission, seek to abandon or terminate the Condominium Project;

- (ii) change the pro-rata interest or obligations of any individual Unit within the Condominium Project for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro-rata share of ownership of each Condominium Unit in the Common Areas;
- (iii) partition or subdivide any Condominium Unit;
- (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Condominium Project shall not be deemed a transfer within the meaning of this clause);
- (v) use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Areas) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided by statute in case of substantial loss to the Units and/or Common Areas of the Condominium Project;
- (vi) redefine any Unit boundaries;
- (vii) convert Units into Common Areas or convert Common Areas into Units; or
- (viii) impose restrictions on a Unit Owner's right to lease his or her Unit.

(b) For purposes hereof, an "Eligible Mortgagee" is any holder, insurer or guarantor of a first mortgage on any Unit who has made written request to the Council (listing its name and address and the Unit number or address of the Unit on which it has or insures or guarantees the mortgage) for timely written notice of all notices permitted or required by this Declaration or the Bylaws to be given to the Unit Owner whose ownership in said Unit is subject to such mortgage, even if such Owner has waived the right to receive such notice. All Eligible Mortgagees are entitled to timely written notice of (1) any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit securing its mortgage, (2) any sixty (60) day delinquency in the payment of assessments or charges owed by the Unit Owner on which it holds the mortgage, (3) a lapse, cancellation, or material modification of any insurance policy maintained by the Council, (4) any proposed amendment of the Condominium Documents effecting a change in the exclusive easement rights of the Unit securing its mortgage, or any proposed amendment of the Condominium Documents effecting a change in the purposes to which any Unit or the Common Areas are restricted, and (5) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

(c) Any agreement for professional management of this Condominium Project, or any other contract providing for services of the Developer (or sponsor or builder), may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

(d) This Project is subject to expansion (phasing or add-ons). In the event that the Project has more than one section (phase or add-on), then Article 7, Section 7.2(a)(ii) and 7.2(a)(iv) are deemed waived to the extent necessary to allow the expansion of the Project in accordance with the Projects Condominium Documents, including the Declaration. No change in the percentage of common interest appurtenant to each Unit may be affected beyond the Development Period.

(e) No Unit Owner, or any other party, has priority over any rights of any first mortgagee of a Condominium Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or Common Areas.

ARTICLE 8

Section 8.1 Reconstruction or Repair. If any part of the Condominium Project shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined as set forth in this Article.

Section 8.2 Lesser Damage. If at least thirty-three and one-third (33 1/3%) percent of the damaged building is found by the Council to be tenable after the casualty, the damaged building shall be reconstructed or repaired.

Section 8.3 Major Damage. If more than sixty-six and two-thirds (66 2/3%) percent of the damaged building is found by the Council not to be tenable after the casualty, whether the damaged property will be reconstructed and repaired or the Condominium Project terminated shall be determined in the following manner:

(a) Immediately after the casualty the Council shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(b) Immediately after the determination of the amount of insurance proceeds made available to the Council, the Council shall give notice to all Unit Owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstructing or repair over the amount of insurance proceeds. Such notice shall call a meeting of Unit Owners to be held within thirty (30) days from the mailing of such notice. If the reconstruction and repair are approved at such meeting by the Owners of Units to which seventy-five (75%) percent or more of the common interest is appurtenant, the damaged property will be reconstructed. If not so approved, the Condominium Project shall be terminated or modified so as to remove the destroyed Units and/or

otherwise recalculate and redistribute the percentage of common interest by reason of the removal of the destroyed Units. Such approval may be expressed by vote or in writing filed with the Council at or within fourteen (14) calendar days prior to the meeting.

(c) The market value of any such destroyed Unit (excluding contents, additions, improvements, decorations and personal property therein) immediately prior to the destruction shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being payable jointly to the Owner and mortgagee, provided that the Owner simultaneously convey by general warranty deed in recordable form, all of the Owner's right, title and interest in and to the Unit, including the Unit's percentage of common interest, to the remaining Owners in the Project, or at the Board's discretion, to the Council for the use and benefit of the remaining Unit Owners in the Project. The Board may then decide upon the ultimate fate of the Unit, including its extinguishment, and shall have full power and authority to make any such disposition, including by deed, by amendment to this Declaration or otherwise. There is to be deducted from any amount due to the Owner and/or mortgagee, the amount of any insurance proceeds which the Owner and/or mortgagee has or will receive or is entitled to by reason of the destruction of the Unit. The market value shall be the fair market value determined by agreement between Unit Owner and the Council. If the Unit Owner and the Council cannot agree upon the market value within one hundred twenty (120) days after the destruction of the Unit, the market value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrator shall be two (2) appraisers appointed by the American Arbitration Association, who shall base their determination upon an average of their appraisals of the Unit. A judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be split between the Unit Owner and the Council.

(d) The purchase price shall be paid in cash or upon terms approved by the seller and the Council.

(e) The sale shall be closed within thirty (30) days following the determination of the sale price (the market value). Good and marketable title to the Unit must be conveyed by the Owner to the remaining Owners by a general warranty deed, free and clear of all liens and encumbrances except this Declaration.

(f) The percentage of common interest appurtenant to each Unit shall be redetermined to reflect the reduction in floor area in the Condominium Project, except that if any such destroyed common interest appurtenant to each Unit shall again be redetermined to reflect the addition in floor area to the Condominium Project. Any such amending or supplementary documents to this Master Deed reflecting changes in the percentage of common interest occurring by reason of destruction or by reason of eminent domain need only be executed by Council.

(g) The funds for the payment of the cost of purchase after casualty of any Unit shall come first from the insurance proceeds. If the insurance proceeds are insufficient, then the Council shall make a special assessment sufficient to pay the excess of the cost over the amount of the

insurance proceeds. The special assessment shall be against all Unit Owners, including the destroyed Units payable by each Unit Owner according to that Unit Owner's percentage of common interest before the destruction. The special assessment may include all transaction costs of the Council including attorneys' fees, court costs, appraisal fees and arbitration costs.

Section 8.4 Plans. Any reconstruction or repair must be substantially according to the plans and specifications approved by the Council

Section 8.5 Responsibility. The responsibility of reconstruction and repair after casualty shall be that of the Council.

Section 8.6 Funds. The funds for the payment of the costs of reconstruction and repair after casualty come first from the insurance proceeds. If the insurance proceeds are insufficient, then the Council shall make a special assessment sufficient to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. The special assessment shall be against all Unit Owners, payable by each Unit Owner according to her percentage of common interest.

ARTICLE 9

Section 9.1 Eminent Domain. The taking of a portion of a Unit or of the Common Areas by eminent domain shall be deemed to be proceeds from insurance on account of a casualty and shall be deposited with the Council. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Council and in the event of failure to do so, in the discretion of the Council, a special assessment shall be made against the defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Owner. The proceeds of the awards shall be distributed or used in the manner heretofore provided for insurance proceeds except that when the Condominium Project is not to be terminated and one or more Units are taken in part, the taking shall have the effect as elsewhere stated in this Article.

Section 9.2 Unit Reduced, but Tenable. If the taking reduces the size of a Unit and the remaining portion of a Unit, in the reasonable discretion of the Council, can be made tenable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium Project:

(a) The Unit shall be made tenable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

(b) The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being payable jointly to the Owner and mortgagees.

(c) The percentage of common interest appurtenant to each Unit shall be redetermined in the method originally determined, but to reflect the reduction in floor area in the Condominium Project.

Section 9.3 Unit Untenable. If the taking destroys or so reduces the size of the Unit that, in the reasonable discretion of the Council, it cannot be made tenable, the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium Project:

(a) The market value of such Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being paid jointly to the Owner and mortgagees, provided that the Owner simultaneously convey by deed all of her right, title, and interest in and to the Unit, including the Unit's percentage of common interest, to the remaining Owners in the Project. Unless otherwise proved to the reasonable satisfaction of Council, the amount of the market value shall be assumed to be the same as the amount of the award.

(b) The remaining portion of such Unit, if any, shall become a part of the Common Areas and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Council.

(c) The percentage of common interest appurtenant to each unit shall be redetermined in the manner originally determined but to reflect the reduction in floor area in the Condominium Project.

(d) If the amount of the award for the taking is not sufficient to pay the market value of the condemned Unit to the Owner and to refurbish the remaining portion of the Unit for use as a part of the Common Areas, the additional funds required for such purposes shall be raised by assessments against each Unit Owner remaining after the changes in the Condominium effected by the taking. Such assessments shall be made in proportion to each's Unit's percentage of common interest as calculated after the taking.

Section 9.4 Amendment to Declaration. The change in the percentage of common interest appurtenant to each Unit, which comes as a result of the eminent domain or as a result of destruction by casualty (Article 8) shall be evidenced by an amendment to the Declaration.

Section 9.5 Power of Attorney. Each Unit Owner and/or his respective mortgagee by acceptance of a deed conveying his Unit and each mortgagee encumbering such ownership interest, hereby irrevocably appoint the Developer or the Council, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct, and empower such attorney, at the option of the attorney, to represent the Unit Owner and/or each mortgagee and any negotiations, agreements, settlements and/or proceedings arising out of the eminent domain or threat thereof, and to execute, acknowledge and record for and in the name of each Unit Owner and/or each mortgagee any amending instruments as may be necessary or desirable to effect the purpose of this Article. This

power of attorney includes the right to receive proceeds and execute releases on behalf of each Unit Owner and each mortgagee.

ARTICLE 10

Section 10.1 Council. The administration of the Project shall be vested in the Council.

The Owner of any Unit, upon acquiring title, shall automatically become a Member of the Council and shall remain a Member until such time as his ownership of such Unit ceases for any reason, at which time his membership in the Council shall automatically cease. The Council shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Condominium Project including but not limited to, the powers and responsibilities to make prudent investments of funds held by it; to make reasonable Rules and Regulations; to borrow money; to make assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the Bylaws and any other documents or instruments relating to the establishment, existence, operation, alternation or termination of the Condominium Project. The powers of the Council shall be construed liberally.

Section 10.2 Board of Directors. Unless otherwise specifically stated in this Declaration, the Council shall act exclusively through its Board of Directors (the "Board"). The Board shall be chosen by the Developer and/or Council in accordance with the Bylaws. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

Section 10.3 Books of Account; Inspection; Audit. The Council shall keep a detailed account of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Areas and any other Common Expenses incurred by or on behalf of the Project. Both the accounts and vouchers accrediting the entries made thereon shall be available for examination by the Unit Owners at such working hours as the Council shall establish and make known. All books and records must be kept in accordance with good accounting procedures and must be reviewed at least once a year by an independent accounting firm.

Section 10.4 Limitations on Council's Duties.

(a) The Council did not construct the improvements, including the Units, in the Condominium Project. The Council does not warrant in any way or for any purpose, the improvements in the Condominium Project. Construction defects are not the responsibility of the Council.

(b) The Council shall have a reasonable time in which to make any repair or do any other work which it is required to do. The Council must first have actual knowledge of a problem. Any determination of the reasonableness of the Council's response, must allow for the facts that the Council is volunteer and that the funds available to the Council are limited.

(c) In case of ambiguity or omission, the Board may interpret the Master Deed and the other Project documents, and the Board's interpretation shall be final if made without malice or fraud. Notwithstanding the foregoing, the Developer may overrule any interpretation affecting it, made within seven (7) years of the date of this Declaration; and such interpretation cannot be enforced against the Developer, its successors or assigns.

ARTICLE II

Section 11.1 Use and Occupancy. The Council shall make Rules and Regulations to govern the use and occupancy of the Condominium Project. In addition, the covenants, conditions, and restrictions contained in Article 11, as to use and occupancy shall run with the land and shall be binding upon each Unit Owner, his heirs, tenants, licensees and assigns:

Section 11.2 Purpose of Property. Except as otherwise provided in this Declaration, no part of the Condominium Property shall be used for other than housing and the common recreational purposes for which the Condominium Property was designed, and each Unit shall be used only for residential purposes, unless the Board of Directors authorizes some other use. Except for the construction, sales and management activities of the Developer, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Condominium Property. To the extent permitted by law, an Owner may use a portion of his or her Unit for an office or studio (other than a music and/or dance studio) provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Condominium Property or in and out of said owner's Unit. Examples include an author, a painter, and any professional bringing papers home from an offsite office to work on after normal office hours.

Section 11.3 Obstruction of Common Areas and Facilities. There shall be no storage or parking of any items, including baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in any part of the Common Areas, except as permitted by the Rules and Regulations. Patios, porches (except screened in and/or enclosed porches) and decks, may be used only for their intended purposes.

Section 11.4 Parking. Except for vehicles being used by persons providing services to the Developer, the Council, the Unit Owners or otherwise used or authorized to be used at the Condominium Property by the Developer, no part of the Condominium Property may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, camp car, recreational vehicle, camper, truck which exceeds 3/4 ton, boat, boat trailer, or with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "Special Vehicles"), unless such Special Vehicles are parked in the garage of the Unit Owner who owns such Special Vehicle and the garage door of such Unit Owner is completely closed at all times when a Special Vehicle is parked therein. Operative vehicles, other than Special Vehicles, used by a resident of a Unit as a primary source of transportation may be parked in the assigned Limited Common

Areas designated as parking spaces for such Unit Owner, the driveway of such Unit Owner or in any garage space owned by the Owner of such Unit. However, the residents of any one Unit may not collectively park more than four (4) operative vehicles other than Special Vehicles on the Condominium Property. Inoperative vehicles may not be parked on the Condominium Property unless these inoperative vehicles are parked in the garage and the garage door is completely closed. No auto maintenance and/or repairs may be performed on the Condominium Property except if performed inside the garage of a Unit Owner. Vehicles, whether owned by a Unit Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking in the Project, the Owner of the vehicle or other vehicle user hereby waives any claim against the Council resulting directly or indirectly out of the towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Council. Note that the Council is not obliged to try to determine the owner of a vehicle and first give notice, before towing the vehicle. If a Unit Owner is not sure about the right to park at any particular area or space, the Unit Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Unit Owner or if the Board does not answer the written request by the Board, the Unit Owner may park in the space until further written notice to the contrary from the Board. If the Unit Owner wishes to appeal the Board's decision, as per the same rules and under the same terms and conditions as appealing a fine, which are set out elsewhere in this Master Deed. Note that the Council's right to tow a motor vehicle or vehicle includes the right to immobilize it.

Section 11.5 Garage Spaces. A Unit Owner shall not be permitted to use, maintain and/or store a refrigerator and/or freezer in any garage space. The use and storage of a refrigerator and/or freezer shall be permitted only within the Unit of an Owner, and shall be maintained at the Owner's sole cost and expense.

Section 11.6 Compliance With Insurance Policies and Waste. Nothing shall be done or kept in any Unit, in the Common Areas or in the Limited Common Areas which will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use, without the prior written consent of the Council. No Unit Owner shall permit anything to be done or kept in his or her Unit, in the Common Areas or the Limited Common Areas which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas and/or in the Limited Common Areas. All laws shall be obeyed.

Section 11.7 Exterior Surfaces of Buildings. Unit Owners shall not cause or permit anything to be hung or displayed on the inside or outside of windows (except as provided herein) or hung on the outside of the Unit doors (including but not limited to decorative door arrangements) or placed on the exterior walls of a building, and no sign (other than those described in Section 11.12 hereof and directional signs or signs concerning the use of the Common Areas), awning, canopy, flag (except the American flag), shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part of the building, or the Common Areas without the prior written consent of the Council. Unless otherwise approved in writing by the Council, Unit Owners shall not

cause or permit any curtains, shades or other window coverings to be hung inside or outside any windows, doorways, and/or patio doors which will show any color on the outside other than white or beige tones.

Section 11.8 Animals and Pets. No animals of any kind shall be raised, bred, or kept in any Unit or in the Common Areas, except that two dogs, two cats or one of each, or two other household pets may be kept in a Unit, subject to the Rules and Regulations, provided that it is not kept, bred or maintained for any commercial purpose, and provided that the pet weighs less than thirty (30) pounds and that it is kept subject to the Rules and Regulations of the Council. Dogs, cats or other household pets must be kept within the confines of the Owner's Unit except when being held on hand leash by the pet owner of the animal. No Unit Owner shall install a fence and/or electric fence on any portion of the Common Area or Limited Common Area without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Area or Limited Common Area. A Unit Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Council shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Unit shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Areas, including the Limited Common Areas.

Section 11.9 Nuisances. No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Limited Common Areas, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

Section 11.10 Impairment of Structural Integrity of Building. Nothing shall be done in any Unit or in, on or to the Common Areas and Limited Common Areas which will impair the structural integrity of any building or which would structurally change any building.

Section 11.11 Laundry or Rubbish and Open Fires in Common Areas and Facilities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas and Limited Common Areas. The Common Areas and Limited Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage or other rubbish shall be deposited only in covered sanitary containers as provided in Section 11.15 below. No open fires shall be permitted on any part of the Condominium Property other than fires in charcoal grills or other similar cooking devices located within the Limited Common Areas provided it does not violate any local governmental rules and regulations.

Section 11.12 Prohibited Activities. Except as otherwise provided in this Declaration, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit,

shall be conducted, maintained or permitted on any part of the Condominium Property. A Unit Owner is permitted to place and maintain a standard "For Sale" or "For Rent" sign only in the window of his/her Unit; provided, however it is of a typical size within the industry or within an area expressly permitted by the Board of Directors. No other sign which is visible from the outside of Units may be placed on any part of the Condominium Property except as expressly permitted by the Board of Directors. Developer and/or the Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. A Unit Owner must obtain the prior written consent of the Board of Directors in the event a Unit Owner desires to maintain a "For Sale" or "For Rent" sign which is not of a typical size within the industry, or desires to maintain other displays or advertising, unless otherwise provided for under the Rules and Regulations. The right is reserved by the Developer to use any such unsold or unoccupied Units or other structures on the Condominium Property as models and/or offices in connection with the construction, sale or rental of Units.

So long as the Developer owns a Unit no action may be taken nor may any Rule or Regulation be adopted or amended that would (a) directly or indirectly alter the exterior appearance of any part of the Condominium Property; (b) reduce or discontinue any maintenance standard or practice in effect as of the date when the Developer no longer controls the Board; (c) adversely affect the Developer's sale or leasing of any Units; or (d) otherwise adversely affect the Developer, any of its rights, or any Unit owned by it without, in each case, first obtaining the Developer's written consent.

Section 11.13 Alteration of Common Areas. Nothing shall be altered or constructed in or removed from the Common Areas except as otherwise provided in this Declaration and except upon the written consent of the Council. In addition, a Unit Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables, on any portion of the Condominium Property.

Section 11.14 Rental of Units. The owners of the respective Units or any first mortgagees in possession thereof shall have the right to lease the same subject to the covenants and restrictions in this Declaration and to the Bylaws and Rules and Regulations. However, neither a Unit Owner nor any first mortgagee in possession shall lease less than an entire Unit nor shall any Unit be leased for a term of less than six (6) months, and the respective Units shall not be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days, or (ii) any rental if the occupants of the Units are provided customary hotel service such as room service for food and beverage, maid service and furnishing of laundry and linen. All leases of any Unit shall be in writing. All such leases shall provide that they are subject to all of the provisions of the Declaration, the Bylaws and the Rules and Regulations and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease. A copy of each such lease shall be given to the Developer and the President of the Council immediately after it is executed. If any lessor or lessee is in violation of any of the provisions of the foregoing documents, the Council may bring an action in its own name and/or in the name of the lessor to have the lessee evicted and/or to recover damages. If the Court finds that the lessee is or has violated any of the

provisions of the Declaration, the Bylaws or the Rules and Regulations, the Court may find the lessee guilty of forcible detainer notwithstanding the facts that the lessor is not a party to the action and/or that the lessee is not otherwise in violation of lessee's lease or other rental agreements with lessor. For purposes of granting the forcible detainer against the lessee, the Court may consider the lessor a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (the Council). The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which Council has. If permitted by present or future law, Council may recover all of its costs, including Court costs and reasonable attorney's fees, and such costs shall be a continuing lien upon the Unit which shall bind the Unit in the hands of the then Unit Owner and the Unit Owner's successors and assigns.

Section 11.15 Trash Disposal. All trash, garbage, or other rubbish shall be deposited by each Unit Owner as directed and instructed by the Board. For Unit Owners instructed by the Board to purchase individual trash containers, these personally owned trash containers shall be kept at all times in each Unit Owner's garage, except on the days which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Unit Owners to be collected by the local waste removal authorities shall only remain outside for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Unit Owner in violation of this Section 11.15, and may assess the Unit Owner for the cost of such removal, which amount shall be payable on the date the next installment of the regular assessment is due.

Section 11.16 Nondiscrimination. No owner (including the Developer), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale, lease or rental of any Unit nor in the use of the Common Areas and Limited Common Areas.

Section 11.17 Compliance with Covenants, Conditions and Restrictions. Every Unit Owner and other party described in the first paragraph of this Article 11 shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the Bylaws and with the Rules and Regulations in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Unit Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Unit Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof. An action seeking a declaratory judgment, the recovery of sums due for damages, or injunctive relief, or any or all of them may be maintained by any interested party against the Developer or any of its agents, any Unit Owner, or any person who has a right to occupy a Unit who has caused or may cause damage by his or her failure to comply or his or her threat not to comply with any provisions of this Declaration, the Bylaws, the Rules and Regulations, any management contract or any other document establishing ownership or control over any part of the Condominium Property. One or more Unit Owners may bring a class action on behalf of all Unit Owners. The lawful provisions of any of the instruments described above may, if necessary to carry out their purposes, be enforced against all or any part of

the Condominium Property or against any party previously or currently owning any interest in the Condominium Property.

In addition to the above rights, the Council may also enter upon a Unit or any land upon which a violation exists to remove any violation, perform maintenance or make repairs thereon which is the responsibility of a Unit Owner who has failed to remove said violation or to perform such maintenance or make such repairs (i) after having given such owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any fines imposed by the Council, which is hereby empowered to levy reasonable fines against any Unit Owner for the failure of such Unit Owner to comply with any such covenants, conditions and/or restrictions ("Default"), and any and all expenses incurred by the Council in enforcing any of the terms and provisions of the Condominium Documents, including reasonable attorneys' fees to the extent permitted by Kentucky law, may be levied as an individual assessment against the Unit Owner in question and his or her Unit.

Any action brought by the Council hereunder may be brought in its own name, in the name of its Board or in the name of its managing agent. In any case of flagrant or repeated violation by a Unit Owner, he or she may be required by the Council to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

ARTICLE 12

Section 12.1 Council's Responsibilities. Council, at its expense, shall be responsible for the maintenance, repair and replacement of all portions of the Common Areas that are not Limited Common Areas and of those portions of each Unit and the Limited Common Areas which contribute to the support of the buildings, excluding, however, any surface of interior walls and of ceilings and floors of the Unit. This shall include, without limitation, the maintenance, repair, replacement and painting of: (a) all private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces; (b) all yards, lawns, trees, grassy areas and fences; (c) the exterior of all buildings, including, but not limited to, the exterior bricks facade, the exterior of all Unit doors, the exterior of all storage area doors located outside a Unit and the exterior of all garage doors, window and door trim (except glass and screens which are part of a Unit) and all roofs; and (d) fire walls. In addition, the Council shall maintain, repair and replace: (a) the patios, patio area wells, porches (except that portion of the screened-in and/or enclosed porches set forth in Section 12.2 below), decks and uncovered parking spaces which are part of the Limited Common Areas; (b) all conduits, ducts, utility pipes, plumbing, wiring and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not Limited Common Areas reserved for the exclusive use of a single Unit; and (c) all of the property which is required to be maintained by the Council in a good state of repair.

Section 12.2 Unit Owner's Responsibilities. The responsibilities of each Unit Owner shall include:

(a) To maintain, keep in good order, repair and replace at his or her expense all portions of his or her Unit including without limitation the interior of all Unit doors as well as replacement of the same, all vestibules and entryways of the Unit, windows, weatherstripping, window frames, locks, door frames and hardware, glass and screens (except as provided above in Section 12.1), and all internal installations of a Unit such as appliances, smoke detectors, heating, ventilating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries and any other wires, pipes, conduit, equipment, improvements and heating or air conditioning equipment located inside or outside the Unit boundaries designated and installed for the exclusive purposes of servicing the Unit. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such items.

(b) To maintain, repair and replace all Limited Common Areas reserved for the exclusive use for his or her Unit including, without limitation, the interior of all storage area doors and garage doors as well as the replacement of the same, all other portions of the storage areas located outside the Units and garages (except as provided above in Section 12.1 above), including without limitation garage door tracts, hardware and automatic openers, the interior surface of the walls, floors and ceilings of the storage areas and garages, screened-in and/or enclosed porches (except the concrete floor which shall be the Council's responsibilities as provided in Section 12.1 above), chimneys if any, dryer vents and all other associated structures and fixtures which are appurtenances to his or her Unit, excluding, however, the exterior and other painting, maintenance, replacement and repair to be done by the Council pursuant to Section 12.1 hereof and the other provisions of the Declaration. The foregoing responsibilities of each Unit Owner include, without limitation thereto, responsibilities for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances except said excluded items. Any repair, replacement and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Council including architectural control and visual harmony.

(c) To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Condominium Project.

(d) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of his Unit, without the written consent of the Council.

(e) To promptly report to the Council or its managing agent any defect or need for repairs, the responsibility for the remedying of which is with the Council.

(f) Not to make any alterations in the portions of the Unit or the building which are to be maintained by the Council or remove any portion thereof or make any addition thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without

first obtaining the written consent of the Council, nor shall any Unit Owner impair the use of any easement without first obtaining the written consents of the Council and of the Owner or Owners for whose benefit such easements exists.

(g) Each Unit Owner shall be deemed to agree by acceptance of delivery of a deed to a Unit, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Unit Owner, or owned by any guest, invitee, tenant or licensee of such Unit Owner.

Section 12.3 Construction Defects. The obligations of the Council and of Owners to repair, maintain and replace the portions of the Condominium Property for which they are respectively responsible shall not be limited, discharged or unreasonably postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the project. The undertaking of repair, maintenance or replacement by the Council or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved. Likewise, this Section is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Council may be delayed if Council does not have the means or the funds to repair the defect or if by repairing the defect, Council would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 12.4 Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Council and/or any Unit Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Council or any Unit Owner in performing his obligation hereunder. Likewise, this Section is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Council may be delayed if Council does not have the means or the funds to repair the defect or if by repairing the defect, Council would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 12.5 Rights of Unit Owners. A Unit Owner's rights include the following:

(a) A Unit Owner shall have the exclusive ownership to his Unit and shall have a common right to share, with other co-owners, in the Common Areas of the Condominium Property, equivalent to the percentage representing the floor area of the individual Unit, in relation to the floor area of the property as a whole.

(b) Each Owner may use the general Common Areas in accordance with the purpose for which they are intended. However, each Owner may not hinder or encroach upon the lawful rights of the other Owners to use the Common Areas.

Section 12.6 Share in Funds. The proportionate interest of each Unit Owner in any funds maintained or held by the Council, cannot be withdrawn or separately assigned, but is deemed to be transferred with each Unit even though not mentioned or described in conveyance.

Section 12.7 Injuries and Damages. Each Unit Owner shall be individually liable for injuries or damages which result from his own negligence or willful misconduct or which occur within his individual Unit, to the same extent and degree as the individual Owner of any other residential property.

Where a judgment arising from a risk common to all of the Owners is in excess of the liability insurance in force, the liability of any co-owner shall not exceed his pro-rata share as determined by the percentage that the value of his individual Unit bears to the value of the Condominium Project as a whole. An uncollected share of a judgment shall not be reassessed among the Owners.

Section 12.8 Authorization to Sue. Each Owner hereby authorizes and empowers the Council to sue on behalf of the Owner on claims related to the Project. Council may bring the suit in its own name with no reference to the Owners, but it is understood that any judgment or awards in favor of Council from the suit are to be used for the benefit of the Owners. This Section specifically includes Council's power to sue on behalf of all Owners on claims relating to construction defects to Common Areas, Limited Common Areas and/or in the reasonable discretion of Council, Units. The purpose of this Section is to give Council the power to sue persons or entities with whom Council did not contract or otherwise deal. This Section is not intended to limit any right of any Owner to sue on the Owner's own behalf or the right of any Owner to bring a class action on behalf of other Owners. This Section is intended to create an additional power and not to limit any existing powers or remedies.

Section 12.9 Garages.

(a) Included in the purchase of certain residential Units is the purchase of a garage or garage space ("garage"). Other residential Units may include an exclusive right to a garage.

(b) All garages, whether owned or assigned by exclusive right, shall be required to pay a garage maintenance assessment which shall be based on the Unit Owner's proportionate share of the budgeted expenses that will be incurred by the Council to maintain the garages, plus an amount for the garage reserve fund as determined by the Board. The garage maintenance assessment shall become due and payable (in advance each month) on the first day of each month.

(c) A garage, whether owned or assigned by exclusive right, may only be used by an Owner of record of a residential Unit in the Project.

(d) The Council may make and enforce by fine, lien and otherwise reasonable rules and regulations about the garage and the use of such. The residential Owner shall be responsible to maintain, repair and replace the garage door and any garage door related equipment. Any lien filed against the Unit automatically includes the garage appurtenant to that Unit.

(e) Garage Owned by Unit Owner. No residential or commercial use can be made of a garage. Nothing dangerous or illegal or of a nuisance to neighbors may be stored in a garage. The use of the garage is subject to the Rules and Regulations of the Council.

(f) Garage Assigned by Exclusive Right. The garage shall be considered a Limited Common Area of the Unit to which it is appurtenant. The Council may require the use of an electric garage door opener. No residential or commercial use can be made of a garage. The use is limited to storing a vehicle. Reasonable storage of household related goods is permitted so long as there is still room for a normal sized automobile to be kept in the garage, and further said automobile must be parked in the garage as the garage cannot be used as a storeroom. The garage may not be used to keep animals. Nothing dangerous or illegal or of a nuisance to neighbors may be stored in a garage. A Unit Owner shall not be permitted to use, maintain and/or store a refrigerator and/or freezer in any garage space. The garage may not be used as a workshop. The use of the garage is subject to the Rules and Regulations of the Council.

(g) Any parking space or carport designed for a particular residential Unit shall be appurtenant to that Unit. The other paragraphs of this Section relating to garage(s) shall also apply to parking spaces and carports, except that no storage of any kind is permitted on a parking space or in a carport. Only operative vehicles may be parked in a driveway, parking space and/or a carport.

(h) If a garage, parking space and/or carport is appurtenant to a Unit, the garage, parking space, and/or carport cannot be conveyed, leased, encumbered or otherwise dealt with separately from the Unit.

ARTICLE 13

Section 13.1 Termination. The condominium regime may be terminated or waived by any method permitted by Kentucky law at the time of the termination or waiver. If Kentucky law permits or is otherwise silent, the condominium regime may also be terminated or waived as set forth in Section 13.3 of this Article.

Section 13.2 Destruction. If it is determined in the manner elsewhere provided that the building(s) shall not be reconstructed because of major damage, or eminent domain, the condominium regime will be thereby terminated without agreement.

Section 13.3 Agreement. If the proposed termination or waiver is submitted to a meeting of the Members of the Council and if approved by Owners of the Units appurtenant to which is not less than seventy-five (75%) percent of the common interest, and if a consent to the termination is obtained from sixty-seven percent (67%) of the Eligible Mortgagees and any other approval required by law not later than ninety (90) days from the date of such meeting, then the approving Owners shall have an option to buy all of the Units of the other Owners for the period ending on the one hundred and twentieth (120th) day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option period, and if the option is exercised, the approvals shall be irrevocable. Such option shall be upon the following terms:

(a) The option shall be exercised by the delivery or mailing by certified mail to each of the record Owners of the Units to be purchased the following instruments:

(i) A certificate executed by the President and Secretary of the Board certifying that the option to purchase the Units owned by Owners not approving termination has been exercised as to all of such Units. Such certificate shall state the names of the Unit Owners exercising the option, the Units owned by them and the Units being purchased by each of them.

(ii) An agreement to purchase, upon the terms herein stated, the Unit of the Owner receiving the notice, which agreement shall be signed by the purchasing Unit Owner or Owners.

(b) The sale price for each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of the instruments. In the absence of such agreement the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two Appraisers appointed by the American Arbitration Association, who shall base their determination upon an average of their appraisals of the Unit. A judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser. The arbitration must be held within one hundred and twenty (120) days from the date of the exercise of the option.

(c) The purchase price shall be paid in cash or upon terms approved by the seller and the Council.

(d) The sale shall be closed within twenty (20) days following the determination of the sale price. Good and marketable title to the Unit must be conveyed by the seller to the purchaser by a general warranty deed, free and clear of all liens and encumbrances except this Declaration.

(e) The closing of the purchase of all of the Units subject to such option shall effect a termination or waiver of the condominium regime without further act except the filing of the certificate hereafter required.

Section 13.4 Certificate. The termination or waiver of the condominium regime in either of the foregoing manners shall be evidenced by a certificate of the Council executed by its President and Secretary certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in records of the County Clerk's office in which the real estate records for the real estate regime are recorded.

Section 13.5 Shares of Owners After Termination. After any termination or waiver of the condominium regime the Unit Owners shall own the Condominium Property and all assets of the Council as tenants in common in undivided shares, and their respective mortgages and liens shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same and the undivided shares in the Common Areas appurtenant to the Owner's Units prior to the termination or waiver.

Section 13.6 Amendment. This Article concerning termination or waiver cannot be amended without consent of all Unit Owners and of all record Owners or mortgages upon the Units.

ARTICLE 14

Section 14.1 Prohibition of Partition. The Common Areas, both general and limited, shall remain undivided and shall not be the object of an action of partition or division of the co-ownership.

Section 14.2 Severability. The invalidity of any Article, Section, covenant, restriction, condition, limitation, or any other provision of this Master Deed or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of the Master Deed.

Section 14.3 Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 14.4 Enforcement of Provisions.

(a) In addition to any other remedies provided for in this Master Deed, the Council, Developer, or any Owner or Owners shall have the right to enforce all restrictions, covenants, conditions, easements, reservations, liens and charges now or hereinafter imposed by or through the provisions of this Master Deed, the Bylaws or any Rules or Regulations promulgated by the Council, or as provided by KRS 381.883. Enforcement shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. The failure or forbearance by the Council or any Owner to enforce any covenant or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages. All charges incurred by the Council in enforcing these covenants and restrictions (including court costs and reasonable attorney's fees) shall constitute a lien against the Unit of such person or persons, subject to subordination of any first mortgage.

(b) In addition to any other remedies provided to the Council by this Master Deed by any other Condominium Document or by law, the Board may impose a reasonable fine against a Unit Owner under the following circumstances:

- (i) The Unit Owner or a person living in the Unit or using the Unit has violated the Master Deed, the Bylaws and/or any Rules and Regulations of the Project;
- (ii) The fine may not exceed \$1,500.00, in real dollars, indexed to inflation with the year of recording this Master Deed as the base year, plus interest at the rate of twelve (12%) percent per year, plus related reasonable attorney's fees and other costs, whether or not a legal proceeding is initiated. The Board may adjust the rate of interest. The Board may be creative. For instance, for a continuing violation, the Board may consider each day to be a separate violation, as long as the total fine does not exceed the allowable limit, exclusive of interest, attorney's fees and other costs. The fine may also be filed as a lien, subject to foreclosure, against the offending Unit, but the lien shall be subordinate to any prior first mortgage or prior second mortgage of record;
- (iii) Before a fine is made, the Board shall send, in any reasonable manner, written notice of the nature of the violation, addressed to the Unit Owner of record at the address of the Unit or at such other address with which the Council has been provided in writing. Besides notifying the Unit Owner of the general nature of the violation, the letter should notify the Unit Owner of the Unit Owner's right to send or to deliver within thirty (30) days of the date of the letter, to the person and address named in the letter, a written statement of the Unit Owner's defense including any appropriate evidence. The letter should also notify the Unit Owner of the date, time and location of a meeting of the Board or a committee of the Board at which the Unit Owner and/or a representative can present a defense. After considering the defense, if any, and any other relevant evidence, the Board shall make a decision, in writing, and mail it to the Unit Owner, addressed as the original notice was addressed, unless the Unit Owner has furnished the Board, in writing, a new address. The decision shall give the amount of the fine and, if the violation is a

continuing violation, that the fine must be paid for each day or part of a day of violation. The Board need not give any reasons for its decision and need not make a record. To stop the daily automatic assessing of a fine for a continuing violation, the Unit Owner must notify the Board, in writing, of the date of curing of the violation and the Board must, in fact, conclude that the violation was cured on that date.

(iv) Appeal from a fine should be to the Circuit Court of the county in which the Project is located. An appeal of a fine must be made within sixty (60) days after the date of the letter notifying the Unit Owner of the board's decision. After the expiration of the sixty (60) days, the Unit Owner shall be considered to have waived the Unit Owner's right to appeal or to otherwise contest the fine. The decision of the Board should not be disturbed, unless clearly erroneous. The offending Unit Owner's sole remedy shall be a judgment exonerating the fine and releasing the lien, except that upon clear and convincing proof, beyond a reasonable doubt, of the Board having acted with malice and without reason in levying the fine, the offending Unit Owner shall also be entitled to damages not to exceed \$5,000.00 against the Council. THE COUNCIL IS NOT RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE.

Section 14.5 Liability. Neither the Developer, nor any subsidiary or affiliate of Developer, nor any employee, agent, successor or assign of Developer, or such subsidiary or affiliate, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with the authority granted or delegated to them or any of them by or pursuant to this Master Deed, except with respect to matters as to which it is adjudged to have been negligent.

Section 14.6 Interpretation. The provisions of this Master Deed shall be liberally construed to effectuate the purpose of creating a uniform plan for the establishment and operation of a condominium development.

Section 14.7 Notices and Demands. Any notice by the Council to a Unit Owner shall be deemed to be duly given, and any demand upon him shall be deemed to have been duly made, if delivered in writing to him personally, or if mailed by certified (or the equivalent) mail.

Any notice to the Council shall be deemed to be duly given, and any demand upon Council shall be deemed to have been duly made, if delivered in writing to two (2) Officers or Directors of Council, or if mailed by certified (or the equivalent) mail to two (2) Officers or Directors of the Council.

Section 14.8 Alteration and Transfer of Interests. The Common Areas and easements appurtenant to each Unit shall have a permanent character and shall not be altered, except as

otherwise provided herein, without the consent of all of the Owners, expressed in a recorded amendment to this Declaration. The Common Areas and easements shall not be separated from the Unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Unit even though such Common Areas or easements are not expressly mentioned or described in the instrument. If a garage is appurtenant to a Unit, the garage cannot be conveyed, leased, encumbered or otherwise dealt with separately from the Unit.

Section 14.9 Council and Director Responsibility. In carrying out the provisions of this Declaration, and in the performance of all of the rights, duties and obligations, covenants and conditions, hereunder, specifically including but not limited to, the protection, maintenance and upkeep of Common Areas, the Council, its officers, directors, servants and employees shall be required to exercise reasonable care only, and shall in no way be deemed absolutely liable, or be deemed insurers.

Section 14.10 Expansion of Council. The Council upon the affirmative vote of fifty-one percent (51%) of its Members or upon unanimous vote of its Board of Directors, may merge with any other Council of a reasonably compatible community. Short of merger, the Council may share expenses or otherwise cooperate with any other Council or homeowners association. The cooperation may be to the fullest extent permitted by law so that economies of scale and the benefits of efficiency and organization can be fully realized.

ARTICLE 15

15.1 Law. To the extent possible, the Condominium Documents, which include this Master Deed, the Articles of Incorporation and Bylaws of the Council, and any Rules and Regulations shall be construed to be consistent with the laws of the Commonwealth of Kentucky and other applicable laws and with the requirements of primary or secondary lenders on Units. The Condominium Documents are intended to supplement, not restrict, any powers which the Council may otherwise have under law.

ARTICLE 16

Section 16.1 Amendment of Declaration. Except as otherwise provided in this Declaration and/or the Bylaws and except as required by law, any provision of the Declaration and Bylaws may be amended at any regular or special meeting of the Members of the Council. In order for the amendment to pass, at least seventy-five (75%) percent of the total number of votes held by the Members of the Council must be cast in favor of the amendment. The amendment will be effective upon the recording, in the County Clerk's office at which the Declaration was recorded, of a copy of the amendment together with an acknowledged statement from the secretary of the corporation stating:

- (i) the date of the meeting at which the amendment was adopted;

- (ii) the percentage of the total number of votes held by members cast in favor of the amendment;
- (iii) the fact that a true and accurate copy of the amendment is attached to the statement; and
- (iv) the fact that the person making the statement is the secretary of the corporation.

Section 16.2 Correction. Either the Council or the Developer may, at any time and without the consent of the Members of the Council, make amendments to the Declaration and/or Bylaws to correct errors in language, errors in typing or errors in grammar or errors in arithmetic or errors on the plats of record, to make such amendments to comply with Kentucky law, or to make such amendments as are required by the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or other similar federal agency, state agency, private agency, or financial institution, in order to qualify the Unit, or any of them, for the benefit of loans, insurance or guarantees, or to adjust fixed dollar amounts in the Master Deed to reflect inflation or deflation; or to reflect changes in laws, court rulings, administrative rulings, regulations and other requirements of law; or to reflect changed business practice or product availability. The amendment will be effective upon the recording in the County Clerk's office at which the Declaration was recorded, of a copy of the amendment together with an acknowledged statement from the corporation of the Developer stating:

- (i) the date on which the amendment was adopted;
- (ii) the fact that a true and accurate copy of the amendment is attached to the statement; and
- (iii) the fact that the person making the statement has the authority to do so.

Section 16.3 Implementation of Amendments. The Council or the Developer, as the case may be, has the power to make any plats, deeds or other instruments necessary or desirable to effectuate an amendment.

Section 16.4 Effective Date. The Board may determine the effective date of an amendment and an amendment may be retroactive. However, an amendment is not effective against a good faith purchaser or lender without actual knowledge, as to any action taken before the date of the recording of the amendment in the County Clerk's office at which the Declaration was recorded.

Section 16.5 Developer's Consent. During the Development Period, no amendment to the Declaration and/or Bylaws is effective unless it has the written consent of the Developer, which consent must be recorded with the amendment or as a part of the amendment. The consent of the

Developer is in addition to the other requirements of this Article. The Developer may at any time surrender in writing the Developer's rights under this Section 16.5.

ARTICLE 17

Section 17.1 Shares without Certificates. The Council does not issue stock certificates. In other words, no Member will have a stock certificate as evidence of membership in the Council. The Member's deed, properly recorded, is the evidence of membership for that Member.

Section 17.2 Notice of Stock Information. This Master Deed shall be considered notice from the Council to each Member of the following facts:

- (a) The name of the corporation is the same as the name of the Council, which is set out in Article 1, Section 1.1(g);
- (b) The grantee in any deed to a Unit, which deed is properly recorded, becomes automatically a shareholder in the corporation and a Member of the Council;
- (c) There is only one (1) class of shares in the corporation;
- (d) Each share is otherwise identical to each other share, except percentage of ownership in the corporation is equal to a Unit's percentage of common interest as per this Declaration, as from time to time amended; and
- (e) There is one share of stock appurtenant to the ownership of each Unit. For instance, if a person owns, of record, full fee simple title to three Units, that person has three shares.

Section 17.3 Developer's Proxy. As explained elsewhere in this Declaration, the Developer has retained a proxy during the Development Period to vote all shares of the corporation. The Council also has proxy rights under certain circumstances as explained elsewhere in the Articles of Incorporation, the Bylaws and this Declaration.

ARTICLE 18

Section 18.1 HUD. This Article is included for the benefit of Housing and Urban Development (HUD) and such other lenders, guarantors of mortgages, insurers of mortgages, or other entities or institutions as the Board of the Council may direct by resolution in its minutes. The Board may otherwise amend or repeal this Article or any part of this Article by resolution, but such a repeal or amendment would only be effective as to mortgages recorded after a copy of the repeal or amendment, certified by the Secretary of the Council, was properly placed of record in the same county clerk's real estate records in which the Master Deed was recorded. A copy of the repeal or amendment must be mailed or otherwise delivered to the local office or main office of HUD, VA, FHLMC and FNMA, or such of those organizations as then exist. Likewise a copy of the repeal or

amendment must be mailed or delivered to each holder of record of a first mortgage on any Unit in the Project. The copy of the repeal or amendment, placed of record, must certify that the mailings or sendings required by Section 18.1 of this Article have been performed. Should Section 18.1 of this Article be construed to conflict with Section 18.2 of this Article, Section 18.1 shall control.

Section 18.2 HUD Requirements. In addition to any other requirements of this Declaration, or the Bylaws of the Council, the following requirements apply:

(a) The Council shall make available to Unit Owners, lenders and holders and insurers of the first mortgage on any Unit, current copies of the Declaration, Bylaws and other Rules and Regulations governing the Project, and other books, records and financial statements of the Council. The Council shall make available to good faith prospective purchasers current copies of the Declaration, Bylaws and other rules governing the Project, and the most recent annual audited financial statement, if there is one. "Available" shall at least mean available for inspection upon request, during normal business hours or under reasonable circumstances set by the Council.

(b) Upon written request from HUD, FNMA, FHLMC, or VA, as long as HUD, FNMA, FHLMC or VA has an interest or a good faith prospective interest in the Project, the Council shall prepare and furnish within a reasonable time an audited financial statement for the immediately preceding fiscal year.

(c) The Developer should reasonably provide for and foster early participation of Unit Owners in the management of the Council. At such time as the Developer relinquishes control of the Council, the Developer, if requested in writing, should help set up the elections for new board Members.

(d) A working capital fund shall be established from a special assessment of two (2) months estimated Common Area charge levied on each Unit at the time of initial sale by Developer.

(e) A holder, insurer or guarantor of a first mortgage, upon written request to the Council (such request to state the name and address of such holder, insurer or guarantor and the Unit number), will be entitled to timely written notice of:

(i) Any proposed amendment of the Condominium Documents effecting a change in (A) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (B) the interests in the Common Areas or Limited Common Areas appertaining to any Unit or the liability for Common Expenses appertaining thereto, (C) the number of votes in the Council appertaining to any Unit, or (D) the purposes to which any Unit or the Common Areas are restricted;

(ii) Any proposed termination of the condominium regime;

- (iii) Any Condominium Project loss or any casualty loss which affects a material portion of the Condominium Project or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- (iv) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days; and
- (v) Any lapse, cancellation or material modification of any insurance policy maintained by the Owner's Association pursuant to this Article 18.
- (f) The following provisions do not apply to amendments to the Condominium Documents or termination of the condominium regime made as a result of destruction, damage or condemnation or to a reallocation of interests in the Common Areas which might occur pursuant to any plan of expansion or phased development as set out earlier in this Declaration:
 - (i) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Council are allocated and sixty-seven percent (67%) of the Eligible Mortgagees shall be required to terminate the condominium regime.
 - (ii) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Council are allocated and the approval of fifty-one percent (51%) of the Eligible Mortgagees shall be required to materially amend any provisions of the Declaration, Bylaws or equivalent documents of the Condominium Project or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:
 - (A) Voting;
 - (B) Assessments, assessment liens or subordination of such liens;
 - (C) Reserves, for maintenance, repair and replacement of the Common Areas;
 - (D) Insurance or Fidelity Bonds;
 - (E) Rights to use of the Common Areas;
 - (F) Responsibility for maintenance and repair of the several portions of the Condominium Project;

- (G) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime, beyond that which has been projected in the Declaration, including the exhibits to the Declaration;
- (H) Boundaries of any Unit;
- (I) The interests in the Common Areas or Limited Common Areas, beyond that which has been projected or permitted by the Declaration;
- (J) Convertibility of Units into Common Areas or of Common Areas into Units;
- (K) Leasing of Units;
- (L) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the Condominium; and
- (M) Establishment of self-management by the Council where professional management has been required by any of the agencies or corporations.
- (iii) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Council are allocated and the approval of fifty-one (51%) percent of the Eligible Mortgagees shall be required to amend any provisions included in the Declaration, Bylaws or equivalent documents of the Condominium Project which are for the express benefit of holders or insurers of first mortgages on Units in the Condominium Project.
- (E) Unit Owners shall have a right of action against the Council to make it enforce and/or comply with the provisions of the Declaration, Bylaws and other Condominium Documents.
- (b) Any future improvements to the Project, including any improvements that become a part of the Project as a result of expansion, must be reasonably consistent with the initial improvements in terms of quality of construction.
- (i) Except as projected in the original Declaration, including the exhibits, the Developer will not expand the Project to include Additional Property without the prior written consent of HUD if HUD holds, insures or guarantees any mortgage in the existing Condominium Project at the time that the Additional Property is to be added.

(j) All improvements on the Additional Property brought into the Project by expansion shall be substantially completed before the Additional Property is annexed into the existing Project. Furthermore, liens arising in connection with the Developer's ownership of and construction of improvements upon the Additional Property must not adversely affect the rights of existing Unit Owners or the priority of existing first mortgages. All taxes and other assessments on the Additional Property must be paid or otherwise satisfactorily provided for by the Developer, before expansion.

(k) Certificates of insurance for the master policy shall be issued to each Unit Owner and mortgage holder upon written request and upon the payment of any reasonable charge. A "Special Condominium Endorsement" or its equivalent shall be part of the policy. Each policy must provide that it cannot be canceled or substantially modified, without at least ten (10) days prior written notice to the Council and to each holder of a first mortgage listed as a schedule holder of a first mortgage in the policy. Each policy shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area of the Project if available, and if affordable by the Project, an "all risk" endorsement shall be purchased.

(l) Comprehensive general liability insurance covering all of the Common Areas, commercial space owned and leased by the Council, and public ways of the Project must be maintained by the Council. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. The coverage must be at least One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under the policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Council. The policies must provide that they may not be canceled or substantially modified, by any party, without at least ten (10) days prior written notice of the Council and to each holder of a first mortgage on any Unit in the Project which is listed as a scheduled holder of a first mortgage on the policy. The policy may also include such other coverage as the Board directs from time to time.

(m) If the Project is located in an area which has been identified by HUD as having special flood hazards, the Council must obtain and pay the premiums upon a master or blanket policy of flood insurance on the buildings and any other property covered by the required form of policy, in a reasonable amount, but not less than the lesser of:

- (i) The maximum coverage available under the NFIP for all buildings and other insurable property within the project to the extent that such buildings and other insurable property are within an area having special flood hazards; or
- (ii) One hundred percent (100%) of current "replacement cost" of all such buildings and other insurable property within the area.

The policy must be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

(n) If the management agent has responsibility for handling or administering the funds of the Council, the managing agent shall maintain, at its own expense, fidelity bond coverage for its offices, employees and agents handling or responsible for funds of, or administered on behalf of, the Council. The fidelity bond must name the Council as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Council or the management agent, as the case may be, at any given time during the term of the bond.

The aggregate amount of fidelity insurance shall never be less than the sum equal to three (3) months aggregate assessments on all units plus reserve funds. The fidelity insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition "employees", or similar terms or expressions. The fidelity insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days prior written notice to the Council. These requirements apply to fidelity insurance carried by the management agent or by the Council.

(o) With regard to property and liability insurance, there may be named as an insured, on behalf of the Council, the Council's authorized representative, including any trustee with whom the Council has entered into any insurance trust agreement or any successor to such trustee. The trustee may have the exclusive authority to negotiate losses under any policy and to perform such other necessary or desirable functions.

(p) If any of the required insurance coverage under this Article becomes or is impossible to obtain or can be obtained only at an unreasonable cost or at a cost which the Council cannot reasonably afford, the Council shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available and affordable.

Section 18.3 Conflict. This Article 18 shall be construed as far as possible to supplement the other articles of the Declaration. If there is a conflict between another article or the Bylaws or any other document, this Article 18 shall control, even if an earlier article states that the earlier article shall control in case of conflict.

Section 18.4 Relief. The Council need not comply with any part of Article 18 if HUD, or any successor to HUD, no longer requires compliance.

DB07254PG0698

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DATED this 21 day of May, 1999.

HILLS COMMUNITIES, INC.

By: [Signature]

Name: Stephen Guttman

Title: President

STATE OF OHIO

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COUNTY OF HAMILTON

The foregoing instrument was acknowledged before me on this 21 day of May, 1999, by Stephen Guttman, President, of Hills Communities, Inc., an Ohio corporation, on behalf of the corporation.

My commission expires June 18, 2001

Notary Public David H. Hovary

THIS INSTRUMENT PREPARED BY:

Jody A. Klump
Jody A. Klump, Esq.



2014年12月20日
2014年12月20日

KEATING, MUEHNING & KLEKAMP, P.L.L.

1800 Provident Tower

One East Fourth Street

Cincinnati, Ohio 45202

513-579-6400

EXHIBITS

- EXHIBIT A Legal Description of Parcel 1
- EXHIBIT B Legal Description of Parcel 2
- EXHIBIT C Percentage Ownership Interest in Common Areas
- EXHIBIT D Floor Plans
- EXHIBIT E One Scenario of Possible Future Expansion
- EXHIBIT F Declaration of Covenants, Easements and Restrictions
- EXHIBIT G Certificate of Water Drainage/Retention Easement Rights Agreement
- EXHIBIT H Application and Contract for Underground Electric Service Extension
- EXHIBIT I Bylaws of Swan Pointe Council of Co-Owners, Inc.

EXHIBIT A

The real estate is located in Jefferson County, Kentucky, and is more particularly described as follows:

See Exhibit A-1, attached hereto and made a part hereof.

Being part of the same property conveyed to Hills Communities, Inc., an Ohio corporation by Deed dated November 13, 1997 and recorded November 14, 1997 at Deed Book 6962, Page 833, in the Office of the Clerk of Jefferson County, Kentucky.

All references herein are to the Jefferson County Clerk's records at Louisville, Kentucky.

The Recreational Facilities and one (1) building are located on Parcel 1. The Recreational Facilities and building are described on the floor plans recorded at A.O.B. Book 72, Pages 3-5 in the office of the Jefferson County, Kentucky Clerk. The area of Parcel 1 is approximately acres. The recorded floor plans of the Condominium Project are incorporated herein by reference.

THIS IS AN EXPANDABLE CONDOMINIUM PROJECT. SEE THE MASTER DEED AND ELSEWHERE IN THIS INSTRUMENT FOR FURTHER DETAILS. HOWEVER, NO REAL ESTATE SHALL BE A PART OF THE CONDOMINIUM PROJECT OR ENCUMBERED BY THE RESTRICTIONS OF THE MASTER DEED AS FROM TIME TO TIME AMENDED AND/OR SUPPLEMENTED, UNLESS THE REAL ESTATE HAS BEEN SPECIFICALLY ANNEXED TO, MADE SUBJECT TO AND/OR BROUGHT UNDER THE CONDOMINIUM REGIME. THE CONDOMINIUM SCHEME SHOULD NOT AND CANNOT BE IMPLIED TO INCLUDE REAL ESTATE THAT HAS NOT BEEN SPECIFICALLY ANNEXED TO, MADE SUBJECT TO AND/OR BROUGHT UNDER THE CONDOMINIUM REGIME, EVEN IF THE NON-CONDOMINIUM REAL ESTATE IS A PART OF THE SAME TRACTS FROM WHICH THE CONDOMINIUM REAL ESTATE CAME.

DB07254 PG0700

EXHIBIT A-1

Swan Pointe Condominium

Phase I

Legal Description

Being a portion of a tract conveyed to Hills Communities, Inc. as recorded in Deed Book 6962, Page 833 in the office of the County Court Clerk of Jefferson County, Kentucky and more particularly described as follows:

Being all of Tract 1 as shown on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99, containing 3.225 acres.

DB07254 PG0701

EXHIBIT B

Swan Pointe Condominium

Phase I

Legal Description

(Residual)

Being a portion of a tract conveyed to Hills Communities, Inc. as recorded in Deed Book 6962, Page 833 in the office of the County Court Clerk of Jefferson County, Kentucky and more particularly described as follows:

Being all of Tract 2 as shown on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99, containing 47.142 acres.

EXHIBIT C

Unit No.	Unit Type	Level	Unit Location	Proposed Unit Floor Area*	% of Common Interest**
1108	G	First	Front Left	1785	26.8987%
1106	E	First	Front Right	1533	23.1013%
12525	G	First	Front Right	1785	26.8987%
12527	E	First	Front Left	1533	23.1013%
			Total:	6,636	100%

A = Adams

B = Taft

C = Lexington

D = Brighton

E = Sussex

F = Essex

G = Windsor

*The Unit Floor Area of a Unit is measured from the interior surface of the walls of the Unit and the interior surface of the ceiling and floor of the Unit.

**As additional Units are added to the Condominium, the various Unit's percentage of interest in Common Areas above will decrease accordingly.

DB07254 PG0703

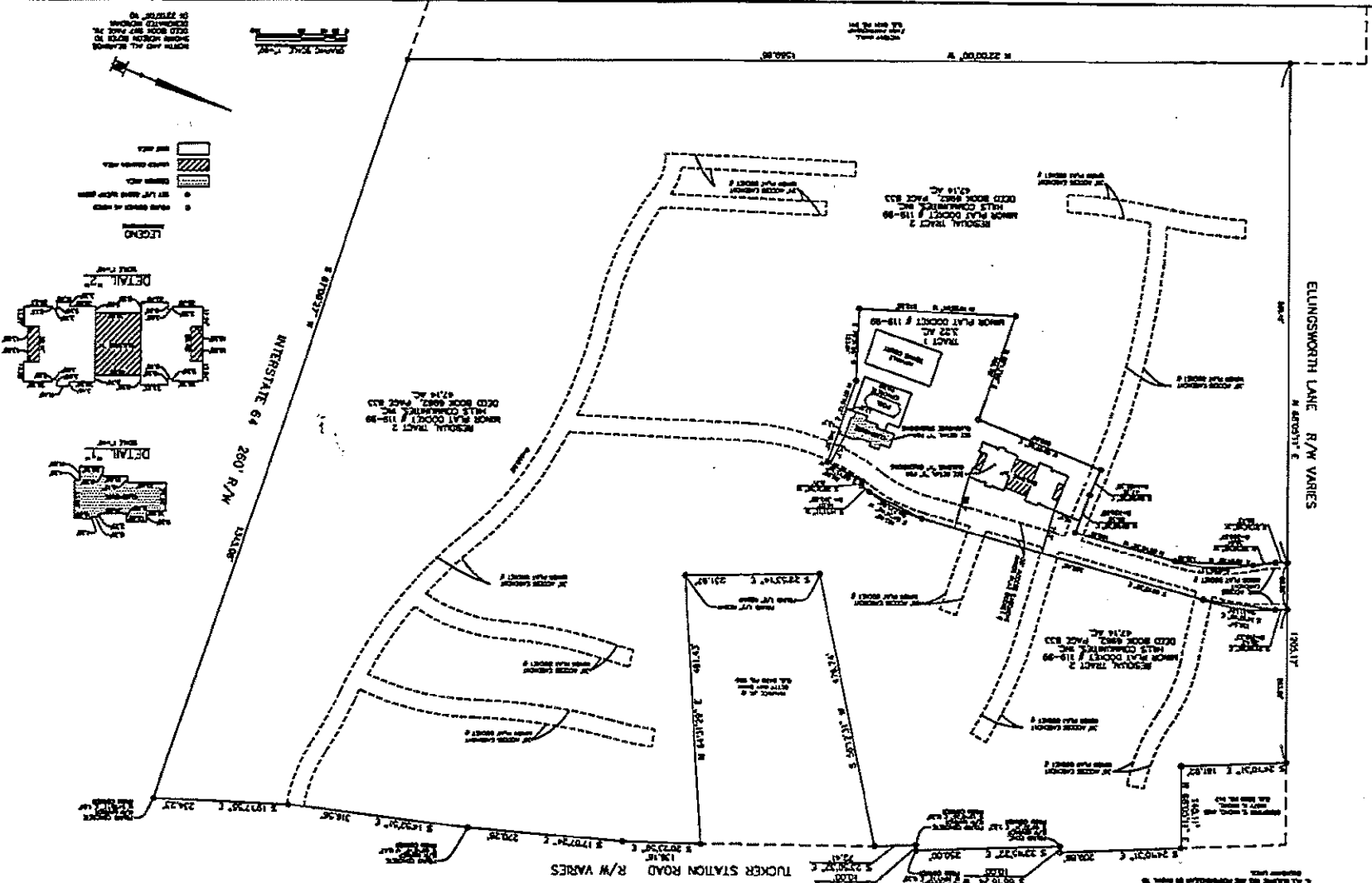
EXHIBIT C (continued)

THERE ARE FOUR (4) UNITS IN EACH QUADPLEX BUILDING. THE MULTIPLEX BUILDINGS WILL EITHER CONSIST OF EIGHT (8) UNITS, TWELVE (12) UNITS, SIXTEEN (16) UNITS OR TWENTY-FOUR (24) UNITS. THE "UNIT LOCATION": IS GIVEN FROM THE POINT OF VIEW OF A PERSON FACING THE FRONT OF THE BUILDING. THE HEIGHT OF A UNIT VARIES BETWEEN APPROXIMATELY 7'10" AND APPROXIMATELY 8'.

If there is a conflict between this Exhibit C and Exhibit E, this Exhibit C controls.

For the purpose of making assessments, or for any other legal purpose, the Board may reasonably round off the percentage of common interest for each Unit.

EXHIBIT D DB07254PG0704



SWAN POINTE CONDOMINIUM
DEED BOOK 6862, PAGE 633
CLUB HOUSE AND BUILDING "H"
MIDDLETOWN,
JEFFERSON COUNTY, KENTUCKY

OWNER/DEVELOPER
HILLS COMMUNITIES, INC.
7420 MONTGOMERY ROAD
CHICAGO, OHIO 45226

MSA
MONTGOMERY SURVEY ASSOCIATES, INC.
1000 10TH AVENUE, SUITE 100
CHICAGO, OHIO 45226

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----



—~~CONFIDENTIAL~~—

417
636

11

Figure 1



MIDDLETOWN,
JEFFERSON COUNTY, KENTUCKY

7420 MONTGOMERY ROAD
CINCINNATI, OHIO 45236

— 12 —

DB07254.P60706

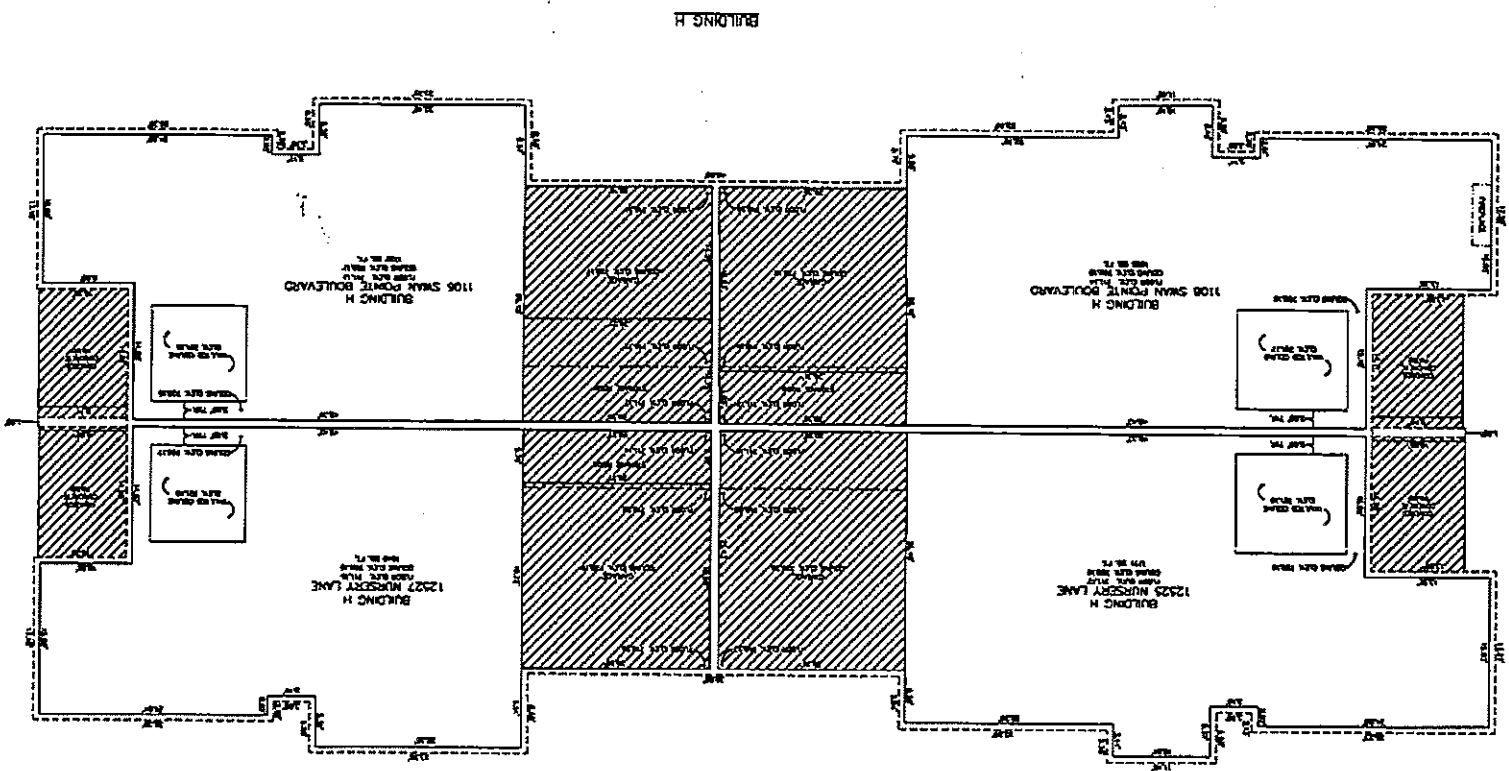


TABLE OF LINES

[Symbol]	Property Line
[Symbol]	Building Footprint
[Symbol]	Room Boundary
[Symbol]	Window
[Symbol]	Door
[Symbol]	Staircase
[Symbol]	Other

2

Line	Description	Area
1	Property Line	
2	Building Footprint	
3	Room Boundary	
4	Window	
5	Door	
6	Staircase	
7	Other	

SWAN PONTE CONDOMINIUM
 DEED BOOK 6962 PAGE 833
 BUILDING "H"
 MIDDLETOWN,
 JEFFERSON COUNTY, KENTUCKY

OWNER/DEVELOPER:
 HILLS COMMUNITIES, INC.
 7420 MONTGOMERY ROAD
 CINCINNATI, OHIO 45236

MSA ARCHITECT & ASSOCIATES, INC.
 1000 LEXINGTON AVENUE
 SUITE 2000
 NEW YORK, NY 10017
 (212) 512-1000

EXHIBIT E

ONE SCENARIO OF POSSIBLE FUTURE EXPANSION

This is an expandable Condominium Project. The Project may be expanded but not necessarily will be expanded.

If the Project is expanded, the expansion will be according to the method and within the limits, as set out in the Master Deed. The exact extent of the expansion, if any, is dependent upon so many different factors beyond the control of the Developer, that no accurate prediction can be given. The facts include, but are not limited to, the interest rate; costs of labor and material; consumer demand; consumer tastes and preference; existing and future laws, rules and regulations; and other opportunities for use or sale of the land out of which the expansion would come.

What follows below is one possible scenario. This scenario may never come. For instance, the project might not go one or two more lots (phases). No one can predict now.

Building	Unit Type	Floor Area of Each Unit	# of Units	Total Floor Area	% of Common Interest Per Unit	% of Common Interest Per Unit Type
1106, 1108 Swan Pointe Boulevard 12525, 12527 Nursery Lane	E G	1533 1785	2 2 4	3066 3570 6636	23.1013% 26.8987%	46.2026% 53.7974% 100%
1106, 1108 Swan Pointe Boulevard 12508-12523, 12525, 12527 Nursery Lane	D E F G	1402 1533 1667 1785	4 6 4 6 20	5608 9198 6668 10710 32184	4.3562% 4.7631% 5.1796% 5.5464%	17.4248% 28.5784% 20.7183% 33.2785% 100%
1201-1209 Winter Springs Court 1106-1108, 1301-1303 Swan Pointe Boulevard 12500-12523, 12525, 12527 Nursery Lane 1100-1109 Nursery Court	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	24 14 10 8 10 8 10 84	25992 19502 15190 11216 15330 13336 17850 118416	.9146 1.1764 1.2828 1.1840 1.2946 1.4077 1.5074	21.9497 16.4690 12.8276 9.4716 12.9458 11.2619 15.0744 100%

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1201-1209 Winter Springs Court 1106-1108, 1301-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 12500-12523, 12525, 12527 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200, 1202, 1204-1207 Prickly Pear Court 1204, 1206 Sugar Pine Terrace	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	40 18 14 12 12 12 <u>12</u> 120	43320 25074 21266 16824 18396 20004 <u>21420</u> 166304	.6512 .8376 .9134 .8430 .9218 1.0024 1.0734	26.0486 15.0772 12.7874 10.1164 11.0616 12.0285 <u>12.8803</u> 100%
1201-1209 Winter Springs Court 1106-1108, 1301-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 1301-1305 Taxus Top Lane 12500-12523, 12525, 12527 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200-1207 Prickly Pear Court 1200, 1202, 1204-1211 Sugar Pine Terrace 1204-1210 Elderberry Lane	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	52 26 18 14 16 14 <u>16</u> 156	56316 36218 27342 19628 24528 23338 <u>28560</u> 215930	.5016 .6451 .7035 .6493 .7100 .7720 .8267	26.0806 16.7730 12.6624 9.0899 11.3592 10.8081 <u>13.2268</u> 100%
1201-1209 Winter Springs Court 1106-1108, 1301-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 1301-1305 Taxus Top Lane 1300-1304 Autumn Sun Court 12500-12523, 12525, 12527 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200-1207 Prickly Pear Court 1200-1303 Sugar Pine Terrace 1200-1210 Elderberry Lane 1300-1303 Black Spruce Lane 1300-1302 Pine Tar Court	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	60 38 22 16 20 16 <u>20</u> 192	64980 52934 33418 22432 30660 26672 <u>35700</u> 266796	.4059 .5221 .5693 .5255 .5746 .6248 .6691	24.3556 19.8406 12.5256 8.4079 11.4919 9.9971 <u>13.3813</u> 100%

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1201-1209 Winter Springs Court 1106-1108, 1301-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 1301-1305 Taxus Top Lane 1206-1304 Autumn Sun Court 12500-12523, 12525, 12527, 12600- 12603 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200-1207 Prickly Pear Court 1200-1303 Sugar Pine Terrace 1200-1210 Elderberry Lane 1300-1303 Black Spruce Lane 1300-1302 Pine Tar Court 12600-12607 Summer Spring Court 12600-12603 Aztec Lily Court 12600-12602 Iris Bed Court 12601, 12603-12607 Regal Lily Terrace	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	68 42 26 20 22 20 <u>22</u> 220	73644 58506 39494 28040 33726 33340 <u>39270</u> 306020	.3539 .4552 .4964 .4581 .5009 .5447 .5833	24.0650 19.1183 12.9056 9.1627 11.0208 10.8947 <u>12.8329</u> 100%
1201-1209 Winter Springs Court 1106-1108, 1301-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 1301-1305 Taxus Top Lane 1200-1304 Autumn Sun Court 12500-12523, 12525, 12527, 12600- 12606 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200-1207 Prickly Pear Court 1200-1303 Sugar Pine Terrace 1200-1210 Elderberry Lane 1300-1303 Black Spruce Lane 1300-1302 Pine Tar Court 12600-12607 Summer Spring Court 12600-12603 Aztec Lily Court 12600-12602 Iris Bed Court 12601, 12603-12607 Regal Lily Terrace	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	76 46 30 22 26 22 <u>26</u> 248	82308 64078 45570 30844 39858 36674 <u>46410</u> 345742	.3132 .4029 .4393 .4055 .4434 .4822 .5163	23.8061 18.5334 13.1803 8.9211 11.5282 10.6073 <u>13.4236</u> 100%

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1201-1209 Winter Springs Court 1100-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 1207-1305 Taxus Top Lane 1200-1304 Autumn Sun Court 12500-12606 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200-1207 Prickly Pear Court 1200-1303 Sugar Pine Terrace 1200-1210 Elderberry Lane 1300-1303 Black Spruce Lane 1300-1302 Pine Tar Court 12600-12607 Summer Spring Court 12600-12603 Aztec Lily Court 12600-12602 Iris Bed Court 12600-12607 Regal Lily Terrace 1101-1103 Viburnum Way	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	84 50 34 24 28 24 28 272	90972 69650 51646 33648 42924 40008 49980 378828	.2859 .3677 .4010 .3701 .4047 .4400 .4712	24.0140 18.3856 13.6330 8.8821 11.3307 10.5609 13.1937 100%
1201-1209 Winter Springs Court 1100-1303 Swan Pointe Boulevard 1300-1304 Pickings Place 1201-1305 Taxus Top Lane 1200-1304 Autumn Sun Court 12500-12606 Nursery Lane 1100-1109 Nursery Court 1201-1207 Honey Hive Place 1200-1207 Prickly Pear Court 1200-1303 Sugar Pine Terrace 1200-1210 Elderberry Lane 1300-1303 Black Spruce Lane 1300-1302 Pine Tar Court 12600-12607 Summer Spring Court 12600-12603 Aztec Lily Court 12600-12602 Iris Bed Court 12600-12607 Regal Lily Terrace 1101-1103 Viburnum Way	A B C D E F G	1083 1393 1519 1402 1533 1667 1785	92 54 38 24 28 24 28 288	99636 75222 57722 33648 42924 40008 49980 399140	.2713 .349 .3806 .3513 .3841 .4176 .4472	24.9626 18.8460 14.4615 8.4301 10.7541 10.0235 12.5222 100%

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1201-1209 Winter Springs Court	A	1083	108	116964	.2530	27.3206
1100-1303 Swan Pointe Boulevard	B	1393	58	80794	.3254	18.8719
1200-1304 Pickings Place	C	1519	42	63798	.3548	14.9020
1201-1305 Taxus Top Lane	D	1402	24	33648	.3275	7.8595
1200-1304 Autumn Sun Court	E	1533	28	42924	.3581	10.0262
12500-12606 Nursery Lane	F	1667	24	40008	.3894	9.3451
1100-1109 Nursery Court	G	1785	28	49980	.4170	11.6747
1201-1207 Honey Hive Place			312	428116		100%
1200-1207 Prickly Pear Court						
1200-1303 Sugar Pine Terrace						
1200-1210 Elderberry Lane						
1300-1303 Black Spruce Lane						
1300-1302 Pine Tar Court						
12600-12607 Summer Spring Court						
12600-12603 Aztec Lily Court						
12600-12602 Iris Bed Court						
12600-12607 Regal Lily Terrace						
1101-1103 Viburnum Way						
1201-1209 Winter Springs Court	A	1083	108	116964	.2464	26.6122
1100-1303 Swan Pointe Boulevard	B	1393	64	89152	.3169	20.2843
1200-1304 Pickings Place	C	1519	44	66836	.3456	15.2068
1201-1305 Taxus Top Lane	D	1402	24	33648	.3190	7.6557
1200-1304 Autumn Sun Court	E	1533	28	42924	.3488	9.7662
1300 Bee Lane	F	1667	24	40008	.3793	9.1028
12500-12606 Nursery Lane	G	1785	28	49980	.4061	11.3720
1100-1109 Nursery Court			320	439512		100%
1201-1207 Honey Hive Place						
1200-1207 Prickly Pear Court						
1200-1303 Sugar Pine Terrace						
1200-1210 Elderberry Lane						
1300-1303 Black Spruce Lane						
1300-1302 Pine Tar Court						
12600-12607 Summer Spring Court						
12600-12603 Aztec Lily Court						
12600-12602 Iris Bed Court						
12600-12607 Regal Lily Terrace						
1101-1103 Viburnum Way						

A=Adams

B=Taft

C=Lexington

D=Brighton

E=Sussex

F=Essex

G=Windsor

The Unit Floor Area of a Unit is measured from the interior surface of the walls of the Unit and the interior surface of the ceiling and floor of the Unit.

EXHIBIT F

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS (the "Declaration") is made this 21st day of May, 1999 by HILLS COMMUNITIES, INC., an Ohio corporation), 7420 Montgomery Road, Cincinnati, Ohio 45236, an Ohio corporation (the "Developer") under the following circumstances:

A. The Developer is the owner of certain real property situated in Jefferson County, Kentucky and being approximately 50.36 acres of certain real property conveyed to the Developer by deed recorded in Deed Book 6962, Page 833 of the Jefferson County, Kentucky Clerk's Office.

B. The Developer intends to submit approximately a 3.22 acre tract of the aforementioned 50.36 acre tract, which 3.22 acre tract is more particularly described in Exhibit "A" attached hereto and made a part hereof, to the provisions of Section 381.805 to 381.910 of the Kentucky Revised Statute by filing with the Jefferson County, Kentucky Recorder a Declaration of Master Deed for Swan Pointe Condominium (the "Declaration of Master Deed"), which property shall be known as Swan Pointe Condominium.

C. The Developer intends to reserve in the Declaration of Master Deed the right to submit all or any of the remainder of the aforementioned 50.36 acre tract, which property is described in Exhibit "B" attached hereto and made a part hereof, to the provisions of Section 381.805 to 381.910 of the Kentucky Revised Statute by amending the Declaration of Master Deed and adding all or any part of the Property to Swan Pointe Condominium. (Collectively, the property described in Exhibit "A" and the property described in Exhibit "B" shall be referred to herein as the "Property.")

D. The Developer has constructed or intends on constructing a private roadway (the "Roadway") on part of the Property, which Roadway connects and adjoins to both Ellingsworth Road and Tucker Station Road, publicly dedicated streets. The actual location of the Roadway is described in Exhibit "C" attached hereto and made a part hereof.

E. In addition, the Developer has installed or intends to install underground utilities (the "Common Utilities"), including without limitation, electrical, telephone, water and/or sewer, in or under the Roadway.

F. The Developer intends that the Roadway and the Common Utilities serve and benefit the Developer, the owners of the units of Swan Pointe Condominium as the same may be expanded pursuant to the terms of the Declaration of Master Deed ("Swan Pointe Unit Owners"), the owners of any other condominium units which may be constructed on the Property (the "Other Condominium Unit Owners"), the owners of any single family residences which may be constructed on the Property ("Residences Owners") and the owners of any apartment buildings which may be

- 2 -

constructed on the Property ("Apartment Building Owners"). As used herein, "residence" shall mean any structure occupied and used or designed to be occupied and used by one (1) family as a permanent place of abode. As used herein, "apartment building" shall mean any structure, other than property subject to Section 381.805 to 381.910 of the Kentucky Revised Statute, which consists of two or more separate dwelling units, any one of which is the subject of or designed to be the subject of a rental agreement, as defined by Section 383.545 of the Kentucky Revised Statute or any similar statute hereinafter enacted.

G. The Developer intends that the Common Utilities be maintained and repaired and that the Roadway be maintained in good repair and condition, free of snow, ice and debris, for the convenience and benefit of the Developer and of Developer's successors, assigns, and grantees of any part of the Property.

NOW THEREFORE, in consideration of the foregoing, the Developer hereby declares that the Property shall be held, sold and conveyed subject to this Declaration, which, together with all amendments hereto (a) shall be construed as covenants running with the land, and (b) shall be binding upon the Developer, all mortgagees, all present and future owners of all or any part of the Property, and their respective heirs, successors, assigns, and all claiming under or through any of them.

1. ROADWAY AND UTILITY EASEMENT. Each of the Swan Pointe Unit Owners, Other Condominium Unit Owners, Apartment Building Owners and Residence Owners (collectively the "Owners") are hereby granted a perpetual, non-exclusive easement (the "Roadway Easement"), appurtenant to the part of the Property owned by such Owners, to be used in common with the Developer, its successors, assigns and agents, on, over and across (a) the Roadway; (b) any part of the Property on which the Roadway may be located; and (c) any part of the Property upon which any extension of the Roadway may be constructed or installed for the purpose of connecting any part of the Property including any condominium unit or other structure located thereon (collectively the "Structures"), with the Roadway, to be used and enjoyed by such Owners, and such Owners' tenants, invitees, licensees and all other persons using the Roadway for the benefit of such Owners and/or for the benefit of the Developer, for ingress and egress to and from the Structures and public and private roadway contiguous to the Property, to freely pass and repass on foot and/or with vehicles for all lawful purposed incident to or proper to the use and enjoyment of the Roadway.

Further, each of the Owners is hereby granted a perpetual, non-exclusive easement in, under and across the Roadway to use the Common Utilities.

2. USE OF THE ROADWAY. Each of the Owners shall use the Roadway with due regard for the rights of the other Owners and the Developer to use the same, and no person shall use or permit the use of the Roadway in any manner which impairs the rights of others to its use. No

person shall park or store vehicles upon the Roadway, nor shall any person store other personal property on, or obstruct or encroach upon, nor permit the obstruction of, or encroachment upon, the Roadway, in any manner whatsoever, without the concurrence of all other Owners entitled to use the Roadway.

3. REPAIR AND MAINTENANCE EXPENSES FOR THE ROADWAY; INSURANCE EXPENSES. Each of the Owners shall pay his proportionate share of the costs of maintaining, repairing and improving the Roadway, including without limitation the costs of removing snow, ice and debris ("Repair and Maintenance Expenses") and of maintaining the liability insurance provided for in Section 11 hereof ("Insurance Expenses"). Each such Owner's proportionate share of the Repair and Maintenance Expenses and the Insurance Expenses will be a fraction, the numerator of which is the total number of Swan Pointe Units, Other Condominium Units, Residences and/or rental units in Apartment Buildings owned by such Owner, and the denominator of which is the total number of Swan Pointe Units, Other Condominium Units, Residences, and/or rental units in Apartment Buildings located upon the Property as of the time the costs and expenses are incurred. Where an Owner is a Swan Pointe Unit Owner or Other Condominium Unit Owner, his proportionate share of the Repair and Maintenance Expenses and the Insurance Expenses shall be paid by him to the condominium owners' association of which he is a member as part of the common expenses of the condominium association of which his unit is a part. Each condominium owners' association shall be responsible for collecting each of its Unit Owners' proportionate share of the Repair and Maintenance Expenses and Insurance Expenses and shall pay, when due, the total proportionate amount for all units in its respective condominium project to Swan Pointe Condominium Owners' Association, Inc. (the "Association"), whether or not such amounts have been collected by such association from its Unit Owners.

4. NEED FOR REPAIR AND MAINTENANCE. The Roadway shall be maintained in good repair, free of snow, ice and debris, and in a condition substantially similar to that of its original construction. The decision to perform maintenance (which shall include snow, ice and debris removal) or make repairs or improvements shall be made by the Association, provided, however, that if any of the Other Condominium Unit Owners, Residence Owners or Apartment Building Owners believe that the Roadway is in need of maintenance, repairs and/or improvements which the Association has, after thirty (30) days following the Association's receipt of such Owner's request for repairs, maintenance and/or improvements, refused to cause the same to be performed, notice of which refusal shall be delivered by the Association to such Owner or Owners within five (5) days following the expiration of the thirty-day period, then any such Owner or Owners may submit the question of whether repairs, maintenance and/or improvements to the Roadway are necessary to the American Arbitration Association, Louisville, Kentucky office ("AAA") which shall decide the matter. Any decision rendered by the AAA shall be binding upon each of the Owners affected thereby. Any initial deposit required by the AAA to secure the costs of the arbitration

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proceeding shall be paid by the Owner or Owners requesting the arbitration. The costs of the arbitration proceeding shall be paid as the AAA may direct.

Whenever it is determined by the Association that the Roadway is in need of maintenance, repairs and/or improvements, other than snow, ice and/or debris removal, the Association shall, at least thirty (30) days prior to the commencement of the work, deliver written notice of such determination to the Other Condominium Unit Owners, Residence Owners and Apartment Building Owners. Such notice shall specify what repairs, maintenance and/or improvements will be performed, the persons who will perform the work, and the estimated cost thereof. If any of such Owners object to the performance of such repairs, maintenance and/or improvements, then such Owner or Owners may submit the question to the AAA which shall decide the matter. Any initial deposit required by the AAA to secure the costs of the arbitration proceedings, shall be paid by the Owner or Owners requesting the arbitration. The costs of the arbitration shall be paid as the AAA may direct.

5. PAYMENT OF REPAIRS AND MAINTENANCE EXPENSES AND INSURANCE EXPENSES. Whenever maintenance, repairs and/or improvements are performed in accordance with this Declaration, or whenever a premium for the insurance required by Section 11 hereof is due, the Association shall, within thirty (30) days after the Association's receipt of bills or invoices from the party performing such repairs, maintenance and/or improvements, or providing such insurance, deliver to each owners' association to which the Other Condominium Unit Owners belong and to each of the Residence Owners and Apartment Building Owners, a notice setting forth the total amount of such Owner's proportionate share of the cost thereof. Each of the Owners, by acceptance of a deed or other instrument of conveyance for all or any part of the Property hereby accepts the obligation to pay his proportionate share of the Repair and Maintenance Expenses and Insurance Expenses ("Assessment") to the Association within ten (10) days after the due date indicated on the notice. There shall be a late charge of eight percent (8%) per annum on any Assessment that is not paid within the stipulated ten (10) day grace period. All such Assessments are the personal obligation of the Owners of the Property and no Owner may waive or eliminate such obligation by non-use of the Roadway or by abandonment of the part of the Property owned by him.

6. LIENS. In addition to any other remedy which may exist at law or in equity, if any Assessment is not paid when due, the amount thereof, together with any interest thereon, as provided in Section 5 above, shall constitute a lien on the respective Swan Pointe Unit, Other Condominium Unit, land and Residence, or land and Apartment Building of such defaulting Owner in favor of the Association prior to all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments and liens of record in favor of the United States of America, the Commonwealth of Kentucky, and all other political subdivisions or governmental instrumentalities of the Commonwealth of Kentucky, to the extent made superior by applicable law. The Association may record a notice of lien with the Recorder of Jefferson County, Kentucky, in any legally recordable

form. Non-payment of any Assessment shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate.

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

8. SUBORDINATION OF LIEN TO FIRST MORTGAGE. When the mortgagee of a first mortgage of record or other purchaser of any part of the Property acquires title thereto as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his or her heirs, successors and assigns, shall not be solely liable for the Assessments chargeable to such Property which become due prior to the acquisition of title by such acquirer. Any lien levied against such Property pursuant to the terms hereof shall be canceled and voided and shall become unenforceable. Such unpaid Assessments shall be collected from all the Owners, including the new acquirer of title, in the same proportions as provided in Sections 3 and 5 hereof.

9. DEVELOPER'S RESERVATION OF RIGHTS TO DEDICATE ROADWAY. The Developer, its successors and assigns, hereby reserves the right at any time to dedicate any part of the Roadway and any part of the Property which is subject to the Roadway Easement of which has not already been submitted to Swan Pointe Condominium, to public use, and upon acceptance of the dedication, this Declaration, insofar as it applies to the Roadway Easement, shall terminate and be of no further force and effect, except as to the rights and obligations set forth herein with respect to the payment of Assessments.

10. PUBLIC LIABILITY INSURANCE. The Association (and/or any association to which Other Condominium Unit Owners belong) shall insure itself, its members, and all of the other Owners against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the Roadway. Such insurance shall afford protection to a limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to damage to or destruction of property arising out of any one accident.

11. NOTICES. Any notice required or permitted to be given to the Association or to any Other Condominium Unit Owners' association shall be deemed given when mailed by United States

mail, postage prepaid, addressed to the statutory agent of such Association. Any notice required or permitted to be given to any of the other Owners, shall be deemed given when delivered personally to the part of the Property owned by such Owner, or when mailed by United States mail, postage prepaid, addressed to such Owner's last known address.

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

13. HEADINGS. The headings of the sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

14. GENDER. Throughout this Declaration, the masculine gender shall be deemed to include, where appropriate, the feminine and neuter, and the singular, plural and vice versa.

15. LIABILITY. Neither the Developer nor its representatives, successors 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 it by or pursuant to this Declaration or in its (or its representative) capacity as Developer, contractor, owner, manager or seller of the Property, regardless of by whom such claim is asserted.

16. NON-MERGER. Developer intends that no merger of the easements set forth in this Declaration shall occur by reason of the same person or entity holding title to the Property or any portion thereof.

DB07254 PG0718

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IN WITNESS WHEREOF, the Developer has executed this Declaration as of the date and year first above written.

Signed and acknowledged
in the presence of:

HILLS COMMUNITIES, INC., an
Ohio corporation

Marsha K. Beckham
Print: Marsha K. Beckham

BY: Stephen Guttman, President
NAME: Stephen Guttman
ITS: President

Print: Amy L. Howard
Amy L. Howard
STATE OF OHIO)
: SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 21 day of May,
1999, by Stephen Guttman, President of HILLS COMMUNITIES, INC., an Ohio
corporation, on behalf of the corporation.

Amy L. Howard
Notary Public

This instrument prepared by:

Jody F. Klekamp
Jody F. Klekamp, Esq.
KEATING, MUETHING & KLEKAMP, P.L.L.
1800 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202
(513) 579-6400



DB07254PG0719

EXHIBIT "A"

Phase 1

Being a portion of a tract conveyed to Hills Communities, Inc. as recorded in Deed Book 6962, Page 833 in the office of the County Court Clerk of Jefferson County, Kentucky and more particularly described as follows:

Being all of Tract 1 as shown on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-89, containing 3.225 acres.

DB07254PG0720

EXHIBIT "B"

Expansion Property

Being a portion of a tract conveyed to Hills Communities, Inc. as recorded in Deed Book 6962, Page 833 in the office of the County Court Clerk of Jefferson County, Kentucky and more particularly described as follows:

Being all of Tract 2 as shown on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99, containing 47.142 acres.

DB07254 PG0721

EXHIBIT "C"

Description of Roadway

Being the 30' Access Easement depicted on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99.

CERTIFICATE OF WATER DRAINAGE/DETENTION
EASEMENT RIGHTS AGREEMENT

For \$15,000.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Maurice Franklin Swan, Jr. and Betty Ray Swan, 1010 Tucker Station Rd., Middletown, Kentucky 40243 and the Estate of Maurice Franklin Swan, Sr. ("Grantors"), Grantors hereby grant to Hills Communities, Inc., an Ohio corporation, 7420 Montgomery Road, Cincinnati, Ohio 45236 ("Grantee"), its successors and assigns, a perpetual easement on, over and under strips of land and spaces as defined and marked "Detention and Drainage Easement" on the plat attached hereto, with the right of ingress and egress over Grantors' property to and from the easement at all times, for the purpose of constructing, operating, maintaining, repairing and reconstructing a surface water detention/retention and ancillary drainage of surface waters along with any and all appurtenant structures, which right of ingress and egress shall not be exercised in such a manner so as to interfere with Grantors' use of their property. The Detention and Drainage Easement shall be used for the purposes of directing surface water to, and storing surface water in, a detention basin designed to slow the rate of run off of water from the Grantee's property onto Grantors' and others' properties in a controlled manner and volume.

This grant is made on the following terms:

1. Except for the improvements necessary and incidental to the Detention and Drainage Easement, no permanent structure of any kind shall be placed in, on, over, or under the land within the Detention and Drainage Easement.
2. The Detention and Drainage Easement shall be designed, constructed, and maintained by Grantee at Grantee's sole cost. Said construction shall include landscaping subject to Grantors' approval which shall not be unreasonably withheld, and a seven (7) foot high wooden privacy fence as defined and marked on the above-referenced plat. The cost of landscaping shall not exceed \$3,000.00 the obligation and cost of reasonable maintenance of such landscaping shall be borne by Grantee during the term of this Easement.
3. The Grantors covenant that they are lawfully seized of the property through which the Detention and Drainage Easement is granted and that they have full right and power to convey the same and said property is free from all encumbrances, except current taxes and restrictions of record.
4. Grantee covenants that it will assume full responsibility for claims resulting from damage to any land or improvement of Grantors outside the Detention and Drainage Easement granted herein, or to any land or improvements used for ingress and egress to such easement, caused by Grantee during construction, operation, maintenance, repair or reconstruction of said Detention and Drainage Easement unless damage is caused by the placement of any structure within or outside the easement in violation of this agreement, in which case no liability will be assumed by Grantee, provided however, grantee shall be liable for damages, if any, resulting from such structures permitted or constructed by Grantee.

BULKY UCC FILING

5. If necessary, a temporary easement, as defined and marked "Temporary Construction Easement" on the plat attached hereto is hereby reserved for Grantee's use as needed during original construction of the Detention and Drainage Easement. This Temporary Construction Easement shall terminate and automatically revert to the property owners upon completion of the original construction.

6. Grantee may assign the Detention and Drainage Easement to the Louisville and Jefferson County Metropolitan Sewer District ("MSD") or to any other public agency having authority to control the Drainage Easement in a form satisfactory to MSD or said other public agency without need of Grantors' approval. If such assignment occurs, the Detention and Drainage Easement may become a part of the sanitary and sewer drainage system of MSD and shall remain under MSD's jurisdiction, control, and supervision. Further, the Grantors acknowledge that if such assignment occurs, that the consideration received for the conveyance made herein does not include any express or implied release or waiver by MSD of rights to subject Grantors and their property to sewer rates, drainage fees, rentals and other charges, including special assessments, as may be authorized by law and applicable to sewer users and property in general or like users and property of a class.

7. It shall be the obligation of the Grantee to keep any and all drains installed on or pursuant to this easement free and clear of any and all obstructions.

8. If either party breaches the terms of this easement, all reasonable attorney fees incurred in any enforcement proceeding by the prevailing party shall be borne by the breaching party.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto on this 13th day of November, 1997.

GRANTORS:

GRANTEE:

HILLS COMMUNITIES, INC.,
a Ohio corporation

Maurice Franklin Swan Jr
MAURICE FRANKLIN SWAN, JR.

BY: Robert D Kuehnigdel
Title: Land Development Manager

Betty Ray Swan
BETTY RAY SWAN

ESTATE OF MAURICE FRANKLIN SWAN, SR.

BY: Maurice Franklin Swan Jr E x e.
Personal Representative

STATE OF KENTUCKY)
: ss
COUNTY OF JEFFERSON)

Subscribed, sworn to and acknowledged before me this 13th day of November, 1997,
by Maurice Franklin Swan, Jr. and Betty Ray Swan:

My commission expires: 1-22-98

STATE OF KENTUCKY)
: SS

COUNTY OF JEFFERSON)

Robert J. [Signature]
NOTARY PUBLIC, State-at-Large, Kentucky

Subscribed, sworn to and acknowledged before me this 13th day of November, 1997,
by Maurice Franklin Swann, Jr. in his/her capacity as Personal Representative of the Estate
of Maurice Franklin Swann, Sr.

My commission expires: 1-21-98

[Signature]

NOTARY PUBLIC, State-at-Large, Kentucky

STATE OF KENTUCKY)
: ss
COUNTY OF JEFFERSON)

Subscribed, sworn to and acknowledged before me this 13th day of November, 1997,
by Robert D. Kohnberger in his/her capacity as Lead Development Manager of Hills
Communities, Inc., an Ohio Corporation.

My commission expires: 6/2/99
[Signature]
 NOTARY PUBLIC, State-at-Large, Kentucky

THIS INSTRUMENT PREPARED BY:
William B. Bardenwerper
 J. P. Hamm

J. P. Hamm
Bardawerper & Lobb, PLLC
8311 Shelbyville Road
Louisville, Kentucky 40222
(502) 425-6688
JPHWBB.016.11/17071

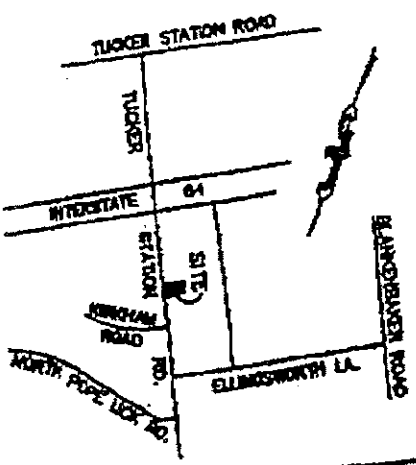
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 County Clerk: Rebecca Jackson
 Deputy Clerk: DEKRYN

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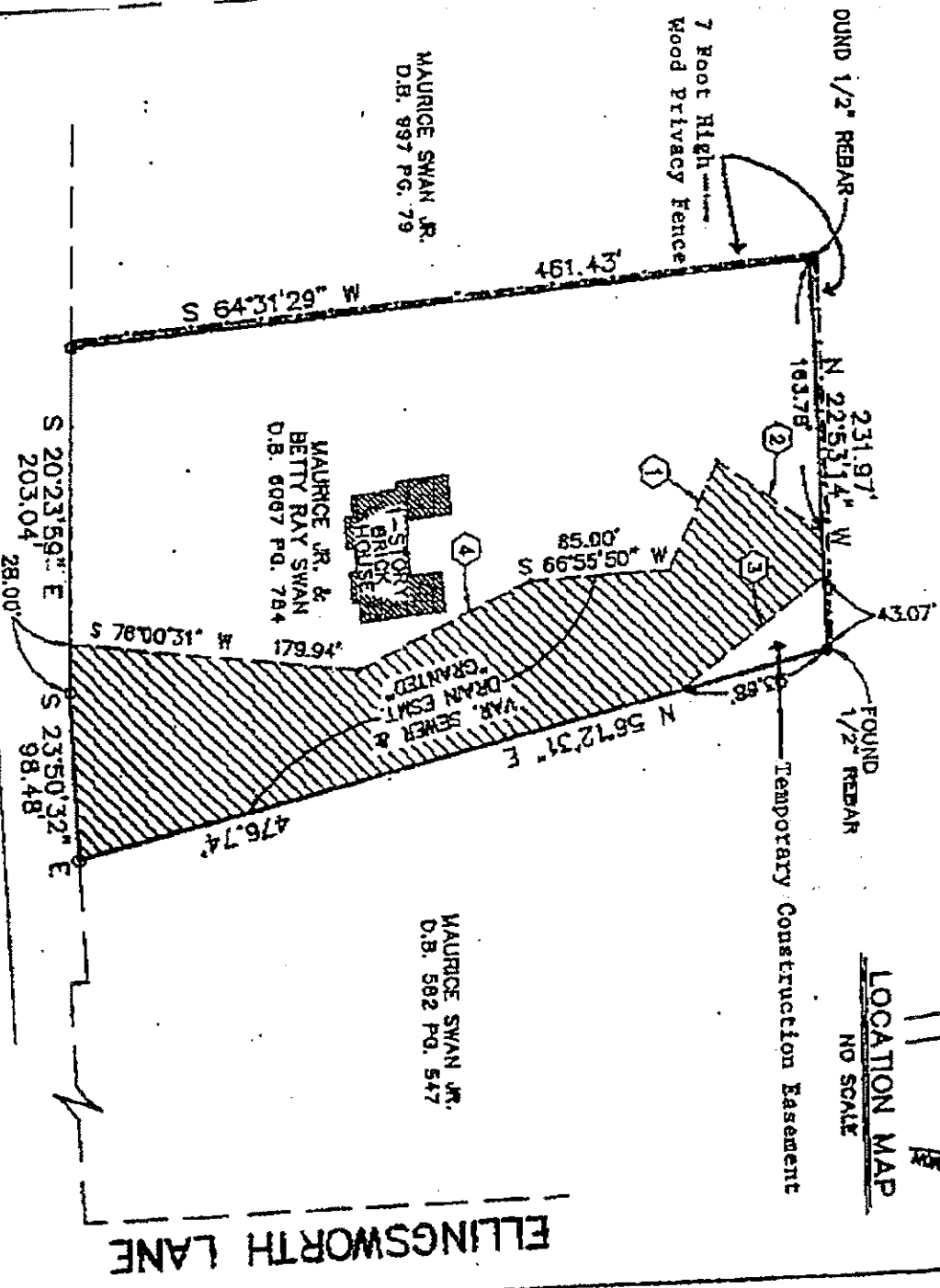
BOOK 6962 PAGE 0844

BEARING & DISTANCES

- 1) S 04°31'41" W 68.80'
- 2) N 78°55'27" W 79.10'
- 3) N 33°38'23" E 110.26'
- 4) S 44°58'16" W 118.78'



LOCATION MAP
NO SCALE



GRAPHIC SCALE 1"=100'



TUCKER STATION ROAD
R/W VARIES

THIS PLAT IS SUBJECT TO EASEMENT'S
AND RESTRICTIONS OF RECORD.

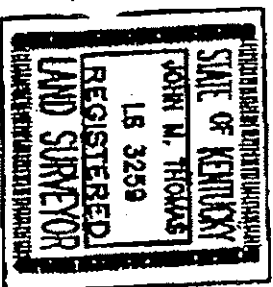
PERMANENT EASEMENT = 39,640 SQ. FT.

PERMANENT EASEMENT
GRANTED



Being a part of the same property conveyed to the Grantor by deed recorded in Deed Book 6170, Page 955, in the office of the Clerk of the Jefferson County Clerk.

MINDEL • SCOTT & ASSOCIATES INC.
PLANNING • ENGINEERING • SURVEYING
LANDSCAPE ARCHITECTURE
P.O. BOX 7246 Louisville, Kentucky 40257-0246
(502) 485-1508



I hereby certify that this plat was made under my supervision and is correct to the best of my knowledge and belief. This easement plat meets or exceeds the minimum standards of Metropolitan Sewer District.

Property of:
MAURICE JR. & BETTY RAY SWAN
DEED BOOK 5470, PAGE 965
1010 TUCKER STATION ROAD
LOUISVILLE, KENTUCKY 40243
Property Address:
1010 TUCKER STATION ROAD
LOUISVILLE, KENTUCKY 40243

JOHN M. THOMAS	PLS # 3259	Date	Parcel No.	Record No.	Date
					10/29/97
			Job No. 1234--EP1	Scale	1"=100'

EXHIBIT H

DB07254PG0727

LOUISVILLE GAS AND ELECTRIC COMPANY INC.

APPLICATION AND CONTRACT FOR UNDERGROUND
ELECTRIC SERVICE EXTENSION IN
MULTIPLE-OCCUPANCY RESIDENTIAL PROJECT

Name of Applicant Stephen Guttman, President / Hills Communities, Inc.

Project Name Swan Pointe Condominiums - Phase 1

Location Tucker Station Road @ Ellingsworth

Units Numbered Bldgs. A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,1,2,3,5,12 & 13 (164 Units Total)

The undersigned, (hereinafter "Applicant" or "Developer") hereby makes application to the Louisville Gas and Electric Company (hereinafter sometimes called "Company"), to extend its electric service to the above location in, through, over and under certain easements and public ways to be dedicated by the Applicant on a plat in the manner hereinafter provided for.

As part of the consideration of this contract, the Applicant agrees to the following terms and conditions, all of which are of the essence:

- 1) The electric distribution facilities shall be installed in a conventional manner before blacktop or other subsurface is constructed on, over or near Company's proposed facilities, but only after:
 - a) Construction plans for all roadways, parking areas, sidewalks, etc., insofar as they affect the installation of the Company's facilities have been completed.
 - b) The Applicant has made the area in which the underground distribution facilities are to be located accessible to the Company's equipment, removed all obstructions from such areas, provided rough grading to a reasonable approximation of final grade, and will maintain clearing and grading during construction by the Company.
 - c) All property line and grade stakes are placed by Developer.
 - d) The amended restrictions set forth in paragraph 5 hereof have been properly placed on record.
 - e) Final grades have been designated as more fully set out in numerical paragraph 6 of this agreement.

Emphasis is placed on the need for the Applicant to refrain from blacktopping or installing sub-surface on the roadways prior to the Company installing its facilities. In the event the developer desires to blacktop main roadways in project prior to Company being able to install the underground electric facilities, the Company will, using normal construction procedures, bore under road surface at necessary locations. However, in the event boring is not possible an open cut of road will be made and developer will be responsible for repairing.

2) Having met the minimum requirement for multiple-occupancy residential building projects as set forth in Louisville Gas and Electric Company's policies and procedures with respect to new residential underground electric extension, there will be no charge to the Applicant for installation of single phase underground electric facilities. The design of Company's electrical facilities is based on plans and load information submitted to the Company by Applicant. In the event of any change in design, either prior or subsequent to the construction of the electrical facilities by the Company, requires modifications or relocation of equipment, the undersigned agrees to pay the Company's actual costs, after appropriate credits, if any. Such additional amount shall be due and payable on completion of said work.

Where three phase power service is required within project, the net cost to the Applicant after appropriate credit, shall be outlined on Company's standard system extension/modification agreement which will be an addendum to this contract.

3) Where appropriate contractual arrangements have been made and subject to all terms and conditions contained herein, the Company will install within this project an underground electric distribution system of sufficient capacity and suitable materials which in its judgment will assure that the customers served thereby will receive safe and adequate electric service for the foreseeable future. Applicant shall notify Company in writing not less than 120 days prior to the anticipated date of completion (i.e. ready for occupancy) of the first building in the project, or portion thereof, if buildings are not under construction effectively throughout the entire project at such time and prior to such similar completion date for the first building in each subsequent portion of the project where Company has not, as of the appropriate date for such notice, begun the installation of its facilities. Upon such notice, the Company will undertake to complete the installation of its facilities in those portions of the project under such active development at least 30 days prior to such estimated dates of completion; however, in no instance shall the Company be obligated to install its proposed facilities in portions of the project where no buildings are reasonably expected to be ready for occupancy on or about the date specified in the aforementioned notice.

Upon written request by the Applicant, subject to acceptance by the Company based on its ability, in its judgment, to comply therewith an advanced payment by the Applicant of the full estimated cost of construction of the underground facilities and any other charges applicable to the extension, either overhead or underground, all as provided in the Company's tariffs on file with the Public Service Commission of Kentucky at the time of acceptance of such request, the Company will undertake, subject to the limitations set forth herein, the installation of its facilities as soon thereafter as practicable. Such advance by the Applicant, to the extent that it exceeds any non-refundable charges as set forth in such tariffs and this contract, shall be refundable to Applicant upon request as provided in the Company's tariffs.

In no case shall such refunds exceed the amounts advanced less those non-refundable charges applicable to the project.

Nothing herein shall obligate the Company to extend its electric lines in cases where such extensions, in the judgment of the Company would not be feasible, impractical, or contrary to good operating practice. Nor shall the Company be obligated to schedule the construction of facilities provided for in this contract in such a manner as to impair its ability to serve other customers who are or will be ready for service prior to permanent customers in this project.

Further, the Company shall not be obligated to complete the installation of its facilities in the event of extraordinary or emergency circumstances beyond its reasonable control, which shall include (but not be limited to) weather and ground conditions unsuitable for construction, the unavailability of materials and strikes or other work stoppages.

- 4) Ownership and title to all distribution facilities installed and/or erected in the easement areas shown by recorded plat or instrument shall remain in the name of Louisville Gas and Electric Company, and it agrees to maintain and operate the same in accordance with its usual practices.

- 5) The following two restrictions lettered (a) and (b) shall be included in the restriction covering the previously mentioned lots/units and shall be set forth in every deed by which said lots in this project are conveyed. Any failure to so include said amended restrictions in the various deeds shall not affect the validity of same.

- a) Each utility service line shall be underground throughout length of service line from LG&E's point of delivery to customer's building; and title to the service line shall remain in and the cost of installation, maintenance thereof shall be borne individually by the respective owner upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each property owner, together with the right of ingress and egress over abutting lots or properties to install, operate and maintain electric service lines to LG&E's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The electric and telephone easements shown on the plat 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 lot owner without the express consent in writing of Louisville Gas and Electric Company and South Central Bell Telephone Company.

- b) Easements for overhead electric transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces including park, open and drainage space areas), outlined by dash lines and designated for underground and overhead facilities.

Aboveground electric transformers and pedestals may be installed at appropriate points in any electric easements.

In consideration of LG&E bringing service to the property shown on this plat, it is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

- c) The foregoing restrictions shall be covenants running with the land for the benefit of the Louisville Gas and Electric Company and South Central Bell Telephone Company and shall not be released or modified without the express consent in writing of these Companies.

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6) In order that the Company may install its facilities in conformance with the finished grades within the development, the applicant agrees to provide property line and grade stakes as specified by the Company. The Louisville Gas and Electric Company's equipment is to be placed in accordance with grades indicated by grade stakes as provided by the developer's engineer. It is understood that elevations of such grade stakes may be recorded by the developer's engineer with a copy of the record sent to Louisville Gas and Electric Company and that it will be the responsibility of LG&E at its own expense to make any required adjustment in its facilities resulting from its failure to observe such final grade designations. If the developer wishes to have the Louisville Gas and Electric Company's equipment placed in accordance with grades existing at time of installation of the facilities he must notify LG&E by letter prior to installation of the facilities. After installation of LG&E's facilities in accordance with grades as described above, any adjustment of said facilities made necessary as a result of changes in grade from that indicated by the developer's engineer shall be made at the expense of the developer.

The developer shall not be held responsible for any change in grade of lots made after the date ownership of lots is transferred from either developer or builder to permanent owner of the structure on said lot; provided, however, that certificate of reservation of electric easement is incorporated in recorded plat and in deed to said property.

Backfilling of trench area shall be in a conventional manner i.e. rough fill with material removed and rolling over with equipment for compacting. This procedure will be used in all new construction areas. Final grading shall be the responsibility of the developer.

7) The charges specified in this contract are based on the premise that the Applicant will cooperate with the Company in an effort to keep the cost of construction and installation of underground electric distribution system as low as practicable. It is understood that all work to be done is subject to delays due to shortage of labor and material or to other causes, whether similar or dissimilar, beyond the control of the Company.

8) If Company's facilities cannot be installed in a conventional manner, as described above, the Applicant agrees to pay the actual cost of the additional work involved. This proposal assumes efficient utilization of men and equipment. Therefore, any delays in construction of electric facilities caused by or within the control of the Applicant will be charged to him. Furthermore, Applicant recognizes the installation and construction called for under this contract will require the use of heavy machinery and equipment and that the use of such may or will damage existing roads, water lines, sewers and other installations. The Applicant agrees to waive and release Company from all damages that Applicant, its successors, and assigns may hereinafter sustain by reason of the Company's or its contractor's installation, construction and maintenance of the facilities, as called for by this contract, to Applicant's land and improvements, including but not limited to existing roadways, water lines, and sewers except as caused by the direct, primary negligence of the Company in the performance of its work, provided, however, that the Company shall have no liability for an consequential damages whatsoever, its liability being expressly limited to the reasonable cost of repairs or replacement of any items or property so damaged. Any claim by the Applicant against the Company must be presented in writing within one hundred twenty (120) days of the completion of the work by the Company, or be forever barred.

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- 9) If deemed desirable, the Applicant or individual property owner by, subject to the terms of the easements provided for herein, screen with shrubbery, facilities of the Company, providing such screening within easements is done in a manner which will not interfere with access to, or operation and maintenance of Company's facilities. Such screening shall be at property owner's risk and LG&E shall not be responsible for damage thereto.

- 10) The above application has been prepared by Louisville Gas and Electric Company as of November 13, 1998, on the basis of construction costs currently prevailing. Unless this application is signed and returned to the office of the Company, within twenty days, these terms shall be subject to changes or withdrawal without notice. Prices quoted herein are based on tariffs filed with the Public Service Commission of Kentucky. In the event any change in tariff reflects an increased cost, the Company reserves the right to withdraw offer if work cannot be completed within three months from effective date of change of tariff. If it appears that the revised tariff would result in a net saving to the Customer, the revised terms would be applied to projects started on or after effective date of new tariff. Installation of facilities and service therefrom are subject to orders, directives, rules and regulations of the Public Service Commission of Kentucky, or any other governmental body having jurisdiction and to rules, regulations and tariffs of the Company, filed from time to time, in accordance with law.

IN TESTIMONY WHEREOF, WITNESS OUR HANDS this 23rd day of November, 1998.

APPLICANT

LOUISVILLE GAS AND ELECTRIC COMPANY

(X) *Stephen Guttman, President*

Steve Hannah

Stephen Guttman, President

Hills Communities, Inc.

7420 Montgomery Road

Cincinnati, Ohio 45236

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS (the "Declaration") is made this 21st day of May, 1999 by HILLS COMMUNITIES, INC., an Ohio corporation, 7420 Montgomery Road, Cincinnati, Ohio 45236, an Ohio corporation (the "Developer") under the following circumstances:

A. The Developer is the owner of certain real property situated in Jefferson County, Kentucky and being approximately 50.36 acres of certain real property conveyed to the Developer by deed recorded in Deed Book 6962, Page 833 of the Jefferson County, Kentucky Clerk's Office.

B. The Developer intends to submit approximately a 3.22 acre tract of the aforementioned 50.36 acre tract, which 3.22 acre tract is more particularly described in Exhibit "A" attached hereto and made a part hereof, to the provisions of Section 381.805 to 381.910 of the Kentucky Revised Statute by filing with the Jefferson County, Kentucky Recorder a Declaration of Master Deed for Swan Pointe Condominium (the "Declaration of Master Deed"), which property shall be known as Swan Pointe Condominium.

C. The Developer intends to reserve in the Declaration of Master Deed the right to submit all or any of the remainder of the aforementioned 50.36 acre tract, which property is described in Exhibit "B" attached hereto and made a part hereof, to the provisions of Section 381.805 to 381.910 of the Kentucky Revised Statute by amending the Declaration of Master Deed and adding all or any part of the Property to Swan Pointe Condominium. (Collectively, the property described in Exhibit "A" and the property described in Exhibit "B" shall be referred to herein as the "Property.")

D. The Developer has constructed or intends on constructing a private roadway (the "Roadway") on part of the Property, which Roadway connects and adjoins to both Ellingsworth Road and Tucker Station Road, publicly dedicated streets. The actual location of the Roadway is described in Exhibit "C" attached hereto and made a part hereof.

E. In addition, the Developer has installed or intends to install underground utilities (the "Common Utilities"), including without limitation, electrical, telephone, water and/or sewer, in or under the Roadway.

F. The Developer intends that the Roadway and the Common Utilities serve and benefit the Developer, the owners of the units of Swan Pointe Condominium as the same may be expanded pursuant to the terms of the Declaration of Master Deed ("Swan Pointe Unit Owners"), the owners of any other condominium units which may be constructed on the Property (the "Other Condominium Unit Owners"), the owners of any single family residences which may be constructed on the Property ("Residences Owners") and the owners of any apartment buildings which may be constructed on the Property ("Apartment Building Owners"). As used herein, "residence" shall mean any structure occupied and used or designed to be occupied and used by one (1) family as a

permanent place of abode. As used herein, "apartment building" shall mean any structure, other than property subject to Section 381.805 to 381.910 of the Kentucky Revised Statute, which consists of two or more separate dwelling units, any one of which is the subject of or designed to be the subject of a rental agreement, as defined by Section 383.545 of the Kentucky Revised Statute or any similar statute hereinafter enacted.

G. The Developer intends that the Common Utilities be maintained and repaired and that the Roadway be maintained in good repair and condition, free of snow, ice and debris, for the convenience and benefit of the Developer and of Developer's successors, assigns, and grantees of any part of the Property.

NOW THEREFORE, in consideration of the foregoing, the Developer hereby declares that the Property shall be held, sold and conveyed subject to this Declaration, which, together with all amendments hereto (a) shall be construed as covenants running with the land, and (b) shall be binding upon the Developer, all mortgagees, all present and future owners of all or any part of the Property, and their respective heirs, successors, assigns, and all claiming under or through any of them.

1. ROADWAY AND UTILITY EASEMENT. Each of the Swan Pointe Unit Owners, Other Condominium Unit Owners, Apartment Building Owners and Residence Owners (collectively the "Owners") are hereby granted a perpetual, non-exclusive easement (the "Roadway Easement"), appurtenant to the part of the Property owned by such Owners, to be used in common with the Developer, its successors, assigns and agents, on, over and across (a) the Roadway; (b) any part of the Property on which the Roadway may be located; and (c) any part of the Property upon which any extension of the Roadway may be constructed or installed for the purpose of connecting any part of the Property including any condominium unit or other structure located thereon (collectively the "Structures"), with the Roadway, to be used and enjoyed by such Owners, and such Owners' tenants, invitees, licensees and all other persons using the Roadway for the benefit of such Owners and/or for the benefit of the Developer, for ingress and egress to and from the Structures and public and private roadway contiguous to the Property, to freely pass and repass on foot and/or with vehicles for all lawful purposes incident to or proper to the use and enjoyment of the Roadway.

Further, each of the Owners is hereby granted a perpetual, non-exclusive easement in, under and across the Roadway to use the Common Utilities.

2. USE OF THE ROADWAY. Each of the Owners shall use the Roadway with due regard for the rights of the other Owners and the Developer to use the same, and no person shall use or permit the use of the Roadway in any manner which impairs the rights of others to its use. No person shall park or store vehicles upon the Roadway, nor shall any person store other personal property on, or obstruct or encroach upon, nor permit the obstruction of, or encroachment upon, the

Roadway, in any manner whatsoever, without the concurrence of all other Owners entitled to use the Roadway.

3. REPAIR AND MAINTENANCE EXPENSES FOR THE ROADWAY; INSURANCE EXPENSES. Each of the Owners shall pay his proportionate share of the costs of maintaining, repairing and improving the Roadway, including without limitation the costs of removing snow, ice and debris ("Repair and Maintenance Expenses") and of maintaining the liability insurance provided for in Section 11 hereof ("Insurance Expenses"). Each such Owner's proportionate share of the Repair and Maintenance Expenses and the Insurance Expenses will be a fraction, the numerator of which is the total number of Swan Pointe Units, Other Condominium Units, Residences and/or rental units in Apartment Buildings owned by such Owner, and the denominator of which is the total number of Swan Pointe Units, Other Condominium Units, Residences, and/or rental units in Apartment Buildings located upon the Property as of the time the costs and expenses are incurred. Where an Owner is a Swan Pointe Unit Owner or Other Condominium Unit Owner, his proportionate share of the Repair and Maintenance Expenses and the Insurance Expenses shall be paid by him to the condominium owners' association of which he is a member as part of the common expenses of the condominium association of which his unit is a part. Each condominium owners' association shall be responsible for collecting each of its Unit Owners' proportionate share of the Repair and Maintenance Expenses and Insurance Expenses and shall pay, when due, the total proportionate amount for all units in its respective condominium project to Swan Pointe Condominium Owners' Association, Inc. (the "Association"), whether or not such amounts have been collected by such association from its Unit Owners.

4. NEED FOR REPAIR AND MAINTENANCE. The Roadway shall be maintained in good repair, free of snow, ice and debris, and in a condition substantially similar to that of its original construction. The decision to perform maintenance (which shall include snow, ice and debris removal) or make repairs or improvements shall be made by the Association, provided, however, that if any of the Other Condominium Unit Owners, Residence Owners or Apartment Building Owners believe that the Roadway is in need of maintenance, repairs and/or improvements which the Association has, after thirty (30) days following the Association's receipt of such Owner's request for repairs, maintenance and/or improvements, refused to cause the same to be performed, notice of which refusal shall be delivered by the Association to such Owner or Owners within five (5) days following the expiration of the thirty-day period, then any such Owner or Owners may submit the question of whether repairs, maintenance and/or improvements to the Roadway are necessary to the American Arbitration Association, Louisville, Kentucky office ("AAA") which shall decide the matter. Any decision rendered by the AAA shall be binding upon each of the Owners affected thereby. Any initial deposit required by the AAA to secure the costs of the arbitration proceeding shall be paid by the Owner or Owners requesting the arbitration. The costs of the arbitration proceeding shall be paid as the AAA may direct.

Whenever it is determined by the Association that the Roadway is in need of maintenance, repairs and/or improvements, other than snow, ice and/or debris removal, the Association shall, at least thirty (30) days prior to the commencement of the work, deliver written notice of such determination to the Other Condominium Unit Owners, Residence Owners and Apartment Building Owners. Such notice shall specify what repairs, maintenance and/or improvements will be performed, the persons who will perform the work, and the estimated cost thereof. If any of such Owners object to the performance of such repairs, maintenance and/or improvements, then such Owner or Owners may submit the question to the AAA which shall decide the matter. Any initial deposit required by the AAA to secure the costs of the arbitration proceedings, shall be paid by the Owner or Owners requesting the arbitration. The costs of the arbitration shall be paid as the AAA may direct.

5. PAYMENT OF REPAIRS AND MAINTENANCE EXPENSES AND INSURANCE EXPENSES. Whenever maintenance, repairs and/or improvements are performed in accordance with this Declaration, or whenever a premium for the insurance required by Section 11 hereof is due, the Association shall, within thirty (30) days after the Association's receipt of bills or invoices from the party performing such repairs, maintenance and/or improvements, or providing such insurance, deliver to each owners' association to which the Other Condominium Unit Owners belong and to each of the Residence Owners and Apartment Building Owners, a notice setting forth the total amount of such Owner's proportionate share of the cost thereof. Each of the Owners, by acceptance of a deed or other instrument of conveyance for all or any part of the Property hereby accepts the obligation to pay his proportionate share of the Repair and Maintenance Expenses and Insurance Expenses ("Assessment") to the Association within ten (10) days after the due date indicated on the notice. There shall be a late charge of eight percent (8%) per annum on any Assessment that is not paid within the stipulated ten (10) day grace period. All such Assessments are the personal obligation of the Owners of the Property and no Owner may waive or eliminate such obligation by non-use of the Roadway or by abandonment of the part of the Property owned by him.

6. LIENS. In addition to any other remedy which may exist at law or in equity, if any Assessment is not paid when due, the amount thereof, together with any interest thereon, as provided in Section 5 above, shall constitute a lien on the respective Swan Pointe Unit, Other Condominium Unit, land and Residence, or land and Apartment Building of such defaulting Owner in favor of the Association prior to all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments and liens of record in favor of the United States of America, the Commonwealth of Kentucky, and all other political subdivisions or governmental instrumentalities of the Commonwealth of Kentucky, to the extent made superior by applicable law. The Association may record a notice of lien with the Recorder of Jefferson County, Kentucky, in any legally recordable form. Non-payment of any Assessment shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate.

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

8. SUBORDINATION OF LIEN TO FIRST MORTGAGE. When the mortgagee of a first mortgage of record or other purchaser of any part of the Property acquires title thereto as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his or her heirs, successors and assigns, shall not be solely liable for the Assessments chargeable to such Property which become due prior to the acquisition of title by such acquirer. Any lien levied against such Property pursuant to the terms hereof shall be canceled and voided and shall become unenforceable. Such unpaid Assessments shall be collected from all the Owners, including the new acquirer of title, in the same proportions as provided in Sections 3 and 5 hereof.

9. DEVELOPER'S RESERVATION OF RIGHTS TO DEDICATE ROADWAY. The Developer, its successors and assigns, hereby reserves the right at any time to dedicate any part of the Roadway and any part of the Property which is subject to the Roadway Easement of which has not already been submitted to Swan Pointe Condominium, to public use, and upon acceptance of the dedication, this Declaration, insofar as it applies to the Roadway Easement, shall terminate and be of no further force and effect, except as to the rights and obligations set forth herein with respect to the payment of Assessments.

10. PUBLIC LIABILITY INSURANCE. The Association (and/or any association to which Other Condominium Unit Owners belong) shall insure itself, its members, and all of the other Owners against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the Roadway. Such insurance shall afford protection to a limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to damage to or destruction of property arising out of any one accident.

11. NOTICES. Any notice required or permitted to be given to the Association or to any Other Condominium Unit Owners' association shall be deemed given when mailed by United States mail, postage prepaid, addressed to the statutory agent of such Association. Any notice required or permitted to be given to any of the other Owners, shall be deemed given when delivered personally

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- 6 -

to the part of the Property owned by such Owner, or when mailed by United States mail, postage prepaid, addressed to such Owner's last known address.

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

13. HEADINGS. The headings of the sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

14. GENDER. Throughout this Declaration, the masculine gender shall be deemed to include, where appropriate, the feminine and neuter, and the singular, plural and vice versa.

15. LIABILITY. Neither the Developer nor its representatives, successors 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 it by or pursuant to this Declaration or in its (or its representative) capacity as Developer, contractor, owner, manager or seller of the Property, regardless of by whom such claim is asserted.

16. NON-MERGER. Developer intends that no merger of the easements set forth in this Declaration shall occur by reason of the same person or entity holding title to the Property or any portion thereof.

[Remainder of Page Intentionally Left Blank]

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- 7 -

IN WITNESS WHEREOF, the Developer has executed this Declaration as of the date and year first above written.

Signed and acknowledged
in the presence of:

HILLS COMMUNITIES, INC., an
Ohio corporation

Amey J. Howard
Print: Amey J. Howard

BY: *Stephen Guttman*
NAME: Stephen Guttman
ITS: President

Marsha K. Beckham
Print: Marsha K. Beckham

STATE OF OHIO)
 : SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 21 day of May,
1999, by Stephen Guttman, President of HILLS COMMUNITIES, INC., an Ohio
corporation, on behalf of the corporation.

Amey J. Howard
Notary Public

This instrument prepared by:

Jody T. Klekamp
Jody T. Klekamp, Esq.
KEATING, MUEETHING & KLEKAMP, P.L.L.
1800 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202
(513) 579-6400



AMEY J. HOWARD
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 18, 2001

DB07254 PG0899

EXHIBIT "A"

Phase 1

Being a portion of a tract conveyed to Hills Communities, Inc. as recorded in Deed Book 6962, Page 833 in the office of the County Court Clerk of Jefferson County, Kentucky and more particularly described as follows:

Being all of Tract 1 as shown on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99, containing 3.225 acres.

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EXHIBIT "B"

Expansion Property

Being a portion of a tract conveyed to Hills Communities, Inc. as recorded in Deed Book 6962, Page 833 in the office of the County Court Clerk of Jefferson County, Kentucky and more particularly described as follows:

Being all of Tract 2 as shown on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99, containing 47.142 acres.

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EXHIBIT "C"

Description of Roadway

Being the 30' Access Easement depicted on the Minor Subdivision Plat, dated May 18, 1999, approved by the Louisville and Jefferson County Planning Commission on MAY 18, 1999, Docket # 119-99.

0807254PG0902
CONSENT OF MORTGAGE

Hills Financial Group, A Limited Partnership, an Ohio limited partnership, and the holder of a mortgage deed to the premises recorded on January 28, 1998 at Deed Book 4570, Page 944 of the Jefferson County, Kentucky Recorder's Records, hereby consents to the execution and delivery of the foregoing Declaration of Covenants, Easements and Restrictions, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of Jefferson County, Kentucky, and further subjects the above-described mortgage to the provisions of the foregoing Declaration with attached exhibits.

IN WITNESS WHEREOF, Hills Financial Group, A Limited Partnership, by its authorized officer, has caused the execution of this Consent this 21 day of May, 1999.

Signed and acknowledged
in the presence of:

HILLS FINANCIAL GROUP, A
Limited Partnership, an Ohio limited
partnership

BY: Hills Developers, Inc., an Ohio
corporation, General Partner

Marsha L. Beckham
Print: Marsha K. Beckham

BY: Stephen Guttman
Name: Stephen Guttman
Title: President

Amy L. Howard
Print: Amy L. Howard

STATE OF OHIO)
 : ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 21 day of May, 1999, by Stephen Guttman, President of Hills Developers, Inc., an Ohio corporation, as General Partner of Hills Financial Group, A Limited Partnership, an Ohio limited partnership, on behalf of the corporation and partnership.

Amy L. Howard
Notary Public

This instrument prepared by:

Jody T. Klekamp
Jody T. Klekamp, Esq.

KEATING, MUEITHING & KLEKAMP, P.L.L.

1800 Provident Tower

One East Fourth Street

Cincinnati, Ohio 45202

(513) 579-6400



AMY L. HOWARD
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 18, 2001

DB07254 PG0903

CONSENT OF MORTGAGEE

THE FIFTH THIRD BANK, an Ohio banking corporation and the holder of a mortgage deed to the premises recorded in the Official Records of Jefferson County, Kentucky at Deed Book 4570, Page 930 hereby consents to the execution and delivery of the foregoing Declaration of Covenants, Easements and Restrictions, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of Jefferson County, Kentucky, and further subjects the above-described mortgage to the provisions of the foregoing Declaration with attached exhibits.

IN WITNESS WHEREOF, The Fifth Third Bank, by its authorized officer, has caused the execution of this Consent this 26 day of May, 1999.

Signed and acknowledged
in the presence of:

THE FIFTH THIRD BANK

Dorina M. Betsch
Printed: DORINA M BERTSCH

BY: [Signature]
Name: Dorcas J Burgess
Title: Vice President

Print: Sharlene K. Garvey

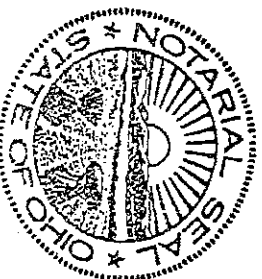
STATE OF OHIO)
: ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 26 day of May, 1999, by Dorcas J Burgess, Vice President of The Fifth Third Bank, an Ohio banking corporation, on behalf of the corporation.

Sharlene K. Garvey
Notary Public

This instrument prepared by:

Jody J. Klekamp
Jody J. Klekamp, Esq.
KEATING, MUEHTHING & KLEKAMP, P.L.L.
1400 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202
(513) 579-6400



SHARLENE K. GARVEY
Notary Public, State of Ohio
My Commission Expires Feb. 15, 2007

Document No.: DN1999091240
Lodged By: pitt & frank
Recorded On: 06/01/1999 10:13:13
Total Fees: 32.00
Transfer Tax: .00
County Clerk: Bobbie Holtsclaw
Deputy Clerk: PENNIN

CONSENT OF MORTGAGE

Hills Financial Group, A Limited Partnership, an Ohio limited partnership, and the holder of a mortgage deed to the premises recorded on January 28, 1998 at Deed Book 4570, Page 944 of the Jefferson County, Kentucky Recorder's Records, hereby consents to the execution and delivery of the foregoing Declaration of Covenants, Easements and Restrictions, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of Jefferson County, Kentucky, and further subjects the above-described mortgage to the provisions of the foregoing Declaration with attached exhibits.

IN WITNESS WHEREOF, Hills Financial Group, A Limited Partnership, by its authorized officer, has caused the execution of this Consent this 21 day of May, 1999.

Signed and acknowledged
in the presence of:

HILLS FINANCIAL GROUP, A
Limited Partnership, an Ohio limited
partnership

BY: Hills Developers, Inc., an Ohio
corporation, General Partner

Marsha K. Beckham
Print: Marsha K. Beckham

By: Stephen Guttman, Inc.
Name: Stephen Guttman
Title: President

Amy L. Howard
Print: Amy L. Howard

STATE OF OHIO)
: ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 21 day of May, 1999, by Stephen Guttman, President of Hills Developers, Inc., an Ohio corporation, as General Partner of Hills Financial Group, A Limited Partnership, an Ohio limited partnership, on behalf of the corporation and partnership.

Amy L. Howard
Notary Public

This instrument prepared by:

Jody T. Klekamp, Esq.
KEATING, MUEHTHING & KLEKAMP, P.L.L.
1800 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202



AMY L. HOWARD
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 18, 2001

END OF DOCUMENT

