

DECLARATION  
OF  
CONDOMINIUM REGIME  
OF  
OVERLOOK AT GLENMARY VILLAGE CONDOMINIUM

PBI BANK, INC., a Kentucky corporation, 2500 Eastpoint Parkway, Louisville, Kentucky 40223 ("**Declarant**") declares this as the plan for ownership in condominium of certain property located in Jefferson County, Kentucky (this "**Declaration**"). This Declaration is dated and made as of May 11, 2011.

Declarant submits the following described real property and improvements now or hereafter constructed on such real property ("**Property**") to a condominium property regime (the "**Condominium Regime**") under the Kentucky Condominium, Sections 381.9101 through 381.9207 of the Kentucky Revised Statutes, as amended from time to time (the "**Act**");

BEING Tract 3, Glenmary Village Subdivision, the plat of which is recorded in Plat and Subdivision Book 49, Page 71, in the Office of the Clerk of Jefferson County, Kentucky.

BEING the property conveyed to PBI Bank, Inc., by deed dated March 10, 2010, of record in Deed Book 9534, Page 216, in the office of the Clerk of Jefferson County, Kentucky.

The Condominium Regime shall be known as the "**Overlook at Glenmary Village Condominium**". Declarant makes the following declarations regarding limitations, restrictions, reservations, easements, divisions, rights, powers, covenants and conditions, declaring that the Property described above and the Units and Common Elements and Limited Common Elements established on the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to this Declaration. The provisions of this Declaration, as may be amended in accordance herewith, constitute covenants running with the land and are binding on and for the benefit of present and future owners, lessees and mortgagees of any part of the Condominium Regime.

**ARTICLE I**  
**DEFINITIONS**

In addition to other terms defined in this Declaration, and in addition to other terms defined in the Act, the following words and phrases shall have the following meaning in this Declaration:

**Section 1.1 "Allocated Interests"** shall mean the undivided interests in the Common Elements (see Section 2.3), the Common Expense Liability (see Section 1.6), and the votes in the Association (see Section 6.1).

**Section 1.2** "Association" shall mean association of Unit Owners that has been or will be incorporated as the "Overlook at Glenmary Village Unit Owners Association, Inc.," a Kentucky corporation, or a similar name, and references to the Association shall include successors and assigns of that corporation.

**Section 1.3** "Bylaws" shall mean the Bylaws, as amended from time to time, of the Association.

**Section 1.4** "Common Elements" shall mean all portions of the Condominium Regime other than the Units.

**Section 1.5** "Common Expenses" shall mean and includes all expenditures made or financial liabilities incurred by the Association, together with any allocations to reserves for future capital expenses, repairs or replacements, and includes without limiting the generality of the foregoing, all charges, costs and expenses incurred by the Association for and in connection with the administration and operation of the Condominium Regime for maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Elements (but excluding Limited Common Elements and portions of the Common Elements deemed part of a Unit as set forth in this Declaration) and grounds keeping; landscaping and snow removal in the Common Elements; any additions and alterations thereto; all labor, services, materials, supplies and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Elements and their use (but excluding liabilities that are a Unit Owner's responsibility under this Declaration); all premiums for hazard, liability and other insurance of the Association with respect to the Condominium Regime; all liabilities incurred in acquiring a Unit pursuant to judicial sale; interest on any debt incurred by the Association; all administrative, accounting, legal and managerial expenses of the Association; amounts incurred in replacing or substantially repairing capital improvements of the Condominium Regime, including roof repair and replacement, and road, driveway and parking area resurfacing; all charges for utilities not separately metered or otherwise allocated, including street lights, water service and garbage collection; provided, however, if the rate for any of the common utilities or garbage collection service is increased as a result of a particular Unit Owner's excessive use, the Executive Board may collect such increase from the Unit Owner. "Common Expenses" also includes all assessments payable to the Glenmary Village Residents Association, Inc. and if applicable to the Glenmary Village Recreational Association, Inc. (currently the Glenmary Village Recreational Association, Inc. is not active) by the Association (on behalf of each Unit Owner) as provided in the Declaration of Covenants, Conditions and Restrictions for Glenmary Village, of record in Deed Book 8372, Page 129, in the office of the Clerk of Jefferson County, Kentucky, as may be amended, and to the extent the Association is the collection agent for either of those Associations. Also, the Association may from time to time enter into an agreement with the owner of the apartments located on Tract 1, Glenmary Village, Plat and Subdivision Book 49, Page 71, in the office of the Clerk of Jefferson County, Kentucky, which agreement will allow the Unit Owners to use the recreational facilities located on that apartment tract; whenever such an agreement is in effect, the "Common Expenses" shall also include the amounts payable to the owner of that apartment tract by the Association to permit such use.

**Section 1.6 "Common Expense Liability"** shall mean the liability for Common Expenses allocated to each Unit and shall be the same percentage as each Unit's Allocated Interest in the undivided interests in the Common Elements as set forth on *Exhibit A* as *Exhibit A* is amended from time to time as additional Units are added to the Condominium Regime pursuant to the Development Rights and Special Declarant Rights.

**Section 1.7 "Development Rights"** shall mean those rights reserved to Declarant set forth in Section 10.1.

**Section 1.8 "Eligible Holder"** shall mean a holder of a bona fide first mortgage on any Unit, which either (a) requests notice of certain matters by written notice to the Association identifying the name and address of the Eligible Mortgagee and of the Unit Owner and address or Unit number, or (b) which is otherwise entitled to certain notices under applicable standards of secondary market lenders such as, but not necessarily limited to, FannieMae, Freddie Mac, HUD, VA or FHA (provided this Declaration or amendments thereto require such notices to be given).

**Section 1.9 "Eligible Insurer"** shall mean an agency that guaranties, insures or purchases a bona fide first mortgage loan held by an Eligible Mortgagee, which either (a) requests notice of certain matters by written notice to the Association identifying the name and address of the Eligible Mortgagee and of the Unit Owner and address or Unit number, or (b) which is otherwise entitled to certain notices under applicable standards of secondary market lenders such as but not necessarily limited to FannieMae, Freddie Mac, HUD, VA or FHA (provided this Declaration or amendments thereto require such notices to be given).

**Section 1.10 "Executive Board"** shall mean the board of directors of the Association.

**Section 1.11 "Identifying Number"** shall mean the number, letter or symbol, which may or may not be the same or similar to the address of a Unit, that identifies each Unit, as set forth on the Plans (as may be amended and supplemented) and on Exhibit A attached as part of this Declaration with respect to initial Units (as may be amended and supplemented).

**Section 1.12 "Limited Common Elements"** shall mean those Common Elements which are reserved by this Declaration or amendments to this Declaration, by recorded Plat or Plans, by agreement of the Unit Owners, or by the designation of Declarant, for the use of a certain Unit or number of Units to the exclusion of other Units, including without limitation:

- (a) any fixtures, improvements, chutes, flues, ducts, wires, conduits, heating systems, air conditioning systems, bearing walls, bearing columns and other fixtures that are partially within and partially outside the boundaries of a particular Units but serve only that particular Unit;
- (b) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and door frames, windows and window frames, and other fixtures designed to serve a single Unit but located outside the Unit's boundaries, whether or not expressly so shown and designated on the Plans;
- (c) any other Limited Common Elements expressly so shown and designated on the Plans;

- (d) all interior hallways, stairways, and other interior space, including all fixtures located within those spaces, allocated exclusively to the use of the Units appurtenant to or otherwise accessible from such interior spaces;
- (e) mailbox and paperbox holders;
- (f) storage closets for particular Units located on the deck or patio that is a Limited Common Element for each such Unit, as shown on the Plans.

**Section 1.13 "Plans"** shall mean a drawing or drawings containing the information required by KRS 381.9141(2) and (3) and may incorporate the information required of a Plat on the same page or pages or on a different page or pages, with all Plans to be recorded in the office of the Clerk of each County where the Condominium Regime is located.

**Section 1.14 "Plat" or "Plats"** shall mean a drawing containing the information required by KRS 381.9141(2), (3) and (4) and may incorporate the information required of Plans on the same page or pages or on a different page or pages, with each Plat to be recorded in the office of the Clerk of each County where the Condominium Regime is located.

**Section 1.15 "Rules and Regulations"** shall mean the rules made from time to time by the Executive Board, which may amended from time to time by the Executive Board.

**Section 1.16 "Special Declarant Rights"** shall have the meaning given it in Section 10.2.

**Section 1.17 "Unit"** shall mean a physical portion of the Condominium Regime (a) consisting of one or more rooms as measured from surfaces of the walls boundaries, floor boundaries and ceiling boundaries as shown on the Plans recorded or to be recorded that set forth each such Unit boundaries; (b) together with all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, any other materials constituting any part of the finished surfaces, all as set forth in KRS 381.9127(1); and (c) together with all spaces, interior partitions, fixtures, improvements, chutes, flues, ducts, wires, conduits, heating systems, air conditioning systems, bearing walls, bearing columns and other fixtures that are wholly within the boundaries of the Units established under (a) of this sentence, except any such items as are partly within and partly outside those boundaries, which are Limited Common Elements as set forth in KRS 381.9127(2); , having direct access to the Common Elements. The location and extent of each initial Unit are as shown on the Plans recorded with this Declaration and the location and extent of Units to be created later will be as shown on the Plans to be recorded with subsequent amendments to this Declaration as contemplated by this Declaration and in accordance with the Development Rights and the Special Declarant Rights. Certain Units contain garages which are part of the Unit as shown on the Plans although in some instances the garage portion of the Unit is not physically contiguous with the remainder of the Unit and access between the garage portion of the Unit and the remainder of the Unit is through Limited Common Element hallways and/or stairs.

**Section 1.18 "Unit Owner"** shall mean the record owner, one or more persons or other legal entities, of a fee simple title to any Unit, but excluding those having an interest in the Unit merely as security for the performance of an obligation.

**ARTICLE II**  
**UNITS; LIMITED COMMON ELEMENTS; UNIT OWNERS RESPONSIBILITIES**

**Section 2.1 Identification of Units.** The Identifying Number of each Unit (and the Building and Phase) initially made part of the Condominium Regime is set forth in *Exhibit A* attached as a part of this Declaration.

**Section 2.2 Plat and Plans.** Simultaneously with recording of this Declaration, there has been filed in the office of the Clerk of Jefferson County, Kentucky, a Plat and Plans for the initial Units made subject to and part of the Condominium Regime. The initial Plans are of record in Condominium Book 129, Pages 49 to 50 inclusive, in the office of the Clerk of Jefferson County, Kentucky. The Plat and Plans are subject the Development Rights and Special Declarant Rights.

**Section 2.3 Percentage of Common Interest.** Appurtenant to each Unit is that Unit's Allocated Interest in the Common Elements as set forth in *Exhibit A* attached as a part of this Declaration, subject to alteration pursuant to the Development Rights and Special Declarant Rights. This percentage is computed by taking as a basis the floor area of the individual Unit in relation to the floor area of all existing Units. Except as otherwise provided by the Act and this Declaration including with respect to the Development Rights and Special Declarant Rights, the Allocated Interest is permanent and shall not be altered without the acquiescence of the Unit Owners representing all Units in the Condominium Regime.

**Section 2.4 Limited Common Elements.** Each Unit has appurtenant to the Unit the Limited Common Elements assigned to it by this Declaration or the Plans.

**Section 2.5 Property Taxes.** Ad valorem real property taxes are or will be assessed against each Unit separately by the appropriate governmental authority(ies) with jurisdiction and are the responsibility of the applicable Unit Owner. Nothing in the Declaration shall be construed as giving any Unit Owner any right of contribution or adjustment against any other Unit Owner or the Association or Declarant on account of any deviation by any such governmental authority(ies) with jurisdiction from the percentages of ownership set forth in any valuation or assessment against the Unit owned by such Unit Owner.

**Section 2.6 Maintenance and Repair Obligations.** In addition to or as a supplement to each Unit Owner's obligations as set forth in this Declaration or in law, the Unit Owners shall have the following maintenance and repair obligations.

(a) Each Unit Owner shall maintain, repair, and replace at the expense of such Unit Owner all portions of the Unit Owner's Unit and Limited Common Elements allocated thereto, except portions expressly set forth in this Declaration or the Act to be maintained, repaired, and replaced by the Association. With respect to stairways and hallways that are Limited Common Elements, they shall be maintained, repaired and replaced by the Association as set forth in Section 6.2(a), subject to assessments as provide in Section 7.3, but those stairways and hallways Limited Common Elements shall be kept clean and neat by the Unit Owners to whose Units the

Limited Common Elements attach. This maintenance, repair and replacement obligations includes, without limitation, all finishes from and inside the interior face of the drywall, ceilings and floors constituting the boundary of the Unit which may be necessary to maintain the good appearance and condition of the Unit; all appliances and fixtures (including any alarm and sprinkler systems) located in the Unit, or located in the Limited Common Elements appurtenant to the Unit, or located in the Common Elements but benefiting the Unit to the exclusion of any other Unit; all plumbing fixtures, water heaters, heating and air conditioning equipment (including HVAC units in the Common Elements that solely serve a single Unit); all interior and exterior lighting fixtures; refrigerators, dishwashers, disposals, built-in microwaves, ranges, hoods and fans, sinks, lamps, interior doors and telephones; all electric, gas, water, cable TV, internet and telecommunication pipes or lines or wires or conduits or ducts serving any such appliances and fixtures.

(b) Each Unit Owner shall report promptly to the Association any defect or need for repairs for which the Association is responsible.

(c) Each Unit Owner shall maintain, repair or replace at the expense of such Unit Owner all portions of the Unit or applicable Limited Common Elements that could cause injury or damage to the other Units or to the Common Elements.

(d) Each Unit Owner shall perform the responsibilities of such Unit Owner in such a manner and at such reasonable hours so as not to unreasonably disturb other Unit Owners.

(e) A Unit Owner shall be liable for the entire expense of any maintenance, repair, or replacement of any part of the Condominium Regime, whether part of a Unit or part of the Common Elements or Limited Common Elements, if such maintenance, repair, or replacement is rendered necessary by any negligent act or omission of the Unit Owner, or any member of the family, or guests, employees, agents, or lessees of such Unit Owner. If any Unit Owner fails to undertake any such maintenance, repair, or replacement within 10 days after the Executive Board notifies such Unit Owner in writing that the Executive Board has determined that such maintenance, repair, or replacement is the responsibility of such Unit Owner under this Section, the Executive Board may undertake such maintenance, repair, or replacement, and the cost thereof shall be a lien on the Unit owned by such Unit Owner until paid by the Unit Owner, and such lien shall be subject to the same remedies as are provided in this Declaration for nonpayment by a Unit Owner of Common Expenses.

**Section 2.7 Alterations.** A Unit Owner may make improvements to or alterations to the Unit Owner's Unit interior that do not impair the structural integrity of or affect the mechanical systems or lessen the support of the Condominium Regime. No alteration or improvement to the Common Elements or to any Unit which would alter or affect the Common Elements or any other Unit (including without limitation altering the appearance thereof) may be made by any Unit Owner other than Declarant (as part of the Special Declarant Rights), without the prior written consent of the Executive Board. The Executive Board may require such information as it deems necessary or appropriate to evaluate the proposed alteration and may deny proposed alterations or impose conditions on approval. No application shall be filed by any Unit Owner

other than Declarant with any governmental authority for a permit covering an addition, alteration, or improvement to be in a Unit which alters or affects the Common Elements or other Units, unless approved and executed by the Executive Board. Such approval and execution shall not establish any liability on the part of the Executive Board or any individual member of the Executive Board to any contractor, subcontractor, materialman, architect or engineer by reason of such addition, alteration, or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing through the manager or managing agent, if any, or through the president or secretary of the Association if no manager or management agent is employed. The Executive Board shall have the obligation to answer within 30 days. The Executive Board may require that the Unit Owner making such improvement, alteration or addition obtain such insurance coverage and in such amounts as the Executive Board deems proper. If the alteration results in increased living space of a Unit the Executive Board is authorized and directed (at the cost of the Unit Owner) to amend this Declaration and the Plans to include the additional square footage as part of the Unit, amending the Allocated Interests as to interests in the Common Elements and as to Common Expense Liability for all Unit Owners in light of the change.

**Section 2.8 Subdivision.** There shall be no subdivision or partition of any Unit without the prior written approval of the Executive Board. If such approval is granted, such subdividing shall not alter or diminish the voting rights or Allocated Interest in the Common Elements or Common Expenses previously allocated to the Unit undergoing such subdividing.

**Section 2.9 Combining Units.** If a Unit Owner acquires adjoining Units and desires to combine them physically, the Unit Owner shall have the rights and obligations set forth in KRS 381.9145(3).

**Section 2.10 Relocation of Boundaries between Adjoining Units.** If a Unit Owner or adjoining Unit Owners desire to relocate the boundaries between such adjoining Units, those Unit Owners and the Executive Board shall each have the rights and obligations set forth in KRS 381.9147.

### ARTICLE III EASEMENTS

**Section 3.1 Easements for Encroachment.** If any part of the Common Elements encroaches upon any Unit or Limited Common Element, a valid easement shall exist for the encroachment, the maintenance, repair and replacement thereof, so long as it continues. If any Unit or Limited Common Element encroaches on any other Unit or Common Element or Limited Common Element, a valid easement shall exist for the encroachment, the maintenance, repair and replacement thereof, so long as it continues. If any building in the Condominium Regime shall be partially or totally destroyed and then rebuilt, minor encroachments on any parts of the Common Elements due to reconstruction shall be permitted, and easements shall exist for the encroachments. These easements do not, however, relieve a Unit Owner or Declarant of liability in the case of willful misconduct or for failure to adhere to the Plats and Plans.

**Section 3.2 Utility Easements.** An easement is hereby established and exists for any maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit (including those common facilities located above a suspended ceiling), which facilities serve more than one Unit and are part of the Common Elements or a Limited Common Element.

**Section 3.3 Maintenance Easements.** An easement is hereby established and exists for the maintenance, repair and replacement of any load bearing wall located within a Unit.

**Section 3.4 Access.** An easement is hereby established and exists in favor of the Association, exercisable by the Executive Board and its agents, to enter any Unit or any Limited Common Element from time to time during reasonable hours after reasonable notice, as may be necessary for the operation of the Condominium Regime (including the right to inspect the Unit, the Limited Common Elements and the Common Elements), on in the event of emergency, for necessary action to prevent damage to any part of the Condominium Regime.

**ARTICLE IV  
COMMON ELEMENTS**

**Section 4.1 Alteration and Transfer of Interests.** Except with respect to the exercise by Declarant of Development Rights and Special Declarant Rights, the Common Elements and easements appurtenant to each Unit shall have a permanent character and shall not be altered without the consent of the Executive Board and the Unit Owner affected. The Common Elements and easements shall not be separated from the Unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with the Unit even though the Common Elements or easements are not expressly mentioned or described in the conveyance or other instrument.

**Section 4.2 Partition.** The Common Elements shall remain undivided and shall not be the object of any action for partition or division of any part thereof except as provided by the Act.

**Section 4.3 Conveyance or Encumbrance.** Portions of the Common Elements may be conveyed or made subject to a lien or security interest by the Association as set forth in KRS 381.9185. As part of the Development Rights and Special Declarant Rights, Declarant may grant utility and similar easements over, under across and through the Common Elements without the approval of the Association during the time period set forth in Section 10.2.

**ARTICLE V  
RESTRICTIONS**

The Units and the Common Elements and Limited Common Elements shall be subject to the following restrictions, which restrictions shall be permanent:

**Section 5.1 Use.** Each Unit shall be used only for single family residential purposes (subject to the Special Declarant Rights). Each Unit shall be subject to such limitations and conditions as may be contained in this Declaration, or in the Bylaws of the Association, or any



Rules and Regulations that may be adopted from time to time by the Executive Board as to the use and appearance of the Units, the Limited Common Elements, and the Common Elements.

**Section 5.2 Leases.** Any Unit lease shall be in writing and shall be subject to this Declaration, the Bylaws and Rules and Regulation, and a copy of such lease shall be delivered to the Executive Board (rent may be redacted). No lease shall have an initial term of less than 180 days.

**Section 5.3 Common Elements.** As set forth above and as required by Kentucky law, each Unit Owner owns only the Unit Owner's Unit, the parameters of which are established by this Declaration and the Plans. Accordingly, no Unit Owner or any other person may, without the prior written consent of the Executive Board, place anything in the Common Elements or the Limited Common Elements or attach or exhibit anything on the outside walls of buildings or on porches, and, without in any way limiting the generality of the foregoing, all of the following are expressly forbidden in any of the Common Elements and Limited Common Elements without such prior written consent: (a) fences, patios, walls, above or below ground pools, antennae or receiver/transmitters (including there commonly known as "satellite dishes"), outbuildings or sheds, or any other structure or placement of any kind or nature; (b) trees, shrubs, flowers, plants, crops or other landscaping material; (c) decorations, including seasonal decorations, (d) personal property of any sort; (e) charcoal grills (other grills are permitted only if applicable ordinances permit); (f) signs; and (g) play equipment, basketball goals, toys, playpens, or other recreational equipment or items, bicycles, wagons, benches or chairs. The Executive Board may require such information as it deems necessary or appropriate to evaluate the proposed placement and may deny proposed placements or impose conditions (such as but not limited to requiring the Unit Owner placing matters in the Common Elements to assume maintenance responsibility therefor) on the Executive Board's consent. Anything placed or left in the Common Elements in violation of these provisions shall be at the sole risk of the Unit Owner or other person so placing it and anything so placed or left may be removed by or at the direction of the Executive Board at the Unit Owner's cost and expense and without any liability to the Executive Board or those authorized by the Executive Board. Neither the Association nor the Executive Board nor any authorized officer or agent of employee of the Association, the Executive Board or any agent of the Executive Board shall be under any obligation to remove or police the areas, but they shall have the right, power and authority to do so.

**Section 5.4 Parking.** Except for certain spaces that are designated for visitor parking only as designated from time to time by the Executive Board and shown by signage, all other general and unassigned or undesignated parking areas shall be available for use by all Unit Owners, their tenants, guests and invitees, subject to Rules and Regulations that are to be imposed by the Executive Board in a uniform manner, which Rules and Regulations may from time to time restrict the number of vehicles that may be parked by any one Unit Owner in the Condominium Regime. No vehicle shall be parked on any street or in the grass or other portions of the Common Elements, except only in areas designated for parking. No vehicles that, because of their size, take up more than one standard parking space are allowed anywhere in the Common Elements.

**Section 5.5 Penalties; Interpretation.** Violation of this Declaration, the Bylaws or any Rules and Regulations adopted by the Executive Board, may be remedied by the Executive Board, or its agent, by the imposition of reasonable fines in amounts established from time to time by the Executive Board, or by legal action for damages, injunctive relief, restraining order, or specific performance and, with respect to parking violations, by towing at the expense of the Unit Owner or vehicle owner. In addition, an aggrieved Unit Owner may maintain a legal action for similar relief. A Unit Owner in accepting ownership of a Unit agrees to become subject to this enforcement in the event of violation. In the event of a dispute over provisions of this Declaration or the Rules and Regulations, the determination of the Executive Board shall be final and binding.

## ARTICLE VI ASSOCIATION

**Section 6.1 Association Membership; Voting.** The administration of the Condominium Regime shall be vested in the Association. The Unit Owner of any Unit, upon acquiring title, shall automatically become a member of the Association and shall remain a member until such time as that Unit Owner's ownership of such Unit ceases for any reason, at which time that Unit Owner's membership in the Association shall automatically cease. By becoming a member, each Unit Owner shall have one vote for each Unit owned. If more than one person or entity owns a Unit, their vote shall be exercised as they determine among themselves, but no vote may be split and, if the Unit Owners of a Unit cannot agree among themselves as to the vote, no vote shall be allowed. If only one of the multiple Unit Owners is present at a meeting that one person shall be entitled to cast the vote for the Unit.

**Section 6.2 Administration of the Condominium Regime.** Administration of the Condominium Regime, including the use, maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations to them, shall be in accordance with the provisions of the Act, this Declaration, the Bylaws of the Association, and Rules and Regulations adopted by the Executive Board. Specifically (but not exclusively) the Association:

(a) Shall maintain, repair and replace all improvements in the Common Elements that may be required by law to be maintained, repaired, and replaced upon, adjoining, in connection with, or for the use of any part of the Condominium Regime, except as certain of such maintenance, repair and replacement obligations are the responsibility of Unit Owners as set forth elsewhere in this Declaration. The Association shall maintain, repair and replace the stairways and hallways that are Limited Common Elements.

(b) Shall keep the Common Elements in a clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority, where applicable to the Condominium Regime.

(c) Shall adopt and amend the Bylaws and Rules, and Regulations.

(d) Shall adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for Common Expenses from Unit Owners.

(e) May hire and discharge managing agents and other employees, agents, and independent contractors.

(f) May Institute or intervene in, and shall defend, litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium Regime.

(g) May make contracts and incur liabilities.

(h) Shall regulate the use, maintenance, repair, replacement, and modification of Common Elements, and authorize access to any Unit for those purposes.

(i) May cause additional improvements to be made as a part of the Common Elements.

(j) May acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that Common Elements may only be conveyed or subjected to a lien or security interest as provided in KRS 381.9185.

(k) May grant easements, leases, licenses, and concessions through or over the Common Elements.

(l) May impose and receive payments, fees, or charges (1) for the use, rental, or operation of the common elements other than Limited Common Elements described in KRS 381.9127(2), (4), and (6); (2) for services provided to Unit Owners; and (3) to cover emergency or extraordinary circumstances affecting the Condominium Regime or any part thereof.

(m) May impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, and the Rules and Regulations of the Association that may include reimbursement to the Association of reasonable fees and costs associated with the enforcement of this paragraph.

(n) May impose reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates required by KRS 381.9203, or statements of unpaid assessments.

(o) May provide for the indemnification of its officers and Executive Board and maintain directors' and officers liability insurance.

(p) May assign its right to future income, including the right to receive Common Expense assessments, but only for the purpose of securing financial accommodations obtained by the Association to perform its duties and obligations under this Declaration or the Act.

(q) May exercise any other powers conferred by this Declaration or the Bylaws.

(r) May exercise all other powers that may be exercised in the Commonwealth of Kentucky by a non-profit corporation.

(s) May exercise any other powers necessary and proper for the governance and operation of the Association.

**Section 6.3 Incurrence and Retirement of Indebtedness.** The Association, acting by unanimous vote of the Executive Board, may borrow money from time to time for the following purposes: (a) to cover any budgetary deficit for operational expenses, so long as such loan can be repaid within twenty-four (24) months from anticipated Common Expense income not needed for ongoing operations; (b) to buy a Unit in the Condominium Regime at a foreclosure sale; or (c) to pay costs of reconstruction, major repair, replacement or alteration of the Common Elements (to the extent not covered by insurance proceeds).

**Section 6.4 Executive Board.** Administration of the Condominium Regime shall be conducted for the Association by an Executive Board elected by the Unit Owners in accordance with the Bylaws and this Declaration (subject to the Special Declarant Rights). The Executive Board shall be authorized to delegate the administration of its duties and powers by written contract to a professional managing agent or administrator employed for that purpose by the Executive Board so long as such contract does not exceed one year in duration, and the costs of such professional management shall be Common Expenses. The Executive Board shall have the rights, obligations and limitations conferred on it by this Declaration and by the Act, including but not limited to KRS 381.9169 (1), (2) and (3).

**Section 6.5 Records; Availability.** The Association shall maintain all such records as are required of it under KRS 381.9197. The Association shall make available to Unit Owners, to prospective purchasers, and to Eligible Holders and Eligible Insurer, current copies of this Declaration, the Bylaws, the Rules and Regulations, and budgets, books, records and financial statements, during normal business hours or under other reasonable circumstances.

**Section 6.6 Declarant Control.** As one of the Special Declarant Rights, Declarant may control the Association and appoint and remove all members of the Executive Board and the officers of the Association. During the period of Declarant Control, the administration of the Condominium Regime, including the adoption and amendment of Bylaws, adoption of Rules and Regulations, assessment of Common Expenses and all other matters relating to the administration of the Condominium Regime, is vested in the Declarant, but subject to the following limitations and requirements. The period of Declarant control shall terminate no later than the earliest of (a) sixty (60) days after conveyance of 75% of the Units that may be created as part of the Condominium Regime to Unit Owners other than Declarant; (b) two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business; (c) two (2) years after any Development Right to add new Units was last exercised; or (d) seven (7) years after the first Unit was conveyed to a Unit Owner other than Declarant. Declarant may voluntarily surrender these rights before required by the preceding provision but may in doing so reserve certain rights and require that certain specified actions by the Association or the Executive Board be approved by

Declarant, with such reservations and requirements to be set forth in a recorded amendment to this Declaration. During this period of Declarant control, Declarant shall possess the irrevocable proxy of the Unit Owners to operate and administer the Condominium Regime, which proxy each Unit Owner automatically grants upon acceptance of a deed to a Unit. If KRS 381.9169(4) is amended to provide for longer periods for Declarant control, then the longer provisions of any amended statute shall control over the provisions of this Section 6.5.

**Section 6.7 Certain Transitional Requirements.** In addition to the limitations on the time period of Declarant control set forth in Section 6.5, Declarant shall provide for the election of certain members of the Executive Board as set forth in KRS 381.9169(5) for so long as that statute is in effect. Upon the expiration of the period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) members, a majority of whom shall be Unit Owners or owners of equity interests in Units. The Executive Board shall elect the officers of the Association. The members and officers shall take office upon election.

## ARTICLE VII ASSESSMENTS

**Section 7.1 Obligation to Pay.** Each Unit Owner shall be obligated to pay to the Association the Unit Owner's Common Expense Liability assessment, as fixed and established pursuant to this Declaration and the Act. The Association shall inform each Unit Owner of the amount of the total Common Expense Liability assessment due from the Unit Owner of the particular Unit. The Unit Owner of each Unit must pay that Unit Owner's Unit's required assessment in advance each month or other period established by the Executive Board. Payment shall be due on the first day of each month, unless the Executive Board otherwise directs. Special assessments are due thirty (30) days after the bill for the special assessment has been mailed or otherwise sent out by Association, unless the Association otherwise directs.

### **Section 7.2 Regular Assessments; Fine Assessments; Start Up Assessment.**

(a) The Association, acting through the Executive Board, shall, from time to time, but not less than annually, determine the amount of the regular total assessment necessary to defray the Common Expenses for a given period. When setting the regular total assessment, the Association should include both (i) those funds required during the period for general operating purposes, and (ii) reserve funds to be used to help defray the cost of future capital improvements. All funds shall be held in the name of the Association.

(b) Each Unit Owner is liable to pay that percentage of the regular total assessment that is equal to that Unit Owner's Unit's Common Expense Liability; provided, however, that the Association may allocate the costs of insurance that are part of Common Expenses in proportion to risk and may allocate any utilities that are not separately metered in proportion to usage. Also, if there is a judgment against the Association that requires the payment of money, assessments to pay such judgment shall be made only against the Units that were part of the Condominium Regime at the time the judgment was entered, in proportion to their Common Expense Liability. During the period that Special Declarant Rights are in effect, for ease of administration, the Association may

assess each Unit an equal amount notwithstanding the percentage Common Expense Liability, recognizing that the percentage Common Expense Liability can change during the period Special Declarant Rights are in effect.

(c) The Association may from time to time levy special assessments for reasonable purposes. The special assessment may be levied against one Unit, or a group of Units or all of the Units, as circumstances reasonably warrant according to the Unit or Units benefited by the assessment. If the assessment is apportioned among Units, the method of apportionment shall be based upon square feet unless for some reason that method would be very unfair. In that case, Association can determine another reasonable method of apportionment.

(d) The Association may levy a reasonable assessment, as a fine or penalty for violation of this Declaration, and the lien right for and enforcement of any such fine or penalty shall be the same as for a regular or special assessment.

(e) A special working capital assessment, due from the buyer at or about the time of closing, arises against a Unit upon the initial transfer of record of the Unit from the Declarant (or successor Declarant or designated Declarant) to the Unit Owner (other than a successor Declarant or designated Declarant). The special assessment shall be in an amount equal to the sum of two months of the full regular assessment. It shall be collected at closing and paid to the Association for use by the Association for Common Expenses. This special assessment is in addition to the regular assessment.

**Section 7.3 Limited Common Element Assessments.** An additional assessment may (but is not required to) be made by the Association against any Unit to pay any expense resulting from a Limited Common Element benefiting that Unit, including stairways and hallways benefiting only one Unit or a group of Units. The assessment should be apportioned among the Units (if more than one) using the Limited Common Element in a fair and reasonable manner. The assessment may be a regular, annual assessment and may be billed and included as part of the regular annual assessment described in Section 7.2 above.

**Section 7.4 Assessment Certificate.** The Association, shall upon demand, at any reasonable time, furnish to any Unit Owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessment; i.e., "current", and if not current, "delinquent" and the amount due. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate. The Association shall deliver such statement within ten (10) business days after receipt of the request.

**Section 7.5 Non-Payment of Assessment; Lien; Penalties; Remedies.** Any assessments (including regular assessments, special assessments, fine or penalty assessments, and Limited Common Element assessments) levied pursuant to this Declaration which are not paid on the date when due shall be delinquent, subject to any grace periods established from time to time by the Executive Board. All assessments, together with interest thereon at a lawful rate established from time to time by the Executive Board [initially ten (10%) percent per annum] not to exceed the maximum allowed by law, late charges as established from time to time by the Executive Board

[initially \$25.00] and costs of collection (including a lien preparation charge, filing fees, court costs, and reasonable attorneys 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 Unit Owner or Unit Owners of the Unit at the time when the assessment fell due. If the assessment is payable in installments the lien shall be for the full amount of the assessment at the time the first installment becomes due. The Association may bring an action at law against the Unit Owner personally obligated to pay the same and/or foreclose the lien against the Unit in like manner in the office of the Clerk of Jefferson County, Kentucky as a mortgage on real estate is foreclosed, in either of which events interest, costs and reasonable attorneys fees shall be added to the amount of each assessment. No Unit Owner may waive or otherwise escape liability for the assessments by non-use or waiver of use of the Common Elements or by abandonment of that Unit Owner's Unit. The lien of the Association 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 7.6 Priority of Association 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 or vendor's liens which have been filed of record before the date on which the assessment sought to be enforced became delinquent. The Association 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 Association shall be entitled, but not obligated, to become a purchaser at the foreclosure sale.

**Section 7.7 Disputes as to Common Expenses; Adjustments.** Any Unit Owner who believes that the Common Expense Liability chargeable to the Unit Owner's Unit, for which an assessment lien has been filed by the Association, has been improperly charged against that Unit Owner or the Unit, may bring action in an appropriate court of law. The Association 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 Unit Owners, as a result of damage or destruction.

**Section 7.8 Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association.** Any purchaser of a Unit at a foreclosure sale shall automatically become a member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

**Section 7.9 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 shall not be liable for Common Expense Liability or other assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to the Unit by such acquirer, unless otherwise required by the Act.

**Section 7.10 Liability for Assessments Upon Voluntary Conveyance.** The personal obligation of each Unit Owner to pay the assessment against the Unit shall pass to any subsequent grantee who takes title through contract, operation of law, or through any other method or

instrument other than a commissioner's deed or other court ordered deed or other than a deed to a mortgagee in lieu of foreclosure. The original Unit Owner shall not be released from the obligation of the assessment, but instead will be jointly and severally liable with the subsequent grantee. However, any such grantee or proposed grantee shall be entitled to an assessment certificate as described elsewhere in this Article, and such grantee shall not be liable for, nor shall the Unit be conveyed subject to a lien for, any unpaid assessment made by the Association against the grantor in excess of the amount set forth in the assessment certificate for the period reflected in the assessment certificate. This Section shall not prejudice the right of the grantee to recover from the grantor the amounts paid by the grantee for the assessment which was also the obligation of the grantor.

**Section 7.11 Emergency Assessment.** The Association may levy an emergency assessment under authority of and pursuant to the requirements of KRS 381.9167(3) and (4).

**Section 7.12 Miscellaneous.**

- (a) The Association may change the interest rate due on delinquent assessments.
- (b) Each Unit Owner has the sole responsibility of keeping the Association informed of the Unit Owner's current address if different from the Unit owned. Otherwise, notice sent by the Association to the Unit address is sufficient for any notice requirement under this Declaration.
- (c) The lien under this Article 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, and any other expenses incurred by the Association in enforcing or collecting the assessment.
- (e) If any Common Element, including any Limited Common Area, is intentionally or negligently damaged or destroyed through the act or omission of any Unit Owner, the Association may make an individual assessment against the Unit Owner and the Unit 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 Executive Board.

**ARTICLE VIII  
INSURANCE**

**Section 8.1 General Insurance.** The Association shall carry a master policy of fire and extended coverage property and casualty insurance and a master policy of commercial general liability insurance and, if required by law, worker's compensation insurance with respect to the



Common Elements and the Association's administration thereof in accordance with the following provisions:

(a) The master policy of fire and extended coverage property and casualty insurance shall be purchased by the Association for the benefit of the Association, the Unit Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration. All Common Elements shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one percent (100%) of the actual cash value thereof (excluding land, foundations, excavation and other items normally excluded from such coverage) and other improvements and betterments, as determined from time to time by the Association. The Association may elect to carry insurance to cover such other perils from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use. The Association shall not be required to insure any part of individual Units except structural columns, load-bearing walls and pipes, conduits, wires or other installations for the provision of services to the entire building housing such a Unit or Units that happen to pass through a particular Unit.

(b) The master commercial general liability insurance, including medical payments insurance, shall be in an amount determined by the Executive Board, but not less than \$1,000,000.00, and shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

(c) If any such insurance is not reasonably available, the Association shall immediately cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners

(d) Each Insurance policy carried by the Association pursuant to this Section 8.1 shall provide that (i) each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association; (ii) the insurer waives its right of subrogation under the policy against any Unit Owner or member of the Unit Owner's household; (c) no act or omission by any Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy, and that that no policy may be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Unit Owner or mortgagee; (iv) if, at the time of loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary coverage that any "other insurance" clause in any policy exclude individual Unit Owner's policies from consideration; (v) prohibit cancellation or material modification without at least 30 days prior written notice to the Association. All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.

**Section 8.2 Fidelity Insurance.** The Association may carry fidelity coverage against dishonest acts on the part of officers and employees, members of the Association, members of the Executive 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 Association as the named insured and shall be written in an amount sufficient to provide protection which is not less than the total annual assessments plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Unit Owners.

**Section 8.3 Directors' and Officers' Errors and Omissions Insurance.** The Association shall purchase insurance to protect itself and to indemnify any director or officer, past or present, against expenses actually and reasonably incurred by a director or officer in connection with the defense of any action, suit proceeding, civil or criminal, to which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; 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 Association.

**Section 8.4 Premiums.** The premiums upon insurance purchased by the Association shall be Common Expenses.

**Section 8.5 Proceeds.** Proceeds of all insurance policies owned by the Association shall be received by the Association as trustee, 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 Association 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 8.6 Power of Attorney.** Each Unit Owner shall be deemed to appoint the Association as that Unit Owner's 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 Association. Without limitation on the generality of the foregoing, the Association 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 Association, 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 Condominium Regime as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

**Section 8.7 Responsibility of Unit Owner.** The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior improvements of any Unit made nor the liability of any Unit Owner for injuries therein not caused by or connected with the Association's operation, maintenance or use of the Condominium Regime. Each Unit Owner shall obtain insurance coverage at that Unit Owner's own expense upon that Unit Owner's Unit's furnishings and personal property (including any personal property located in Common Elements) and for all plumbing fixtures, electrical fixtures, kitchen and bathroom

fixtures, kitchen and bathroom cabinets, carpeting, paint, wallpaper, interior walls, partitioning, trim, dry wall and appliances furnished by the Declarant, and other improvements and betterments not otherwise covered under the master policy referenced in Section 8.1, and each Unit Owner shall obtain at such Unit Owner's sole cost and expense Betterments and Improvements insurance for the foregoing improvements and betterments not otherwise covered under the master policy and provide evidence of such coverage to the Association upon request. Also, each Unit Owner shall obtain comprehensive personal liability insurance covering liability for damage to persons or property of others located within such Unit Owner's Unit, or in another Unit in the project or upon the Common Areas, resulting, from the negligence of the insured Unit Owner, in such amounts as shall from time to time be determined by the Association but initially not less than \$300,000, and each Unit Owner shall provide evidence of such coverage to the Association upon request.

**Section 8.8 Release.** All policies purchased under this Article by either the Association 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 Association, any employee of the Association, the Executive Board, or any occupant of the Condominium Regime, 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 8.9 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 Association shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

**Section 8.11 Other Insurance Requirements.** If this Project is intended to be qualified under the requirements of FannieMae, FreddieMac, HUD, FHA, VA or other similar program, the insurance requirements of that program are incorporated herein by reference, as they may be amended from time to time. If any insurance company is unsure of the coverage intended, it should ask for an interpretation from the Executive Board. Otherwise, the broadest coverage shall be presumed, if there is an ambiguity.

## ARTICLE IX RESTORATION AND RECONSTRUCTION

**Section 9.1 Restoration.** Restoration or replacement of the Condominium Regime (unless resulting from casualty destruction), or construction of any additional buildings or Units (other than those initially contemplated in the Condominium Regime including those contemplated by Section 2.4), or material alterations or additions to any building of the Condominium Regime, shall be undertaken by the Association or any Unit Owners only after unanimous approval of all affected Unit Owners, and with written consent of the holders of all liens on Units affected and in accordance with the complete plans and specifications approved in writing by the Executive Board. Promptly upon completion of such restoration, alteration or replacement, the Board of Administration shall duly record the amendment with a complete set of floor plans of the Units of the Condominium Regime as so altered, certified as built by a registered architect or engineer.

**Section 9.2 Reconstruction.** Where casualty destruction, partial or total, of the building occurs, whether arising from events covered by insurance or not, the determination as to reconstruction shall be governed by the Act, more particularly KRS 381.890, as may be amended or supplemented from time to time. If any building is repaired or restored by the Association, the Unit Owners must repair and reconstruct the interior of such Units at the Unit Owner's cost and within a reasonable time of the repair or reconstruction of the building housing such Units.

## ARTICLE X DEVELOPER RIGHTS AND SPECIAL DECLARANT RIGHTS

**Section 10.1 Development Rights; Expandable Condominium Regime; Phasing.** This is an expandable condominium regime. Additional buildings and Units may become a part of this Condominium Regime at the option of Declarant, its successors and assigns, as follows, with all of the rights set forth in this Section being "Development Rights":

(a) Declarant currently contemplates that the Condominium Regime will consist of approximately 11 buildings and 118 Units, but this expression of intent does not obligate Declarant, its successors or assigns, to construct all such Units (unless designated on a Plat or on Plans as "MUST BE BUILT"), nor does this expression of intent prohibit Declarant from constructing more or fewer Units or changing its current development plan to meet market conditions. If and as expanded, the Allocated Interests (both the undivided interests in the Common Elements and the Common Expense Liability appurtenant to each Unit in the Condominium Regime) shall be redistributed upon completion of additional Units from time to time. The redistribution shall be done by an amendment or amendments to this Declaration. Declarant intends to construct the Units in several phases, which shall be designated by Declarant from time to time.

(b) Declarant also reserves the right, in addition to creating additional Units as set forth in the immediately preceding paragraph, to create Common Elements and Limited Common Elements and to allocate or re-allocate Common Elements and Limited Common Elements, to subdivide Units or convert Units into Common Elements or Limited Common Elements, and to withdraw land that is otherwise Common Elements from the Condominium Regime.

**Section 10.2 Special Declarant Rights.** For the period set forth in Section 10.3, Declarant shall have all of the following rights, each of which are included in the phrase "**Special Declarant Rights**": (a) the Development Rights; (b) the rights set forth in Section 6.6; (c) the right of Declarant to complete improvements indicated on Plats or Plans; (d) the right to maintain sales offices, management offices, signs advertising the Condominium Regime and the sale of Units; (e) the right to use easements through the Common Elements for the purpose of making improvements within the Condominium Regime; (e) the right to make the Condominium Regime part of a larger project or planned community; (f) the right to make the Condominium Regime subject to a master association; (g) the right to grant utility and access easements over, under, across and through the Condominium Regime; and (h) certain amendment rights set forth in Section 12.2. Notwithstanding any change in control of the Association as provided in Section 6.6, the

Association may not make any amendment to this Declaration or the Bylaws or impose any Rules and Regulations that would affect the Special Declarant Rights.

**Section 10.3 Time Period for Development Right and Special Declarant Rights.**

Declarant hereby reserves for itself, its successors and assigns, for a period ending twenty (20) years after the date this Declaration is recorded (except as otherwise expressly provided in Section 6.6), all Development Rights and Special Declarant Rights and to effectuate those the right to execute on behalf of all contract purchasers, Unit Owners, mortgagees or other lien holders, and all other parties claiming a legal or equitable interest in the Condominium Regime or any part thereof, any amendment, agreement or supplement that may be required to exercise any of the foregoing Development Rights and Special Declarant Rights, and to record new, amended or supplementary Plats and Plans, and by taking any interest in the Condominium Regime or by taking any interest in a Unit, each such person or entity shall be deemed to have granted to Declarant a power of attorney for such purposes, coupled with an interest, running with the Condominium Regime or Unit, as applicable, and binding upon the successors or assigns of any of the foregoing parties, with that power of attorney not being affected by the death or disability of any principal or by the lapse of time. Declarant, for itself, and for its successors and assigns, reserves an interest in any real estate, including the Condominium Regime and each Unit, for these purposes.

**Section 10.4 Transfer of Development Rights and Special Declarant Rights.** The Special Declarant Rights may be transferred or assigned, in whole or in part, by an instrument recorded in the office of the Clerk of each County where any part of the Condominium Regime is located, which instrument shall be executed and acknowledged both by Declarant and the transferred or assignee. Liabilities and responsibilities of the transferor/assignor and transferee/assignee shall be as set forth in the instrument of transfer/assignment unless otherwise prohibited or required by applicable law, including without limitation KRS 381.9171.

**ARTICLE XI  
GLENMARY VILLAGE ASSOCIATIONS**

In addition to this Declaration, the Condominium Regime and the Units are subject to a Declaration of Covenants, Conditions and Restrictions for Glenmary Village, of record in Deed Book 8372, Page 129, in the office of the Clerk of Jefferson County, Kentucky, as may be amended, and the Unit Owners are members of and have responsibilities to the Glenmary Village Residents Association, Inc. and the Glenmary Village Recreational Association, Inc. (if it is activated – currently it is not active and there are no recreational facilities as were otherwise contemplated in that Declaration of Covenants, Conditions and Restrictions for Glenmary Village). Except as expressly set forth in that Declaration of Covenants, Conditions and Restrictions, no Unit Owner or any other person or entity shall, by virtue of any ownership of a Unit or membership in the Association, be entitled to any membership or other right, title or interest in the Glenmary Village Residents Association, Inc. or the Glenmary Village Recreational Association, Inc. or any right of enjoyment in or use of the Glenmary Village Common Area or the Common Area (as such terms are defined in that Declaration of Covenants, Conditions and Restrictions).

**ARTICLE XII  
GENERAL**

**Section 12.1 Eminent Domain.** The following provisions shall control upon any taking by eminent domain:

(a) In the event of the taking of an entire Unit by eminent domain or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for residential purposes, the Unit Owner and the Unit Owner's mortgagee(s), as their interests may appear, shall be entitled to receive the award for such Unit taking and, after acceptance thereof, the Unit Owner, the Unit Owner's mortgagee(s) and other interest holder shall be divested of all interest in the Condominium Regime and that Unit's Allocated Interest (except for voting) shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of the Units before taking, and the Association shall promptly prepare, execute and record an amendment reflecting the reallocations.

(b) Except as provided in Section 12.1(a), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and its Allocated Interests in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree provides otherwise, (i) the Unit's Allocated Interests (except for voting) are reduced in proportion to the reduction in size of the Unit, and (ii) the portion of the Allocated Interests (except for voting) divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

(c) If there is any taking of part of the Common Elements, the condemnation proceeds relative to such taking shall be paid to the Association. If there is any taking of part or all of Limited Common Elements, the condemnation proceeds relative to such taking shall be equally divided among the Unit Owners of the Units to which the Limited Common Element was allocated before the taking.

**Section 12.2 Amendment of Declaration.**

(a) Developer has certain amendment rights with respect to Development Rights and Special Declarant and those amendment rights are incorporated in this Section 12.2. Developer also reserves the right, without the joinder of Unit Owners or their mortgagees, to unilaterally amend this Declaration to correct errors, or to clarify certain matters, or to make changes appropriate to comply with the requirements of FannieMae, FreddieMac, HUD, FHA, VA or other similar programs. The Association has certain amendment rights as set forth in Section 12.1 and KRS 381.9113, in KRS 381.9139(3), in KRS 381.9147(1) and in KRS 381.9149 and those amendment rights are incorporated in this Section 12.2. Unit Owners have certain amendment rights as set forth in KRS 381.9139(2) and in KRS 381.9147(1) and those amendment rights are incorporated in this Section 12.2.

(b) In instances other than with respect to amendment rights set forth elsewhere in this Declaration or in the Act, this Declaration may be amended [subject to the provisions of Section 12.2(c) and (d)] from time to time by a vote or agreement of Unit Owners holding at least sixty-seven percent (67%) of the votes in the Association, effective only upon recording of the signed instrument setting forth the amendment.

(c) No amendment shall create or decrease Development Rights or Special Declarant Rights, or increase the number of Units beyond those contemplated by this Declaration, change the boundaries of any Unit, change the Allocated Interests, or change the use of Units from residential use, without the unanimous consent of the Unit Owners.

(d) The approval of Unit Owners holding 67% of the votes and of Eligible Holders holding first mortgages on Units to which at least 51% of the votes of Units subject to such mortgages appertain shall be required for any amendment that materially alters the establishment of, provision for, governance of or regulation of any of the following matters: (i) voting, (ii) assessments [not including normal annual or periodic adjustments that do not raise previously assessed amounts by more than 25%], assessment liens, or subordination of such liens, (iii) reserves for maintenance, repair and replacement of Common Elements, (iv) insurance or fidelity bonds, (v) rights to use the Common Elements, (vi) responsibility for maintenance and repair of the several portions of the Condominium Regime, (vii) expansion or contraction of the Condominium Regime or the addition, annexation or withdrawal of property from the Condominium Regime, (viii) redefinition of boundaries of Units (except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Holders holding first mortgages on such Unit or Units must approve such actions), (ix) reallocation of interests in Common Elements or Limited Common Elements (except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and the Eligible Holders holding first mortgages on such Unit or Units must approve such actions), (x) convertibility of Units into Common Elements or of Common Elements into Units, (xi) leasing of Units, (xii) imposition of any rights of first refusal or similar restrictions on the right of a Unit Owner to sell, transfer or otherwise convey a Unit, (xiii) establishment of self-management where professional management had been required, or (xiv) provisions that expressly benefit Eligible Holders or Eligible Insurers. Notwithstanding the foregoing, approval of Eligible Holders shall not be required with respect to the construction of new Units and incorporation of new Units into the Condominium Regime in accordance with Section 2.4. To the extent permitted by applicable law or regulations, an Eligible Holder shall be deemed to approve any such matter if the Eligible Holder does not respond within 60 days of the notice of the proposed action being given by certified mail, return receipt requested.

**Section 12.3 Approval of Eligible Insurers.** The approval of Eligible Insurers is required for any of the following: (i) annexation of additional property to the Property, (ii) merger or consolidation of the Condominium Regime with any other common interest community or the merger or consolidation of the Association with any other entity, (iii) dedication of Common Elements, or (iv) the dissolution of the Association. To the extent permitted by applicable law or regulations, an Eligible Insurer shall be deemed to approve any such matter if the Eligible Insurer





This Instrument Prepared By:



David B. Buechler  
Salyers & Buechler, P.S.C.  
The 1000 Building, Suite 204  
6200 Dutchmans Lane  
Louisville, Kentucky 40205

