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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE "NICOLAS FARMS SUBDIVISION"
Jefferson County, Kentucky

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE NICOLAS FARMS Subdivision (this "**Declaration**") is made on July 20th, 2023, by **LEISURE DEVELOPMENT, LLC**, a Kentucky limited liability company having a mailing address of 6400 N. Preston Highway, Louisville, Kentucky 40229 (the "Declarant" and "Developer").

WITNESSETH:

WHEREAS, the Declarant is the Owner/Developer of a certain real property located in Louisville, Jefferson County, Kentucky, more particularly described as Lots 1 – 53 as shown on the NICOLAS FARMS SUBDIVISION Record Plat prepared by Timothy L. Gehlhausen, PLS # 3005 with Mindel Scott dated June 27, 2023 and of record in Plat Book 63, Page 66-67 in the Office of the Clerk of Jefferson County, Kentucky, and approved by the Louisville Metro Planning Commission under Docket No. 23-RP-0009, the property of which is now being developed as a residential subdivision of single-family homes, including the ability to place accessory dwelling units on the same lots as the single-family homes, known and marketed as the "Nicolas Farms Subdivision," and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

WHEREAS, Developer intends to establish a general and orderly plan for the use, occupancy and enjoyment of said residential subdivision and the continued maintenance of certain improvements to real property, as further set forth herein; and

WHEREAS, Developer desires to subject such property, together with such additions as may hereafter be made thereto (herein collectively the "Property"), to the covenants, conditions, restrictions, easements, charges and liens as contained in this Declaration, all of which are for the benefit of the Property and each individual Owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the Areas of Common Responsibility and administering and enforcing the within covenants, conditions and restrictions; and

WHEREAS, Developer will form the "Nicolas Farms Homeowners Association, Inc.", as a non-profit Kentucky corporation for the purpose of carrying out the powers and duties aforesaid (the "Association").

NOW, THEREFORE, the Developer hereby declares that all of the Property, as defined herein, shall be held, sold, conveyed, encumbered, leased, rented, used, occupied, improved and maintained subject to the following covenants, conditions, easements and restrictions, which are for the purpose of protecting the value and desirability of Nicolas Farms Subdivision and of the

Property. The covenants, conditions, easements and restrictions shall run with the Property and be binding on all parties having any right, title or interest in the Property, their heirs, successors and assigns and shall inure to the benefit of each Owner.

ARTICLE I DEFINITIONS

The terms in this Declaration and the “By-Laws” (as defined herein) shall be construed to have their ordinary, generally accepted meanings unless otherwise specifically defined herein or in the By-Laws. In addition, the following definitions shall apply:

Section 1. “Area of Common Responsibility” shall mean and refer to all improvements therein including, without limitation, open space lots, open space lots containing thereon a water feature(s), traffic islands, landscaped areas located within the Property on common area and not inside an Owner’s Lot, stormwater infrastructure and associated green infrastructure best management practices equipment, catch basins, headwalls, culverts, drains, storm sewers, street lighting, sidewalks, open space, water features including ponds, entryway signature signage, including any fence or structure to which the entryway signature signage may be affixed, and any other improvement placed within or not within a common area that such improvement serves the Development as a whole and requires maintenance to remain in good and appropriate working condition and appropriate appearance so as not to cause unsightly conditions within the Property, and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 2. “Articles of Incorporation” shall mean those Articles of Incorporation filed with the Secretary of State of Kentucky incorporating the Nicolas Farms Homeowners Association, Inc., as a non-profit corporation under the provision of the Kentucky Revised Statutes, as the same may be amended from time to time.

Section 3. “Association” or “Nicolas Farms Association” or shall mean and refer to the [**NICOLAS FARMS HOMEOWNERS ASSOCIATION, INC.**], a Kentucky non-profit corporation, its successors and assigns.

Section 4. “Board of Directors” or “Board” means the board of directors of the Association.

Section 5. “By-Laws” means the by-laws of the Association as amended from time to time. All provisions contained in the body of this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the By-Laws.

Section 6. “Common Expenses” shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

Section 7. “Development” shall mean any and all lots, including open spaces and common areas, if applicable, and any and all other property contained within and commonly known as the Nicolas Farms Subdivision.

Section 8. "Declaration" shall mean any declaration of covenants, conditions and restrictions, as amended from time-to-time, affecting the Nicolas Farms Subdivision.

Section 9. "Developer" shall mean and refer to Leisure Development, LLC, a Kentucky limited liability company, its successors and assigns.

Section 10. "Lot" or "Lots" shall mean and refer to Lots 1 through 52, such lots as referred to on Exhibit A attached hereto. When the plural "lots" is used in the lower case, it shall mean and refer to any or all lots specifically referenced or to all lots. When the singular word "lot" is used in the upper case, it shall mean and refer to only the lot specifically referenced.

Section 11. "Majority" shall mean those votes of the Owners representing more than fifty percent (50%) of the total vote in the Association. Any specific percentage of Owners means that number of Owners, who in the aggregate, are entitled to exercise such specified percentage of the total vote in the Association.

Section 12. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 13. "Open Space" shall mean that portion of the Property denoted as "Open Space" on the Plat.

Section 14. "Owner" shall mean and refer to the record Owner, whether one or more Persons or entities, of fee simple title to any Lot which is a part of the Property, but excluding any Person who is a mortgagee or holds an interest merely as security for the performance of an obligation.

Section 15. "Person" shall mean any individual, corporation, company, partnership, joint venture, trustee or other legal entity, including the Association.

Section 16. "Plat" means the final record plat or plats of the Property of record in the Office of the Clerk of Jefferson County, Kentucky, showing the number of each Lot and expressing its area, location and other data necessary for identification as such plat or plats may be amended from time to time.

Section 17. "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 18. "Residence" shall mean and refer to any improved Lot whereupon a single-family dwelling, including an accessory dwelling unit in compliance with applicable zoning regulations, has been constructed in accord with the provisions of this Declaration.

ARTICLE II
HOMEOWNERS' ASSOCIATION

Section 1. Membership in the Nicolas Farms Homeowners Association.

Developer and every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Such Owner and Member shall: [i] abide by the Nicolas Farms Association Bylaws, Articles of Incorporation (if incorporated), and the rules and regulations adopted by the Association; [ii] shall pay the assessments provided for in this Declaration when due; and [iii] shall comply with the decisions of the Nicolas Farms Association Board of Directors. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. No Owner, whether one or more persons, shall have more than one membership per Lot owned. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation, company, partnership or other entity shall be exercised by an individual designated and authorized by the specifically associated entity pursuant to a written instrument provided to the Secretary of the Association.

Section 2. Classes of Membership. The Nicolas Farms Association shall have two classes of voting membership.

A. Class A. Class A Members shall be all Owners with the exception of Developer, and shall be entitled to one (1) vote for each lot owned, but the right of Class A members to vote may be exercised only in accordance with Section 2C below. In the event that the Owner is more than one person or entity, votes shall be apportioned as provided herein. If the ownership of a lot is held by Owners in joint survivorship, each Owner shall have a proportional vote in the same fractional share as his/her interest represents to the total number of owners. If ownership of a lot is held by any multiple parties, other than as described in the immediately preceding sentence, each shall have a fractional share of one vote based on the percentage of his ownership of the lot. Owners of each lot shall keep on file with the Secretary of the Association a notice of the fractional votes to which each Owner is entitled. In no event shall any lot be entitled to more than one vote.

B. Class B. The Class B Member shall be the Developer. Developer shall be entitled to one (1) vote for each Lot owned and it shall determine who shall cast the vote. In addition, the Class B Member shall be entitled to appoint all the members of the Board of Directors, in accordance with the By-Laws, until 100% of the Property shown on Exhibit B, as amended from time to time, including additions thereto, has been developed into Lots, certificates of occupancy issued thereon and have been conveyed to persons other than Developer or builders holding title for purposes of development and sale (the "Class B Control Period"). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

- (i) – when in its discretion Developer so determines by written notice to the Association; or

- (ii) - when Developer's right during the Class B Control Period to appoint all of the Board of Directors terminates as set forth hereinabove.

C. Class A Vote. Class A members shall not be entitled to exercise any vote until the earlier of the termination of the Class "B" Control Period or when, in its discretion, the Class B Member so determines by written notice to the Association.

Section 3. Rights and Obligations of the Association.

A. The Nicolas Farms Homeowners Association shall be responsible for the exclusive management, maintenance and control of the Area of Common Responsibility and all improvements therein including, without limitation, stormwater infrastructure and associated green infrastructure best management practices equipment, catch basins, headwalls, culverts, drains, storm sewers, street lighting, sidewalks, open space and open space whereon water features exist, including regular maintenance thereto, landscaped areas, and any other improvement placed within a common area and requires maintenance to remain in good and appropriate working condition and appropriate appearance so as not to cause unsightly condition within the Property, and shall keep it in good, clean, attractive, safe and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

B. All rights reserved by the Developer in this Declaration shall automatically pass to the Association when Class B membership ceases pursuant to Article II, Section 2, except that Developer may assign any and all rights reserved herein by Developer to said Association at any time prior to the sale by the Developer of 100% of the Property shown on Exhibit B, as amended from time to time, including additions thereto, as specifically provided for in Article II, Section 2.B hereinabove, provided that no such earlier transfer shall be effective until it is in a written instrument signed by Developer and duly recorded in the public records of the Office of the Clerk of Jefferson County, Kentucky.

C. In addition to the powers and duties otherwise set forth in this Declaration, the Association is authorized and directed to make provision for the improvement and maintenance of the Area of Common Responsibility and to adopt rules and regulations and to take such action as is necessary to accomplish the purposes of this Declaration. The Board of Directors of the Association may adopt rules and regulations. After the Class B membership ceases, the Board of Directors of the Association may propose rules and regulations and amendments thereto for adoption by the Members. Written notice of any such meeting of the Members to consider said rules and regulations or any amendments thereto shall be given in writing at least thirty (30) days in advance and shall set forth the time, place and purpose of the meeting. The presence at the meeting of Members in person or by proxy entitled to cast twenty-five (50) percent (%) of all the votes shall constitute a quorum for this purposes.

ARTICLE III **MAINTENANCE OBLIGATIONS FOR AREA OF COMMON RESPONSIBIITY**

Section 1. Association's Responsibility. The Association has been formed for the purpose of maintaining and keeping in good repair the Area of Common Responsibility as provided in this Article III. The Association shall maintain and keep in good repair the Area of

Common Responsibility, unless such obligations are assumed after expressed and authorized acceptance by any municipal or governmental agency or other entity having jurisdiction thereof, such maintenance to be funded as hereinafter provided. This maintenance shall include but shall not be limited to (i) maintenance of all street lights, catch basins, headwalls, culverts, drains, storm sewers, including maintenance and annual inspections of green infrastructure best management practices that are located on the Property as further detailed and set forth in that Stormwater Quality Maintenance Agreement pertaining to Long-term Operation and Maintenance Responsibilities dated April 21st, 2022, recorded in Deed Book 12546, Page 863 in the Office of the Clerk of Jefferson County, Kentucky; (ii) maintenance and regular upkeep of the Open Space and the ponds or other water features located thereon, including but not limited to mosquito abatement and application of mosquito larvicide approved by the Louisville Metro Health Department and administered in accordance with the larvicide product's labeling, regular cutting of grass and weeds, trimming of shrubs and trees, if necessary, and the removal of debris, litter, waste and leaves; (iii) snow removal, if necessary, from sidewalks, rights-of-way of public and private roads; (iv) other areas, if any, that by the terms of this Declaration, or by contract with any other Person, becomes the responsibility of the Association; (v) accounting, management and billing; and (vi) other care deemed necessary for the Area of Common Responsibility.

Section 2. Owner's Responsibility. Each Owner shall maintain all parts of such Owner's Lot, including any improvements thereon, all in accordance with applicable local building code and property maintenance regulations, as well as all applicable covenants, conditions and restrictions, and, except as expressly stated herein, neither the Association nor any other party shall have any liability whatsoever for the construction, maintenance or reconstruction of any part of any building or structures on any Owner's Lot. If any Owner fails to properly perform such Owner's maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article IV of this Declaration; provide, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Dedication of Common Areas to Local Government. Common areas, Open Space, private roads, islands in the right-of-way, and signature entrances shall not be dedicated to a unit of local government without the authorized acceptance by the unit of local government with jurisdiction over the Property and the approval of the Louisville Metro Planning Commission. The Association cannot amend this restriction without approval from the Louisville Metro Planning Commission. Anything to the contrary herein notwithstanding, and to the extent these common areas exist, the Association and the lot owners shall be responsible for the maintenance of all common open space, private roads, islands in the right-of-way, and signature entrances, so long as the subdivision is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended.

ARTICLE IV **COVENANT FOR ASSESSMENTS**

Section 1. Creation of Assessments. There are hereby created assessments for Common Expenses as may from time to time specifically be authorized by the Board of

Directors to be commenced at the time and in the manner set forth in Section 2 of this Article. There shall be two (2) types of assessments:

A. General Assessments to fund expenses for the benefit of all Members of the Association; and

B. Special Assessments as described in Section 3 below.

General Assessments shall be levied on all Lots as hereinafter set forth, except those Lots owned by Developer. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of its deed or other indicia of ownership, whether or not it shall be so expressed in such deed or such indicia of ownership, is deemed to personally covenant and agree to pay all these assessments.

All assessments, together with interest at a rate not to exceed eighteen percent (18%) or the highest rate allowed by Kentucky law as computed from the date the delinquency first occurs, costs and reasonable attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment was made or accrued, and its grantees shall be jointly and severally liable for any assessment that are due and payable at the time of conveyance, except to the extent the lien securing same may have been extinguished by judicial proceedings.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate in an amount determined by the Association.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. The Board of Directors shall have the right to require that an Owner authorize the Board of Directors to auto-draft from an account of Owner any Assessments due hereunder. No Owner may waive or otherwise exempt itself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by abandonment of the Lot. No diminution or abatement of assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

The assessments levied by the Association shall be used to promote the health, safety, and welfare of the owners and residents and, in particular, for the acquisition, improvement and maintenance of the Areas of Common Responsibility, services and facilities

devoted to those purposes or for the use of the Areas of Common Responsibility, including, but not limited to, the costs of repairs, replacement and additions, the cost of labor, equipment, material, management, supervision; the procurement and maintenance of insurance, if necessary, in accordance with the By-laws and this Declaration; the employment of attorneys and accountants to represent the Association when necessary; and such other needs as may arise.

Section 2. Computation of Assessment. It shall be the duty of the Board of Directors, at least thirty (30) days prior to the beginning of each calendar year and thirty (30) days prior to the meeting at which the operating budget shall be presented to the Members, to prepare an operating budget covering the estimated cost of operating the Association during the coming year. The amount of the General Assessment to be levied for each calendar year against each Lot under Section 9 below shall be computed as of the 1st day of January of each calendar year for the succeeding calendar year based on the record ownership of each Lot as of such date and each Lot's "Percentage Interest" (as herein defined). Each Lot's "Percentage Interest" shall be equal to one (1) divided by the total number of Lots on which residences have been constructed and sold by the Developer. The Board shall review the Plat in effect as of the 1st day of January of each calendar year and shall compute and adjust, if necessary, the Percentage Interest of each Lot pursuant to this Article. Lots on which residences are constructed and sold by Developer during any year shall be subject to a pro-rata assessment for the period after such Lot thereon is sold based on the then effective annual assessments for all Lots. The General Assessment for each Lot shall be determined multiplying the total operating budget for the Association by the Lot's Percentage Interest. The Board of Directors shall cause a copy of the budget and the amount of the General Assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting at which the budget will be presented to the Members. The budget and the assessment shall automatically become effective unless disapproved at the meeting by (i) a vote of Members representing at least a majority of the total Class A vote in the Association and (ii) the Class B Member, so long as the Class B membership exists.

Notwithstanding the foregoing, in the event the proposed budget is disapproved or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, such assessment shall have the affirmative vote or written consent of the Class B Member, so long as the Class B membership exists, and upon termination of the Class B membership, the Members representing at least a majority of the Class A vote in the Association. Special assessments shall be levied against each Lot based on the Lot's Percentage Interest in the same manner provided for General Assessments, except to the extent such Special Assessment is levied against just one or more, but not all, Lots under the following terms and conditions.

Notwithstanding the foregoing, the Association may levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and its Lot into compliance with the provisions of the Declaration, and amendments thereto, the Articles of Incorporation of the Association, the By-Laws and the Association rules, which Special

Assessment may be levied upon the majority vote of the Board of Directors after notice to the Member and an opportunity for a hearing.

In addition, the Association may levy an emergency Special Assessment to repair an emergency condition of any structural, utility or mechanical component in the Area of Common Responsibility which has made, or is imminent danger of making, any Lot, component of the Area of Common Responsibility or any area within the Property unsafe, uninhabitable, or uninsurable, provided the Association is first provided with an opinion affixed with a professional seal from a professional engineer or licensed architect stating said emergency condition. The emergency Special Assessment shall be made upon the vote of seventy percent (70%) of the members of the Association Board of Directors or a vote of a majority of the Unit owners present at a special called meeting. Any emergency Special Assessment made under this Section by the Association Board of Directors may be reduced or rescinded by a vote of sixty percent (60%) of the total Unit owners at a special meeting.

Section 4. Lien for Assessments. The General Assessments and Special Assessments and all other sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred as provided herein, shall be secured by a continuing lien on such Lot in favor of the Association, which lien is created hereby and shall not be diminished in any way by a transfer, subdivision and/or consolidation that occurs after the 1st day of January of each calendar year. Such lien shall be prior to all other liens and encumbrances on such Lot except:

A. all taxes, assessments and other liens which by law would be superior thereto, and

B. the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, to which first Mortgage the lien created herein shall be and hereby is subordinate and inferior in all respects.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period of time which a Lot is owned by the Association following foreclosure:

C. no right to vote shall be exercised on its behalf;

D. no assessment shall be assessed or levied on it by the Association; and

E. each Lot shall be charged, in addition to its usual assessment, its equal pro rata share (based on each Lot's Percentage Interest divided by the total Percentage Interest of all other Lots excluding the Lot owned by the Association) of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure.

Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and an

opportunity for a hearing, the Board of Directors may (i) temporarily suspend voting rights of and (ii) file a supplemental notice against the Lot of a Member who is in default in payment of any assessment until such assessment and all other amounts then due under this Declaration have been paid in full.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest, then to delinquent assessments, then to any unpaid installments of the General Assessments or Special Assessments which are not the subject matter of suit, in the order of their coming due, and then to any unpaid installments of the General Assessments or Special Assessments which re the subject matter of suit, in the order of their coming due.

Section 5. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget to take into account the number and nature of replaceable assets and the expected repair or replacement cost. The Board of Directors shall set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution shall be fixed by the Board of Directors and included within and distributed with the budget and assessment as provided in Section 2 of this Article.

Section 6. Date of Commencement of Assessments. Assessments shall commence against each of the Lots as determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing, each Owner who purchases a Lot from the Developer shall prepay to the Board of Directors an amount equal to five hundred dollars (\$500.00) (or if such amount has not been established based on an estimate determined by the Board of Directors in its sole discretion). This prepayment is non-refundable and shall automatically be transferred with the sale of a Lot. Developer shall have no obligation to pay assessments for any Lots it owns which are held for construction or on which construction is occurring; provided, however, Developer shall be liable for the assessments on Lots on which residences have been fully constructed and for which a certificate of occupancy has been issued by the governmental authorities, provided that assessments have commenced against other Lots owned by third parties. It shall be the duty of the Board of Directors of the Association to periodically fix the amount of the assessment against each Lot for such assessment period and the Board of Directors shall make reasonable efforts to fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at the time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be opened to inspection by any Owner upon reasonable notice to the Association. Written notice of the assessment shall thereupon be sent to the Owner of any Lot subject thereto.

Section 7. Exempt Property. Notwithstanding anything to the contrary herein, all property dedicated to and accepted by any governmental authority or public utility shall be exempt from payment of General Assessments and Special Assessments.

Section 8. Failure to Assess. The omission or failure of the Board of Directors to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as

for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 9. Initial Assessment. Each Owner who purchases a Lot from the Developer shall pay an initial assessment (the "Initial Assessment") equal to one-sixth of the General Assessment to be levied against such Lot for the next twelve (12) month period or if such amount has not been established based on an estimate determined by the Board of Directors in its sole discretion). The Initial Assessment is non-refundable.

ARTICLE V **ANNEXATION OF ADDITIONAL PROPERTY**

Section 1. Annexation With Approval of Membership. Subject to the consent of the owner thereof, additional real property may be annexed to the provisions of the Declaration and the jurisdiction of the Association. Such annexation shall require only the consent of the Class B Member, so long as the Class B membership exists, and upon termination of the Class B membership the affirmative vote of Members representing a majority of the Class A votes of the Association (other than those held by Developer) present at a meeting duly called for such purpose. Annexation shall be accomplished by filing of record in the Office of the Clerk of Jefferson County, Kentucky, a Subsequent Amendment with respect to the properties being annexed. Any such Subsequent Amendment shall be signed by the a) Class B member so long as the Class B membership exists, or b) the president and secretary of the Association upon termination of the Class B membership, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 1 and to ascertain the presence of a quorum at such meeting.

Section 2. Amendment This Article V shall not be amended without the prior written consent of Developer so long as the Developer owns or has an option to purchase any portion of the Property.

ARTICLE VI **USE RESTRICTIONS**

Section 1. Primary Use Restrictions. Except as may be permitted by Article VI, Section 11 of this Declaration, no Lot shall be used except for single-family residential purposes or Open Space. No structure shall be erected or placed or altered or permitted to remain on any Lot except one single-family dwelling not to exceed two and one-half stories in height and containing a garage for the sole use of the Owner and occupants of the Residence, except that one (1) accessory dwelling unit may be placed on each Lot containing a single-family dwelling, so long as the Owner of said Lot receives the necessary land use approvals from the applicable planning unit/zoning jurisdiction with authority over the property; should an Owner of a Lot receive the necessary approval to locate an accessory dwelling unit on the subject Lot, said Owner shall thereafter ensure compliance with all zoning regulations applicable to the Lot, including the accessory dwelling unit thereon placed. No freestanding garage is permitted on the Lot. All garage doors shall be kept closed except for the ingress and egress thereof. No trade or business

of any kind shall be conducted on any Lot without the prior written consent of the Developer, except a home-based business or home occupation with one employee, who is the Lot Owner.

Section 2. Developer Approval of Residence. No Residence shall be constructed on any Lot until construction plans and specifications, including the exterior finish of the Residence, including an accessory dwelling unit proposed for the Lot, if any, and a plan showing said Resident's location on its respective Lot, have been approved in writing by the Developer as to the quality of workmanship and materials, harmony of external design with existing residences in the Property, and also as the Residence's location with respect to topography and finished grade elevation. No fence, hedge, row of trees, shrubs or wall shall be constructed on any Lot nearer to the public right-of-way than the closest frontal façade elevation of the Residence; plan specifications for any fence or wall are to be submitted to the Developer or the Association for approval prior to the commencement of construction of the same. No chain-link fence will be permitted in the NICOLAS FARMS SUBDIVISION unless said chain-link fence is coated in black and approved by the Developer or the Association prior to being erected on any Lot. No fence of any kind over six feet (6') in height is permitted to be erected on any Lot. No basketball goal shall be erected on any Lot without first being approved by the Developer or the Association. The Developer or the Association shall provide approval prior to the construction of any addition or expansion to any Residence.

Section 3. Minimum Area of Single Level Dwelling. No single level dwelling shall have a minimum floor area of less than 950 square feet, unless said dwelling is the accessory dwelling unit.

Section 4. Location of Building on Lot. No building shall be located on any Lot nearer to the front or nearer to the side street line than the minimum setback line shown for the particular Lot, respectively, as shown on the Plat. No building shall be located on any lot nearer than fifteen (15) feet to a rear lot line without prior written consent of Developer.

Section 5. Appurtenances, Improvements and other Permanent Structures. No outbuilding or storage facilities of any kind, including, but not limited to, portable storage containers (including PODS or similar mobile storage containers shall be permitted on any Lot longer than a consecutive seven (7) day period and only in connection with the Lot residents' move-in or move-out) or other similar items, shall be placed on any portion of a Lot at any time, and no appurtenance, improvement or other permanent structure shall be constructed or placed on any Lot without the prior approval of the Developer. For purposes of this Declaration, accessory dwelling units do not qualify as an appurtenance or outbuilding regulated by this Section 5, as may be amended from time to time. Location and use of solar panels are not permitted on any outbuilding or storage facility including sheds located on any Lot. No exterior alterations of any existing building may be permitted without the prior approval of the Developer. The following requirements are applicable to such appurtenances, improvements and other permanent structures:

A. Sheds. A shed may be built or placed on a lot provided the Developer or Association approves plans and specifications submitted by the Owner for approval prior to construction of the shed. Sheds shall meet the following specifications and standards:

1. Shed Dimensions – The shed dimensions shall be no larger than 10' x 12'.
2. Construction Materials – The shed shall be constructed of wood, vinyl, or a resin composite. Metal sheds are NOT acceptable construction.
3. Color Scheme – The shed must match the neighborhood color scheme. White is acceptable.
4. Floor Construction – Sheds must have a floor constructed of one or more of the following materials: wood, resin composite, patio block, or concrete.
5. Location – On a non-fenced lot, the shed must be located behind the rear wall of the Residence. On a fenced lot, the shed must be located behind the rear wall of the house and must be placed with ample space (approximately 2') between shed and fence to allow owner to cut/mow grass between shed and fence.
6. Roof – Wood and vinyl sheds must either utilize shingles that match the color of the shingles on the roof of the house or use black shingles. Resin sheds must have a matching roof. No attachment of solar panels permitted on shed roof (or anywhere on the shed structure).

B. Temporary Structures. No temporary structure shall be permitted on any Lot with the exception of temporary tool sheds and/or field offices used by individual builders during the course of construction on such Lot, or by the Developer. Any such sheds or offices shall be removed upon substantial completion of construction on the Lot in question. No such sheds and/or field offices, or house trailer, basement, tent or garage or out building of any kind shall be used on any Lot at any time as a residence either temporarily or permanently.

C. Basketball Goals. As required by Article VI, Section 2 of this Declaration, Basketball Goals shall not be erected on any Lot unless first approved by the Developer or the Association. Developer or Association approval of any Basketball Goal proposed for any Lot may include whether the type and design of the Basketball Goal is appropriate and the location on the subject Lot where the Basketball Goal is to be affixed to the Property. All Basketball Goals must be permanently affixed to the Property. Unless expressly authorized by the Developer or the Association, Basketball Goals shall not be located in an area on any Lot that is closer to the public right-of-way than the front façade wall of the single-family residential dwelling.

D. Swimming Pools. Swimming Pools are permitted on Lots in conformance with this Declaration. A swimming pool is any structure intended for recreational bathing and exercise that contains water over 24" (inches). This includes in-ground, above-ground, and on-ground swimming pools, hot tubs and spas. Specifications for swimming pools are as follows:

1. Location – All pools must be located behind the single-family residence erected on any Lot. Placement of swimming pools shall not alter natural drainage or drainage easements.
2. Maintenance –
 - a. All pools must be kept in working order and properly maintained.
 - b. All pools found to be in neglectful condition: i.e. pools not in use containing stagnant water or without water, pools falling into disrepair, or pools not in working condition will be the Owner's responsibility to correct within 30 days of notice or the pool will be removed at the Owner's expense.
3. Regulations – All Owners must follow both the Louisville Metro Code of Ordinances and personal insurance guidelines concerning pools (fences, no trespassing signs, etc.)
4. Liability – All liability concerning swimming pools resides and remains with the Owner of the Lot whereon the swimming pool is located.

E. Signs. No signs of any kind shall be displayed on any Lot, with the exception of professionally lettered For Sale or Rent signs (which shall not be greater in size than nine (9) square feet, and signs deemed acceptable or necessary by Developer or the Association, including signs of Developer located on Lots advertising the sale of Lots by Developer. Developer, at its discretion, may install entry signs, traffic control signs or other signs necessary for the identification and benefit of the Nicolas Farms Subdivision, subject to applicable zoning and building regulations. No window signs, displays or advertising shall be maintained or permitted in any townhome.

F. Satellite Dishes. Only small satellite dishes shall be constructed, installed or used in the Nicolas Farms Subdivision, and must be installed so they are not visible from the front of the Residence and the installation and placement of which shall be approved by the Developer or the Association as the case may be.

G. Solar Panels. Solar Panels, or any similar component of a photovoltaic system that is made out of a series of photovoltaic cells arranged to generate electricity using sunlight, are permitted to be affixed, attached, and/or installed to/on only the rear roof of the primary or accessory residential dwelling of a Lot, but only after the Developer or the Association have provided approval of said solar panel installation. Plan specifications for any affixture, attachment or installation of solar panels to/on a residential structure must be submitted to the Developer or the Association for approval prior to the commencement of affixing, attaching or installing the same.

G. Clotheslines. No outside clothesline, temporary or permanent, shall be erected or placed on any Lot.

H. Mailboxes. If permitted, all individual mailboxes (1 per Lot) shall be of uniform architectural design as determined by the Developer. No separate paperholders are permitted without the approval of Developer.

I. Tanks. No above-ground or in-ground tanks of any type, including septic tanks, shall be permitted to remain on any Lot.

J. Driveways and Sidewalks. Each driveway, patio, porch and walk shall be finished with either smoothed concrete or exposed aggregate with the apron between property line and the roadway meeting all the requirements of applicable government land use regulations. Driveways, sidewalks and steps shall be completely installed prior to or upon completion of construction of a single-family residence on such Lot.

Section 6. Obligation of Lot Owner to Maintain Lawn. Lot Owners shall maintain a lawn, which shall be regularly mowed and free of weeds. Any Lot Owner who is constructing a Residence shall sod the front yard of the newly-constructed Residence as soon as progress of the construction permits. No more than one (1) yard ornament plastic, concrete or other materials may be placed in any front yard unless written approval is obtained by the Developer or the Association.

Section 7. Disposal of Trash. No Lot shall be used as a dumping ground for rubbish, trash or garbage, and any and all such waste shall be kept in suitable sanitary containers. No vacant Lot shall accrue trash, rubbish or debris at any time. Grass and/or shrubbery clippings, dead shrubs, leaves or any other debris shall be disposed of in appropriate waste receptacles. Dumping of said materials on any Lot is strictly prohibited. All garbage and trash generated from any Lot must be placed in the proper receptacles as designated for refuse and/or recycling collection and shall not remain outside in any area of the Lot between the front of the house and the roadway for more than twenty-four (24) hours. Should the Lot Owner fail to comply therewith, Developer may take such action on behalf, and at the expense of, such Lot Owner.

Section 8. Obligation to Install Sidewalk on Lot. Each Owner shall cause a sidewalk to be constructed on its Lot no later than the date of completion of a residence on its Lot; provided, however, that each Owner shall cause a sidewalk to be constructed on its lot within 180 days after written notice from the Developer or the Homeowners' Association, regardless of whether an Owner has completed construction of a residence on its lot. Sidewalk construction shall be in accordance with uniform design standards to be provided by Developer and shall be in the location as designated by Developer. Upon an Owner's failure to comply with the provisions of this Section 8, Developer may take such action as shall be necessary to cause compliance therewith, including, but not limited to, having such sidewalk constructed itself, or in the event that a constructed sidewalk does not comply, Developer may cause same to be removed and reconstructed in accordance with all regulations. In such event, Owner shall, on demand, immediately reimburse Developer or Association or other performing party for all costs and expenses, including attorney fees, together with allowable statutory interest. Developer shall have a lien on the lot and the improvements thereon to secure the repayment of any such amounts. Such a lien may be enforced as set forth herein this Declaration.

Section 9. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets may be kept, provided that they

are not kept, bred or maintained for any commercial purpose. In no instance shall any lot owner have more than three pets residing on a lot in Nicolas Farms.

Section 10. Vehicles. No trailer, commercial vehicle, recreational vehicle, camper trailer, camping vehicle, motor/mobile home, bus, jet skis, or boat shall be parked or kept on any Lot for a period of time greater than twenty-four (24) consecutive hours, unless housed in a garage; no inoperable automobile shall be parked on any Lot or street, unless housed in a garage. Owners of Lots and any residents of an Owner's Lot may keep one (1) work vehicle total per Lot parked in the driveway; parking of said work vehicle must also comply with applicable local zoning regulations. Any and all routine automobile maintenance shall be conducted only within a garage. No such routine maintenance shall be permitted on residential streets or on driveways of a Lot. Vehicles parked in violation of any such regulations may be towed away at the Lot Owner's sole risk and expense. No motorized off-road vehicles, including, but not limited to, trail bikes, mini-bikes, go-carts, golf carts, three-wheelers, four-wheelers, ATV's, scooters, mopeds, and snowmobiles shall be used on the street or any Lot within the Property. Notwithstanding, vehicles reasonable necessary during construction or alterations of any buildings or improvements upon the Lot are permitted.

Section 11. Subdivision/One Primary Residence Per Lot. No additional subdivision of any Lot shall be made. No more than one (1) primary single-family residence shall be built on any Lot, with the exception than an Owner of a Lot may construct and/or locate an accessory dwelling unit, as defined by and wholly in compliance with the provisions pertinent to accessory dwelling units set forth within the Louisville Metro Land Development Code, as may be amended from time to time. An Owner of a Lot may also construct pergolas or similar structures on the Owner's Lot, any of which must have been approved by the Developer or Association prior to construction. Any such structures which are constructed without prior Developer or Association approval shall be subject to immediate removal upon demand of the Developer or Association, at the sole discretion of either Developer or Association.

Section 12. Zone Changes. No zone changes for this Property shall be applied for without the prior approval of Developer or Association, whichever applies.

Section 13. Noxious or Offensive Activity. No noxious or offensive activity or any commercial or industrial trade or business shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. No violation of any applicable zoning restriction or violation of any federal, state or county regulation or law affecting the use or occupancy of any Lot will be allowed in Nicolas Farms Subdivision.

Section 14. Duty to Install Silt Fencing on Lot. Silt control measures, and other protective measures required by Metropolitan Sewer District, shall be required by the Developer at all times during the construction process. Builders shall also be required to provide and maintain silt control measures at all times.

Section 15. Tree Canopy Protection Areas. The Tree Canopy Protection Areas (TCPAs) as designated on the approved Tree Preservation Plan and/or Landscape Plan approved by Louisville Metro's Department of Planning and Design Services for the Nicolas Farms Subdivision (23-LANDSCAPE-0004, as may be amended) shall be permanently preserved in a

natural state. TCPAs are those areas where tree preservation has been provided, as set forth on the approved Tree Preservation Plan and/or approved Landscape Plan, to meet the applicable tree canopy requirements, as set forth in Louisville Metro's Land Development Code, as it may be amended from time to time. No clearing, grading, or other land disturbing activity shall occur in the TCPAs except supplemental landscape planting, pruning to improve the general health of trees, removing dead or declining trees that pose a public health and safety threat, and clearing of under story brush to remove a public health and safety threat.

Any tree or shrub removed in violation of this Deed of Restriction shall be replaced by the person who removed the tree or shrub within thirty (30) days of removal of the affected tree(s), unless the removal of the tree is during a time of year when replanting the replacement tree(s) would be detrimental to the health of the replacement tree(s), which, in those cases it is permissible to plant said replacement tree(s) during the very next planting season. Trees planted to replace a tree that is improperly removed shall equal the diameter of the removed tree (that is, one tree of the same diameter or multiple trees, each with a minimum caliper of one and three-quarter inches, together equaling the same diameter of the removed tree planted at intervals acceptable to the healthy growth of the particular species to be planted) and shrubs and under story vegetation shall be replaced using native species. Underbrush and invasive plant species are permitted to be removed from the TCPAs.

These Tree Canopy Protection Area restrictions may be amended or released only with the prior approval of the Louisville Metro Planning Commission.

ARTICLE VII **GENERAL PROVISIONS**

Section 1. Enforcement.

A. Enforcement of these covenants and restrictions shall be by proceeding at law or in equity, brought by any Owner of any Lot subject to this Declaration, by the Developer, or by the Association against any party attempting to violate any covenant or restriction ("Violating Party"), either to restrain violations, to direct restoration and/or to recover damages, and against the land to enforce any lien created by these by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by any Owner, the Developer or the Association to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions. In any lawsuit filed to enforce this Declaration by injunction or restraint, 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, conditions or restrictions cannot be adequately remedied by action or by recovery of damages. These covenants and restrictions and any rules and regulations of the Association shall be binding upon the Owner of any Lot and such Owner's family, tenants, servants, employees, agents, visitors, guests, invitees or licenses.

B. In addition to all other remedies of the Nicolas Farms Homeowners Association, the Association shall have the right to assess a maximum fine of \$100.00 per day

per violation against any Owner who violates any provision of this Declaration or the Articles, Bylaws or Rules of same after such Owner has been given thirty (30) calendar days' notice of the violation and an opportunity to cure said violation within said thirty (30) calendar days. Upon receiving notice of the purported violation of any covenant or restriction and before any fine has been levied against the Violating Party, a Violating Party may request an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the governing authority or as may be set forth in the Bylaws.

Section 2. Severability. Invalidation of any one of these covenants by judgment or court shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 3. Restrictions Run with Land. Unless canceled, altered or amended under the provisions of this section, these covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be automatically extended for successive periods of one (1) year unless an instrument signed by the Class B Member, so long as the Class B membership exists, and upon termination of the Class B membership, the Owners of 70% of the Lots subject to the Declaration has been recorded, agreeing to change said covenants and restrictions in whole or in part. These covenants and restrictions may be canceled, altered or amended at any time by written instrument signed by the Class B Member, so long as the Class B membership exists, and upon termination of the Class B membership, the Owners of 70% of the Lots subject to the Declaration and recorded in the Jefferson County Clerk's Office. No amendment may (a) remove, revoke or modify any right or privilege of Developer or (b) remove, revoke or modify the annual maintenance fee provided for herein without the written consent of the Developer so long as Developer owns any portion of the Property.

Section 4. Amendment. Notwithstanding the foregoing, the Developer may unilaterally amend this Declaration so long as it still owns any portion of the Property; thereafter, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Class A members representing 75% of the total votes of the Association, including 75% of the votes held by members other than the Developer. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the public records of Jefferson County, Kentucky.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to so consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

Section 5. Easements for Utilities, Etc. All lots shall be subject to the easements for electrical, drainage, gas, water, cable and telephone utilities as shown on the Plat. All such easements shall include the right of ingress and egress across the subdivision lots and the right to

cut down or trim any trees within the easements that may interfere with the installation, operation or maintenance of the utility lines.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on any identified Common Area on the Plat, except as may be approved by the Association's Board of Directors or as provided by Developer. Should any entity furnishing a service covered within general easement herein provided request a specific easement by separate recordable document, the Developer or the Board of Directors shall have the right to grant such easement on said Common Areas without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Common Areas.

Section 6. Owner's Easements of Enjoyment and Easement Rights to Access and Use Common Areas. Every owner shall have a right and easement of enjoyment in and to any Common Area which shall be appurtenant to and shall pass with the title to every lot. All Common Areas are hereby made subject to the Association. The Developer retains an easement across or onto any lot for the purpose of maintaining Common Areas which, for the sole purpose of maintenance and the right to dedicate or transfer all or any part of a Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association, provided such dedication or transfer is approved and accepted by the public agency, authority or utility, where such acceptance or approval is necessary. Developer may dedicate utility or service easements at its sole discretion so long as there is in existence the Class B membership as provided above.

The Developer has included within its subdivision Plat for Nicolas Farms Subdivision several Common Area Open Space easements, including the pond area located on Lot # 51 (as may be amended, the "Pond") for the enhancement of Property and for the use of all Lot Owners. The Open Space located within the Common Area, including the Pond, are and shall remain private property exclusively for recreational or access purposes. The Open Space, including the Pond area, shall be used exclusively by Owners and Owners' guests accompanied by residents of an Owner's Lot. Only Owners whose dues and assessments are fully current and their guests are entitled to use the Pond owned by the Nicolas Farms Homeowners' Association. The Association (as hereinafter defined) shall maintain the Common Area and Open Space located therein, including the Pond, and any other section of the Property that Developer may by future deed restriction or amendment hereof designate and provide. The Pond area may be used only in accordance with the rules promulgated by the Association. The Pond shall be considered an amenity and can be used for fishing in accordance with the aforesaid rules. The Pond area shall be used at the risk of the user and the Developer and the Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the Pond area. No swimming in the Pond is permitted. No boats or other water craft shall be permitted in the Pond area.

Section 7. Amendments to Articles and By-Laws. Nothing in this Declaration shall limit the right of the Association to amend from time to time its Articles and By-Laws.

Section 8. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property or any questions of interpretation or application of

the provisions of this Declaration or the By-Laws, the determination thereof by the Board of Directors of the Association shall be final and binding on each and all of such Owners.

Section 9. Governing Law. The substantive laws of the Commonwealth of Kentucky (without regard to provisions governing conflicts of laws) shall govern the construction of this Declaration and the rights and remedies of the Owners hereunder.

Section 10. Waiver of Jury Trial. All Owners voluntarily and intentionally waive any right that they may have to a trial by jury in respect of any litigation arising from or connected with this Declaration, or any agreement made or contemplated to be made in connection with this Declaration, or any course of dealing, course of conduct, statement or actions of any party in connection with this Declaration.

Section 11. Notice of Violation. In the event of an asserted violation of this Declaration, Developer or the Association shall be permitted to file a notice thereof with the Office of the Clerk of Jefferson County. After such asserted violation is remedied to Developer's or the Association's (as applicable) satisfaction or as ordered by the Court of competent jurisdiction, a release of such notice shall be filed by Developer or the Association (as applicable) with the Office of the Clerk of Jefferson County.

Section 12. Mediation. Before any Lot Owner may institute legal proceedings against the Association relating to a dispute arising from the operation and administration of the Association, the involved Lot Owner(s) and the Association shall engage in mediation in Jefferson County, Kentucky, in an effort to resolve the dispute.

In addition, before any Lot Owner may institute legal proceedings against another Lot Owner to enforce any covenant, restriction or other provision of the Declaration, such Lot Owner shall refer the dispute to the Association for its consideration and availing itself of the remedies available to it hereunder. In the event the Association determines not to take action on such dispute, then before any such Lot Owner may institute legal proceedings against the other involved Lot Owner relating thereto, the involved Lot Owners and the Association shall engage in mediation in Jefferson County, Kentucky, in an effort to resolve the dispute.

ARTICLE VIII **DEVELOPER'S RIGHTS**

Any or all of the special rights ("Developer Rights") and obligations of the Developer may be transferred to another Person, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the public records of Jefferson County, Kentucky, provided, however, if Developer ceases to exist as a legal entity without formally assigning its Developer Rights, those Developer Rights shall be deemed assigned to the Association.

Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, and any amendments thereto, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Developer and any builder or developer approved by Developer to maintain and carry on upon

such portion of the Property as Developer may deem necessary, such facilities and activities as, in the sole opinion of Developer, may be reasonably required convenient or incidental to Developer's, and such builder's or developer's development, construction, and sales activities related to the Property and any builder or developer approved by Developer. Developer and any such builder or developer shall have an easement for access to such facilities.

This reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to: (a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, in or on the Property; (b) the right to tie into any portion of the Property with driveways, parking areas and walkways; (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable, natural gas, water, in-ground sprinklers, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; (d) the right to carry on sales and promotion activities on the Property; and (e) the right to construct and operate business offices, signs, construction trailers, model homes, and sales offices on the Property, so long as such activities are permitted by applicable zoning regulations. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned or leased by the Developer or any such builder or developer, as model homes and sales offices, respectively. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Property, reasonable steps shall be taken to protect such Property, and damage shall be repaired by the Person causing the damage at its sole expense.

No such rights, privileges, and easements granted or reserved herein shall be merged into the title of the Property, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released except by delivery of a quit-claim deed from Developer releasing such right, privilege, or easement by express reference thereto.

Remainder of page intentionally left blank.

Signature page follows.

THIS INSTRUMENT PREPARED BY:

A handwritten signature in black ink, appearing to read "Jon Baker", written over a horizontal line.

Jon Baker

Wyatt, Tarrant & Combs LLP

400 W. Market Street, Suite 2000

Louisville, KY 40202

(502)562-7316

EXHIBIT A

Legal Description of the Nicolas Farms Subdivision

Being Lots 1 – 53 as shown on the Nicolas Farms Subdivision Record Plat prepared by Timothy L. Gehlhausen, PLS # 3005 with Mindel Scott dated June 27, 2023 and of record in Plat Book 027, Page 0646, in the Office of the Clerk of Jefferson County, Kentucky, and approved by the Louisville Metro Planning Commission under Docket No. 23-RP-0009, as copied and set forth on Exhibit A-1 below.

Being a 12.26-acre portion of the same property acquired by Leisure Development, LLC, a Kentucky limited liability company, by General Warranty Deed dated August 20, 2021 and recorded on August 27, 2021 in Deed Book 12120, Page 395, in the Office of the County Clerk of Jefferson County, Kentucky. That 0.324-acre portion of the property Leisure Development, LLC acquired by General Warranty Deed dated August 20, 2021 and recorded on August 27, 2021 in Deed Book 12120, Page 395, in the Office of the County Clerk of Jefferson County, Kentucky is expressly excluded from being incorporated into the Property subject of this Declaration, as Leisure Development, LLC conveyed said 0.324-acre portion of the same property to Tammy Lynn Brewer, unmarried, by General Warranty Deed dated November 30, 2021 and recorded on February 9, 2022 in Deed Book 12271, Page 561, in the Office of the County Clerk of Jefferson County, Kentucky, being “Lot 1” consisting of 0.324 acres as shown on Approved Minor Plat attached to the aforesaid Deed, in the Office of the Clerk aforesaid.

EXHIBIT A-1

Major Subdivision Plat of the Nicolas Farms Subdivision

[To be attached]

