

**POND CREEK CROSSING SUBDIVISION NORTH WEST ADDITION  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF OWNERSHIP**

This Declaration, made this 15<sup>th</sup> day of September, 2003, by Ponde Creek, LLC, a Kentucky limited liability company (hereinafter sometimes called the "Declarant").

WITNESSETH

WHEREAS, the Declarant is the owner of the real property described in Article II and desires to create a community consisting of single family detached homes and to create community facilities for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and community facilities; and to this end, desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, the Declarant 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 common areas and community facilities, administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed the Pond Creek Crossing Homeowner's Association, Inc., a non-profit Kentucky corporation, for the purpose of carrying out the powers and duties aforesaid; and

NOW, THEREFORE, the Declarant hereby declares that all of the properties described in Article II shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Section 1 - Definitions

The following words when used in this Declaration shall have the following meanings:

(A) "Association" shall mean and refer to the Pond Creek Crossing Homeowner's Association, Inc., and its successors and assigns.

(B) "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(C) "Properties" shall mean and refer to that certain real property hereinafter described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

(D) "Lot" shall mean and refer to any plat of land shown upon and recorded subdivision plat or map of the property or recorded subdivision thereof with the exception of the common areas or community facilities.

(E) "Common Areas" or "Community Facilities" shall mean and refer to all real property owned by the Association for the benefit, use and enjoyment of its members and shall be designated as "H.O.A." on the subdivision plat and shall also refer to any real or personal property or interest therein designated for upkeep, maintenance, repair and payment of utilities by the Association or Developer.

(F) "Living Unit" shall mean and refer to a building situated upon an individual lot designated and intended for use and occupancy as a residence by a single family.

(G) "Member" shall mean and refer to all those owners who are Members of the Association, as provided in Article IV hereof.

(H) "Developer" shall mean and refer to the Declarant and its successors and assigns if such successors or assigns should acquire more than one (1) developed lot from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.

(I) "Declarant" shall mean and refer to Ponde Creek, LLC, a Kentucky limited liability company.

ARTICLE II

## Section 1 - Property Subject to Declaration

The Real Property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in the County of Campbell, Commonwealth of Kentucky, and is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

## Section 2 - Additions

For a period of twenty (20) years from and after the date hereof, additional property may be annexed to the above described Property by the Declarant without the assent of the Members of the Association, if any, subject, however, to the prior approval, if applicable, of the Department of Housing and Urban Development (HUD) and the Veterans Administration (VA) if Class-B Membership has not terminated pursuant to Article IV, Section I. Thereafter, such additional property may be annexed only with the consent of fifty-one percent (51%) of each class of members of the Association. Any additional property so annexed, however, must be adjacent to or in the immediate vicinity of the above described Property. The scheme of the within covenants and restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real Property described in Exhibit "A" as hereinafter provided.

Any annexation made pursuant to this Article, or otherwise shall be made by recording a supplement to this Declaration of Covenants and Restrictions in the real estate records of the Clerk of the County of Campbell, Kentucky which supplementary declaration shall extend such complementary additions and modifications to the covenants and restrictions set forth in the within Declaration as may be necessary to reflect the different character and use, if any, of such annexed property.

ARTICLE III

## Section 1 - Member's Right of Enjoyment

Every member shall have a right and easement of enjoyment in and to the Common Areas and Community Facilities and such easement shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(A) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas, and Community Facilities and in aid thereof to mortgage said property. The Association shall not, in respect to Common Areas or Community Facilities, mortgage said property except by resolution approved by sixty-six and two-thirds percent (66 2/3%) of the total number of votes held by Class A Members and sixty-six and two thirds percent (66 2/3%) of the total number of votes held by Class B Members. Any such mortgage shall also require

the prior approval of HUD and VA, if applicable.

(B) The right of the Association to levy reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas by the Members of the Association and their guest.

(C) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas property against mortgage default and/or foreclosure.

(D) The right of the Association to limit the number of guests of Members.

(E) The right of the Association to suspend the voting rights and the rights to use the Common Areas, and Community Facilities for any period during which any assessment remains unpaid and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(F) The right of the Association to dedicate or transfer all or any part of the Common Areas or Community Facilities to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration, provided, however, that no such dedication or transfer shall be effective except upon resolution approved by sixty-six and two-thirds percent (66 2/3%) of the total number of votes held by Class B Members or, upon lapse of the Class B Membership in accordance with Article IV, Section (B), by 66 2/3% of the total number of votes held by Class A Members.

#### Section 2 - Delegation of Use

Any Owner may delegate, in accordance with the applicable By-Laws of the Association, his right of enjoyment in and use of the Common Areas, and Community Facilities to the members of his family, guests and his tenants or contract purchasers who reside on the property, provided that in the instance of a delegation to tenants or contract purchasers who reside in the Property, the Owner's right of enjoyment in any use of the Common Areas, and Community Facilities and that of his family and guests shall be suspended unless the Owner shall likewise reside on the property.

### ARTICLE IV

#### Section 1 - Voting Members

The Association shall have two (2) classes of voting Members.

(A) With the exception of the Declarant, until Class B membership has lapsed and becomes a nullity, every person, group of person or entity who is a record Owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Class A Member of the Association.

(B) Class B Members shall be the Declarant, which shall be entitled to ten (10)

votes for each Lot in which any Developer holds the interest otherwise required for Class A membership multiplied by the number of living units located or proposed by the Declarant to be located on such Lot, provided, however, that each Class B membership shall lapse and become a nullity on the earlier of (i) fifteen (15) years from and after the date hereof or (ii) upon transfer by Deed of 75% of the lots to owners who are not a Developer.

At such times as Class B membership shall lapse and become a nullity, any Developer which, for any Lot, holds an interest therein otherwise required for Class A membership, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member. Class A Members shall be entitled to One (1) vote for each Lot in which they hold the interest required for the membership. If more than one (1) person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for such Lot shall be exercised as they among themselves determine, but if they are unable to agree then according to the determination of the person first named on the Deed. In no event shall more than one (1) vote be cast with respect to any Lot.

#### Section 2 - Board of Directors

The initial Board of Directors shall consist of the Members named in the Articles of Incorporation. The initial Board of Directors shall serve until the first annual meeting of the Board of Directors.

Prior to the lapse of the Class B membership, in accordance with Article IV, Section 1(B), the Board of Directors shall be elected solely by the vote of Class B Members. None of the Members of the Board of Directors need be members of the Homeowner's Association.

Following the lapse of the Class B Membership, the Board of Directors shall be elected by the Class A Members and all of the members of the Board of Directors must be Class A Members. The Members of the Board of Directors shall be elected in accordance with the terms of the By-Laws of the Homeowner's Association.

### ARTICLE V

#### Section 1 - Covenant for Assessments

The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons or entity who becomes an Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments; and (2) Special Assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments, together with interest thereon as hereafter provided and costs of collection thereof (including court costs and reasonable attorneys' fees) as hereinafter

provided shall be charged on the land and shall be a continuing lien upon the Property and Lot against which such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person, group of persons or entity who was the Owner of such Property and Lot at the time when the assessment fell due.

#### Section 2 - Annual Assessments, Purpose

The Annual Assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Property and preserving the aesthetic and scenic qualities of the development.

To carry out these purposes, an annual general assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the Common Areas and Community Facilities, including, but not limited to, the payment of taxes and insurance and for repairs, replacements and additions and for the cost of labor, equipment and materials, management and supervision. The Association shall maintain liability insurance with respect to the Common Areas and Community Facilities for the benefit of Association Members in such sums as the Association shall determine but not less than One Million and 00/100 Dollars (\$1,000,000.00) for personal and bodily injury and property damage.

#### Section 3 - Annual Assessments, Initial Amount

The initial annual general assessment for each Class A membership, for general purposes provided in Section 2 of this Article V, shall not exceed \$400.00 payable on a quarterly basis in the sum of \$100.00 per quarter; provided, however, that no such assessment shall be levied until such time as the Declarant notifies the Association in writing that the annual general assessment shall begin. The Board of Directors may increase the annual general assessment, from time to time, based upon the required budgetary needs of the Association. The assessment shall be fixed at a uniform rate based upon Living Units.

#### Section 4 - Special Assessments

In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year a Special Assessment, applicable to that year only, for the purposes of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement located upon the Common Areas which cost has not otherwise been provided for in full as part of the annual general assessment or annual maintenance assessment, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of fifty-one percent (51%) of the total number of votes held by Class B Members of the Association or, upon lapse of the Class B Membership in accordance with Article IV, Section 1(b), by 51% of the total number of votes held by

Class A members. Any Special Assessment levied by the Association pursuant to the provision of this Section shall be fixed by the association pursuant to the provision of this Section and shall be fixed at a uniform rate based upon the number of Living Units. All monies received by the Association as a Special Assessment shall be held in trust by the Association for the benefit of the Members to be used solely for the purpose of the Special Assessments and any income derived therefrom shall be held as a separate fund and shall not be commingled with other assets coming under the control of the Association. The assessment may be billed in advance on a monthly, quarterly or annual basis.

#### Section 5 - Commencement of Assessments

The Annual Assessments, once begun, shall commence sixty (60) days following the transfer of the first Living Unit. The Board of Directors may, from time to time, determine the manner and schedule of payments.

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 open to inspection by any Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owner of any Lot subject thereto. Annual Assessments subsequent to the first Annual Assessment shall become a lien on January 1 of each year; and Special Assessments shall become a lien at the time designated by the Board of Directors. No notice of lien other than this Declaration need be recorded to establish the validity of any such lien, and this Declaration shall stand as notice thereof.

#### Section 6 - Assessment of Developer

Notwithstanding any other provisions of this Declaration to the contrary, for each completed and finished Living Unit owned by Developer, the Developer shall pay twenty-five percent (25%) of all assessments otherwise chargeable to such Living Unit. Developer shall not be obligated for any other assessment or charge made by the Homeowner's Association.

#### Section 7 - Assessment Certificate

The Association shall, upon demand, at any reasonable time, furnish the 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., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Twenty Five and 00/100 Dollars (\$25.00) may be levied in advance by the Association for each certificate so delivered.

#### Section 8 - Nonpayment of Assessment

Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Property which shall bind such Lot in the hands of the then Owner, his heir, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each assessment. No Owner shall waive or otherwise escape liability for the assessments herein provided for no use of the Common Area or Community Facilities or abandonment of his Lot or Living Unit.

In addition to the twelve percent (12%) per annum interest provided above, the Board of Directors, in its discretion, may establish a reasonable late charge to be paid in the event of any assessment that is not paid within thirty (30) days after due date, provided that such late charge shall not exceed a sum equal to ten percent (10%) of the amount of the assessment which is delinquent by thirty (30) days.

#### Section 9 - Subordination of Lien to Mortgages

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, any tax lien foreclosure, land contract cancellation or foreclosure, or any proceeding lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer.

### ARTICLE VI

#### Section 1 - Finance and Maintenance Committee

The Board of Directors shall appoint a Finance and Maintenance Committee composed of membership as set forth in the By-Laws of the Association. This committee shall prepare the annual budget of the Association for submission to the Board of Directors, shall determine the need, repairs and monetary requirements subject to the Annual Assessment for the following year and make recommendations to the Board of Directors as to the type of work to be performed by the Association for the following year



consistent with the purpose of the Annual Assessment, and further shall make recommendations to the Board of Directors to the amount of the Annual Assessment to be levied by the Board of Directors. The finance committee shall further have such additional duties as may be assigned to it from time to time by the Board of Directors.

ARTICLE VII

Section I - Prohibited Uses and Nuisances - All Living Units and Lots

Except for activities of the Developer during original construction, the following provisions shall apply to all Living Units and Lots:

A. No noxious or offensive trade or activity shall be carried on any Lot or within any dwelling situated upon the Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the other Owners of the Property.

B. The maintenance, keeping, boarding and/or raising of animals, livestock, or poultry of any kind, regardless of number shall be and is hereby prohibited on any Lot or within any dwelling situate upon the Property, except that this shall not prohibit the keeping of dogs, cats, and/or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes. Dogs and cats must be kept within the confines of the Owner's Living unit or Lot, except when being held on hand leash by person attending animal. Owners and/or harborers of dogs and cats shall be liable for any damage caused by such animals. The Association acting through its Board of Directors may suspend for reasonable length of time the voting rights and the rights to use the common Areas and Community Facilities of any person who violates this subparagraph (B).

C. No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

D. Trash and garbage containers shall not be permitted to remain outside any Living Unit.

E. In order to facilitate the free movement of passing vehicles, no automobiles belonging to the resident shall be parked on the paved portion of any private joint driveway or private street, except during bonafide temporary emergencies.

F. No trees, parts of trees or shrubbery shall be removed from any Common Area without the written approval of the Association acting through its Board of Directors or duly appointed committee.

G. No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change,

obstruct or retard direction of any drainage channels.

H. No freestanding antenna, receiver or satellite dish shall be erected or maintained on any lot. All antennas or receivers shall be attached to the principal building on the lot and shall have a maximum height of ten feet above the roofline of said building. Satellite dishes attached to the principal building shall not exceed twenty-four (24) inches in diameter and shall not be visible from the street.

I. There shall be no violation of any rules for the use of the Common Areas and Community Facilities which may from time to time be adopted by the Board of Directors and promulgated amount the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt or amend such rules.

J. Except as herein elsewhere provided, no junk vehicle, no commercial vehicle, boat, trailer, truck of more than one (1) ton, shack, barn or temporary or permanent outbuilding, shall be kept or used upon the Lots or Common Areas nor (except for bonafide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designed for the parking of such vehicles or the like. Notwithstanding the provisions hereof, the Developers and their subcontractors may, for the purpose of business use in connection with the development of the Properties or construction of Living Units therein, maintain trucks, equipment, temporary offices (including trailers) and structures in connection with such development and construction. Notwithstanding the provisions hereof, the Developer may designate an area for the location of a dumpster suitable for garbage collection.

K. No sound hardwood trees or shrubbery shall be removed from any Lot without written approval of the Association acting through its Board of Directors or duly appointed committee, provided that this provision shall not apply to any Lots owned by the Declarant or any Developer prior to the completion of all Living Unit(s) on the Lot and sale thereof or use as rental units by the Declarant or Developer.

L. No signs of any character shall be erected, posted, attached or displayed upon, or on any Lot or Living Unit, excepting street and identification signs installed by the Association or the Declarant and excepting one (1) temporary real estate sign not exceeding five square feet (5') in an area erected upon any Lot advertising same upon the market for sale or rent. This subsection shall not apply to any Developer as long as there exists a Class B Member, or at anytime, to sign of or on behalf of a Developer, advertising or marketing the subdivision or any unit therein.

M. The front of each new home must be landscaped within three months of the date of closing. If landscaping is not completed within that time, the Developer or his assignee may contract, in the homeowners name, for the lot to be landscaped at the homeowners expense.

N. Swimming pools shall be located behind the rear line of the house and shall be of the in-ground type when the depth of the pool exceeds 18 inches. Bath houses in connection with such in-ground pools shall conform to the architecture of the residence. Fences and privacy walls around the pool shall be in conformance with state and/or local laws concerning such.

O. No fence of any kind shall be permitted on any lot from the street to the rear line of the house constructed thereon; beyond the rear line of the house, no fence shall exceed four feet in height and shall be rustic rail type or alternative accepted by Developer or Association. For corner lots, in addition to the foregoing fence and wall restrictions pertaining to said lots, no fence or wall shall be erected, placed or suffered to remain upon said premises nearer to any street upon which the lot abuts than the building line of the residence constructed on the lot nearest to said street.

P. The Grantor expressly reserves, for itself and the designee, the sole and exclusive right to establish grades, slopes, swales and contours for any lot and to fix the grade at which any building shall be hereafter erected or places thereon, so that the same may conform to the general plan, subject to also however, to local building code restrictions.

Q. No residence or addition or alteration thereto shall be erected until the plans and specifications are approved, in writing, by Ponde Creek, LLC or its designee. Ponde Creek, LLC or its designee, may disapprove any proposal if (i) the location of the building is not suited to the topography, (ii) the finished ground elevation or the external design of the building, or the quantity or quality of the landscaping is not in conformity and harmony with the general exterior design and elevation of the existing buildings and the general landscaping of the subdivision, or both.

R. Each Lot owner will install a mailbox near the drive apron of the common design provided by the Developer. The Lot owner may choose to have their builder erect the mailbox as part of the residence construction. Mailboxes will be erected before the Lot owner takes occupancy of the residence.

S. Each single-family residence must have sufficient enclosed garage space for at least two (2) full size automobiles. The garage may be attached to or detached from the residence or incorporated within the basement of the residence. Each lot shall contain a driveway of at least sixteen (16) feet in width for a front entry garage and a driveway of a width approved in writing by the Developer for a side or rear entry garage.

T. Ponde Creek, LLC reserves the right to modify the terms of this Article VII, Section 1 in whole or part with respect to one or more Lots in the exercise of its sole discretion so long as it retains title to any Lot. Additionally, in order to avoid unnecessary hardship and overcome practical difficulties in the application of certain provisions in this Section, Ponde Creek, LLC shall have the authority to grant reasonable variances from the provisions in this Section. So long as Ponde Creek, LLC owns one or more Lots, it may grant reasonable variances from these provisions. No variance granted

pursuant to the authority of this Section shall constitute a waiver of any provisions of this Section as applied to any other party or other part of this Section. All provisions of this Section not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the property subject to this Declaration.

U. Ponde Creek, LLC has the right to subject additional property to the provisions of this declaration by the execution of an amendment and its recording with the Campbell County Clerk's Office, Alexandria, Kentucky ("Amendment"). The Amendment may contain additional easement and restrictive covenants or otherwise modify this Declaration in any manner that Ponde Creek, LLC in its sole and absolute discretion deems appropriate.

#### Section 2 - Residential Use

All of the lots shall be used for private residential purposes exclusively except that a Developer may use Living Units as models and as offices in connection with the marketing or sale of Lots or Living Units in the Subdivision.

#### Section 3 - Right of Association to Remove or Correct Violations of this Article

The Association may, in the interest of the general welfare of all of the Owners, and after reasonable notice to the Owner enter upon any Lot or the exterior of any dwelling at reasonable hours on any day except Sunday for the purpose of removing or correcting any violation or breach or any attempted violation of any of the covenants and restrictions contained in the Article, or for the purposes of abating anything herein defined as prohibited use or nuisance, provided however, that no such action shall be taken without a resolution of the Board of Directors of the Association. All charges incurred by the Association obtaining access to any Lot or Property covered under this Section and any charges incurred by the Association in correcting the violation hereunder (including court costs and reasonable attorney's fees), shall constitute a charge against the subject Property and a personal obligation of the Owner thereof, and the Association shall have a lien upon the Property and Lot for such expenses, and including costs of collection of said lien amount, which lien shall be subordinate to first mortgages as provided in Article V, Section II.

#### Section 4 - Developer's Reservation of Entry Rights

The Declarant for itself and any Developer reserves the right for a period of three (3) years after sale of a Lot by the Declarant or Developer to an Owner to enter upon the Lot for purposes of correcting grade and drainage pattern for the benefit of the entire Properties, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.

### Section 5 - Declarant's and Association's Right to Grant Easements

Notwithstanding the provisions of Article III, Section 1(F) or other provisions of this Declaration, as long as there exists Class B membership, the Declarant, and thereafter the Association is authorized without consent of the members to grant across, through or under any Lot or Common Area, any utility easement, including television cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the Properties, provided that no easement shall be granted across, through or under any Living Unit or which materially restricts ingress or egress to such Living Unit.

## ARTICLE VIII

### Section 1 - Duration and Amendment

The covenants and conditions herein contained in this Declaration shall run with the land perpetually subject to amendment as hereafter set out.

Except as set out in Article IV, Section 1, any other provision of this Declaration may be amended by an instrument signed by seventy-five percent (75%) of the holders of the total of Class A votes and seventy-five percent (75%) of the holders of the total of Class B votes.

### Section 2 - Enforcements

Any Owner may enforce these covenants and restrictions. Enforcement shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants or restriction cannot be adequately remedied by action at law or by recovery of damages. All charges incurred by the Association in enforcing these covenants and restrictions (including court costs and reasonable attorney's fees) shall constitute a charge against the person or persons violating or attempting to violate the covenant or restriction, and such charge shall constitute a lien against the Lot or Property of such person or persons, subject to subordination to first mortgages as provided in Article V, Section II.

### Section 3 - Notices

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner

on the records of the Association at the time of such mailing.

Section 4 - No Dedication to Public Use

Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any common Areas or Community Facilities by any public or municipal agency, authority or utility.

Section 5 - Association and Director Responsibility

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

Section 6 - Severability

Invalidation of any of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

ARTICLE IX

Effective Date of Declaration:

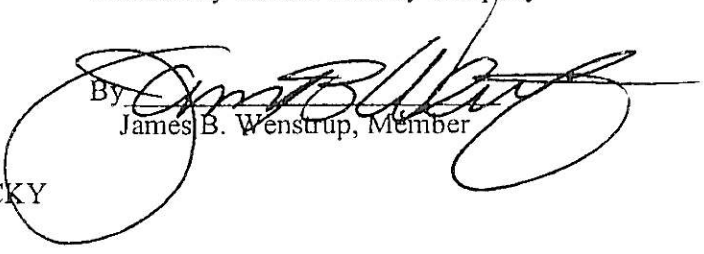
Notwithstanding any other provision of this Declaration, with the exception of Article VII which is effective immediately, this Declaration shall not take effect, and all of the provisions hereof shall be unenforceable, until such time as an amendment to this Declaration is recorded shall contain:

- (a) the signature of the Declarant to such Amendment; and
- (b) a copy of the Articles of Incorporation and By-Laws for the Association.

Upon the recordation of such Amendment, this Declaration shall take effect (the "Effective Date"). Any person or entity who acquires an interest in a Lot prior to the Effective Date of this Declaration shall acquire such interest subject to the right of the Declarant to implement this Declaration as provided in this Section.

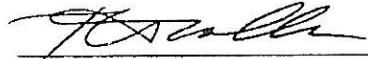
IN WITNESS WHEREOF, Ponde Creek, LLC, a Kentucky limited liability company has hereunto set its hand by and through James B. Wenstrup, its Member pursuant to operating agreement this 15<sup>th</sup> day of September, 2003.

Ponde Creek, LLC  
a Kentucky limited liability company

By   
James B. Wenstrup, Member

COMMONWEALTH OF KENTUCKY  
COUNTY OF KENTON

The foregoing instrument was acknowledged before by Ponde Creek, LLC, a Kentucky limited liability company by and through James B. Wenstrup, its Member, this 15<sup>th</sup> day of September, 2003.

  
Notary Public  
Expiration: 9/24/04

THIS INSTRUMENT PREPARED BY:

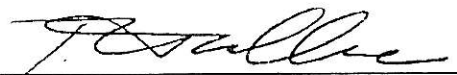
  
Ronald G. Mullen, Attorney  
2362 Grandview Drive  
Ft. Mitchell, Kentucky 41017  
(859) 344-1919

EXHIBIT "A"

PIDN: 999-99-31-337.17  
 999-99-31-337.26  
 999-99-31-337.10  
 999-99-31-337.11  
 999-99-31-337.12  
 999-99-31-337.13  
 999-99-31-337.14  
 999-99-31-337.15  
 999-99-31-337.34  
 999-99-31-337.27  
 999-99-31-337.28  
 999-99-31-337.29  
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 999-99-31-337.31  
 999-99-31-337.32  
 999-99-31-337.33  
 999-99-31-337.18  
 999-99-31-337.19  
 999-99-31-337.20  
 999-99-31-337.21  
 999-99-31-337.22  
 999-99-31-337.23  
 999-99-31-337.24  
 999-99-31-337.25

Groups: 70250/H1  
 70250/H2  
 70250/H3  
 70250/H4  
 70250/H5  
 70250/H6

Being all of Lots 1 - 17, 103 - 108, Section Seven (7) of Pond Creek Crossing, as shown in Plat Cabinet E, Slide 326B of the Campbell County Clerk's records at Alexandria, Kentucky.

GENERAL INDEX 2nd SERIES  
 GROUP NO. 70250/H1-H6  
*Dampson*  
 INDEX CLERK

70250/I1 + I2



PIDN: 999-99-31-337.06  
999-99-31-337.07  
999-99-31-337.09  
999-99-31-337.02  
999-99-31-337.03  
999-99-31-337.04  
999-99-31-337.05

Groups: 70250/I1  
70250/I2

Being all of Lots 18 – 21, 100 – 102, Section Eight (8) of Pond Creek Crossing, as shown in Plat Cabinet E, Slide 327A of the Campbell County Clerk's records at Alexandria, Kentucky.

Recorded JACK SNODGRASS  
ALEXANDRIA CAMPBELL COUNTY CLERK  
Doc type: RESTRICTIVE COVENANT  
Book/page: 197/ 499 17 pg  
Doc#: 03 09 25 019 00012  
Dt/tm Recorded: 09/25/2003 09:32:47am  
Total fees: 27.00  
Clerk name: ANNA H SHITH 8.00  
80