

WYNFIELD SUBDIVISION

DECLARATION OF RIGHTS AND RESTRICTIONS

THIS DECLARATION, made this 19th day of May, 1994, by ZORN CLUSTER HOMES, INC., a Kentucky corporation, 800 Meidinger Tower, Louisville, Jefferson County, Kentucky 40202.

WITNESSETH:

WHEREAS, Zorn Cluster Homes, Inc. (the "Developer") is the owner of the property shown on the plat of WYNFIELD (the "Property"), a subdivision located in Jefferson County, Kentucky, recorded in Plat and Subdivision Book 40, Page 79, in the Office of the Clerk of Jefferson County, Kentucky, as amended with respect to Lots 1, 2, and 3 by Minor Subdivision Plat approved by the Louisville and Jefferson County Planning Commission on February 20, 1997, bearing Docket No.52-97, and recorded in Deed Book 6860, Page 517 in said Clerk's office. The Declaration was recorded on May 19, 1994 in Deed Book 6455, Page 825 in said Clerk's office.; and

WHEREAS, following conveyance of the Lots of WYNFIELD Subdivision from the Developer to the certain individual owners (the "Owners"), the Owners entered into the First Amendment to Declaration of Rights and Restrictions for WYNFIELD (the "First Amendment"), such First Amendment having an effective date of May 17, 1994, but actually executed on January 4, 2000, and recorded in Deed Book 7391, Page 159, in said Clerk's office.

WHEREAS, the Owners entered into the Second Amendment to Declaration of Rights and Restrictions for WYNFIELD (the "Second Amendment"), such Second Amendment having an effective date of May 17, 1994, but actually executed on December 20, 2003, and recorded in Deed Book 8337, Page 859, in said Clerk's office.

WHEREAS, the Owners entered into the Third Amendment to Declaration of Rights and Restrictions for WYNFIELD (the "Third Amendment"), such Third Amendment having an effective date of May 17, 1994, but actually executed on May 18, 2009, and recorded in Deed Book 09394, Page 0314, in said Clerk's office.

NOW, THEREFORE, to provide the means necessary to achieve such purpose and to enhance and protect the value and attractiveness of the Property, Zorn Cluster Homes, Inc., does now and

hereby subject the Property to the covenants, conditions, easements, restrictions, charges and assessments (collectively referred to as "Restrictions") set forth, contained and provided for in this Declaration, the Restrictions to be covenants running with the land which shall be binding upon and inure to the benefit of all parties having any interest in the Property.

#### DEFINITIONS OF TERMS USED

(1) "Association" shall mean the not-for-profit corporation, known as the WYNFIELD ASSOCIATION, INC., incorporated under the laws of Kentucky for the purpose of taking the fee simple title to the Common Areas and managing, maintaining and controlling the Common Areas, the Maintenance Easement Areas and certain portions of the Exterior of the Residences in accordance with the provisions hereof.

(2) "WYNFIELD" shall mean the real estate development located in Jefferson County, Kentucky, the plat of which is recorded in Plat and Subdivision Book 40, Page 79, in the Office of the Clerk of Jefferson County, Kentucky, as amended with respect to Lots 1, 2, and 3 by Minor Subdivision Plat approved by the Louisville and Jefferson County Planning Commission on February 20, 1997, bearing Docket No.52-97, and recorded in Deed Book 6860, Page 517 in said Clerk's office.

(3) "Common Areas" shall mean the areas dedicated to nonexclusive common use and benefit of the Owners, their tenants, licensees and invitees, including, but not by way of limitation, private streets, service drives, driveways, open parking areas, landscaped areas, curbs, lawns, gardens, open areas and all necessary appurtenances to each such item and so designated by the Association from time to time, and shall include the areas so designated on the plat.

(4) "Developer" shall mean Zorn Cluster Homes, Inc., a Kentucky corporation, its successors and assigns.

(5) "Exterior of the Residences" shall mean the exterior portions of the Residences located on the Lots and shall include the exterior of all walls, roofs, decks, enclosed and unenclosed patios, exterior portions of the garage, garage doors, windows (including storms and screens), doors (including storm doors), all outdoor lights, fences all gutters, downspouts, awnings, stairs, steps, any walkways or sidewalks located on the Lots or other similar items located on the exterior of a Residence.

(6) "Lot" shall mean each single family residential lot which comprises a part of the Property as shown on the recorded subdivision plat.

(7) "Maintenance Easement Area" shall mean that portion of each Lot which is to be maintained by the Association as described in Section 8.4 hereof, which portion excludes the Residence Site but includes the Exterior of the Residences to the extent necessary for the Association to satisfy its maintenance, repair and replacement obligations for certain items located therein, as set forth in Section 4.1(a) of this Declaration.

(8) "Owner" shall mean the record owner, whether one or more persons or other legal entities, of fee simple title to any Lot in Wynfield, but excluding a mortgagee having merely a lien or other security interest in the Owner's Lot and improvements located thereon.

(9) "Private Streets" shall mean the streets in Wynfield not dedicated to public use.

(10) "Residence" shall mean the single family residence and garage constructed on a Lot.

(11) "Residence Site" shall mean the enclosed space occupying part of a building (including the enclosed space within any garage attached to an Owner's Residence) and having direct access to the Lot upon which the Residence Site is located and/or the Common Areas. Notwithstanding that some of the following might be located within the Exterior of the Residences (as defined above) or the Common Areas, the plumbing, heating, and air conditioning equipment (including all ducts and pipes), electrical wiring and equipment, telephone lines, cable television wires, mail box, paper holder, and other equipment located within or connected to a Residence Site for the sole purpose of serving that Residence Site exclusively, are a part of the Residence Site and the maintenance, repair and replacement thereof shall be the responsibility of the Owner of that Residence Site in accordance with Sections 4.1(a) and 8.4 of this Declaration. The lower vertical boundary of each Residence Site is a horizontal plane (or planes), the elevation of which coincides with the elevation of the upper surface of the unfinished surface of the floor or subfloor of the lowest level of the Residence Site (whether that be the floor of the basement or otherwise), extended to intersect the lateral or perimeter boundaries thereof. The upper vertical boundary of each Residence Site is a horizontal plane (or planes), the elevation of which

coincides with the elevation of the lower surface of the unfinished ceiling of the highest level of the Residence Site (whether that be the ceiling of the attic or otherwise), extended to intersect the lateral or perimeter boundaries thereof. The lateral or perimeter boundaries of each Residence Site are vertical planes which coincide with the unexposed surfaces of the perimeter interior walls of the Residence Site, to include the perimeter drywall, windows and doors thereof, extended to intersect the upper and lower vertical boundaries of the Residence Site. Mechanical equipment and appurtenances located within any Residence Site and designated to serve only that Residence Site, such as appliances, range hoods, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Residence Site as shall all decorated interior surfaces of all interior structural walls, floors and ceilings consisting of, inter alia and as appropriate, wallpaper, paint, plaster, carpeting and tiles. All pipes, wires, conduits or other public utility lines or installations constituting a part of the overall system designed for the service of more than one particular Residence Site, and any structural members or portion of any Residence Site, shall be deemed to be part of the Exterior of the Residences or the Common Areas, and shall not be a part of any Residence Site. The Owner of a Residence Site shall also repair, maintain and keep in good order and condition any enclosed or unenclosed patio or deck connected to the Residence Site.]

## ARTICLE I

### MEMBERSHIP IN ASSOCIATION

Until the Developer has sold the last Lot in Wynfield or such earlier date as the Developer may determine, Developer shall exercise all voting rights in the Association. Subject to the foregoing:

Section 1.1 Membership. Each owner shall be a member of the Association and shall be entitled to the benefits and subject to the obligations of membership, but the Owners, if more than one, of each Lot, shall be entitled to only one vote. Membership in the Association shall be mandatory for the Owner or Owners of each Lot and no owner shall be permitted or allowed to disclaim said membership and the duties, obligations and benefits thereof nor withdraw from the Association for any reason.

Section 1.2 Suspension. The membership and right to vote of any Owner who is delinquent in the payment of any assessment or

charge duly imposed by the Association shall be suspended until such delinquency has been cured and any penalties reasonably imposed have been paid.

Section 1.3 Qualifications. The Association shall be the sole judge of the qualifications of its members and of their right to participate in the vote at its meeting and proceedings in accordance with its Articles of Incorporation and By-Laws. The exercise of voting rights, whether in person or by proxy, shall be governed by the By-laws of the Association.

## ARTICLE II

### LAND ENTITLED TO BENEFITS

No land shall be entitled to any of the benefits, improvements or services provided by the Association unless subjected to the terms and conditions of this Declaration and to the assessments herein provided for; provided, however, nothing in this Declaration shall be construed as dedicating any land for any purpose, including but not limited to the private streets and other ways or means of access to, ingress or egress from Wynfield, to the public, except those specifically so dedicated of record, if any.

## ARTICLE III

### ADDITIONS TO LAND

Developer may from time to time add to the land subject to this Declaration such other land owned by it, as it in its discretion may determine, which additional land shall be entitled to all of the benefits of the land initially subject hereto, including access to and use of the Common Areas and utility easements; provided, however, (i) any such additional land shall be subject to and bound by all of the terms and conditions of this Declaration and any future modifications thereof, and (ii) any such additional land must be adjacent to the Property.

## ARTICLE IV

### POWERS AND DUTIES OF THE ASSOCIATION

Section 4.1 Duties.

The Association shall have the following duties:

- a. To maintain and repair the Common Areas and the Maintenance Easement Areas and to repair and replace items therein when necessary, all of which includes but is not limited to grass areas, shrubs, trees, plants, curbs, drainage facilities and gutters, downspouts or other similar items. The Association shall also be responsible for maintenance and repair of common use parking areas and driveways, but is not responsible for maintenance and repair of exclusive use parking and driveway areas located at 408 and 409 Wynfield Close Court and 3035 Wynfield Mews Lane. With respect to the Exterior of the Residences, the Association shall clean, maintain, repair, and replace when necessary the following items: gutters, downspouts and roofs (except those portions of the roofs which have been modified by an Owner) and shall be responsible for the painting of the exterior of the Residence. Except as otherwise expressly provided herein, all other maintenance shall be performed by and shall be the responsibility of the Owner of each Lot and Residence.
- b. To pay all real estate taxes and special assessments levied against the Common Areas. Each Owner shall be responsible for the payment of all real estate taxes and assessments pertaining to that Owner's Lot and Residence.
- c. To obtain and provide (i) special cause of loss (open perils) extended coverage insurance (including earthquake coverage), covering all of the Exterior of the Residences (ii) public liability insurance with respect to the Association's activities and the Common Areas, the Exterior of the Residences and the Maintenance Easement Area and (iii) such other insurance as the Association deems desirable, all such insurance to be carried and maintained in accordance with Article VI of this Declaration. Each Owner shall be responsible for obtaining at their own expense (i) special cause of loss (open perils) extended coverage insurance (including earthquake coverage) with respect to the Residence Site and its contents and (ii) comprehensive general public liability insurance coverage with respect to their Lot, Residence and Residence Site as more fully set forth in Section 6.2 hereof.

- d. To do such other matters as may from time to time be necessary to maintain the quality and appearance of the Common Areas, Maintenance Easement Areas and those items within the Exterior of the Residences for which the Association has retained the duty to maintain, repair or replace.

Section 4.2 Powers.

The Association shall have the following powers:

- a. To fix, levy and collect assessments, both general and special, as Common Areas costs or otherwise, against each Owner and the Owner's respective Lot as hereinafter set forth in Article V to perform its duty to maintain and repair the Common Areas, Maintenance Easement Areas and the Exterior of the Residences and to replace items therein when necessary pursuant to Section 4.1(a) hereof.
- b. To collect and pay as a Common Areas costs such real estate taxes and special assessments as are levied against the Common Areas, as hereinafter set forth in Article V.
- c. To collect as a Common Areas costs and pay the premiums for such public liability or other insurance deemed necessary by the Association, as hereinafter set forth in Article VI.
- d. To employ a Management Company to carry out in whole or in part the duties or powers of the Association as set forth herein and to collect as a Common Areas cost and pay the fee of such Management Company, all as set forth in the By-Laws of the Association.
- e. To provide and maintain such on-site security measures, if any, as may be deemed necessary or appropriate by the Association, including but not limited to burglar and fire alarms, fences, gatehouse control, intercom system, guards, and any other security measures, facilities and personnel deemed necessary or appropriate by the Association; and to fix, levy and collect as a Common Areas cost the cost of maintaining the aforementioned security measures, facilities and personnel, if and when installed or utilized, but the Association shall not be liable for the failure to install or utilize any such

measure, facility or personnel or for any alleged act or omission in connection with any measure, facility or personnel which may be installed or utilized.

- f. To establish and publish such rules and regulations from time to time which it deems necessary or appropriate for the enjoyment by the Owners and for the protection of the Common Areas, the Maintenance Easement Areas and the Exterior of the Residences, and to amend said rules and regulations as it deems necessary or appropriate from time to time.
- g. If necessary, to contract for garbage and trash removal for all Lots.
- h. To perform, install and maintain any and all other functions, measures and items deemed necessary by the Association for the convenience, benefit and enjoyment of the Owners, and to fix, levy and collect as a Common Areas cost or otherwise any assessments necessary to pay the cost of any and all of the foregoing.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

###### Section 5.1 Creation of the Lien and Personal Obligation for Assessments.

Each Owner, by acceptance of the deed for the Owner's Lot in Wynfield, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association assessments or charges to be fixed, established, levied and collected at the times and in the amounts determined by the Association, which assessments shall include but not be limited to the Common Areas costs described in Article IV hereof and other items necessary for the maintenance, repair or replacement of the Common Areas, Maintenance Easement Areas and the Exterior of the Residences, and any other expense of the Association's carrying out its duties, powers and purposes. If there is more than one Owner of a particular Lot, each such Owner shall be jointly and severally liable to the Association for all assessments or charges against that particular Lot. The assessments, both general and special, together with such late charge thereon and such costs of collection thereof as may be necessary, as hereinafter provided, shall be a charge on the land



and any improvements thereon and shall be a continuing lien upon the property against which each such assessment is made.

Section 5.2 Payment of Assessments.

The assessment for each Lot shall be established by the Association on the basis that the assessments shall be borne equally by each Lot, provided that so long as a Lot is unimproved it may be assessed at a lower rate to reflect the lower level of services rendered. Assessments shall be due on the first day of each calendar quarter (or such other date as may be designated by the Association in the notice of assessment) and shall be deemed delinquent after the fifteenth day following such due date. All commutations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted accounting practices and, as part of the Common Areas cost, the Association shall prepare, or cause to be prepared, a written report of its operations for each calendar year and a copy of such written report shall be given to the Owner of each Lot.

Section 5.3 Special Assessments.

Although it is intended that the assessments provided for in Sections 5.1 and 5.2 will be sufficient to pay all costs incurred by the Association in the performance of its duties and obligations hereunder, the Association shall have the authority, from time to time, to fix, establish, levy and collect such special assessments as may be deemed necessary by the Association, which special assessment or assessments shall be paid by the Owner within fifteen days of billing by the Association.

Section 5.4 Late Charge.

If an assessment or special assessment is not paid before becoming delinquent, the Association may impose a late charge in such amount as may from time to time be established by the Association's Board of Directors and such late charge shall become a lien on a defaulting Lot as any other assessment until paid. Late charges, when collected, shall be credited to the Common Areas fund.

Section 5.5 Foreclosure of Lien.

If any assessment made pursuant to the provisions hereof by the Association remains unpaid for thirty (30) days after the date upon which it is due, it may be foreclosed by suit by the Association in a like manner as a mortgage of real property. The

Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey any property acquired as a result of a successful bid. Suit to recover money charged for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same. The Association shall be entitled to collect its reasonable attorney's fees incurred in any such suit.

Section 5.6 Waiver of Use.

No Owner may exempt that Owner or that Owner's Lot from liability for assessments levied against that Owner or that Owner's Lot by waiver of the use or enjoyment of any of the Common Areas or by abandonment of the Lot.

Section 5.7 Lien Statement.

The purchaser of a Lot subject to any lien arising under this Declaration prior to the date of purchase and the recording of deed shall take title to the Lot subject to the lien; provided, however, that any such purchaser may request a written statement from the Association as to whether a lien exists against such Lot and such written statement, executed by any two of the President, Secretary or Treasurer of the Association, shall be conclusive as to the facts stated therein as against the Association and may be relied on by the purchaser and the mortgagee of a mortgage upon that Lot.

Section 5.8 Priority of Lien.

The lien created by Section 5.1 hereof shall be subordinate to (1) all ad valorem taxes on the respective Lot and (2) the lien of a recorded first mortgage on such Lot. The sale or transfer of any Lot pursuant to foreclosure of a recorded first mortgage, or voluntary conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, but the Association shall have a lien upon the proceeds from such foreclosure or sale junior only to said recorded first mortgage. No such sale or transfer shall relieve the Lot from assessments thereafter becoming due.

ARTICLE VI

INSURANCE

Section 6.1 Association's Insurance.

The Association shall carry and maintain the following insurance policies in such amounts as the Association may determine from time to time (i) a special cause of loss (open perils) extended coverage (including earthquake coverage) insurance policy covering the Exterior of the Residences, (ii) a comprehensive general public liability insurance policy covering the Association and the Owners with respect to their activities in the Common Areas, the Exterior of the Residences and the Maintenance Easement Areas, and (iii) such other insurance as the Board of Directors of the Association deem desirable. All insurance policies shall be carried and maintained by the Association in accordance with the following provisions:

- a. The special cause of loss (open perils) extended coverage (including earthquake coverage) insurance policy shall be purchased by the Board of Directors for the benefit of the Association and the Owners, and their respective mortgagees as their interests may appear, subject to the provisions of this Declaration (and provisions shall be made for the issuance of appropriate mortgagee endorsements to the mortgagees of the Owners).
- b. The Exterior of the Residences shall be insured against fire, earthquake and other perils covered by a standard extended coverage endorsement, in an amount equal to the maximum insurable replacement value thereof, or at least eighty percent thereof, as determined from time to time by the Board of Directors. The Board of Directors may elect to carry insurance to cover such other perils as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use.
- c. The comprehensive general public liability insurance shall be purchased by the Board of Directors for the benefit of the Association and the Owners, and their respective mortgagees as their interests may appear, and the Board of Directors shall use its best efforts to see that such insurance shall contain cross liability endorsements or appropriate provisions to cover liability of the Owners, individually and as a group

(arising solely because of their ownership interests in the Common Areas and the Maintenance Easement Areas), to another Owner.

- d. All premiums upon insurance purchased by the Association shall be chargeable as a Common Areas cost to be assessed against and paid by the Owners, as set forth in Article V hereof; provided, however, if the rate of insurance is increased as a result of a particular Owner's use of their respective Owner's Lot, Residence or Residence Site, then that Owner shall pay to the Association, within ten days after the Association delivers to that Owner a certified statement from the Association's insurance carrier stating that the rate increase was caused solely by an activity of that Owner, a sum equal to the difference between the original premium and the increased premium.
- e. Proceeds of all insurance policies owned by the Association shall be received by the Board of Directors for the use of the Owners and their mortgagees, as their interests may appear; provided, however, the proceeds of any insurance received by the Board because of property damage shall be applied to repair and reconstruction of the damaged property.
- f. Each Owner shall be deemed to appoint the Board of Directors of the Association as its true and lawful attorney in fact to act in connection with all matters concerning the maintenance of the insurance policies carried by the Association. Without limitation on the generality of the foregoing, the Board as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds and to distribute the same to the Association, the Owners and their respective mortgagees as their interests may appear, to execute releases of liability and to execute all documents and to do all things on behalf of the Owners as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Board in regard to such matters. The Board shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Owner's Residence, nor the liability of any Owner for injuries therein, not caused by or connected with the Association's operation,

maintenance or use of the Common Areas, the Exterior of the Residences or the Maintenance Easement Areas.

#### Section 6.2 Owner's Insurance.

Each Owner, at their own expense, shall be responsible for obtaining (i) special cause of loss (open perils) extended coverage insurance (including earthquake coverage) covering the Residence and the Residence Site including without limitation the interiors, equipment, fixtures, personal property and contents located therein and (ii) comprehensive general public liability insurance covering liability for injury to person or damage to property of others within such Owner's Residence or Residence Site or upon such Owner's Lot, in a combined single limit amount as may from time to time be determined by the Board of Directors, but in no event less than One Million Dollars (\$1,000,000.00). The Association and each Owner shall use their best efforts to see that all property and liability insurance carried by the Owner or by the Association shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the Owners or the Association and the respective employees and agents of the Owners or the Association, as the case may be.

### ARTICLE VII

#### SALE AND LEASING OF OWNER RESIDENCES, RIGHT OF FIRST REFUSAL

##### Section 7.1 Sale of Residences; Right of First Refusal.

If any Owner shall desire at any time to sell that Owner's Residence, the Owner shall first give the Association at least forty-five (45) days prior written notice of the proposed sale, and the terms of the proposed sale, including the identity of the proposed purchaser. The Association shall have the right of first option to purchase upon the same terms as the proposed sale described in such notice. Any change in terms or new proposal of any sort must be re-submitted to the Association, in accordance with the above provision. The Association may, in writing, after receipt of written notice of a proposed sale, notify the Owner prior to the expiration of the option period that it does not intend to exercise the option. The provisions of this Article VII, with respect to the Association's right to first option, shall not apply to purchasers at foreclosure or other judicial sales under mortgages or to transfers to the mortgagee in lieu of foreclosure of any such mortgage; provided that said mortgagee gives written notice of the default with respect to said mortgage

to the Association and gives the Association the right to cure the default in said mortgage within twenty days of such notice and provided further that the Association be given the right prior to the institution of foreclosure proceedings or transfer in lieu thereof to purchase the mortgage indebtedness and that notice of such intention to institute mortgage foreclosure proceedings or accept a transfer in lieu thereof be given at least twenty days prior to the institution of such proceedings or such transfer in lieu.

#### Section 7.2 Leasing of Residences.

If any Owner shall desire at any time to lease that Owner's Residence, such lease shall be in writing and shall be subject to this Declaration and Rules and Regulations adopted by the Association, as they may be amended from time to time. No Residence may be leased for a term of less than thirty days or more than one (1) year. At least thirty (30) days prior to the commencement date of the lease of any Residence, the Owner of such Residence shall notify the Association in writing of the execution of such lease, which notice shall specify in full the names of the lessees thereunder and the names of such lessees' dependents and other family members who will reside at such Residence, and shall include a copy of the proposed lease, which lease shall include a provision that the lessees have received, reviewed and will abide by the provisions of this Declaration and the Rules and Regulations adopted by the Association, as they may be amended from time to time. Upon receipt of the notice of proposed lease from the Owner, the Association's Lease Review Committee shall review the same to confirm that both the notice and the proposed lease satisfy all requirements set forth in this Declaration and in the Rules and Regulations adopted by the Association, as they may be amended from time to time, and shall notify the Owner of its approval or denial of such lease at least ten (10) days prior to the lease commencement date. Such Residence Owner shall be and remain liable for any and all unpaid fees, charges and expenses owed to the Association by such lessees and/or their dependents. All such unpaid fees, charges and expenses, and all such fees, charges and expenses incurred by the Association in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, shall bear interest at the rate per annum from the due date thereof until paid at a fixed rate of eighteen percent (18%) per annum or such lower rate as may constitute the maximum then permitted by applicable law, and all such amounts, plus accrued interest thereon, shall constitute a charge and lien upon the Residence to secure the payment thereof of equal priority to the lien for assessments provided for in this Declaration. Any

lease entered into in violation of this Section 7.2 shall be void and of no further force and effect.

#### ARTICLE VIII

##### EASEMENTS AND RESTRICTIONS

Section 8.1 Each Lot shall be used only for single family residential purposes, shall not be further subdivided, and shall be subject to such limitations and conditions as may be contained herein or in the Association's By-Laws.

Section 8.2 No alteration in the exterior appearance of any Residence may be made without the prior written consent of the Association.

Section 8.3 Improvements on any Lot shall be constructed, changed or altered only in strict accordance with plans and specifications previously submitted to and approved by Developer (by the Association after the Developer's voting rights have transferred to the Owners), and shall comply with the following:

- a. The Residence shall be located so as to conform with building setback lines and utility easements shown on the recorded plat.
- b. The improvements constructed on any Lot shall have exterior construction only of brick, stone, stucco, wood or a combination of the foregoing.
- c. No Residence shall be more than thirty-five (35) feet above ground, at the front of the Residence.
- d. The ground floor and total square footage of each Residence on any Lot, exclusive of open porches, unfinished basements, patios and garages, shall not be less than the following:
  - i) two thousand (2,000) square feet on the ground floor for a one story Residence, with a minimum of two thousand five hundred (2,500) square feet total; or
  - ii) (ii) one thousand six hundred (1,600) square feet on the ground floor for a two story Residence, with a minimum of two thousand five hundred (2,500) square feet total.

For purposes of this subsection d., the term "ground floor" means the first floor totally above ground level, and the term "story" means those floors totally above ground level at the front of the Residence. The Developer may, in its discretion, permit any Residence to contain up to ten percent fewer square feet (ground floor and/or total) than would otherwise be required above.

Developer and/or the Association may delegate their powers, in whole or in part, to an Architectural Review Committee, and may establish a reasonable fee to defray such costs incurred in considering and acting upon any proposed plans and specifications. In order to minimize confusion and complications, and in order to maintain a high quality of construction, Developer and/or the Association reserves the right to designate approved contractor(s) who shall be the exclusive contractor(s) authorized and permitted to construct Residences upon Lots in Wynfield.

Section 8.4 Designation of Maintenance Easement Area; Additional Owner Maintenance. Each Owner, by acceptance of a deed to a Lot, agrees that the portion of the Lot excluding the Residence, the Residence Site and the Exterior of the Residences, except for certain items for which the Association shall retain the responsibility to maintain, repair and replace under this Declaration, shall be deemed to be the "Maintenance Easement Area" for purposes of this Declaration. Each Owner, by acceptance of a deed to a Lot, (A) agrees to be responsible for, and shall pay all costs associated with, the maintenance of all existing and any future landscaping installed on the Lot including but not limited to shrub trimming, weeding of plant beds, mulching of plant beds, maintenance of all additional landscaping installed by the Owner, and (B) conveys to the Association a maintenance easement granting to the Association the right to (1) mow the grassed areas located within the Maintenance Easement Area; (2) to access the Exterior of the Residences to clean, maintain, repair and replace the following items: gutters, downspouts and roofs (except those portions of the roofs which have been modified by an Owner) and for the painting of the exterior of the Residences, with all other maintenance and repair within Exterior of the Residences to be the responsibility of the Owner of each Lot and Residence as set forth in Section 4.1(a) of this Declaration; and (3) and to prescribe rules limiting the Owner's rights to use the Maintenance Easement Area in any manner so as to interfere with the performance by the Association of such duties and powers. Each Owner retains the right, subject to the approval of the Association, which approval shall not be unreasonably withheld, to install at the Owner's



expense, landscaping in the Maintenance Easement Area provided the Owner shall be entirely responsible for the cost of maintaining such landscaping, including the cost of pruning and removal thereof if determined by the Association to be unsightly or to pose a danger or hazard to others. In furtherance of its obligations under Section 4.1(a) hereof, the Association shall maintain the Common Areas, including the mowing of all grass areas, blowing of sidewalks and grass areas, mowing and mulching of leaves within the Maintenance Easement Areas (but not within the plant beds of individual Owners or under shrubs other than those within the Common Areas) and the trimming, mulching and weeding of the Common Areas.

Section 8.5 Every Owner, his tenants, licensees and invitees, shall have in common with all Owners, their tenants, licensees and invitees, the non-exclusive right and easement of passage over the Private Streets for entrance and egress to such Owner's Residence and the enjoyment of other Common Areas, all subject to such reasonable rules and restrictions as the Association may impose. The roads in Wynfield shall not be dedicated to or maintained by the public except by agreement of all Owners and approval by the Louisville and Jefferson County Planning Commission after finding that the roads meet all standards required for a newly created public road.

Section 8.6 Every Owner shall have a non-exclusive right and easement of enjoyment in and of the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and which is subject to the provisions of this Declaration and subject to the Association's Articles, By-Laws and rules and regulations. This right and easement of enjoyment may be exercised by members of the Owner's family.

Section 8.7 No Lot or Common Area shall be used in any manner or for any purpose in violation of such rules and regulations which may be in effect from time to time, as adopted by the Association. The Association shall have the power to establish rules and regulations concerning the use of Lots and Common Areas, and to amend such from time to time. Such rules and regulations may include, but shall not be limited to, the following subjects: signs; appearance of exterior of any improvements and alterations thereto; radio, television or other antennae; animals; activities or items visible from the exterior of any Residence; limitation of such activities as yard sales, garage sales or auctions; parking; traffic; storage of boats, trailers, trucks, other vehicles or objects; mailboxes; garbage and refuse containers and disposal; conditions under which snow or ice removal will be conducted;

noise; exterior lighting fixtures; fences.

Section 8.8 For the purpose of providing easements for utilities and various services to the Residences, Maintenance Easement Areas, and Common Areas, Developer shall have and does hereby reserve unto itself, its successors and assigns in title (which shall be the Association after the Developer's voting rights have transferred to the Owners), the right to grant easements to locate, construct, maintain and use, and to authorize the location, construction, maintenance and use on, such portions of the Common Areas, as it may designate for drains, sanitary and storm sewers, gas and water mains and lines, electrical and telephone lines, cable television conduits and line, community television antenna lines, fire warning and security systems, and other utility lines and conduits for any and all purposes.

Section 8.9 Service lines from any utility easement to a particular Lot are to be maintained by and at the cost of the Owner of such Lot.

Section 8.10 A party wall easement is hereby established over that part of any Lot on which any part of a common wall between improvements on adjoining Lots is constructed, together with the right to maintain and restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits and fireplace flues, serving improvements using such party wall. Said party wall easement shall be a cross-easement in favor of each Lot involved with such common walls.

Section 8.11 Although it is anticipated that public water service to the Property will be provided by the Louisville Water Company and that each Residence will be separately metered, the Developer may elect to provide water through a private water service, in which event each Owner shall pay its proportionate share of the cost of such water service and usage based on the total number of Lots in Wynfield; provided, however, any Owner who has a need for excess water such as a swimming pool shall pay for the cost of installing a sub-meter to measure that Owner's excess water usage and shall pay all costs based on the then current rates being charged for such water usage.

Section 8.12 No Common Areas, open space, private roadway or island in the right-of-way shall be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the Louisville and Jefferson County Planning Commission. The Association can not amend this restric-

tion without approval from the Louisville and Jefferson County Planning Commission.

Section 8.13 Anything to the contrary herein notwithstanding, the Association and the Owners shall be responsible for the maintenance of all open spaces, private roads (if applicable) and Common Areas, so long as the Property is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended.

#### ARTICLE IX

##### ENFORCEMENT

Developer, the Association, and also any Owner or Owners shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the provisions set forth above, in addition to any ordinary legal action for damages, and failure of Developer, the Association, or any Owner or Owners, to enforce any of the provisions set forth herein at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so thereafter.

#### ARTICLE X

##### BINDING EFFECT; RELEASE OR MODIFICATION

The Restrictions contained herein are and shall be deemed to be covenants running with the land and shall be binding on all parties having any interest in any portion of the Property and all successors in title thereto, together with their heirs, administrators, executors, successors or assigns. Provided, however, at any time whatsoever this Declaration or any provisions hereof may be modified, altered or terminated upon the written consent of Owners of two-thirds (2/3rds) or more of the Lots and Developer (so long as Developer continues to own any Lot). Any such agreement modifying, altering or terminating these Restrictions shall be recorded in the office of the Clerk of Jefferson County, Kentucky, which recorded instrument may be executed by the Association on behalf of all consenting Owners.

#### ARTICLE XI

SEPARABILITY

Invalidation of any provision set forth herein or any part thereof by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or any part thereof as set forth herein, but they shall remain in full force and effect.

IN WITNESS WHEREOF, Zorn Cluster Homes, Inc. has by authority of its Board of Director caused this instrument to be executed by its President, this 19th day of May, 1994.

ZORN CLUSTER HOMES, INC.,  
a Kentucky corporation

By: \_\_\_\_\_  
Henry M. Potter, President

Commonwealth of Kentucky )  
                                      )  
County of Jefferson            )

Acknowledged before me on \_\_\_\_\_, 1994, by Henry M. Potter, as President of Zorn Cluster Homes, Inc., a Kentucky corporation, on behalf of the corporation.

My Commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State at Large, Ky.

Commission Expires: \_\_\_\_\_

This instrument was prepared by:  
Timothy W. Martin  
BROWN, TODD & HEYBURN  
3200 Providian Center  
Louisville, Kentucky 40202-3363