

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
I J, X

GARDINER PARK

Plat and Subdivision Book ____, Pages
Jefferson County, Kentucky

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GARDINER PARK (this "Declaration") is made on _____, 1998, by GARDINER PARK DEVELOPMENT, LLC, a Kentucky limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner and developer of certain real estate in Jefferson County, Kentucky, more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property" or "Subdivision"); and

WHEREAS, Declarant is developing the Property as GARDINER PARK by subdividing it into "Lots" that are to be used for residential purposes as well as common area real estate that is owned by a homeowners association to which the owner of a Lot must belong and pay lien-supported maintenance assessments; and

WHEREAS, at the time of the conveyance of a Lot to an Owner, the Declarant intends to make available the common amenities on the Property, if any, as they are built, and, at the time of completed development, the entire Property, excluding the Lots and dedicated streets, if any, shall be conveyed without cost or charge to the Association;

NOW, THEREFORE, the Declarant hereby declares that all of the platted Lots located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Covenants, Conditions and Restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

ARTICLE I
DEFINITIONS

Section 1. "Declarant" shall mean and refer to Gardiner Park Development, LLC, a Kentucky limited liability company, its successors and assigns as a Declarant.

Section 2. "Association" shall mean and refer to GARDINER PARK HOMEOWNERS ASSOCIATION, INC., to be formed as a not-for-profit corporation, its successors and assigns.

Section 3. "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4 "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling, including, but not limited to, temporary guests and lessees.

Section 5 "Property" or "Subdivision" shall mean and refer to the certain real estate Described exhibit "A" and all other real estate that may be annexed into this Declaration and the Association by the Declarant.

Section 6 "Lot" shall mean and refer to any plat of land designated as such upon a recorded Subdivision map of property upon which a dwelling has been or is to be constructed. The Declarant has created the number of Lots shown on the Record Plat, of which there shall be no more than One Hundred and Forty-Eight (148) Lots in the subdivision, of which no more than Sixty-Nine (69) may be attached (townhouse style) homes, the other seventy-nine (79) being detached (garden style) homes. Each Lot shall contain one (1) one-family residential Dwelling with a two-car minimum attached garage. Each Dwelling shall contain an area which approximates the exterior face of the foundation wall dimensions of the structure and shall include the Dwelling's side of one-half (1/2) of any party wall dividing a Dwelling structure from any other Dwelling.

Section 7. "Dwelling" shall mean and refer to the individual family living unit on an individual Lot.

Section 8. "Common Area(s)" shall mean all the real estate (including lakes, ponds, retention/detention basins, non-buillable open space lots, entranceways, undedicated streets, medians and other improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

ARTICLE II PROPERTY RIGHTS IN COMMON AREA

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement

Of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title

to every Lot, subject to the following provisions:

a) The right of the Association to suspend the voting rights and right to the use of the Common Area by an Owner for any period during which any assessment against his lot remains unpaid and for a period not to exceed sixty (60) days for any violation of this Declaration or the Association's Articles. Bylaws, or rules and regulations (for the pulses of this section, each day a "violation" occurs constitutes a separate violation);

b) The right of the Association to dedicate or transfer all or any part of the Commonarea to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No Such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded. No Common Area shall be dedicated or transferred to a unit of local government without acceptance of the unit of local government involved and the approval of the Louisville and Jefferson County Planning Commission. Anything to the contrary herein notwithstanding, the Association and the Lot owners shall be responsible for the maintenance of the Common Area so long as the Property is used as a residential subdivision or until property dedicated to a unit of local government. The Association cannot amend this Section 1(b) without approval from the Louisville and Jefferson County Planning Commission.

c) The right of the Association or Declarant to place reasonable restrictions upon the use of the Common Area beneficial to all Owners.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws his right of enjoyment to the Common Area to the members of his family, his tenants, guests or contract purchasers of the Owner's Lot.

Section 3 Title to Common Area. The Declarant shall convey all Common Area to the Association in fee simple absolute after the time of the final platting of all Lots in the Subdivision. Any such conveyance shall be subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

ARTICLE III HOMEOWNERS ASSOCIATION

Section 1. downers Association. There is hereby created a not-for-profit Homeowners Association, known as the Gardiner Park Homeowners Association, Inc., which shall be responsible for the maintenance upon the Common Area and upon each Lot and Dwelling as more specifically set forth in this Declaration.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles or the Bylaws. The Board of Directors may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 3. The Rules. By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal rules and regulations to be known as the Rules, with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however that the Rules shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adapted, tended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4. Membership of Association. The Declarant and every Owner of a Lot which is subject to assessment, and defined in Article IV, Section 1 shall be a member of the Association. Such Owner and member shall abide by the Association's rules and regulations, shall pay the assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of a Lot (except conveyance to a mortgagee) Automatically transfers membership in the Association without necessity of further documents Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 5. Classes of Membership. The Association shall have two (2) classes of Membership:

a) Class A. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a residence has been erected within the Property, shall automatically be a Class A Member of the Association; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a residence has been constructed which is subject to assessment Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

b) Class B The Class B member shall be the Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the events specified in paragraph (c) below, whichever occurs earlier.

c) Voting. Each member shall have one vote with respect to each Lot owned by such member, but a Class A member shall not be entitled to exercise any vote until the earlier of:

- i) When Declarant, it its sole discretion.so determines;
- ii) Within ninety (90) days following the date when 100 percent of the lots which may be developed in the Subdivision have been sold by Declarant; or
- iii) January 1,2013.

d) Minimum in Fund. There shall be a minimum of \$3000.00 remaining in the fund of the Association as defined in Article IV, Section I, at the earliest to occur of the following, when eighty percent (80) of the Dwellings are constructed and sold or when the Class B membership shall cease as set forth hereinabove.

Section 6 Maintenance Obligations of the Association. The Association shall maintain, operate and keep in good repair, unless such obligations are assumed by a municipality or governmental agency having jurisdiction thereof, the Common Areas, including any and all signature entranceways, street signs, sidewalks, community buildings/structures and recreational facilities if any In addition, the Association shall provide exterior maintenance to each Dwelling, including, but not limited to, the painting of all exterior building surfaces, the repair, replacement and care of roofs, gutters, downspouts and exterior building surfaces, and the repair, replacement and care of driveways, grass and landscape areas, shrubs and trees, except as otherwise set forth herein below Such exterior maintenance shall not include the cleaning and repair of glass surfaces or of the interior of windows or doors, or of the interior of enclosed porches and patios. In the event the need for maintenance or repair of a Lot, Dwelling, or the improvements thereon is caused through the willful or negligent act of the family, guests or invitees of the Lot, Dwelling, or improvements thereon needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject. The Association, its employees, agents or designees are hereby granted in perpetuity a blanket easement in gross over and upon all Lots in the Subdivision, except for the interior of any Dwelling, for the

purpose of all exterior property and grounds maintenance. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's rules and regulations, which duties shall include exterior building maintenance and all yard, landscape and tree maintenance, as noted hereinabove, and the collection of garbage. All rights reserved by Declarant in this Declaration shall automatically pass to the Association when Class B membership ceases pursuant to Article III, Section 5, and thereafter any reference to Declarant shall be construed to mean the Association.

ARTICLE IV COVENANT FOR ASSESSMENTS

Section 1. Personal Obligation of Assessments. Each Owner of any Lot, except Declarant and the Association, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) the Annual Assessments; (2) any Additional Assessment; and (3) any Special Assessments for capital improvements, all such assessments to be established and collected as hereinafter provided.

The Association shall also procure and maintain adequate comprehensive liability, hazard, fire, casualty and such other insurance as it may deem appropriate under the Declaration. Insurance costs shall be a part of the annual assessment.

Section 2. Creation of the Lien. The Annual, Additional and Special Assessments, together with interests costs and reasonable attorney's fees, and any fines that the Association may impose pursuant to Article VI, Section 1, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall be also the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them in writing, but such delinquent accounts shall remain a lien upon the Lot subject to foreclosure.

Section 3. Purpose of Assessments. The assessments levied by the Association on a Lot shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and Residents in the Subdivision and for the improvement, maintenance and insurance of the Common Area and of the Lots and Dwellings situated in the Subdivision.

Section 4. Date of Commencement of Assessments: Due Dates. Any Annual Assessment and any Additional Assessment provided for herein determined as of closing on the purchase of a Lot shall commence as to each Owner of a Lot, except Declarant and the Association, located within the Subdivision, on the first day of the month following the initial conveyance of the Lot to the Owner. The first assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment to be paid by each Class A Member against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of assessments shall be sent to every Class A Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed

certificate of the Association as to the status of assessments on a Lot is binding upon the Association on the date of its issuance.

Section 5. Uniform Rates of Annual Assessments. Annual Assessments shall be fixed at a uniform rate for all Lots, except those owned by Declarant and the Association. The Association's governing body may, at its discretion, waive such assessment for any year or part of a year for any Lot not occupied as a residence.

Section 6. Maximum Annual Assessment. Until December 31, 1999, the maximum Annual Assessment shall be set at a rate not to exceed Two Hundred Dollars (\$200.00) per month per Lot with a detached Dwelling and not to exceed Two Hundred Dollars (\$200.00) per month per Lot with an attached Dwelling. After December 31, 1999, the maximum Annual Assessment may be increased by an affirmative vote of the Board of Directors of the Association, which governing body shall also determine when such assessment shall be paid.

Section 7. Additional Assessments. In addition to the Annual Assessment authorized above, an Additional Assessment may be assessed by the Declarant to some or all Lots on the basis of the anticipated additional costs of maintenance of a Lot or Dwelling resulting from amenities (for example, roofing or other building materials) that are above and beyond the standard customary for other Lots or Dwellings). Said Additional Assessment shall be collected in the same manner and time as Annual Assessments and shall be determined prior to closing on the sale of a Lot by amendment to this Declaration. After December 31, 1999, the Additional Assessment may be increased at a uniform rate not to exceed the rate of increase in the Annual Assessment. Such increase, if any, may occur by an affirmative vote of the Board of Directors of the Association.

Section 8. Special Assessments for Capital Improvements. In addition to the Annual Assessment and Additional Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Members who are voting either in person or by proxy at a meeting duly called for such purpose.

Section 9. Notice and Quorum for any Action Authorized under Sections 6,j_ and_ 8. Upon the Class A Members' entitlement to exercise a vote pursuant to Article III, Section 5, written notice of any meeting called for the purpose of taking any action authorized under Sections 6, 7 or 8 of this Article shall be sent to all Class A Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Class A Members or of proxies entitled to cast two-thirds of all the votes of the Class A Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment for a Class A Membership not paid within thirty (30) days after the due date shall become delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear a late charge of one and one-half percent (1-1/2) per month. The Association may bring an action at law against the Owner personally obligated to pay the same, or

foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of Common Area or abandonment of his Lot or by reason of disagreement with the Association Board or management of the Association with respect to any decision or issue, including refusal to make certain repairs to a Dwelling or Lot. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but such delinquent accounts shall remain a lien upon the Lot subject to foreclosure.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments and fines provided for in this Article 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 or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwellings and placed on the dividing line between the Lots and Dwellings thereon shall constitute a party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law of the Commonwealth of Kentucky regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Owners who make use of an interior party wall shall not be entitled to change or alter in any way said party wall. Owners who make use of an exterior party wall shall be entitled to change or alter said party wall only to the extent that all of said Owners who make use of said party wall shall agree and as agreed to by the Association.

Section 3. Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribute Runs with Land. The right of any Owner to a contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the parties shall be obligated to arbitrate the dispute under the applicable rules of the American Arbitration Association. Unless the parties can agree upon one

arbitrator as the rules of the American Arbitration Association otherwise require, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision of the arbitrators shall be by a majority of all the arbitrators and shall be binding on the parties to the dispute.

ARTICLE VI GENERAL PROVISIONS

Section I. Enforcement.

a) These covenants, conditions and restrictions may be enforced by the Association or any Owner. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created 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 the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. 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 at law or by recovery of damages.

b) In addition to all other remedies of the 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 and regulations of the Association after such Owner has been given notice of the violation and 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 Board of Directors or as may be set forth in the Bylaws.

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

Section 3. Restrictions Run With Land: Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty-five (25) years from the date of the recording of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a two-thirds (2/3) vote of all Class A Members of the Association, such covenants and conditions are amended, altered or revoked.

Section 4 Amendment. The Association (the Declarant controlling the Association until such time as described in Article III, Section 5) may amend this Declaration at any time, as long as consistent with the design, scheme and purposes of this Declaration, by an instrument signed by not less than seventy-five percent (75) of all Class A Members after such time as said Members are

entitled to exercise a vote in the Association as described in Article III, Section 5. Any amendment must be recorded in the Office of the County Clerk of Jefferson County, Kentucky. No such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed amendment is sent to every Member at least thirty (30) days in advance of any action taken, and no such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Area herein created.

Section 5. Reservation of Rights. Declarant reserves the right in the Subdivision to maintain sales and management offices, model units and advertising signs upon the Common Area and upon Lots owned by it until fifteen (15) years after the recording date of this document or its conveyance of the last Lot, whichever comes first.

Section 6. Management and Service Contracts. Any agreement for the professional management of the Subdivision or the Common Areas may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

Section 7. Binding Determination. In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Association, the determination thereof (i) by Declarant for so long as Declarant retains control of the Association under Article III, Section 5 and (ii) thereafter by the Board of Directors of the Association shall be final and binding on each and all such Owners.

Section 8. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 9. Notices. Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of (i) the date when received by such Owner, or (ii) the date which is three days after mailing (postage prepaid) to the last address of such Owner set forth in the books of the Association. The address of an Owner shall be at his Lot (or any of them if more than one) unless otherwise specified in writing to the Association. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

Section 10. Governing Law. This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the Commonwealth of Kentucky, and suit to enforce any provision hereof or to obtain any remedy with respect hereto shall be brought in Circuit Court, Jefferson County, Kentucky, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

ARTICLE VII MORTGAGEE'S RIGHTS

Section 1. Notice of Rights of Mortgagee of a Lot. Upon written request by a mortgagee to the Association, a mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrences by the Owner of the Lot of any obligation of the Owner under the Declaration, the Bylaws of the Association or the Articles of Incorporation of the Association. The request for notification can be made by any mortgagee of a Lot, its successor or assign. The notification shall be sent not later than the 65th day after the occurrence of an uncured default.

Section 2. Rights of First Refusal. Any right of first refusal now or hereafter contained in this Declaration or any amendment or modification hereto or otherwise arising in favor of the Association or certain Owners shall not apply to or preclude or impair in any way the right of the first mortgagee to (i) foreclose or take title to the Lot pursuant to the remedies provided in its mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of a default under the mortgage; or (iii) sell or lease a Lot and Dwelling acquired by the mortgagee.

Section 3. Rights of Mortgagee. Unless at least seventy five percent (75) of the first mortgagees (based upon one vote for each first mortgage owned), or the Class A members have given their prior written approval, the Association shall not:

a) by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Subdivision or Common Area or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Subdivision by the Association shall not be deemed a transfer within the meaning of this clause);

b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

c) by act or omission change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Dwellings, the exterior maintenance of the Dwellings, the maintenance of party walls or common fences, driveways or the upkeep of lawns and plantings in the Subdivision;

d) fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent (100) of the insurable value (based on current replacement cost); or

e) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 4. Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

Section 5. Taxes and Insurance. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage

on the lapse of a policy, for such Lot, and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 6. Insurance Proceeds and Condemnation Awards. No provision of this Declaration or any other document or instrument affecting the title to the Property, Common Area, any Lot or the organization or operation of the Association shall give an Owner or any other party priority over any rights of first mortgagees of Lots within the Subdivision pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Areas.

ARTICLE VIII
HARMONY. ENVIRONMENTAL CONTROLS
AND USE RESTRICTIONS

Section 1. Design Guidelines. Dwellings shall be characteristic of the buildings shown in the renderings attached hereto as Appendix A and shall be constructed in accordance with the following design guidelines:

a) Exterior building materials of all Dwellings shall extend to ground level and shall be either brick, stone, brick veneer, stone veneer, siding or a combination of same. No more than twenty five percent (25) of the total number of Dwellings shall be of greater than fifty percent (50) siding building material.

b) All chimneys and all foundations shall be brick or stone only, including on homes that are built predominantly of siding material.

c) Internal first floor ceiling heights shall be a minimum of nine (9) feet; internal second floor ceiling heights shall be a minimum of eight (8) feet, four and one-half (4¹/₂) inches; and lower level ceiling heights shall be a minimum of eight (8) feet.

d) Dwellings shall have the following minimum square footages, exclusive of porches and true basements: one thousand seven hundred and fifty (1750) square feet for attached (townhouse style) homes; and for detached (garden style) homes two thousand (2000) square feet for ranch style homes, two thousand two hundred fifty (2250) square feet for one and one-half (P/2) story homes, and two thousand five hundred (2500) square feet for two (2) story homes.

e) Roof pitches for Dwellings shall be not less than a plane of six (6) inches vertical for twelve (12) inches horizontal for structures with more than one story and a plane of seven (7) inches vertical for every twelve (12) inches horizontal for one story structures.

f) There shall be no more than fifteen (15) individual Dwellings (whether attached or detached) with garages facing the front street.

g) Chain link fences shall be prohibited, and no fences of any other kind shall be allowed except as approved by the Board of Directors of the Association.

The provisions of this Section 1 shall be enforceable by any property owner located within two tiers of the Subdivision or within such subdivisions located across Shelbyville Road known as Ashmoor Woods and Chestnut Glen or by the Ashmoor Woods, Chestnut Glen or Eastwood Area neighborhood associations to the extent that any of same have legal standing to file suit to enforce these provisions.

Section 2. Architectural Control Committee. No building, fence, sidewalk, drive, walk, or other structure, plus anything attached to any structure visible from the outside of the structure (including storm doors that may only be full glass with no ornamental grills) shall be erected, placed, altered, or maintained upon the Subdivision nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any architectural control committee appointed by said Board of Directors. Refusal of approval of plans, location or specification by said Board of Directors or architectural control committee may be based upon any ground, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the sole and uncontrolled discretion of said Board of Directors or architectural control committee shall deem sufficient. No alterations may be made in such plans after approval by the Board of Directors or architectural control committee is given except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished the Board of Directors or architectural control committee for its records.

Section 3. Use Restrictions. Except for the activities of the Declarant during original construction:

a) Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the Owners.

b) Business; Home Occupations. No trade or business of any kind shall be conducted in the Subdivision except as permitted under the definition of "home occupation" as set forth in the Development Code for all of Jefferson County, and then only to the extent that the business (i) does not involve clients, patients, or customers who visit the home-based business and (ii) does not involve delivery by vehicles other than traditional home delivery vehicles on a frequency of no greater than once per day. Nothing shall be done thereon that may become an annoyance or nuisance to the neighborhood.

c) Animals. 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 situated upon the Subdivision, except that this shall not prohibit the keeping of dogs, cats, and/or caged birds or other customary household domestic pets provided they are not kept, bred or maintained for commercial purposes. All animals, when outside of a Dwelling, shall be kept on leash, and their owners shall be fully responsible for any additional expense incurred by Declarant or the Association by reason of damage done by an animal. An Owner shall be responsible for any mess created by his pet out of the Owner's Dwelling. No animal shall be boarded or left outside for extended periods of time and each Owner shall control his animal to keep noise to a minimum.

d) Parking of Vehicles.

i) No trailer, recreational vehicle ("RV"), camper trailer, camping vehicle, boat or junk vehicle shall be parked or kept on any Lot or on any street in the Subdivision for any period in excess of two (2) days in any 365 day period (any portion of a day constitutes a day) unless housed in a garage. No commercial vehicle shall be parked or kept on any Lot or any street

in the Subdivision, except in a garage, in excess of four hours in any 24 hour period or except when used as part of a temporary construction or repair activity on the Lot. "Commercial vehicle is defined as a vehicle meeting any one of the following characteristics: (i) having rear dual wheels; (ii) having a design load carrying capacity of more than one ton; (iii) being designed to carry more than nine passengers including driver; (iv) being designed to carry business equipment on or in exterior racks or bins, but not including tool boxes; or (v) advertising a business or containing on its exterior any business information in excess of the business name on the driver's side door of the vehicle.

ii) No vehicle, motorized or otherwise, including, but not limited to, those set forth in paragraph (d)(i) above, shall be parked overnight on any street or right-of-way of the Subdivision, and no such vehicle shall be parked at anytime except on a street, in a designated parking lot, on a legal driveway or in a garage. No vehicle of an Owner or Resident shall be parked overnight on any portion of the Subdivision except inside of a garage. No motor vehicle may be temporarily parked (for a period in excess of seven days in any 365 day period) upon any legal driveway, parking lot or street in the subdivision. There shall be no habitation of any vehicle parked anywhere in the Subdivision.

e) Disposal and Collection of Trash.

i) No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. This restriction shall not apply during the period of construction of a Dwelling on the Lot, provided such Owner makes provisions to retain all rubbish, trash and garbage on that particular Lot.

ii) There shall be only one sanitation company approved for collecting garbage from each Lot. The approval of such sanitation company shall be made by the Board of Directors. If a Owner fails to pay the fees charged by the approved sanitation company, the Association may make such payment and assess the Owner for such charge. An Owner's failure to repay the Association within five (5) days after receipt of such statement shall be treated as a non-payment of assessments, and the Association shall have all rights and remedies afforded the Association in Article VI of this Declaration.

f) Other Structures. Except for a temporary structure placed by the Declarant during construction and initial sales and as may be approved in writing by the Board of Directors or its designated committee, no trailer, tent, shack, bam, outhouses, other outbuilding, or any structure of temporary character shall be used on any portion of the Subdivision at any time.

g) Signs Except for entrance and directional signs, no signs of any character shall be erected posted or displayed upon, in or about any Lot situated in the Subdivision, except as specifically permitted by a written resolution adopted by the Board of Directors, and provided that Declarant shall have the right to (i) erect signs when advertising the Subdivision; (ii) place signs on Lots designating the Lot number of the Lots; (iii) following sale of a Lot, place signs on such Lot indicating the name of purchaser of that Lot. This restriction shall not prohibit placement of occupant name signs, for sale signs, and Lot numbers as allowed by applicable zoning regulations.

h) Clothes Lines: Awnings; Fences and Walls; Tennis Courts; Swimming Pools; Play Equipment.

i) No outside clothes lines shall be erected or placed on any Lot.

ii) No awnings or other similar exterior window coverings shall be installed on a Dwelling without the prior written consent of the Board of Directors of the Association or its architectural control committee.

iii) No visible fence or wall shall be constructed in the Subdivision without the prior written approval of the Board of Directors of the Association or its architectural control committee.

iv) No swimming pools or tennis courts shall be erected or placed on any Lot without the prior written approval of the Board of Directors of the Association or its architectural control committee.

v) No exterior play equipment and basketball goals shall be erected or placed on any Lot without the prior written approval of the Board of Directors of the Association or its architectural control committee.

i) Interference With Easement. No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any portion of the Subdivision which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

j) Garages. All Dwellings shall have a two-car minimum attached garage. Garage doors and the doors of any other storage room or the like shall be maintained in a closed position when not being used for immediate ingress or egress.

k) Antennae and Receivers. No exterior antennas or satellite dishes for reception or transmission shall be maintained upon any Lot except receiver dishes for direct signal televisions not to exceed twenty four (24) inches in diameter and then only in such location as receives the prior written consent the Board of Directors of the Association or its architectural control committee.

l) Common Area. There shall be no violation of any rules for the Common Area which may from time to time be adopted by the Board of Directors or promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws, authorized to adopt such rules.

m) Inclusion of Plat Restrictions. In addition to the foregoing restrictions, all restrictions as shown on the plat of the Subdivision are incorporated by reference herein as restrictions of this Declaration.

n) Single Family Residential Uses. The Subdivision shall be developed and used only for single family residential uses. A single family shall consist of (i) any number of persons not to exceed two (2) persons per the number of bedrooms of a Dwelling, all of whom are related by blood, legal adoption, or marriage, occupying a Dwelling and living as one housekeeping unit

using one kitchen; or (ii) three or fewer persons occupying a Dwelling and living as one housekeeping unit using one kitchen.

o) Plantings. Owners and Residents shall not plant anything but annuals on the Lots except as otherwise approved in writing by the Board of Directors of the Association or the architectural control committee and except within a patio area where the Owners and Residents have control and discretion over what they plant to the extent that Owners and Residents shall not plant anything taller than seven (7) feet without the prior written consent of the Board of Directors of the Association or the architectural control committee. Vegetable gardens are prohibited outside the patio areas. Landscaping and plant materials, except annuals, located anywhere in the Subdivision outside the patio areas shall be planted, installed and maintained by the Association.

p) Holiday Decorations. Decorations shall be limited to wreaths and lighting and shall not include roof ornaments or yard statues or figures. Decorations shall be removed immediately after the generally recognized conclusion of the holiday for which the decorations were placed.

q) Leasing. No Owner shall lease a Lot or Dwelling for a period of less than one (1) year.

r) Window Treatments. Every Dwelling shall have proper window coverings (no sheets or other material of a temporary nature) placed over windows within thirty (30) days of occupancy. Without the prior written approval of the Board of Directors, no aluminum foil, tinted or reflector glass or other tinted or reflective material shall be installed or maintained on any window. All window coverings shall have a white backing.

s) Duty to Maintain and Rebuild.

i) Owners shall, at their sole cost and expense, repair the interiors of their Dwellings, keeping same in condition comparable to that at the time of initial construction.

ii) Owners shall keep their Lots neat and attractive in appearance. Should any Owner fail to do so, then the Declarant or the Association may take such action as it deems appropriate in order to make the Lot neat and attractive. An Owner shall, immediately upon demand, reimburse Declarant or other performing party for all expenses incurred in so doing, together with allowable statutory interest. Declarant or other performing party shall have a lien on that Lot and the improvements thereon equal in priority to the lien for assessment provided in Article IV to secure repayment of such amounts. Such lien may be enforced by foreclosure.

iii) If all or any portion of a Dwelling is damaged or destroyed by fire, or other casualty, then the Owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such Dwelling in a manner that will substantially restore it to its apparent condition immediately prior to the casualty. While awaiting reconstruction, the Owner shall completely raze the Dwelling and sod or seed the entire Lot until such time as construction of a new Dwelling is begun.

t) Yard Sales. No yard sales or garage sales of any kind shall be conducted on any Lot without prior written consent of the Declarant or Board of Directors as the case may be.

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 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 for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance.

ARTICLE IX EASEMENTS AND RIGHT-OF WAYS

Section 1. Public and Semi-Public Utility Easements and Right-of-Ways. There shall be and hereby are reserved, whether or not shown upon any subdivision plat of the Property, easements and rights-of-way for the benefit of governmental agencies, authorities and instrumentalities and for the benefit of public utilities, and for the benefit of the Association and the Owners, on, under and through the Property for the ownership, use, operation and maintenance, repair and replacement of water, sewage, gas, electrical and other facilities, including lines, pipes, wires, valves, switches, etc., and all parts of the Property may be entered upon under reasonable circumstances for maintenance and repair of the aforementioned utilities or facilities.

Section 2. Access to Utility. Sewage and Drainage Easements. The utility, sewage and drainage easements designated on the plat of the Subdivision shall constitute a non-exclusive easement for the installation and maintenance of public and private utilities, sewers, drainage and fire protection facilities (including storm sewers, gas and water, phone, cable, electricity and security) and is hereby reserved and granted to public or private utility companies, the Association and any Owner whose use and occupancy of a Dwelling is conditioned therefrom for the installation, construction, operation and maintenance of lines, mains, sewers, drains, hydrants, or any appurtenances and facilities installed in connection with any of the foregoing, whether under or above ground, subject to the condition that, following any such construction, installation or maintenance, the area within the utility, sewage and drainage easements involved shall be returned to the condition existing prior thereto at the cost and expense of the party responsible for having any such installations made, construction performed or maintenance done.

Section 3. Utilities Maintenance. All utilities constructed within the utilities, sewage and drainage easements shall be maintained by the Association or utility company, whichever is legally responsible. Utility service to each Lot shall be billed to the Owner thereof without liability on the part of the Association. Utility service for the purpose of maintenance of the Common Areas and for the safety of residents shall be billed to the Association without liability on the part of the Lot Owners.

Section 4. Driveway Easement. Lots served by a common driveway shall have an easement upon that portion of the driveway reasonably necessary for ingress, egress and turnaround. Said common driveways shall not be blocked at any time, even temporarily, and the Owner whose rights are interfered with shall be entitled to all remedies otherwise provided for in this Declaration.

Section 5. Overhangs. Every Lot on which an attached (townhouse style) Dwelling is located shall have an easement upon that portion of any adjoining Lot reasonably necessary, whether or not shown upon any subdivision plat of the Property, for the overhang, including maintenance, repair and replacement thereof, of any and all portions of any original construction improvements on said Lot, which may include but shall not be limited to common walls, cornices, gutters, eaves, roofs and windows.

EXHIBIT A

Legal Description

BEING Lots 1 through 140 inclusive, and Open Space Lots 149, 150, 151, 152, 153, 156, 157, 158, 159, 160, 162 and 164, as shown on plats of Gardiner Park East and Gardiner Park West of record in Plat and Subdivision Book ____, Pages ____ and ____, in the Office of the Clerk of Jefferson County, Kentucky.

BEING the same property acquired by GARDINER PARK DEVELOPMENT, LLC, a Kentucky limited liability company, by Deed of record in Deed Book 6977, Page 621, in the Office of the Clerk aforesaid.