



**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**BRUSH MOUNTAIN FARMS**

**PHASE THREE**

**BELL COUNTY, KENTUCKY**

q 73.1

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EXHIBIT "A"    Property Description



# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## BRUSH MOUNTAIN FARMS

### PHASE THREE

**THIS DECLARATION** is made, published and declared this 6th day of September 2007, by and among (1) Diversified Investments & Developments, LLC (the "Declarant"), and (2) any and all persons, companies or other entities presently owning or hereinafter acquiring any of the hereinafter described real property.

**WHEREAS**, the Declarant has created, established and developed **Brush Mountain Farms, Phase One**, as shown on plat filed of record in the Clerk's Office of Bell County, Kentucky as Instrument Number Plat Cabinet 3 Slide 26 (the "Phase One Plat"), pursuant to that certain Declaration of Covenants, Conditions and Restrictions dated November, 2004, and filed of record in the Clerk's Office of Bell County, Kentucky as Instrument Number Misc. Book 20, Page 482 (the "Phase One Declaration");

**WHEREAS**, the Declarant subsequently created, established and developed **Brush Mountain Farms, Phase Two**, as shown on plat filed of record in the Clerk's Office of Bell County, Kentucky as Instrument Number Plat Cabinet 3 Slide 54 (the "Phase Two Plat"), pursuant to that certain Declaration of Covenants, Conditions and Restrictions dated October, 2005, and filed of record in the Clerk's Office of Bell County, Kentucky as Instrument Number Misc. Book 20, Page 737 (the "Phase Two Declaration");

**WHEREAS**, it was the intention of Declarant, in so creating, establishing and developing Brush Mountain Farms, Phases One and Two, to create one integrated subdivision created and developed in phases (with Brush Mountain Farms, Phases One, Two and Three (as created herein), and any future additions thereto, collectively referred to as "Brush Mountain Farms"; and the Phase One Declaration, Phase Two Declaration and this instrument, and any future amendment or supplements, collectively referred to as the "Declaration");

**WHEREAS**, the Declarant is the fee simple owner of a certain tract of real property in Bell County, Kentucky, which is more particularly described in Exhibit "A", attached hereto and made a part hereof by this reference (the "Property");

**WHEREAS**, the Declarant has caused to be prepared a plan for the subdivision of said Property into residential lots, and has caused a subdivision plat of the said Property to be filed of record in the Clerk's Office of Bell County, Kentucky as Instrument Number TBD – To be Determined after filing and recording (the "Phase Three Plat");

**WHEREAS**, pursuant to the Declaration, additional property may be added to and become subject to the Declaration as desired by the Declarant, in the sole discretion of Declarant;

**WHEREAS**, it is the intention of Declarant that the Property shown on Exhibit "A" be hereby added to Brush Mountain Farms, and that the Declaration be hereby amended to add such Property to Brush Mountain Farms;

**WHEREAS**, it is to the benefit, interest and advantage of the Declarant, and each and every person or other entity which may hereafter acquire any interest in any of the aforescribed Property that such Property be subject to the covenants, restrictions, easements, assessments and liens of the Declaration that



govern and regulate the use and occupancy of all of the same, said covenants, restrictions, easements, assessments and liens to run with the land;

**NOW, THEREFORE**, in consideration of the premises, the Declarant does hereby publish and declare (1) that all, and each and every part of, said Property described in Exhibit "A" is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and otherwise held and used subject to (a) the covenants, conditions, restrictions, uses, limitations and obligations of the Declaration, as also hereinafter set forth, and that such property hereby become a part of the Brush Mountain Farms development; and (b) all easements, conditions, restrictions, uses, limitations and obligations, as set out in the Subdivision Plat, all of which are hereby declared and agreed to be in furtherance of a plan for the development and improvement of said Property, (2) that said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Property and to the Declarant, its successors and assigns, the Association and any person or legal entity acquiring or owning any interest in any portion of said Property or any improvements thereon, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

## **ARTICLE I** **DEFINITIONS**

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

Section 1. "Association" shall mean and refer to Brush Mountain Farms Community Association, a non-profit, non-stock association of Lot owners, its successors and assigns.

Section 2. "Designated Common Area(s)" shall mean all land designated as Common Area(s) on said Plat or any revisions thereof.

Section 3. "Declarant" shall mean Diversified Investments & Development, LLC, with offices in Middlesboro, Kentucky, its successors and assigns.

Section 4. "Declaration" shall mean, collectively, the Phase One Declaration, Phase Two Declaration and this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereafter, as the Declaration may, from time to time, be amended in accordance with its terms.

Section 5. "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots.

Section 6. "Lot" or "Lots" shall mean and refer to the plots of land designated on the Subdivision Plat. For all purposes hereunder, the Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which the Declarant conveys in fee simple title by recordable deed from and after the date hereof.

Section 7. "Member" shall mean and refer to every Person who holds membership in the Association. Joint ownership of a single Lot by two or more Persons shall be deemed one Member

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, but excluding those having such



interest merely as security for the performance of an obligation. The purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 9. "Person" means an individual, firm, company, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 10. "Property" shall mean all of that certain real property hereinabove described both in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association and the Declaration.

Section 11. "Subdivision Plat" or "Plat" shall mean, collectively, the Phase One Plat, Phase Two Plat and Phase Three Plat, and any amendments or revisions thereto, and the recorded plats of any additional property which is later incorporated into and made subject to the Declaration.

## **ARTICLE II** **THE PROPERTY**

Section 1. Property Subject to Declaration. The Property shall be held and used subject to the Declaration.

Section 2. Roads and Utilities. The roads within the Property are public property. Pipes, lines, cables, other means to facilitate utility services, shall also be public.

Section 3. Additional Property Subject To The Declaration. Additional residential property and/or designated Common Area(s) which are not presently a part of the Property may be added to and become subject to the Declaration as desired by the Declarant. The decision to include additional property to be subject to the Declaration shall be at the sole discretion of Declarant. Declarant and/or the venturers of the Declarant may subsequently acquire additional land adjacent or contiguous to the Property or in the vicinity of the Property and may incorporate some or all of such additional land into the Declaration, but Declarant and/or the venturers of the Declarant are under no obligation to incorporate any such additional land into the Declaration.

## **ARTICLE III** **THE ASSOCIATION**

Section 1. Members. Every Person who is a record owner of a fee or an undivided fee interest of any Lot shall be a Member of the Association provided, however, that anyone who holds such interest merely as security for the performance of an obligation, shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Control by Declarant. The Declarant shall be a Member for each Lot owned by it until the same is sold and title transferred. Notwithstanding any other provision of the Declaration or any related document, the Declarant shall retain total control of the Association including the right to cast the votes of all members, the Property, the development thereof, and the improvements thereon, including, without limitation, plan approval, until the development is complete and 75% of the Lots have been sold and title transferred. However, Declarant may, at its option, transfer said control to the Members at such time as it deems appropriate.



Section 3. Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of a Lot, with one (1) vote for each Lot owned. The Declarant's vote on any matter shall outweigh the aggregate vote of all other Members until the control granted to Declarant in this Article is transferred to the Members.

Section 4. Secured Parties. No individual or legal entity holding titling to a Lot as security for any debt or obligation shall be considered an owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any questions or matter affecting the administration of the Association.

Section 5. Voting. At every meeting of the Members, each of the Members shall have the right to cast his/her vote on each question. Subject to the Declarant's control as set forth in Article III, Section 2 above, and other rights set forth in the Declaration, the vote of the Members representing fifty-one (51%) percent majority of the total votes cast, with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute, the Association's Charter or By-Laws, or the Declaration, a different vote is required. In such case, such express provision shall govern and control. The vote of any membership which is owned by more than one person may be exercised by any of them present at any meeting unless an objection or protest by a co-owner of such membership is noted at such meeting. In the event all of the co-owners of any such membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

Section 6. Proxies. A Member may appoint any other Member or the Declarant, or any other person permitted by law or by the By-Laws, as his/her proxy. In no case, may any Member, except the Declarant, cast more than one vote by proxy, in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the By-Laws.

Section 7. Quorum. The presence, either in person or by proxy, of Members representing at least a fifty-one (51%) percent of the total votes entitled to be cast with respect to any question shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of the Members. If the number of Members at a meeting drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted. If two or more successive meetings are adjourned for lack of a quorum, the quorum for each successive resumed meeting shall be equal to the greater of the number of votes represented at either of the two previous adjourned meetings.

Section 8. Rules and Regulations. The Developer initially, and the Association after control is turned over, may from time to time, promulgate rules and regulations for the use and enjoyment of the designated Common Area(s) and roads.

#### **ARTICLE IV**

#### **PROPERTY RIGHTS AND EASEMENTS**

Section 1. Owner's Easements of Enjoyment Over the Common Area(s). Every Owner shall have a right and easement of enjoyment over and across the Common Area(s), and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Declaration and the following specific provisions:



- (a) The right of the Association, as provided in its charter and/or By-Laws, to suspend any enjoyment rights of any member;
- (b) The right of the Association, in accordance with its Charter and/or By-Laws, to improve and maintain the Common Area(s);
- (c) The right of the Declarant and the Association, but not the obligation, to protect, maintain and inspect the Common Area(s).

Section 2. Easements for Utilities and Related Purposes. The Declarant and/or the Association are authorized and empowered to grant such licenses, easements and/or rights-of-way for water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antennae, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities and other common services to the Property as may be considered necessary, appropriate or desirable for the orderly maintenance, preservation of the health, safety, convenience and/or welfare of the Owners and the Declarant.

Section 3. General Easement. The Declarant hereby reserves for itself and the Association the right and easement to the use of any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot, any other Lot, or the Common Area(s).

Section 4. Easements for Entrance Improvements. All Lots adjoining the Entrance to the Property shall be subject to an easement for the benefit of the Declarant and the Association as necessary to allow for the installation, maintenance and/or replacement of Entrance Improvements. Easements for such purposes of ten (10) feet inside of such Lot(s) are hereby created. Said improvements shall be maintained by the Association.

## **ARTICLE V**

### **MAINTENANCE AND REPAIR**

Section 1. Association Responsibilities. Except as otherwise stated in the Declaration, the Association shall provide and pay for all maintenance and expenses for the Common Area(s), any improvements on the Common Area(s), Common Fences, the entrances, the Entry Areas, drainage structures, Retention Basins, street lights, sidewalks and road medians.

Section 2. Individual Lot Owners. Each Owner shall be responsible for the maintenance, painting, and proper upkeep of the Owner's Lot and all improvements thereon, including, without limitation, all areas within easements. Grass, weeds, and vegetation shall be kept neatly mowed to the curb and all debris and animal waste shall be cleared at regular intervals from each Lot so as to maintain same in a neat, health, safe and attractive manner.

Further, each Owner shall keep his residence in a condition comparable to its condition when initially constructed. In the event all or any portion of a residence is damaged or destroyed by fire or other casualty, then the Owner shall promptly rebuild, repair or reconstruct said residence in a manner which will substantially restore same to its original condition or demolish the residence, at his discretion within nine (9) months of the occurrence of the casualty.

In the event the Owner of the Lot shall fail to comply with the terms and conditions of this Article in a manner reasonably satisfactory to the Board of Directors and in keeping with other Lots, the Declarant,



in its sole discretion, or the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right, through agents and/or employees, to enter upon said Lot and to repair, maintain and restore the Lot and to repair, maintain, restore or demolish the improvements thereon. The costs thereof, together with interest thereon and costs of collection thereof, shall be a binding personal obligation of such Owner, as well as, a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Clerk of Bell County, Kentucky. The rights and remedies given to the Association by the Article of the Declaration dealing with assessments and non-payment thereof shall apply fully to the debt obligations, including interest and costs of collection, and the lien rights created in this Section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

## **ARTICLE VI COMMON FENCES**

Common Fence. The Declarant may, but shall not be obligated to construct a fence along any portion of the perimeter of the Property, the Common Areas and along certain roads within the subdivision (the "Declarant Fence"). The Declarant Fence shall be of a design to be selected by the Declarant and shall be maintained by the Association, and may not be changed in any manner by any Owner.

## **ARTICLE VII ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the assessments provided in this Article. Said assessments shall be fixed, established and collected from time to time as herein provided. All such assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the Owner of such Lot at the time when the assessment becomes due.

### Section 2. Annual Assessments.

- (a) Each Member other than Declarant shall pay to the Association in advance an annual sum equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:
  - (1) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any, any repayment of any debt expenses including any loans incurred by the Association and interest thereon from Declarant for operating and capital improvement; and
  - (2) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
  - (3) The cost of extended liability insurance and the cost of such other insurance as the Association may obtain; and



- (4) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
  - (5) The estimated cost of repairs, maintenance and replacements of the entrance, the Declarant Fence, drainage systems, Retention Basins, the Common Area(s) and other items.
  - (6) Electricity and water for irrigation of the Common Area(s) improvements.
  - (7) Common Area(s) improvements.
- (b) For each Lot, the annual assessment shall first become due on the date of the closing of the sale of said Lot from the Declarant to the Owner, unless the Owner is a builder constructing a residence for someone other than himself, in which case, said assessment shall first become due on the date of the closing of the transfer of said Lot by the builder to the first resident, or twelve (12) months from the date of the closing of the sale of the Lot from the Declarant to the builder, whichever is earlier. The assessment shall be prorated for any partial assessment year.
  - (c) After January 1, 2005, the Board of Directors shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By-Laws. The general annual assessment for each Lot shall be computed by dividing the total assessment attributable to the Property by the total number of Lots. Written notice of the annual assessment shall be sent to every Owner subject thereto; but failure to receive such notice shall not excuse payment. 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 assessment on a specified Lot has been paid.
  - (d) Until the sooner of January 1, 2005, or until 75% of all Lots are sold by Declarant, the maximum annual assessment per Lot to be paid to the Association shall be \$500.00. Currently, the assessment fee is \$ 300.00 per annum.
  - (e) Homeowners association dues and assessments fees will be waived for lots that meet all the following criteria:
    - 1. The lot is owned by the same party that owns another lot that is subject to assessments;
    - 2. The lot is adjacent to a lot owned by the same party; and
    - 3. There are no improvements upon the lot except landscaping.

It is intended that where two of the said lots are adjacent, owned by the same party, and only one has improvements constructed thereon, only one lot will be assessed Homeowners dues.

Section 3. Special Assessments. In addition to the regular assessments authorized by this Article, the Association may levy a special assessment or assessments in any assessment year, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is



responsible or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least fifteen (15) days, but not more than thirty (30) days, in advance of such meeting, which notice shall set forth the purpose of the meeting. Such assessment shall be prorated among the Members on the same basis as annual assessments.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of the Members or the property of the Members, the Board of Directors may declare an emergency assessment in such amount and payable at such time as the Board, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of the Declaration. Such assessment shall be prorated among the Members on the same basis as annual assessments. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was made in good faith.

Section 5. Non-Payment of Assessments. Any assessment levied pursuant to the Declaration, or any installment thereof, which is not paid on the date when due, shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. In order to evidence said lien, a notice of lien setting forth the amount of the indebtedness, the Owner's name, and a description of the Lot shall be recorded with the Office of the Clerk of Bell County, Kentucky. The personal obligation of the Member to pay such assessment shall, however, remain his/her personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to the Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein.

Any assessment levied pursuant to the Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Kentucky, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages upon the Lot or Lots; in either event, the Association may collect from the Member interest, costs and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Owner irrevocably grants the Board of Directors of the Association the power to sell his Lot at public sale to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale conforms with Sections 5, 7 and 8 of this Article. The Association is hereby authorized to take any and all courses of action available to it for collection of the assessment which the laws of the State of Kentucky allow. Any such sale shall be made after first advertising the sale of said property for not less than twenty-one (21) days by three (3) weekly publications in some newspaper circulated in the County of Bell, State of Kentucky, giving notice of the time and place of such sale. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, statutory right of redemption, marital rights, homestead, and dower and all other exemptions, all of which are expressly waived by the Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over



any and all other liens of every nature against the Lot except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust described in Section 7 of this Article.

The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorney's fees, and sale commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust as described above; and third, to the payment of all amounts due the Association under the terms of the Declaration and the By-Laws; and the balance, if any, to the Owner whose Lot is sold, or his/her successors or assigns.

Upon any default in the payment of the assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as the mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or an Owner, pursuant to any terms, provisions and covenants and conditions of the Declaration and the By-Laws, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Declaration and the By-Laws, at law or in equity.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to the Declaration, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 7. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any mortgage instruments duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Association reflecting that payments on said lien were current as of the date of recording of said mortgage instrument.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to the Declaration upon any Lot shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a lien with priority over all other liens) if such mortgage is made in good faith and for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, and shall not in such instance apply to claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Owners, including the mortgaged Lots. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Said lien, if any, shall have the same effect and be enforced in the same manner as provided herein.



No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded first mortgage secured by a Lot shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to the Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but failure to include such a provision in any such instrument shall not affect the validity of priority thereof, and the protection extended to the holder of such instrument (or the indebtedness secured thereby) elsewhere in this Article shall not be altered, modified or diminished by reason of such failure.

## **ARTICLE VIII**

### **ARCHITECTURAL CONTROL**

Section 1. Architectural Control Committee. An Architectural Committee is hereby established and shall consist of three (3) entities or persons (the "Committee"). The initial Committee shall consist of the Declarant and two (2) other entities or persons to be selected by the Declarant. These Committee members shall serve for a period of two (2) years (and until such time as replacement members are appointed,) unless they are replaced by the Declarant, resign or otherwise fail to serve. Upon the expiration of two (2) years from the date hereof, or the earlier termination of any Committee member, the Declarant shall then appoint substitute Committee members until control of the Association is transferred to the Members (or until 75% of all building lots have been sold), at which time, the Board of Directors of the Association shall have the authority to make said appointments; provided, however, that the Declarant shall have the absolute right to be one of the three (3) Committee members until the development is complete and all of the Lots have been sold and all land currently owned or hereafter acquired by the Declarant, by any venturer of the Declarant, or by any entity related to any venturer, in the surrounding vicinity is developed and sold. The affirmative vote of a majority of the membership of the Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation. With the exception of improvements desired by the Declarant, no residence, structure or improvement of any kind or nature, or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots, nor shall any existing structure, improvement, fence or barrier upon any Lot be altered in any way which materially changes the exterior appearance thereof, without the written consent of the Committee; nor shall any new use be commenced on any Lot without the written consent of the Committee. Plans and specifications of all such improvements and uses shall be submitted to and may be retained by the Committee. They shall be in such form and shall contain such information as may be required by the Committee, but in any event shall include, without limitation, (1) a building plan and site plan showing the floor plans, exterior elevations, color scheme, kind, shape, height, materials and location with respect to said Lot (including proposed front, rear and side setbacks) of all structures, fences or barriers, and location of all parking spaces and driveways on the Lot and the proposed surface thereof, (2) grading and landscape plans, and (3) a selection of one of several landscape designs which the Committee will make available and which will represent the minimum landscape requirements. Declarant recommends that all plans and specifications be prepared by a registered and licensed professional Architect or Engineer, or professional residential housing designer. The Builder selected to construct any residence shall be approved by the Committee in its sole and absolute discretion. No residence may be constructed upon any Lot except by a Licensed General Contractor.



The Committee may promulgate rules governing the forms and content of plans to be submitted for approval or requiring specific improvements on the Lots, including, without limitation, the exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Committee at any time, and no inclusion in, or omission from or amendment of any such rule or statement shall be deemed to bind the Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Committee's discretion as to any such matter; however, no change of policy shall affect the finality of any approval granted prior to such change.

Approval for use on any Lot of any plans or specifications shall not be deemed a waiver by the Committee in its discretion to disapprove such plans, specifications, features or elements as are subsequently submitted for use on any other Lot. Approval of any such plans and specifications relating to any Lot shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, improvements, fences or barriers on and uses of the Lot in question.

In the event the Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

Upon submission of the plans and specifications, the Owner may be required to pay to the Committee a review fee of \$900.00 as adjusted from time-to-time, and shall further pay an additional fee of \$200.00 for each additional review needed to comply herewith, plus any expenses or cost incurred by the Committee in connection with such reviews.

If any structure, improvement, fence or barrier shall be altered, erected, placed or maintained upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Committee as required herein, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein; and upon written notice from the committee, any such structure, improvement, fence or barrier so altered, erected, placed or maintained upon any Lot, in violation hereof, shall be removed or altered, and such use shall be terminated so as to extinguish such violation.

If fifteen (15) days after the notice of such violation, the Owner of the Lot in question shall not have taken reasonable steps toward the removal, alteration or termination of the same, the Association, by its officers or directors, shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner, as well as, a continuing lien upon the Lot in question upon the recording of a notice of lien with the Office of the Clerk of Bell County, Kentucky. The provisions of the Article of the Declaration dealing with assessments and non-payment thereof, including, without limitation, the right and remedies given to the Association therein, shall apply fully to the debt obligations, including interest and costs of collection, and the lien rights created in this section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Committee, the Committee shall, upon written request of the Owner thereof, issue a letter of compliance identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted



thereon have been approved and that such structure complies therewith. Preparation of such letter shall be at the expense of the Owner of such Lot. Any compliance letter issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such compliance letter shall be conclusive evidence that all structures and improvements described therein and the use or uses described therein comply with all the requirements of these restrictions.

Any agent of the Declarant or the Committee, may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions of this

Declaration, and no such persons shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

## **ARTICLE IX**

### **CONSTRUCTION OF RESIDENCE**

Section 1. Completion of Construction. Once construction of a residence is commenced, the particular Owner shall proceed diligently therewith and complete construction within eighteen (18) months after said commencement. Completion of construction shall include a paved driveway (asphalt or concrete) from the street to the residence.

If said construction is not completed within said eighteen (18) months, then the Owner shall owe to the Declarant a penalty equal to twenty percent (20%) of the original price of the Lot. Said amount shall be payable within thirty (30) days after the end of said eighteenth month and shall increase by an additional penalty of one percent (1%) of said price for each additional thirty (30) days it remains unpaid. Said penalties, together with costs of collection thereof, shall be a binding personal obligation of such Owner, as well as, a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Clerk of Bell County, Kentucky. The rights and remedies given to the Association by the Articles of the Declaration dealing with assessments and non-payment thereof shall apply fully to the debt obligations, including costs of collection, and the lien rights created in this Section for the benefit of the Declarant.

The terms and conditions of this Section, including, without limitation, the time periods set forth for completion of construction, shall apply fully to any subsequent purchasers or any Lot.

Section 2. Subordination and Mortgage Protection. The subordination and mortgage protection provisions of the Article of the Declaration dealing with assessments and non-payment thereof shall be fully applicable to all the rights and remedies of the Declarant created by this Article.

## **ARTICLE X**

### **RESTRICTIVE COVENANTS**

Section 1. Residential Use. No Lot shall be used except for single-family private residential dwelling except for those uses permitted to the Declarant as shown herein.

Section 2. Uses, Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the residences to be built on the Lots and for the protection of the values of the entire development, the Lots and the residences to be constructed shall be governed by the following provisions:



(a) The Property is hereby restricted to single-family private residential dwellings for residential use only, and no trade or business of any kind shall be conducted on a Lot, except for such uses permitted to Declarant as shown herein. Each lot shall have only one dwelling. All buildings or structures placed upon the Property shall be site-built and of new construction, and no buildings or structures shall be moved from other locations onto the Property, unless approved by the Committee. However, nothing in this paragraph is intended to limit or restrict, and same shall not limit or restrict, Declarant from constructing any structure upon, or moving any mobile home or trailer onto, the Property whether any of same be new or used, for use as an office or any other purpose related to the development, marketing and management of the Property. Nor shall same limit or restrict Declarant from placing such signs or billboards or engaging in any such trades, businesses or activities on the Property which Declarant, in its discretion, shall deem appropriate and proper related to the development, marketing and management of the Property.

(b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Subdivision Plat.

(c) There shall be no direct access to any Lot from Highway 217. All Lots shall be accessed only from roads within the Subdivision.

(d) No structures of a "temporary" character (e.g. trailers, tents, shacks, garages, barns or other out-buildings) shall be used on any portion of said Property at any time as a residence, either temporarily or permanently, unless approved by the Committee.

(e) All buildings erected on any Lot shall have wood frame, or vinyl clad windows on sides facing a street, or other type windows as approved by the committee.

(f) Each residence shall be guttered.

(g) Each residence must have a uniform traditional mailbox structure and may have outdoor post lights located near street from driveway, all of which must be approved by the Committee.

(h) The treatment and construction of all driveway entrances must be approved by the Committee. Each residence must have a paved driveway (asphalt or concrete) from the street to the residence.

(i) All private fences must be constructed of (1) brick and/or wrought iron, (2) wood planks shadow box style no more than 8" in width, or (3) Kentucky fences consisting of wood or vinyl posts and three (3) wood or vinyl rails. In accordance with Article VIII hereof, all fences must be approved by the Committee. No fence, hedge or other separating device shall be constructed beyond the front house line, nor on corner lots beyond the side house line. All fences, regardless of location, shall be no more than six (6') feet tall. Notwithstanding all of the foregoing provisions of this paragraph (j), the Committee shall have the right to grant approval for such variations, waivers or exceptions to any or all of the above restrictions related to fences as it, in its sole discretion, shall deem proper.

(j) No obnoxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance.



(k) Unless approved by the Committee, no animals of any kind shall be raised, bred or kept on any of the Lots, except horses, dogs, cats or caged birds provided that such dogs, cats and birds are not kept, bred, or maintained for any commercial purpose and are confined within homes, fenced rear yards or restrained by leash at all times, as appropriate. Any dogs kept outside shall not be allowed to be noisy, bothersome or a nuisance. Pens or runs are allowed, provided such pens or runs are no close to the street than the rear wall exterior wall of the residences and they are properly screened from view from the Street. No more than one horse shall be permitted for each one and one half acre of property for each Lot.

(l) Prior to occupancy of a new residence, the initial Owner shall sprig or seed those areas of the entire Lot not otherwise containing ground cover, and shall take such other action reasonably required to prevent erosion of the Lot..

(m) No three-wheelers, four-wheelers or other vehicles not approved for use on public streets (except bicycles) shall be permitted on the streets of the Property. This provision will be enforced by the proper Bell County authorities.

(n) No signs whatsoever (except normal mailbox signage and one (1) "for sale" sign per Lot not to exceed five (5) square feet, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any residents thereof. No business activity of any kind whatsoever shall be conducted in any building or on any portion of the Property (except for home offices which do not generate any traffic to or from the property, such as from visitors, clients, customers or delivery vehicles) provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of the Declarant, its agents, and assigns during the development of the Property and the time period needed to sell the Lots.

(o) No exterior television or radio antennas, nor any satellite dishes with a diameter in excess of 20 inches (the location of which shall be approved by the Committee) shall be placed, allowed or maintained upon the Property or any improvements to be located upon the Property.

(p) No clothesline may be used or maintained on any Lot.

(q) No building material of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence improvements. Building materials shall be stored only within the property lines of the particular Lot involved.

(r) Excluding mail boxes, approved post lights, natural or approved vegetation and the needs of the Declarant, no obstruction shall be allowed within ten (10') feet of any right-of-way, except on property or easements owned by the Association or unless approved by the Committee.

(s) All equipment, air conditioning units, electrical transformers, garbage cans, service yards, and woodpiles shall be kept screened by adequate planting or fencing so as to completely conceal them from view of all streets and neighboring Lots. Further, any and all of the foregoing items, along with any basketball goals or other playground or sports equipment shall be located and placed no closer to any street than the front of the house. Basketball goals shall not be attached to the front of any house. "Front of the house" as used in the Declaration shall mean that part of the structure of the house farthest away from the street but facing such street. Corner



lots must comply with this restriction as to both streets. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(t) The construction of all swimming pools shall be approved by the Committee. All swimming pools shall be fenced in a manner to comply with applicable law and regulations and to prohibit easy access by small children. All such fences must be in full compliance with the fence restrictions hereinbefore set forth. No above-ground pools shall be allowed.

(u) No tennis court fence shall be erected on any Lot unless the construction, size and materials are approved by the Committee. In the event wire fencing is approved, it must, at a minimum, be coated with green or black vinyl or a similar material of like color.

(v) No wagons, trailers or recreation or commercial vehicles, including, without limitation, boats, boat trailers, motorcycles, trucks, motor homes, camping trailers, or similar type items shall be kept other than in a garage, except in the case of horse trailers which may be stored outside in an area which is no closer to the street than the front of the residence,. No automobile or other vehicle shall be continuously, habitually or regularly parked on any street or right-of-way or in any yard.

(w) No tree with a diameter of six (6) or more inches, as measured two (2') feet from the ground, shall be removed without the approval of the Association, except for the emergency removal of a tree that constitutes a hazard to person or property.

(x) The minimum heated livable area of any residence, excluding garages, porches, storage rooms, workshops, etc., shall not be less than 700 square feet on the ground floor for a one story building and 975 square feet on the ground floor for one and one half story buildings and 1500 square feet for two story buildings.

(y) Setback lines and height restrictions shall be no less than those required by applicable Governmental regulations and no less than those shown on the Subdivision Plat. The Committee shall have the absolute right to control the precise site and location of any house or other structure upon all Lots. Such location shall be determined only after reasonable opportunity has been afforded to the Owner to recommend a specific site.

(z) No Lot may be further subdivided, except by Declarant. No portion of any Lot may be conveyed except with the prior written approval of the Committee.

(aa) All above-ground exterior foundation and exposed basement walls must be must be covered as approved by the Committee.

(bb) Lots must be regularly cleaned and at all times kept free of debris, including during construction of improvements. During construction of a residence, or major improvements to a residence, a dumpster [and a portable toilet in the case on-site toilet facilities is not available] must be maintained and utilized on the site.. Governmental erosion and sediment control guidelines shall be observed at all times.

(cc) All driveways, walks, and patios must be covered prior to occupancy of any dwelling and must be constructed of stone or other paving material (asphalt or concrete) as approved by the Committee.



(dd) Each lot may be improved with only one single-family dwelling. No out-buildings, sheds or any other structures shall be allowed, except one detached garage and/or a detached storage building or barn stick-built on site, constructed of the same material as the residence on said lot so as to have a similar appearance. Said storage building must be located in the rear yard and completely screened by a privacy fence. Prior to construction, plans and specifications for any such out buildings must be approved by the committee.

(ee) The finished grading for all Lots shall be completed in conformity with the recorded Plat for the Subdivision and in such manner as to retain all surface water drainage on said lot or lots and to prevent the flow of all surface waters onto adjoining lots.

(ff) Except for those built by the Developer and Association within their Easement as set out in Article IV, Section 4 herein. No fences may be erected on any lot adjacent to Common Areas until control of the Association is turned over to the members.

(gg) No vegetable gardens shall be allowed in front or side yards.

(hh) All dwellings must have an exterior of cedar siding or other earth-tone siding approved by the Committee. Limited exceptions may be allowed by the Committee for cases of exceptional attractive designs.

(ii) All flashings on structures must be aluminum or metal painted to match the trim of the structure.

(jj) The Declarant reserves unto itself the right to approve additional and separate restrictions at the time of sale of any of the Lots, which restrictions may differ from Lot to Lot.

(kk) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the time period necessary for the sale of said Lots, upon such portion of the premises as the Declarant deems necessary, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the development of the Property and the sale of the Lots, including, without limitation, a business office, storage area, construction yard, signs, model units, and sales office.

(ll) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors for the operation and use of the Property and promulgated among the membership by them in writing. The Board of Directors is hereby authorized to adopt such rules including the levying of appropriate fines which will then be treated as assessments.

(mm) The Declarant, in its sole discretion, or the Association, after approval by a majority vote of the Board of Directors, shall have the right, through agents and/or employees to enforce the aforesaid restrictive covenants and to enter upon any Lot in violation thereof for such purpose. Upon written notice from either the Declarant or the Association, any such violation shall be corrected by the Owner of the subject Lot. If fifteen (15) days after the notice of such violation, the Owner shall not have taken reasonable steps toward correction thereof, the Declarant or the Association, by their officers and directors, shall have the right, through agents and employees, to enter upon such Lot and take such steps as necessary to extinguish such violation. The costs thereof shall be the binding personal obligation of such Owners, as well as, a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Clerk of Bell County, Kentucky. The provisions of the Article of the Declaration dealing with assessments and



non-payment thereof, including, without limitation, the right and remedies given to the association therein, shall apply fully to the debt obligations including interest and costs of collection, and the lien created in this section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

(nn) No firearms shall be discharged within the Subdivision.

(oo) Common Area(s) as shown on the recorded plat is for the common enjoyment of all members of the Association and shall only be used by members and their guests exclusively. There shall be no toilet facilities placed upon any portion of any Common Area(s), nor shall any camping be allowed thereon, unless approved by the Committee.

## **ARTICLE XI** **MISCELLANEOUS**

Section 1. Duration and Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, shall inure to the benefit of the Association and the Owners of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, and shall remain in effect until January 1, 2024, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of ninety (90%) percent of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Any amendment must be properly recorded to be effective. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES AND SHALL HAVE THE RIGHT UNTIL THE ASSOCIATION IS TRANSFERRED TO THE TO OWNERS TO UNILATERALLY AMEND THE DECLARATION IN WHOLE OR IN PART IN ORDER.

Section 2. Enforcement. The Declarant, the Association, or any Member, shall have the right to enforce the terms and conditions of the Declaration by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Declarant or the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 3. Hold Harmless and Owner's Responsibility. Each Owner, recognizing that certain risks are inherent in the building of houses, and in other aspects of building and recreation, does upon taking title to a Lot, hold harmless: (1) the Declarant, (2) the Association, (3) any other entity managing or supervising the aforesaid activities which is owned and/or controlled or employed by the Declarant, by the Association or by some or all of the Members, and (5) their directors, officers and employees, from any and all losses, liabilities, or damages which said Owner, his family, or guests may sustain resulting from the acts, and/or omissions of said entities, except for their gross negligence. Further, said Owner shall be fully responsible for any and all losses or damages, which might be caused by him, his family or their invitees.

Section 4. Disclaimer. The Property may include some land that is filled or partially filled or that contains abandoned wells, underground springs or other characteristics which may affect its suitability for building. The Declarant makes no warranty or representation, express, implied or otherwise, as to the Property being undisturbed land or suitable for building, and shall not be liable for claims, losses or damages of any kind or character resulting from such conditions.



Section 5. Casualty and Liability Insurance. The Owner of each Lot shall carry in full force and effect casualty insurance in limits for the replacement value of Lot improvements located thereon and normal and reasonable general liability insurance. The Owner shall provide the Association a copy of the policies providing such coverage, and the policies shall contain a thirty (30) day notice of cancellation provision running to the benefit of the Association. Insurance on the Common Area(s) shall be carried and paid by the Association.

Section 6. Interest and Late Charges. Any amount due to the Association, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors of the Association, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Kentucky, and may, by resolution of said Board, be subject to such penalty or "late charges" as said Board may fix.

Section 7. Notices. Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

Section 8. Headings. All headings appearing herein are for convenience only and shall be disregarded in construing the substantive provisions hereof.

Section 9. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 10. Waiver. No restriction, condition, obligation or provision of the Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 11. Gender, Etc. Whenever in the Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.



IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by the officer duly authorized so to do the day and year first above written.

**Diversified Investments & Development, LLC**

By: J. Chris Gibbs  
J. Chris Gibbs: Member

STATE OF KENTUCKY )  
COUNTY OF Bell ) : ss.

Before me, the undersigned authority, a Notary Public in and for said County and State aforesaid, personally appeared. Chris Gibbs, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Manager of **Diversified Investments & Development, LLC**, the within named Declarant, a limited liability company, and that he as such Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Company by himself as Member.

Witness my hand and seal at office, this 6th day of September, 2007.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 18 Aug 2008



**"EXHIBIT A"**

Property Description – Phase Three

State of Kentucky  
County of Bell

-ss-

I, Becky Blevins, Clerk within and for the  
State and county aforesaid, do hereby certify that the  
foregoing ~~from~~ Declaration

of Covenants and Restrictions

was this day lodged for record,  
whereupon the same has been duly recorded in Misc  
Book No. 21 at page No. 486 record of my said office.

Given under my hand this the 17th day of

Oct - 2007

By Becky Blevins, Clerk

Becky Blevins

Clerk