

FEGENBUSH PLACE SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FEGENBUSH PLACE SUBDIVISION, ("Declaration"), is made on May 24, 2002, 2002, by Tergeo Corporation, a Kentucky Corporation with principal office and place of business at 2708 Hikes Lane, Louisville, Kentucky 40219 ("Developer").

WHEREAS, Developer is the owner of certain real property in Jefferson County, Kentucky, which is to be developed as a residential subdivision;

NOW THEREFORE, Developer with this declares that all of the property described in this instrument, shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for protecting the value and desirability of the real property. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

ARTICLE I PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property that is subject to this Declaration is located in Jefferson County, Kentucky and is more particularly described as follows:

BEING lots 1 through 4, both inclusive, of Fegenbush Place Subdivision, Section 1, of record in Plat Book 40, Page 23 in the Office of the County Clerk of Jefferson County, Kentucky.

BEING part of the same property acquired by Developer by Deed dated December 14, 2001, recorded in Deed Book 7800, Page 222, in the Office of the County Clerk of Jefferson County, Kentucky.

Developer reserves the right to create cross easements and to restrict all of the properties according to the terms of this Declaration. All of the above lots shall be referred to in this Declaration as "Fegenbush Place" or "Subdivision".

ARTICLE II -- USE RESTRICTIONS

Section 1. Primary Use Restrictions. No lot shall be used except for private single family residential purposes. No structure shall be erected, altered or permitted to remain on any lot except a one single family dwelling designed for the occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half stories in height.

Section 2. Nuisances. No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood. No hazardous waste shall be allowed to be transported and/or stored within the subdivision.

Section 3. Use of Other Structures and Vehicles.

(a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds, field offices or sale offices used by the Developer, which shall be removed when construction or development is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, barn, or structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck, other than pick-up trucks, or commercial vehicle, shall be parked or kept on any lot at any time unless housed in a garage or basement. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in the Subdivision. No trailer, boat, truck or other vehicle, except an automobile or pick-up truck, shall be parked on any street in the Subdivision for a period in excess of twenty-four hours in any one calendar year. However, this restriction shall in no way impair the right of the developer to maintain temporary office facilities for sales purposes.

(d) No automobile or pick-up truck shall be continuously or habitually parked on any street or public right-of-way in the Subdivision.

Section 4. Animals. No animals, including reptiles, livestock and poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, provided they are not kept, bred or maintained for any commercial or breeding purposes. Pets must be kept on the owner's lot or leashed when not on a lot. No private or public kennel may be maintained on an owner's lot.

Section 5. Clothes Lines; Fences and Walls; Tennis Courts; Swimming Pools; Antennae and Receivers/Transmitters.

(a) No outside clothes lines shall be erected or placed on any lot,

(b) No fence or wall of any nature may be extended toward a front or street side property line beyond the front or side wall of the residences. No fence or wall of any nature may be erected, placed or altered on any lot until a copy of the plans for same are approved in writing by Developer. Fence and wall construction materials may be specified by, and must be first approved by Developer.

(c) No swimming pools or tennis courts shall be erected or placed on any lot unless design and placement thereof are approved in writing by the Developer.

(d) No aboveground swimming pools, except a wading pool not more than 2 feet in depth, shall be erected or placed on any lot unless the design and placement are approved in writing by Developer.

(e) No antennae (except for standard small television antennae), microwave or other receivers or transmitters (including those currently called "satellite dishes" and "direct TV receivers") shall be erected or placed on any lot unless the design and placement are approved by Developer.

(f) No mail boxes or paper boxes shall be erected on any lot or in the public right of way located adjacent to a lot unless the design is approved by developer.

(g) Approvals for all the items in the aforementioned sub-sections shall be within the sole and absolute discretion of the Developer.

Section 6. Duty to Maintain Lot.

(a) Each owner of a lot shall keep the grass on the lot properly cut, shall keep the lot free from weeds and trash, and shall keep it otherwise neat and attractive in appearance. Should any lot owner fail to do so, then Developer or the Association may take such action as it deems appropriate in order to make the lot neat and attractive. The owner of that lot shall, immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest. The Developer shall have a lien on that lot and the improvements thereon to secure the repayment of such amount. Such lien may be enforced by foreclosure against that lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

Section 7. Duty to Repair and Rebuild.

(a) Each owner of a lot shall, at his/her sole cost and expense, repair his/her residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then the owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty. Alternatively, the lot owner shall completely raze the residence and fill any cavities thereon, and sod or seed the entire lot until such time as a construction of a new residence is begun.

Section 8. Business; Home Occupation. No trade, business, or professional service of any kind shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof or of Section 1 of this Article II, a new house may be used by a builder as a model home for display, provided said use terminates within eighteen months from completion of the house or at the expiration of such additional period of time as may be expressly agreed to in writing by Developer.

Section 9. Signs. No sign for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale or rent thereof, which shall not be greater in area than twelve square feet; provided, however, Developer shall have the right to (i) erect larger signs when advertising the subdivision, (ii) place signs on lots designating the lot number of the lots, and (iii) following the sale of a lot, place signs on such lot indicating the name of the Builder/purchaser of that lot. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

Section 10. Drainage. Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

Section 11. Disposal of Trash. 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. This restriction shall not apply during the period of construction of a residence on the lot or adjoining lots, however, upon completion of construction the owner shall comply with all

restrictions with respect to disposal of trash and maintenance of the property in a neat and attractive manner. Periodically the Developer or the Association may require the Owner to police and keep clean the lot even during construction periods, at owner's sole discretion.

Section 12. Undergroud Utility Service.

(a) Each property owner's electric, water, sewer, gas, cable television, and general utility service lines shall be underground throughout the length of service line from Louisville Gas & Electric's (LG&E) point of delivery to customer's residence, and title to the service lines shall remain in and the cost of installation and maintenance thereof shall be borne by the respective lot owner upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each property owner, together with the right of ingress and egress over abutting lots or properties to install, operate and maintain electric, water, sewer, gas, cable television, and general utility service lines to LG&E's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The electric and telephone easements shown on the plat shall be maintained and preserved in their present condition and no encroachment thereon and no change in the grade or elevation thereof shall be made by any person or lot owner without the express written consent of LG&E and South Central Bell Telephone Company.

(b) Easements for overhead transmission and distribution feeder lines, poles and equipment appropriate in connecting therewith are reserved over, across and under all areas shown on the plat (including park, open and drainage space areas) and designated for underground and overhead facilities.

Above ground electric transformers and pedestals may be installed at appropriate points in any electric easement.

In consideration of bringing service to the Property, LG&E is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

ARTICLE III - ARCHITECTURAL CONTROL

Section 1. Approval of Construction and Landscape Plans

(a) Purchasers of lots shall begin construction of residence in accordance with the contractual agreement between the purchaser and the Developer.

(b) No structure may be erected, placed or altered on any lot until the construction plans and building specifications and a plan showing (i) the location of improvements on the lot; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material (including delivery of a sample thereof, if requested by developer); and (iv) the location and size of the driveway (which shall be concrete), shall have been approved in writing by the Developer.

(c) In addition to the plans referred to in the previous paragraph, a landscape plan shall be submitted to the Developer for its approval in writing, which plan shall show the trees, shrubs, and other plantings then existing or to be planted on the lot. Every effort shall be made in such plans to maintain existing trees on all lots. The developer does not warrant any trees, shrubs, or any other growing plant life on the property. Once approved, no additional trees, shrubs or other growing planting may be placed on any yard area of a lot until a supplementary landscape plan has been submitted to Developer for its approval in writing.

(d) References to "Developer" shall include any entity, person or association to whom Developer may assign the foregoing right of approval. References to "structure" in this paragraph shall include any building, including a garage, fence, wall, antennae (except for standard small television antennae), microwave and other receivers and transmitters (including those currently called "satellite dishes").

(e) After any structure has been erected and the initial landscaping material installed, no alterations or additions that affect the external appearance of the structure or landscaping may be performed until plans for same have been approved in writing by the Developer, the Association, or any designated review entity as the case may be.

Section 2. Building Materials; Roof; Builder.

(a) The exterior building material of all structures shall extend to ground level and shall be either wood, vinyl siding, brick, drivit, stone, brick veneer, or stone veneer or a combination of same. Developer recognizes that the appearance of other exterior building materials may be attractive and innovative and reserves the right to approve in writing the use of other exterior building materials.

(b) The roof pitch of any residential structure shall not be less than a plane of 6 inches vertical for every plane of 12 inches horizontal for structures with more than one story, and a plane of 6 inches vertical for every plane of 12 inches horizontal for one story structures.

(c) The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of one year and must have built a minimum of six homes. The Developer makes this requirement to maintain a high quality of construction within the subdivision, and reserves the right to waive these standards and experience.

Section 3. Minimum Floor Areas. The following shall be the minimum floor areas for homes to be constructed after this instrument is recorded;

(a) The ground floor area of a one story house shall be a minimum of **950** square feet, exclusive of the garage.

(b) The total floor area of a one and one half story house shall be a minimum of **1200** square feet, exclusive of the garage.

(c) The total floor area of a two story house shall be a minimum of **1300** square feet, exclusive of the garage.

(d) The total floor area of a tri-level house shall be a minimum of **1200** square feet, exclusive of the garage.

(e) Finished basement areas, garages and open porches are not included in computing floor areas.

(f) Different concepts must be approved by the Developer.

Section 4. Setbacks. No structure shall be located on any lot nearer to the front lot line than the minimum building setback lines shown on the recorded plat, except steps may project into such areas, and open porches may project into such area so long as such projections do not conflict with applicable building codes or the rules and regulations of the Louisville and Jefferson County Planning Commission. No structure shall be located on any lot nearer any side lot line or side street line than the minimum building setback lines required pursuant to applicable zoning regulations. Developer may vary the established building lines, at its sole discretion, where not in conflict with applicable zoning regulations.

Section 5. Garages; Carport.

(a) Garages, as structures, are subject to prior plan approval under Section 1 of this Article III.

(b) No carport shall be constructed on any lot.

Section 6. Landscaping; Sidewalks, Driveways, Trees.

(a) After the construction of a residence, the lot owner shall grade and sod that portion of the lot between the front and street side walls of the residence and the pavement of any abutting streets.

(b) Each lot owner shall, at his/her expense and upon completion of a single family dwelling on the lot, install a sidewalk along the length of all portions of the lot bordering a street, as required by the Jefferson County Public Works Department or the Developer.

(c) Each lot owner shall concrete the driveway on his/her lot within five months after completion or occupancy of a single family dwelling.

(d) Upon an owner's failure to comply with the provisions of this Section 6, Developer may take such action as shall be necessary to cause compliance therewith, and the owner shall immediately, upon demand, reimburse Developer or other performing party of all expenses incurred in so doing, together with allowable statutory interests, and Developer shall have a lien on that lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

Section 7. Mail and Paper Boxes; Hedges. Mail boxes and paper holder's shall be developer's standard. No hedge shall be placed or planted on any lot unless its design and place of planting are approved in writing by Developer.

Section 8. Developers Right to Waive Restrictions. Anything contained in the foregoing notwithstanding, until such time as residences have been constructed on all building lots in the various sections of the Subdivision, Developer, or their successors and assigns, may waive any of the foregoing restrictions in the event the enforcement of same would create a hardship because of the topography of any of said lots, or in the event that enforcement of same would create an undue burden on the purchaser of any particular residence. Any such waiver shall be within the sole and absolute discretion of the Developer.

ARTICLE IV - RESIDENTS ASSOCIATION

Section 1. Creation of Residents Association. There is hereby created the Fegenbush Place Subdivision Residents Association ("Residents Association"), which shall be governed by the hereinafter enumerated terms and conditions.

Section 2. Owner's Easement 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. The common area means and refers to all non-residential lots and areas which are shown on any recorded final subdivision plat within any portion of the Subdivision made subject to the Residents Association, with the exclusions of the right-of-way and easements.

The right of enjoyment is subject to the following provisions:

(a) The right of the Residents Association to charge reasonable fees for the maintenance of the common area;

(b) The right of the Residents Association to borrow money for the purpose of improving the common areas or for constructing, repairing or improving any common areas located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or a part of the common area and/or a security interest in future maintenance fee receivables.

(c) The right of the Residents Association to suspend the voting rights of an owner for any period during which any assessment against his/her lot remains unpaid, and for a period of time for any infraction of its published rules and regulations; and

(d) The right of the Residents Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Resident Association. Developer may dedicate utility or service easements at its sole discretion so long as there is in existence the Class B membership in accordance with Section 13 of this Article IV.

Section 3. Delegation of Voting Rights. Any lot owner may delegate, in accordance with the Bylaws, his/her voting rights to the members of his/her family or to contract purchasers who reside on the property. Membership in the Residents Association may not be conveyed separately from ownership in the lot.

Section 4. Residents Association's Right of Entry. The authorized representative of the Residents Association or the Board shall be entitled to reasonable access to the individual lots as may be required in connection with the preservation of property on an individual lot or in the event of an emergency or in connection with the maintenance of, repairs, or replacements within the common area, or any equipment, facilities, or fixtures affecting or serving other lots or the common area or to make any alteration required by any governmental authority.

Section 5. Assessments; Creation of the Lien and Personal Obligation. Each lot owner, except Developer, by acceptance of a deed for the lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Residents Association (i) annual assessments or charges, and (ii) special assessments for capital improvements, such as assessments to be established and collected as provided in this Article IV. Developer shall be responsible for the maintenance costs of the Residents Association, incurred over and above assessed amounts payable to the Residents Association by the lot owners, until Developer transfers control of the Residents Association.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land 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 attorneys' fees, shall also be 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/her successors in title unless expressly assumed by them.

Section 6. Purpose of Assessments.

(a) The assessments levied by the Residents Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, or for use and the enjoyment of the common area, including but not limited to, the cost of labor, equipment, materials, management and supervision, payment of taxes assessed against the common area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys and accountants to represent the Residents Association when necessary and such other needs as may arise, and for the improvement and maintenance of the common area. The Residents Association shall maintain, operate and repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the common areas, open spaces, entranceways, streets, crosswalks, medians, storm drains and storm basins, and retention basin.

(b) Until Class B membership ceases and is converted to Class A membership pursuant to Sections 13 and 14 of this Article IV, Developer or its nominee shall administer the assessments and receipts therefrom, which may only be used for purposes generally benefitting the various sections of the Subdivision, as permitted in this Declaration.

Section 7. Annual Assessment.

(a) The initial annual assessment shall be \$ 100.00 per lot, but shall be subject to increase by Developer

upon ninety (90) days notice.

(b) At such time as Developer relinquishes all control of the Association, the Board of Directors of the Association may fix the annual assessment and the Board of Directors shall determine when the assessments shall be paid.

Section 8. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Residents 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 any improvement upon the common area. Any such assessment shall have the assent of the members of the Residents Association in accordance with the Bylaws.

Section 9. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all lots except those owned by Developer during the period when Class B membership exists in the Association, as provided in Section 13 and Section 14 of this Article IV. The Board of Directors may at its discretion waive the assessment for any year or part of a year for any lot not occupied as a residence.

Section 10. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall begin the time the lot is occupied as a residence. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when the lot is first occupied as a residence.

Section 11. Effect of Nonpayment of Assessments; Remedies of the Residents Association. Any assessment not paid by the due date shall bear interest from the due date at the maximum rate of interest then allowable by Kentucky Law. The Residents Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the property and interest. Costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

Section 12. Subordination of the Lien to First Mortgage. The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage on the lot. Sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. 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 and such lien shall transfer to the sale proceeds. No

sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien.

Section 13. Membership. Developer and every owner of a lot which is subject to an assessment shall be a member of the Residents Association. Such owner and member shall abide by the Residents Association's Bylaws, Articles of Incorporation, and rules and regulations, shall be the assessments provided for in this Declaration when due, and shall comply with decisions of the Residents Association's Board of Directors. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 14. Classes of Membership. The Residents Association shall have two classes of voting membership:

(a) **Class A.** Class A member shall be all lot owners, with the exception of Developer.

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

(c) 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, in its discretion, Developer so determines; or

(ii) When 100 percent of the lots in the various sections of the Subdivision have been sold by Developer.

Section 15. Common area maintenance. Anything to the contrary herein notwithstanding, the Residents Association and where applicable the individual lot owners shall be responsible for the maintenance of all common open space, private roads, islands in the right-of-way, and signature entrances so long as the subdivision is used as a residential subdivision or until properly dedicated to a unit of local government. This section may not be amended without approval of the Louisville and Jefferson County Planning Commission.

Section 16. Dedication of Common Elements. Common areas, open space, private roads, islands in the right-of-way, and signature entrances shall not be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the Louisville and Jefferson County Planning Commission. This section may not be amended without approval of the Louisville and Jefferson County Planning Commission.

ARTICLE V - GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these restrictions shall be by proceeding at law or in equity, brought by any owner or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration, and/or to recover damages. Failure of any owner or Developer to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

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

Section 3. Restrictions Run with Land. Unless canceled, altered, or amended under the provisions of this Section 3, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten years, unless an instrument signed by a majority of the then owners of all lots in the various sections of the Subdivision has been recorded agreeing to change these restrictions and covenants in whole or in part. Except as otherwise provided in Article IV, Sections 15 and 16, these restrictions may be canceled, altered, or amended at any time by the affirmative action of the owners of 80 percent of the lots in the various sections of the Subdivision or by the Developer prior to when the Developer shall turn over the property to the Association as set forth herein.

Section 4. Amendments to Articles and Bylaws. Nothing in this Declaration shall limit the right of the Residents Association to amend, from time to time, its Articles of Incorporation and Bylaws.

Section 5. Non-Liability of the Directors and Officers. Neither Developer nor the directors and officers of the Residents Association shall be personally liable to the owners of the lots for any mistake in judgment or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The owners shall indemnify and hold harmless each of the directors and officers and their respective heirs, executors, administrators, successors, and assigns in accordance with the Bylaws of the Residents Association and the Developer.

