

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS AND EASEMENTS FOR SCULLY PROPERTY**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS is made this 1 day of October, 2006 by Realty Unlimited, 1795 Alysheba Way, Ste. 1001 Lexington, KY 40509 ("Developer"), and MAIN STREET CONSULTANTS, INC., a Kentucky corporation, 674 Brookgreen Lane, Lexington, Kentucky 40509 ("Builder");

**WITNESSETH:**

WHEREAS, Developer is the owner of 3425 McFarland Lane in the city of Lexington, Kentucky ("the Property") which is more particularly described as;

All that tract or parcel of land situated on the Barr's Lane near Todds Road in Fayette County, Kentucky, about six miles east of Lexington and more particularly described as follows: Beginning at a point in the center of Barr's Lane, a corner to McFarland; thence with McFarland Lane S 40-3/4 E 324 feet to a stake at a new corner to McFarland; thence again with McFarland S 49-25 W 209 feet to a stake at another corner; thence again with McFarland S 40 3/4 E 209 feet to a new corner in the line of Tom Taylor; thence with Tom Taylor 49-24 W 460 feet to a stake, a corner to Tom Taylor in the line of Harry Davis; thence with Harry Davis N 6-00 W 638 feet to the center of Barr's Lane and corner to Harry Davis; thence with the center of Barr's Lane N 40 1/2 E 308 feet to the point of beginning and containing five acres.

Being the same property conveyed to Realty unlimited, Inc. by Frances Scully, single, buy Deed dated November 29<sup>th</sup>, 2004, of record in Deed Book 2413, page 49, in Office of Fayette County Clerk.

Being the same property recorded in Plat Cab M Slide 939.

WHEREAS, Developer intends to develop the Property into a residential subdivision;

WHEREAS, Developer and Builder jointly desire to subject the Property to certain covenants, conditions, restrictions, reservations and easements as more fully set out herein; and

NOW, THEREFORE, Developer and Builder hereby declare that the Property shall be held, conveyed, encumbered, used, occupied and improved subject to the following restrictions, covenants, conditions and easements, all of which are in furtherance of a plan for subdivision, improvement and sale of the Property and are established for the purpose of enhancing the value, desirability and attractiveness of the Property and every part thereof. All of the restrictions, covenants, conditions and easements shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein or thereto and shall be for the benefit of the owner or owners of any portion of the Property.

MAIL TO  
Professor

The Property is hereby subject to the following covenants, conditions and restrictions:

## ARTICLE I

### DEFINITIONS

The following terms, when used herein, shall have the meanings ascribed thereto below:

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the "Association" as amended from time to time.

1.2 "Association" shall mean a Kentucky nonprofit corporation that will be incorporated by Builder on or before January 1, 2009, or any successor thereof charged with the duties and obligations of the Association hereunder, its successors and assigns.

1.3 "Board" shall mean the Board of Directors of the Association, duly elected and acting pursuant to the Articles and "By-Laws."

1.4 "By-Laws" shall mean and refer to the By-Laws of the Association which are and shall be adopted by the Board, as they may from time to time be amended.

1.5 "Developer" shall mean and refer to (i) Realty Unlimited, Inc., (ii) any successor expressly designated as the "Builder" hereunder by written instrument executed by Realty Unlimited, Inc. (or its successor as Builder) and recorded in the Fayette County Clerk's Office.

1.6 "Common Expenses" shall mean and include the actual and estimated expenses of (a) incorporating and setting up the Association, (b) enforcing the provisions of this Declaration (including attorney fees), (c) such uses as Builder in its absolute discretion deems appropriate during the Builder Control Period so long as such funds are devoted to matters which Builder determines in good faith may benefit the Property or the Association, (d) such other uses as designated by the Board in the event of a special assessment or specific assessment against a specific lot, (e) operating the Association, and (f) establishing any reasonable reserves in connection with the foregoing, all as may found to be necessary and appropriate by the Builder during the Builder Control Period pursuant to this Declaration or the Board after the Association's incorporation pursuant to this Declaration, the By-Laws, and the Articles.

1.7 "Declaration" shall mean this "Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for The Scully Property, as amended from time to time.

1.8 "Builder" shall mean and refer to (i) Main Street Consultants, Inc., (ii) any successor expressly designated as the "Builder" hereunder by written instrument executed by Main Street Consultants, Inc. (or its successor as Builder) and recorded in the Fayette

County Clerk's Office.

1.9 "Builder Control Period" shall mean the time from the date of this Declaration until such time as the Association is incorporated.

1.10 "Lot" shall mean a portion of the Property intended for any type of independent ownership.

1.11 "Mortgage" means any mortgage, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.12 "Mortgagee" means the holder of record of any Mortgage.

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

1.14 "Plat" or "Plats" shall mean the plats of The Scully Property / Subdivision that are currently of record or may be recorded in the future with the Fayette County Clerk.

## ARTICLE II ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. Every Owner shall be a member of the Association upon its incorporation. No Owner, whether one or more persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership.

2.2 Voting Rights. The Association shall have two (2) classes of voting membership;

(a) Class A. Class A members shall be all Owners, with the exception of Builder and Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds ownership interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be Builder and shall be entitled to three (3) votes for each Lot owned by Builder. The Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following:

(i) Upon ninety-five (95%) percent of the Lots which are planned for development in the Property becoming owned by persons or entities other than Developer or Builder; or

(ii) January 1, 2009  
; or

(iii) The consent of Builder.

Owners may vote by written proxy.

### ARTICLE III

#### RIGHTS AND OBLIGATIONS

3.1 Owners' Responsibility. Each Owner shall maintain his Lot, including, but not limited to, all structures and improvements thereon in a manner consistent with the community-wide standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to Builder during the Builder Control Period or the Association after its incorporation pursuant to any additional Declaration of Covenants applicable to such Lot. If any Owner fails to properly perform his maintenance responsibility, Builder during the Builder Control Period or the Association after its incorporation may perform it and assess all costs incurred by Builder during the Builder Control Period or the Association after its incorporation against the Lot and the Owner in accordance with this Declaration.

3.2. Services. Builder during the Builder Control Period or the Association after its incorporation may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as Builder during the Builder Control Period or the Association after its incorporation shall determine to be necessary or desirable for the proper operation of the community, whether such personnel are furnished or employed directly by Builder during the Builder Control Period or the Association after its incorporation or by any person or entity with whom or which it contracts. Builder during the Builder Control Period and the Association after its incorporation may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the community or the enforcement of this Declaration.

3.3 Personal Property for Common Use. Builder during the Builder Control Period and the Association after its incorporation may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.4 Implied Rights. Builder during the Builder Control Period and the Association after its incorporation may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

#### ARTICLE IV

#### LIEN FOR ASSESSMENTS

##### 4.1 Creation of the Lien and Personal Obligation of Assessments.

(a) Each Owner of any Lot other than Developer and Builder, by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to Builder during the Builder Control Period and the Association after its incorporation:

(i) annual assessments or charges; and

(ii) special assessments or charges, such assessments to be established and collected as herein provided; and

(iii) specific assessments or charges against any particular Lot which are established pursuant to the terms of this Declaration.

(b) All such assessments, together with later charges, interest, costs and reasonable attorney's fees, shall be a charge on the land and a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner shall also be liable for his portion of each assessment applicable to the time he is the Owner of a Lot.

(c) The grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the Lot up to the time of such conveyance, without prejudice to such grantee's right to recover from such grantor the amounts paid by the grantee therefore; provided, however, that if such grantor or grantee shall request a statement from Builder during the Builder Control Period or the Association after its incorporation as provided in Section 5.10 hereof, such grantee, his successors, successors-in-title and assigns, shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such statement, if any.

##### 4.2 Purpose of Assessments. The assessments levied by Builder during the

Builder Control Period and the Association after its incorporation shall be used exclusively for Common Expenses.

4.3 Computation. The annual assessment for the calendar year 2006 shall be \$100.00 per Lot. Thereafter, it shall be the duty of the Board at least sixty (60) days prior to the Association's annual meeting to prepare a budget covering the estimated cost of operating the Association during the coming year including an adequate reserve fund. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least twenty-one (21) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of a majority of the total Association membership. Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding year then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. Such budget shall include breakdown of such costs allocated to Common Expenses. The per Lot assessment shall be computed by dividing the total assessment for each category of assessment by the number of Lots subject to such assessment. In the event that The Brighton East Homeowners Association takes over control of the Scully Property Homeowners Association, the dues will be that of the Brighton East Association.

4.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy upon all Owners, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Area, provided that any such assessment shall have the assent of at least fifty-one (51%) percent of the votes of the Owners who are voting in person or by proxy at a meeting duly called for such purpose. The Board may make special assessments payable in installments over a period of not more than three (3) years. Each such assessment together with interest, costs and reasonable attorney's fees shall become the personal obligation of each Owner, his heirs, successors and assigns.

4.5 Notice of Meeting. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than twenty (20) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members entitled to cast fifty-one (51%) percent of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called upon written notice of not less than three (3) nor more than five (5) days. Said meeting shall not be required to satisfy the quorum in order to do business. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6 Date of Commencement and Amounts of Annual Assessments. The initial assessment hereunder shall be \$100 per year, for each Lot. Assessments are not

applicable to Builder or Developer. During the Builder Control Period, Builder may from time to time increase or decrease the assessment. After the Association is incorporated, the Board may from time to time increase or decrease the assessment. During the Builder Control Period, Builder shall determine the amount of and fix the due date of each assessment. After the Association is incorporated, the Board shall determine the amount of and fix the due date of each assessment. The annual assessment will be dated January 1 of each year. The assessment will be prorated in the event of ownership for a portion of the year, with the proration to be calculated by determining the number of days of ownership of the Lot.

4.7 Lien for Assessments. All sums assessed to any Lot pursuant to this Article, together with late charges, interest, costs, and reasonable attorney's fees, as provided herein, shall be secured by a lien on such Lot in favor of Builder during the Builder Control Period and the Association after its incorporation. Such lien shall be superior to all other liens and encumbrances on such Lot, except only for:

- (a) Liens for ad valorem taxes; and
- (b) A lien for all sums unpaid which are secured by a first in priority Mortgage, or any Mortgage in favor of Builder, duly recorded in the public records of Fayette County, Clerk's Office, and all amounts advanced pursuant to such Mortgage(s) and secured thereby in accordance with the terms of such instrument(s).

All other persons acquiring liens or encumbrances on any Lot which become liens after this Declaration is filed for record shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens or encumbrances.

4.8 Effect of Non-Payment of Assessments: Remedies of Builder and the Association. Any assessments which are not paid when due shall be delinquent and the lien provided for herein shall attach. Any assessment due for a period of fifteen (15) days shall incur a late charge of ten percent (10%). If the assessment is not paid within thirty (30) days, the lien provided for herein shall include a late charge of ten (10%) percent, together with interest on the principal amount due and the late charge at the rate of eighteen (18%) percent per annum, or at whatever rate Builder shall establish during the Builder Control Period or the Association shall establish after its incorporation at its annual meeting (the interest to run from the date the assessment was due until paid in full), costs and reasonable attorney's fees. In the event that the assessment remains unpaid after thirty (30) days, Builder during the Builder Control Period or the Board after the Association is incorporated, may institute suit to collect such amounts or to foreclose its lien. Each Owner, by his acceptance of a deed to a Lot, vests in Builder during the Builder Control Period and the Association after its incorporation or their agents the right and power to bring actions against him personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of Builder during the

Builder Control Period and the Association after its incorporation, and shall be for the benefit of all other Owners. Builder during the Builder Control Period and the Association after its incorporation, acting on behalf of the Owners, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area.

4.9 Effect of Lien on Mortgages. In the event that the holder of a Mortgage, or other person acquires title to any Lot as a result of foreclosure of a Mortgage, such holder or other person, his successors, successors-in-title and assigns, shall not be liable for, nor shall such Lot be subject to a lien for, any assessment hereunder chargeable to such Lot on account of any period of time prior to such acquisition of title.

4.10 Certificate as to Assessments. Any Owner, Mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot, shall be entitled upon request to a statement from Builder during the Builder Control Period and the Association after its incorporation or their management agents setting forth the amount of the assessments past due and unpaid (with late charges, interest, costs, and reasonable attorney's fees applicable thereto), against that Lot.

## ARTICLE V

### SPECIFIC REGULATIONS OF USE AND CONSTRUCTION

#### 5.1 Land Use and Building Type.

(a) No Lot shall be used except for private single-family residential purposes. However, notwithstanding the foregoing, Builder may construct model and/or speculative homes on Lots and use same for the marketing and sale of private single family residences. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height, unless otherwise provided for herein.

(b) No lot shall be subdivided without the written approval of The Developer. This restriction shall run for 25 after the date of recorded plat.

5.2 Construction Materials and Building Plans. No building shall be erected, altered, placed or permitted to remain on any Lot without the written approval (prior to construction) of the plans and specifications by Builder; and one complete set of the plans and specifications shall be provided to and may be retained by Builder. The plans and specifications shall include all details of construction and materials including without limitation the color of the brick and/or paint to be used on the exterior, and the style of roof shingles. Any building erected, altered, placed or permitted to remain on any Lot shall be of brick or stone or vinyl siding or such other material as is approved in writing by Builder



in its sole and absolute discretion, but any areas of the front elevations must be brick veneer; provided, however, in structures that require special support, Builder may reduce the amount of brick veneer on the front elevations, but such approval must be in writing and prior to construction. No home may have any exposed concrete or block on the exterior with the exception of split faced block on the sides and rear of the foundation. No stucco will be allowed. The minimum size of living areas (exclusive of porches, basements, attics, carports and garages) shall be 1,300 square feet and 1600 square feet for two story and story and a half houses. Story and a half houses will have a minimum first floor of 900 square feet, and two story houses will have a minimum of 900 square feet; provided, however, Builder in its sole and absolute discretion may approve smaller living areas, but any such approval must be in writing. Roof shingles shall be architectural dimensional type shingles. Other types of roof material or shingles may be approved by Builder in its sole and uncontrolled discretion. All roof lines which face the front or rear of the Lot must be a minimum of 8/12 and all other roof lines must be a minimum of 6/12 unless approved in writing by Builder in its sole and absolute discretion. At least one major gable must also be 8/12.

5.3 Approval of Building Plans. Builder is hereby granted the right, but is not obligated, to approve all plans and specifications for the erection of improvements on all Lots.

5.4 Attached Garage. Any residence constructed on a Lot shall have a two (2) car attached garage.

5.5 Detached Garages and other Outbuildings. Any detached garage or outbuilding shall, at a minimum, be constructed of a siding material and with roofing shingles that match the materials on the main residence on the Lot, include the same roof pitch as the main residence and be of a permanent nature (i.e., built upon a permanent foundation). No detached garages or outbuildings built with wood or aluminum siding, or which include a "barn style" roof and/or doors, or which will be situated upon cinder blocks or any other temporary type foundation shall be permitted. Notwithstanding the foregoing, nothing herein shall preclude Builder from erecting and maintaining temporary tool or storage sheds or field offices on the Property which are used by Builder.

5.6. Temporary Structures. No structure of a temporary character, trailer, and basement of any uncompleted structure, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

5.7. Nuisances. No noxious 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 to the neighborhood. No immobile or "junk" cars, trailers or recreational vehicles shall be allowed to be parked upon streets or public rights-of-way in the Property. No antenna, shortwave or "ham" radios, or shortwave towers shall be allowed on or within the Property. No vehicles, trailers, boats, RVs, or commercial vehicles shall be parked on the "grass" for more than 24 consecutive hours.

5.8 Vehicles. No motor vehicle, camper, trailer or boat of any nature shall be (a) regularly parked or (b) parked for a period in excess of twenty-four consecutive hours, on a street in the Property (other than for construction purposes). No person shall engage in major car repairs either for himself or others at any time.

5.9 Lot Condition. In the event an owner fails to keep or maintain his Lot in a good condition, free of trash or weeds and grass over 9" in height, Builder shall have the right, but not the obligation, to clean, mow and maintain said Lot in whatever manner Builder deems appropriate and charge the owner for all costs incurred in performing such work together with interest, costs, and reasonable attorney's fees. Upon the demand of Builder, the Owner of such Lot shall reimburse Builder for all costs incurred in performing such work and Builder shall retain a lien on such Lot and the improvements thereon to secure the repayment of such amounts plus interest, costs, and reasonable attorney's fees. Interest shall accrue on the unpaid costs at the rate of eighteen percent (18%) per annum commencing on the date on which Builder demands payment and ending on the date Builder is indefeasibly paid in full for such costs. Such lien may be enforced by foreclosure against the Lot and improvements thereon, but such lien shall be subordinate to any first Mortgage thereon.

5.10 Animals. No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets (meaning domestic pets traditionally recognized as household pets in this geographic area) may be kept provided that they are not kept, bred or maintained for any commercial or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the Lot occupied by the Owner of such pet except that such pets may be walked on leashes on the sidewalks and across streets. However, no "dog runs" of any type or material or any type of permanent dog or pet shelter shall be permitted on any Lot.

5.11 Signs. No sign for advertising or for any other purpose (including, but not limited to, signs for advertising any Lot or building "for rent" or "for lease" or the like) shall be displayed on any building, structure or anywhere else on any Lot except one sign for advertising the sale thereof, which shall not be greater in area than six square feet. Builder may remove any sign displayed in violation of this Section 6.11 and retain same until such time as the Owner of the Lot has paid Builder a \$25.00 fine. In the event the Owner of the Lot does not pay said fine within forty-five (45) days of Builder's removal of the sign from the Lot, the sign will be deemed abandoned and Builder will be deemed the owner of the sign and may dispose of the sign in any manner Builder deems appropriate. Notwithstanding the foregoing, Builder shall have the right to erect larger signs. This restriction shall not prohibit placement of occupant name signs and house numbers as allowed by applicable zoning regulations.

5.12 Fences. No fences of any kind, shrubbery or hedge shall be permitted within the area between the minimum setback or building line, as indicated on the applicable Plat, and the street. Fences shall not obstruct any drainage easements and

shall provide no less than an eight (8) inch clearance above the drainage easement's ground level. All runners, posts and other support components of the fence shall be placed on the inside of the fence. All fences shall be made of natural wood. Fences cannot be painted, but they may be stained. All fences shall comply with all governmental regulations. The maximum height of fences shall be 42"; provided, however, Builder in its sole and absolute discretion may approve higher fences, but such approval must be in writing and obtained prior to commencement of the construction of the fence. All fences are subject to the approval by Builder in its sole and absolute discretion and such approval must be in writing and obtained prior to commencement of the construction of the fence.

5.13 Mail Boxes. All mail boxes will be uniform standard mail boxes on a post or a brick mail box approved by Builder or Developer. The type and design will be specified by Builder. There shall be one post or brick mailbox for every two houses on the 40' lots (i.e., two mail boxes on a single post) unless otherwise approved in writing by Builder. In the case of post mailboxes, the type specified will be the All Aluminum Decorative Model manufactured by John R. Hayne, Inc. These provisions, however, are subject to the United States Postal System's requirements. All mailboxes must be maintained to the satisfaction of the Association.

5.14 Antennas, Etc. No antenna or dish for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained on the Property without the prior written approval of Builder and, when approved, must not exceed 36" in diameter and installed in the rear of the residence.

5.15 Clothes Lines. No exterior clothes line, or similar apparatus used for the display of clothing, shall be placed upon any Lot.

5.16 Grading. As construction on a Lot is completed, it shall be fully graded, and it shall be fully sodded with grass except only for the building area, driveways, patios and sidewalks.

5.17 Confirmation. All land development and building construction within the Property shall confirm to the applicable Lexington-Fayette Urban County Government Land Subdivision Regulations and Zoning Ordinances as adopted by the Lexington-Fayette Urban County Council from time to time.

5.18 Address Plaques. All address plaques or stones will be uniform throughout the Property and shall initially be purchased from Builder for a price not in excess of \$100.00.

5.19 Basketball Goals. No permanent basketball goals shall be visible from the front view of the house. No mobile basketball goals shall be left out so they are visible from the front view of the house for more than twenty-four consecutive hours.

## ARTICLE VI

## GENERAL PROVISIONS

6.1 Rights of First Mortgagees. In addition to the rights of Mortgagees elsewhere provided, each first Mortgagee of a Lot shall (a) be entitled to written notice from the Association of any default by an Owner in the performance of his obligations under this Declaration which is not cured within thirty (30) days; (b) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (c) be furnished copies of annual financial reports made to the Owners; and (d) be entitled to inspect the financial books and records of the Association during reasonable business hours; provided, however, that said Mortgagee shall first file with the Association a written request that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of said Mortgagee at an address stated in such notice.

6.2 Consent of First Mortgagees. Unless at least seventy-five (75%) percent of the Mortgagees holding Mortgages constituting first liens on Lots subject to such Mortgages (based on one vote for each Mortgage owned) have given their prior written approval, Builder during the Builder Control Period and the Association after its incorporation shall not be entitled to:

(a) change the method of determining the assessments or other charges which may be levied against an Owner;

(b) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of residences on the Lots, the exterior maintenance of residences on the Lots and on the Lots;

(c) fail to maintain fire and extended coverage insurance on the items required to be insured under Article IV in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost);

(d) use hazard insurance proceeds for losses to residences or the Common Area for other than the repair, replacement or reconstruction of such residences and Common Area; or

(e) terminate professional management, if any, and assume self management of the community.

6.3 Priority of First Mortgagees. No provision of this Declaration shall be construed to grant to any Owner, or to any other party any priority over any rights of first Mortgagees of the Lots pursuant to their first Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or the Common Area.

**6.4 Easements in Favor of Builder.**

(a) Builder shall have a transferable easement on and over the Common Area for the purpose of making improvements on the Property, and for the purpose of doing all things in connection therewith.

(b) Builder and its duly authorized agents, representatives and employees shall have an easement for the maintenance of sales offices and/or model residences on the Property for so long as Builder or Builder owns any Lot for sale in the ordinary course of business.

**6.5 Enforcement.** Each Owner shall comply strictly with the By-Laws and with the rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, restrictions and easements set forth in this Declaration. Builder during the Builder Control Period and the Board on behalf of the Association after the Association's incorporation may (a) collect assessments provided for herein or in the By-Laws or the rules and regulations and (b) impose fines or other sanctions, collection of which may be made as provided for in Article V hereof. Failure by Builder or the Association to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. Builder during the Builder Control Period shall have the right to enforce all other covenants and restrictions contained herein. Upon the termination of the Builder Control Period, any Owner or the Board on behalf of the Association shall have the right to enforce all other covenants and restrictions contained herein. Notwithstanding any other provision contained herein to the contrary, Builder shall retain the right to enforce the provisions of Sections 6.1(b) and 6.11 so long as any Lot is owned by Builder, the principals of Builder, or any entity in which Builder or the principals of Builder own a majority interest.

**6.6 Professional Management.** Any agreement for professional management of the Association must provide for termination by the Association for cause upon no greater than ninety (90) days written notice thereof. The term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. Builder shall have the right to turn over the Association and incorporate the Association into the neighboring association for permanent management if Builder desires to do so.

**6.7 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, all of which shall remain in full force and effect.

**6.8 Duration and Perpetuities.** The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Kentucky law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land for a period of thirty (30) years from the date this

Declaration is filed for record in the Fayette County Court Clerk's Office, after which time such provision shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least fifty-one (51 %) percent of (i) the then Owners of record and (ii) the holders of first Mortgages on their Lots has been recorded in the Fayette County Clerk's Office agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

6.9 Notice of Sale or Mortgage. In the event an Owner sells or mortgages his Lot, such Owner will give Builder during the Builder Control Period and the Association after its incorporation notice prior to closing, in writing, setting forth the name of the purchaser or Mortgagee of the Lot.

6.10 Amendment and Additions of Additional Submitted Property.

(a) This Declaration may be amended unilaterally at any time and from time to time by Builder with written permission from the Developer (i) if such amendment is necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, or (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, Secretary of Housing and Urban Development, or reputable private mortgage insurance company to insure mortgage loans on the Lots; provided, any such amendment shall not adversely affect the title to any Owner's Lot or materially alter or change any Owner's right to the use and enjoyment of the Common Area as set forth herein, unless any such Owner so affected thereby shall consent thereto in writing, or (v) the Builder may amend any provision in this Declaration so long as in its good faith judgment the Property will be benefited by such amendment, or if in its good faith judgment the continued development of the remainder of the Property is hindered or made less economic in any way by any provision hereof; provided, however, that this right of amendment shall cease at such time as Builder and Developer collectively own less than ten percent (10%) of the Lots.

(b) This Declaration may be amended at any time and from time to time by an agreement by at least two-thirds (2/3 rds) of the Owners, provided, however, such amendment by the Owners shall not be effective unless also signed by Builder if any Lot is owned by Builder, the principals of Builder, or any entity in which Builder or the principals of Builder own a majority interest.

(c) No amendment to the provisions of this Declaration shall alter, modify,

change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any first Mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto.

(d) Builder may, at its sole discretion, declare additional real property to be subject to this Declaration by recording an amendment to this Declaration setting forth the exact description of the real property with the Fayette County Clerk and giving written notice to the Association of the amendment.

(e) Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Fayette County Clerk's Office. The written consent thereto of any first Mortgagee affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this Section.

6.11 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6.12 Rights of Third Parties. This Declaration shall be recorded in the public real estate records of the Fayette County Clerk, and shall inure to the benefit of Builder, the Association, the Owners and the holders of the Mortgages affecting any of the Property, their respective heirs, legal representatives, successors-in-title, successors and assigns; and by such recording, no owner of property not located within the Property shall have any right, title or interest whatsoever in the Property or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of the Builder and Mortgagees as herein provided, the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such other person.

6.13 Reservation of Easements. Builder and Developer hereby reserves for itself, its successors and assigns, across the Property for the following uses and purposes:

(a) An easement for ingress and egress by vehicular and pedestrian traffic over (i) such drives, roadways, walkways and paths as are shown on the Plat or Plats recorded in connection with the Property, and (ii) such drives, roadways, walkways and paths as may be constructed in the future;

(b) An easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewerage, storm drainage, electricity, telephone and other utilities and services, including the right to use in common with the Owners, the wires,

pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners.

6.14 No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provisions of this Declaration.

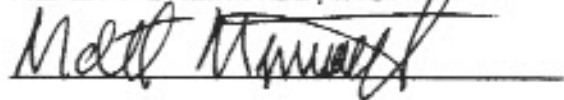
6.15. Builder or Developer Determinations. Any judgment, discretion, decision or other matter determined hereunder by Builder or Developer shall be binding on all parties if made in good faith, and any interpretation hereof made by Builder and Developer in good faith shall likewise be binding on all parties; and in each case no party shall have any remedy against Builder and Developer except to require specific performance of its duties hereunder and/or to obtain a declaratory judgment. In no case shall damages be claimed, shown or obtained against Builder and Developer with respect to any matter related hereto.

6.16 Duties of Association. Upon its incorporation, the Association shall perform the duties and obligations imposed upon it by this Declaration.

6.17 Reimbursement of Legal fees. Association will reimburse Builder, Developer, or any designee for the upfront legal cost and fees associated with the creation or incorporation of the Association.

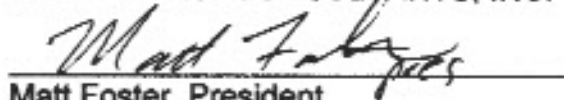
**IN WITNESS WHEREOF,** Builder has executed this Declaration as of the day and year first above written.

REALTY UNLIMITED, INC.



Matt Miniard, President

MAIN STREET CONSULTANTS, INC.



Matt Foster, President

STATE OF KENTUCKY



COUNTY OF FAYETTE

Subscribed, sworn to and acknowledged before me by Matt Miniard, as President of Realty Unlimited, Inc. on behalf of said company, on this 9 day of October, 2006.

My commission expires: 6-2-09

  
NOTARY PUBLIC,  
KENTUCKY, STATE AT LARGE

STATE OF KENTUCKY

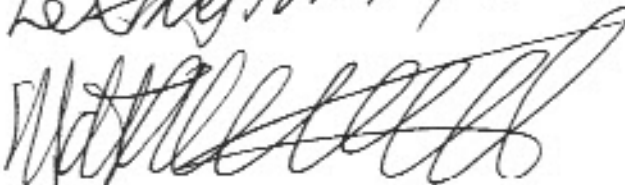
COUNTY OF FAYETTE

Subscribed, sworn to and acknowledged before me by Matt Foster, as President of Main Street Consultants, Inc., a Kentucky corporation, on behalf of said corporation, on this 9 day of October, 2006.

My commission expires: 6-2-09

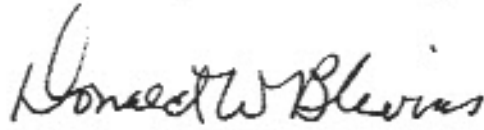
  
NOTARY PUBLIC,  
KENTUCKY, STATE AT LARGE

PREPARED BY MATT MINIARD, REALTY UNLIMITED  
MATT FOSTER MAIN STREET HOMES  
1795 Alysheba Way Suite 1001  
Lexington KY 40509



**DEED BOOK 2677 PAGE 741**

I, Donald W Blevins, County Court Clerk  
of Fayette County, Kentucky, hereby  
certify that the foregoing instrument  
has been duly recorded in my office.



By: **DOUG BRADLEY**, dc

**200610020387**

**October 2, 2006 16:09:30 PM**

<b>Fees</b>	<b>\$55.00</b>	<b>Tax</b>	<b>\$0.00</b>
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<b>Total Paid</b>	<b>\$55.00</b>
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**THIS IS THE LAST PAGE OF THE DOCUMENT**

**18 Pages**

**724 - 741**

## AMENDED RESTRICTIONS AND COVENANTS FOR SCULLY PROPERTY

This Declaration of Amended Restrictions and Covenants for Scully Property Subdivision is made this 23<sup>rd</sup> day of May, 2016, by and through its governing body, Brighton East Homeowner's Association.

Whereas, in heretofore declared Restrictions and Covenants for Scully Property Subdivision, there contained a provision which provided that said Restrictions and Covenants could be altered or amended by the consent of a two-thirds (2/3) majority of the then owners of the lots in said subdivision, and;

Whereas, upon a duly convened meeting of the Brighton East Homeowner's Association, Inc., a two-thirds (2/3) majority of said current owners have cast votes in favor of the following amendments to the Restrictions and Covenants;

Now, therefore, the undersigned President of said Homeowner's Association, Russell Edwards, acting on behalf of said two-thirds (2/3) majority of owners, does hereby Amend said Restrictions and Covenants, as follows:

### **Item 1: Change Section 5.7 Nuisances, as follows:**

**From:** No noxious 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 to the neighborhood. No immobile or "junk" cars, trailers or recreational vehicles shall be allowed to be parked upon streets or public rights-of-way in the Property. No antenna, shortwave or "ham" radios, or shortwave towers shall be allowed on or within the Property. No vehicles, trailers, boats, RVs, or commercial vehicles shall be parked on the "grass" for more than 24 consecutive hours.

**To:** No noxious or offensive trade or activity shall be carried upon any Lot nor shall anything be done or left undone, thereon, which may be or become an annoyance or nuisance to the neighborhood. No inoperable vehicles may be kept or parked on any lot. Vehicles, RVs, or trailers parked on any lot for storage is prohibited. No boats, RVs, or trailers shall be routinely kept on any lot, except that boats, RVs, trailers and inoperable vehicles may be stored in enclosed garages. No clotheslines, short wave, or "ham" radios, short-wave towers, poles, or antennas of any type shall be allowed on the property unless approved by the Association. Outdoor holiday lighting and decorations, such as for, but not limited to, the holidays of Christmas and Halloween, shall be put up no earlier than thirty (30) days prior to and taken down no later than thirty (30) days after the calendar date of the official holiday, as recognized by the United States of America.

### **Item 2: Change for Section 5.12 Fences, as follows:**

**From:** Fences: No Fences of any kind, shrubbery, or hedge shall be permitted within the area between the minimum setback or building line, as indicated on the applicable Plat, and the street. Fences shall not obstruct any drainage easements and shall provide no less than an

eight (8) inch clearance above the drainage easement's ground level. All runners, posts and other support components of the fence shall be placed on the inside of the fence. All fences shall be made of natural wood,. Fences cannot be painted, but they may be stained. All fences shall comply with all governmental regulations. The maximum height of fences shall be 42"; provided, however, Builder in its sole and absolute discretion may approve higher fences, but such approval must be in a writing and obtained prior to commencement of the construction of the fence. All fences are subject to the approval by Builder in its sole and absolute discretion and such approval must be in writing and obtained prior to commencement of the construction of the fence.

**To: Fences:** No Fences of any kind, shrubbery, or hedge shall be permitted within the area between the minimum setback or building line, as indicated on the applicable Plat, and the street. No fence or wall shall be shorter than 42 inches or taller than 72 inches in height and said fence shall be natural wood, other than green pressure treated wood. Fences cannot be painted, but they may be stained. Fences shall not obstruct any drainage easements and shall provide no less than eight (8) inches clearance above the drainage easement's ground level. All existing fences must be maintained in a quality state of repair, with no missing, broken, rusted or rotten components. If a property owner desires to deviate from these restrictions for any reason, property owner must obtain written permission from adjoining property owners with a view of the fence and obtain a written waiver from the Board.

**Item 3 New Amendment Section 5:20 Swimming Pools, as follows:**

5.20 Swimming Pools: All swimming pools shall be in-ground pools. There shall be no above-ground pools permitted, except small "kiddie pools" for temporary use. No construction of in-ground swimming pools shall be commenced until approved in writing by the Board. Drainage, fencing, placement and lighting plans shall be included in the construction design plan submitted to the Board for approval. There shall be no increase in drainage to other properties permitted as a result of construction. No lighting of a pool or other recreational area will be installed without the prior written approval of the Board. If allowed, such lighting will be designed of recreational character so as to buffer the surrounding residences from such lighting.

**Item 4 New Amendment Section 5.21 Gardens, as follows:**

5.21 Gardens: There shall be no vegetable gardens in the side yards or front yards of any lot. If a property owner desires to deviate from these restrictions for any reason, property owner must obtain written permission from adjoining property owners with a view of the proposed location for the garden and obtain a written waiver from the Board.

**Item 5 New Amendment Section 5.22 House and Yard waste Containers, as follows:**

5.22 House and Yard Waste Containers: All trash, recycle and yard waste containers, above ground tanks, and other similar items shall be concealed from the view of neighboring lots and streets, except on trash collection days. If a property owner desires to deviate from these restrictions for any reason, property owner must obtain written permission from adjoining

property owners with a view of the proposed location for the containers and obtain a written waiver from the Board.

Therefore, a two-thirds (2/3) majority of the lot owners, as represented by the President of the Brighton East Homeowner's Association, Inc., do hereby declare this Amendment of Restrictions and Covenants on this 23<sup>rd</sup> day of May, 2016.

Brighton East Homeowner's Association, Inc.

By: Russell S. Edwards II - President  
Russell Edwards, President

Commonwealth of Kentucky

County of Fayette

Subscribed, sworn to, and acknowledged before me by Russell Edwards, as President for and on behalf of Brighton East Homeowner's Association, Inc., a Kentucky corporation.

Notary Public: Dorely A. Hagan

My Commission Expires: 5-17-2018