

Kentucky with trust powers as may be designated as insurance trustee by the Board of Directors, which trustee is referred to in this instrument as the "insurance trustee." Payment of premiums, renewal and sufficiency of policies, settlement of claims with insurers, and collection of insurance proceeds shall be the responsibility of the Board of Directors, and the sole duty of the insurance trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this Article.

(E) Shares of the proceeds; mortgagees

The insurance trustee shall hold all insurance proceeds covering property losses in shares, which shares need not be set forth on the records of the insurance trustee, as follows: each Unit Owner shall have an undivided share in such proceeds, such share being the same as the undivided share in the Common Elements appurtenant to the Unit(s) owned by such Unit Owner as set forth in Exhibit B to this Master Deed. In the event a mortgagee endorsement has been issued with respect to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds which, pursuant to the provisions of this Article, are to be held by the insurance trustee, except distributions of such proceeds made pursuant to this Article.

(F) Distribution of proceeds

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(1) Expense of the trust

All expenses of the insurance trustee shall be paid first or provision made for such payment.

(2) Reconstruction or repair

If the damage for which the proceeds are paid is to be repaired or reconstructed substantially in accordance with the original plans for the Building, the remaining proceeds shall be paid to defray the cost of such as provided in Article IX of this Master Deed. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. All mortgages and other liens existing against any Unit(s) at the time of damage shall attach to such repaired or reconstructed Unit(s) in the same priority as existed prior to such damage. All such repaired or reconstructed Units shall bear the same Unit numbers as those of the original Units and shall retain the same percentage of ownership in the Common Elements as those of the original Units (subject to "as built" adjustment as may be required by statute). If the damage for which the proceeds are paid is not to be repaired or reconstructed in accordance with the original plans for the Building as permitted by Article IX of this Master Deed, the mortgagees of Units in that Building may demand that the remaining proceeds be applied to reduction of the mortgage debt on such Units up to the total amount of the mortgage debt then due. Any proceeds remaining after such application to reduction of the mortgage debt shall be paid to defray the costs of repair and reconstruction as provided in the Article of this Master Deed entitled "Reconstruction or Repair after Casualty." This section is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

## (3) Failure to reconstruct or repair

If it is determined in the manner provided in Article IX of this Master Deed that the damage for which the proceeds are paid shall not be reconstructed or repaired, the net proceeds remaining after all mortgages on the damaged or destroyed Building have been paid shall be distributed in the manner determined by all of the Unit Owners at the special meeting of the Council provided by Article IX (A), provided that such distribution complies with the provisions of the Horizontal Property Law as amended.

## (4) Certificate

In making distribution to Unit Owners and/or the mortgagees of the Units, the insurance trustee may rely upon a certificate of the Council made by its president and secretary as to the names of the Unit Owners and their respective shares of the distribution, and the insurance trustee shall have no liability to the Council or to any Unit Owner for any distribution made in reliance upon such a certificate.

## (G) Council as agent

- The Council is irrevocably appointed as agent for each Unit Owner and for each holder of a mortgage or other lien upon a Unit and for each Owner of any other interest in the condominium project to adjust all claims arising under insurance policies purchased by the Council and to execute and deliver releases upon the payment of claims.

## ARTICLE IX

### Reconstruction or Repair after Casualty

## (A) Determination to reconstruct to repair

If any part of the condominium project shall be damaged or destroyed by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

## (1) Common Element

If the damaged or destroyed improvement is a Common Element (other than portions of the Building), the damaged or destroyed property shall be reconstructed or repaired.

## (2) Building

If the damaged or destroyed improvements is a Building, such Building also shall be reconstructed or repaired except that, as to such Building (if any) as to which more than two-thirds of such Building has been destroyed, such Building shall not be reconstructed or repaired if (and only if) (a) all of the Unit Owners of Units in such Building shall agree in writing within 30 days after the date of the occurrence of such destruction that they desire that such Building not be repaired or reconstructed and request the secretary of the Council in writing to call a special meeting of the Unit Owners for the purpose of deciding whether such Building shall be repaired or reconstructed, and (b) Unit Owners of Units in the entire condominium project to which greater

then 67% of the Common Elements are appurtenant and by eligible mortgage holders who represent at least fifty-one percent (51%) of the Common Elements shall vote not to repair or reconstruct such Building at the meeting of all of the Unit Owners, which shall be duly called by the secretary of the Council within 10 days after the receipt by the secretary of the written request from the Unit Owners of the affected Building. In the event the Building is not reconstructed or repaired, the Unit Owners of such Building (and their mortgagees) shall be entitled to receive their proportionate share of the insurance proceeds payable as a result of such destruction, and the Board of Directors shall cause the Master Deed to be amended to revise the allocation of the Common Elements amount the Units located in the remaining Buildings according to the proportion which the floor area of each such Unit bears, respectively, to the sum of the floor area for all of remaining Units.

(3) Certificate

The insurance trustee may rely upon a certificate of the Council made by its president and secretary to determine whether or not the damaged or destroyed property is to be reconstructed or repaired.

(B) Manner of reconstruction

The original plans for the condominium project shall be the property of the Council and shall be kept by the Board of Directors in a fireproof safe or safe deposit box. Any reconstruction or repair must be substantially in accordance with the original plans, or, if not, then according to plans and specifications approved by the Board of Directors and, by all mortgagees of Units in the damaged or destroyed Building.

(C) Responsibility

If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Council.

(D) Estimate of costs

Immediately after a determination is made to rebuild or repair damage to property for which the Council has the responsibility of reconstruction and repair, the Council shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(E) Assessments

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Council, or if, at any time during reconstruction and repair, or upon completion of reconstruction and repair, the proceeds are determined to be insufficient, assessments shall be made against the Unit Owners in amounts sufficient to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the share in the Common Elements appurtenant to the

Unit owned by such Unit Owner as set forth in Exhibit B to this Master Deed.

(F) Construction funds

The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Council from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) Council

If the total of assessments made by the Council in order to provide funds for payments of costs of reconstruction and repair that is the responsibility of the Council is more than \$10,000.00, then the sums paid upon such assessments shall be deposited by the Council with the insurance trustee. In all other cases the Council shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

(2) Insurance trustee; construction fund

The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Council from the collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Council--lesser damage

If the amount of the estimated cost of the reconstruction and repair that is the responsibility of the Council is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Council; provided, however, that, upon request to the insurance trustee by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(b) Council--major damage

If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Council is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors and upon approval of an architect licensed to practice in Kentucky and employed by the Council to supervise the work.

(c) Unit Owner

The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the insurance trustee to the Unit Owner, or if there is a mortgagee endorsement as to the Unit, then to the Unit Owner and the mortgagee, jointly, who may use such proceeds as they determine.

(d) Surplus

It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; provided, however, that the part of the distribution to a beneficial Owner that represents assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.

(e) Certificate

Any provisions of this Master Deed to the contrary notwithstanding, the insurance trustee shall not be required to determine whether or not sums paid by the Unit Owners upon assessments shall be deposited by the Council with the insurance trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Council or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amount paid. Instead, the insurance trustee may rely upon a certificate of the Council made by its president and secretary as to any and all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Council, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires, the approval of an architect named by the Council shall be first obtained by the Council upon disbursements in payment of costs of reconstruction and repair.

(G) Eminent domain

Appropriation, taking, injury to or destruction of, or condemnation by eminent domain by federal, state, or local government or any instrumentality thereof of any portion of the condominium project, respectively, shall be considered to be included in the terms "damage and destruction" for purposes of this Article, and the decision whether or not to restore, insofar as is possible, the Building of which two-thirds or more is taken, and the proceeds of the eminent domain taking, respectively, shall be treated in the same manner as is provided in this Master Deed upon the occurrence of damage and destruction to the condominium project. The Board of Directors shall give to all holders of first mortgages on Units prompt notice of any eminent domain proceedings, and the distribution of the proceeds of any eminent domain proceeding shall be subject to the provisions of Article VIII (E) with respect to the rights of the holders of mortgages on Units.

## ARTICLE X

### Sale and Mortgaging of Units

(A) Right to sell Units

The Unit Owner of each Unit shall have the right to sell such Unit and the Common Elements appurtenant thereto, subject to all of the provisions of the Condominium Documents.

(B) Grantee to be liable with grantor for unpaid common charges

In any conveyance of a Unit either by voluntary instrument, operation of law, or judicial proceedings in accordance with this Master Deed or Bylaws, the grantee of the Unit shall be jointly and severally liable with the former Unit Owner for any unpaid common charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the former Unit Owner the amounts paid by the grantee therefor. "Grantee" as used in this section shall not include either the holder of an institutional mortgage of record or a purchaser of a Unit at a foreclosure sale of an institutional mortgage.

(C) Rights of Mortgage Holders, Insurers, or Guarantors

The holder, insurer, or guarantor of a mortgage on any Unit shall have the right to timely written notice of (1) any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage; (2) any 60-day delinquency in the payment of assessments or charges owned by the Owner of any Unit on which it holds the mortgage; (3) a lapse, cancellation, or material modification of any insurance policy maintained by the Council; and (4) any proposed action that requires the consent of a specified percentage of eligible mortgage holders. Any such mortgage holder, insurer or guarantor must submit a written request for this information to the Council, stating both its name and address and the number or address of the Unit on which it has (or insures or guarantees) the mortgage. Eligible mortgage holders shall include those holders of a first mortgage on a Unit who have submitted a written request that the Council notify them on any proposed action requiring the consent of a specified percentage of eligible mortgage holders.

## ARTICLE XI

### Obligations of Unit

#### Owners and Remedies upon Default

(A) All Unit Owners and tenants subject to Condominium Documents which run with the land

All present or future Unit Owners, tenants, occupants, or any other person that might use the condominium project in any manner are subject to the terms and provisions of the Condominium Documents, as they may be amended from time to time, and the decisions of the Council acting through the Board of Directors acting, in turn, through its resolutions, the officers of the Council, and the managing agent. The acceptance of a deed or conveyance or entering into of a lease, or the entering into occupancy of any Unit shall signify that the provisions of the Condominium Documents and the decisions of the Board of Directors are accepted and ratified by such Unit Owner, tenant, or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Units, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease of the Unit.

(B) Remedies upon default

Failure of a Unit Owner (or other person subject to the Condominium Documents) to comply with the provisions of the Condominium Documents shall entitle the Council (and the Declarant, in the proper case) to the following remedies provided by the Horizontal Property Law

and by any other provisions of the Condominium Documents:

(1) The right to enter any Unit or any portion of the condominium project upon which, or as to which, such violation or breach exists which requires emergency attention or emergency repairs, and on an emergency basis to abate and remove, at the expense of the defaulting Unit Owner, any structure or thing or condition that may exist in violation of the Condominium Documents; and the Council, or its employees or agents, shall not thereby be deemed guilty of trespass.

(2) The right to enjoin, abate, or remedy by appropriate legal proceedings, at law or equity, the continuance of any breach; and, pursuant to the appropriate court action, the right, if any Unit Owner or any occupant of his Unit shall continue to be in violation of the aforesaid documents and rules and regulations for 30 days after notice in writing from the Council, to issue to the defaulting Unit Owner a 10-day notice in writing to terminate the rights of said Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit and to file a suit in equity against the defaulting Unit Owner for a mandatory injunction against the Unit Owner or occupants or, in the alternative, a decree declaring the termination of the defaulting Unit Owner's right to occupy, use, or control the Unit and ordering that the Unit shall be sold at a judicial sale upon such notice and terms as the court shall establish, except that the defaulting Unit Owner shall not be entitled to reacquire the Unit at such sale or by virtue of right of redemption.

(3) The right to assess a fine, not to exceed \$100.00 per default, each day of a default constituting a separate default, against the defaulting Unit Owner, which fine shall in all respects be treated in the same manner as an assessment under Article V.

(C) Costs and attorney fees

In any proceeding arising because of an alleged failure of a Unit Owner or the Council to comply with the terms of the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court.

(D) No waiver of rights

The failure of the Council or any Unit Owner to enforce any covenant, restriction, or other provision of the Horizontal Property Law or the Condominium Documents shall not constitute a waiver of the right to do so thereafter.

(E) Rights are cumulative

All rights, remedies, and privileges granted to the Council, Declarant, the Board of Directors, its designated agent(s), or a Unit Owner, pursuant to any terms, provisions, covenants, or conditions of the Condominium Documents 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 hereunder, under the other Condominium Documents, or at law or in equity.

## ARTICLE XII

### Future Development Phasing and Withdrawal

Moss Creek, as initially built, consists of six (6) Units in three (3) Building(s) previously constructed and may consist of additional Units contained in additional Buildings which may be constructed. These Buildings and the Units therein together with the Common Elements appurtenant thereto will automatically become subject to this condominium regime by amendment(s) to the Master Deed upon the filing of their respective floor plans. Declarant specifically reserves the right, from time to time, to further amend the Master Deed to the extent of adding additional Units and General Common Elements (not to exceed a total of one hundred seventy-one (171) Units or one hundred sixty-four (164) additional Units) and Limited Common Elements and, once added by amendment, the Units therein shall have the same rights, privileges, and obligations as appear herein. In furtherance of the foregoing, an irrevocable power of attorney coupled with an interest is hereby granted and reserved unto Declarant, its successors and assigns (however, individual Unit Owners shall not be included within the meaning of successors and assigns as used in this paragraph), to amend the Master Deed to accomplish the foregoing and to shift and relocate from time to time the percentage of ownership in the Common Elements appurtenant to each Unit to the percentages set forth in each amendment pursuant to this paragraph.

Each execution of a deed of conveyance, mortgage, or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant, and an acknowledgement of and conclusive evidence of the parties thereto to the consent of such reservation of power to Declarant as attorney in fact and shall be deemed to reserve to Declarant and its successors and assigns the power to shift and reallocate from time to time the percentages of ownership in the Common Elements appurtenant to each Unit set forth in each such recorded amendment. Further, Declarant specifically reserves unto itself, and its successors and assigns, the rights to determine the location of all future Units, Common Elements, and Limited Common Elements. The rights reserved in this Article include the right to annex additional property into the regime. Annexations into the regime shall be limited to 25.57 additional acres of property.

Moss Creek shall be developed in a series of phases as shown on the Phasing Plan attached hereto as Exhibit C. Development need not occur in any specific order of phases, but shall occur in the phases shown on the Phasing Plan.

Each Unit Owner by acceptance of a deed to a Unit further acknowledges, consents, and agrees to this Master Deed and to each such amendment that is recorded, as follows:

(A) The portion of the additional Common Elements and any additional Limited Common Elements described in each such amendment shall be governed in all respects by the provisions of this Master Deed.

(B) The percentage of ownership in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded amendment and upon recordation thereof the amount by which such percentage appurtenant to a Unit is adjusted as set forth therein shall thereby be and be deemed to be reallocated from or to such Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in such recorded amendment.

(C) Each deed, mortgage, or other instrument affecting a Unit shall be deemed given



subject to the conditional limitation that the percentage of ownership in the Common Elements appurtenant to each Unit shall, upon the recording of each amendment, be adjusted in proportion to the revised percentage set forth in such amendment and vested among all the other Owners, mortgagees, and others owning an interest in the other Units in accordance with the terms and percentages of each such recorded amendment.

(D) A right of revocation is hereby reserved by the grantor in each such deed, mortgage, or other instrument of a Unit to so amend and reallocate the percentage of ownership in the Common Elements appurtenant to each Unit.

(E) The percentage of ownership in the Common Elements appurtenant to each Unit shall include and be deemed to include any additional Common Elements made a part of the condominium project by a recorded amendment, and each deed, mortgage, or other instrument affecting a Unit shall be deemed to include such additional Common Elements and the ownership of any such Unit and lien of any such mortgage shall automatically include and attach to such additional Common Elements as such amendments are recorded.

(F) Each Unit Owner shall have a perpetual easement, appurtenant to his Unit, for the use of any additional Common Elements annexed thereto by and described in any recorded amendment for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners of specific Units as may be provided in any such amendment:

(G) The recording of each such amendment shall not alter the amount of the lien for expenses assessed to a Unit prior to the date of such amendment.

(H) Each Unit Owner by acceptance of the deed conveying his Unit agrees for himself and all those claiming under him, including mortgagees, that the Master Deed and each Amendment is and shall be deemed to be in accordance with the Horizontal Property Law and, for purposes of the Master Deed and Horizontal Property Law, any changes in the respective percentages of ownership in the Common Elements as set forth in each Amendment shall be deemed to be made by agreement of all Unit Owners and mortgagees.

(I) Declarant reserves the unilateral right to amend the Master Deed for the purpose of shifting and reallocating the percentages of ownership in the Common Elements in the manner provided by this article and any applicable law. If requested by Declarant, each Unit Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Article to comply with the Horizontal Property Law as it may be amended from time to time.

(J) Additional Units shall be substantially completed prior to being subjected to the regime and shall be consistent with other Units in terms of quality of construction.

(K) The provisions of the Master Deed and in deeds and mortgages of the Units and Common Elements may contain clauses intended to confirm the right to shift the Common Elements. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Elements can be accomplished.