



3/09/09

**RESTATED DECLARATION OF PROTECTIVE COVENANTS
AND RESTRICTIONS FOR THE IVAN DOWNS PLANNED UNIT DEVELOPMENT**

WHEREAS, on the 1st day of December, 2005, approximately 135.95 acres off Elrod Road in Bowling Green, Warren County, Kentucky were zoned as a Planned Unit Development (P.U.D.) with binding elements, known as the "Ivan Downs P.U.D."; and

WHEREAS, multiple restrictive covenants affecting part or all of the 135.95 acres were subsequently recorded, including;

- (i) Declaration of Protective Covenants and Restrictions for Trackside Section 1 at Ivan Downs of the Ivan Downs Planned Unit Development at Deed Book 916, Page 352;
- (ii) Amended and Restated Declaration of Protective Covenants and Restrictions for Trackside Sections 1 and 2 of Ivan Downs, within the Ivan Downs Planned Unit Development at Deed Book 926, Page 838;
- (iii) Declaration of Protective Covenants and Restrictions for Paddock Section 3 of Ivan Downs, within the Ivan Downs Planned Unit Development at Deed Book 942, Page 724;
- (iv) Amendment to Declaration of Protective Covenants and Restrictions for Paddock Section 3 of Ivan Downs, within the Ivan Downs Planned Unit Development as recorded in Deed Book 942, Page 724, in the Warren County Clerk's Office at Deed Book 948, Page 893;
- (v) Amendment to Declaration of Protective Covenants and Restrictions for Trackside Section 1 at Ivan Downs of the Ivan Downs Planned Unit Development as Recorded in Deed Book 916, Page 352 at Deed Book 948, Page 895;
- (vi) Amendment to Amended and Restated Declaration of Protective Covenants and Restrictions for Trackside Sections 1 and 2 of Ivan Downs, within the Ivan Downs Planned Unit Development as Recorded in Deed Book 926, Page 838, in the Warren County Clerk's Office at Deed Book 948, Page 897, in the office of the Warren County, Kentucky Clerk (the "Declarations"); and

WHEREAS, circumstances thereafter occurred which prevented development of Ivan Downs pursuant to the Declarations; and

WHEREAS, all except 52.8741 acres of the real property subject to the Declarations have been transferred; and

WHEREAS, the Statement of Binding Elements which governed development of the 52.8741 acres subject to the above Declarations was deleted by that Statement of Binding Elements dated September 27, 2007 and recorded at Book D966, Page 800 in the office of the Warren County, Kentucky Clerk (the "2007 Binding Elements"), and the owners of the 52.8741 acres now desire to amend and restate the restrictive covenants applicable to their property to reflect the 2007 Binding Elements;

NOW THEREFORE, for good and valuable consideration, and in order to continue orderly development and preservation of the values, amenities, desirability and attractiveness of Ivan Downs, and provide for operation and maintenance of the Common Areas;

ARTICLE I DEFINITIONS

A. Definitions. Certain terms used in this Declaration and any supplemental declaration hereto, shall be defined as follows unless the context clearly indicates a different meaning thereof:

- (1) "Architectural Review Board or ARB" shall mean and refer to the committee created by Article IV for the purposes therein described.
- (2) "Association or Homeowners Association" shall mean and refer to the IVAN DOWNS Homeowners Association, a non-stock, nonprofit corporation organized and existing under the laws of the Commonwealth of Kentucky, its successors and assigns.
- (3) "Board" shall mean and refer to the Board of Directors of the IVAN DOWNS Homeowners Association.
- (4) "Common Area" shall mean and refer to all parts of the subject property not included within any Lot and owned by the Homeowners Association for the use and benefit of the Homeowners Association and the members thereof, including without limitation the walking trails, entrance signs, medians, storm water structures, alleyways, landscaping, signs, parks, fences, irrigation systems, walks, and landscape buffers at IVAN DOWNS. At least sixteen percent (16%) of the Subject Property shall be developed as Common Area open space.
- (5) "Community" or "Ivan Downs" shall mean and refer to the 52.8741 acres of IVAN DOWNS P.U.D. described in Exhibit A hereto.
- (6) "Community Facilities" shall mean and refer to all structures of the subject property not included within any Lot and owned by the Homeowners Association for the use and benefit of the Homeowners Association and the members thereof, including without limitation the playground.
- (7) "Declaration" shall mean and refer to this Restated Declaration of Protective Covenants and Restrictions for IVAN DOWNS as the same shall be amended, changed, supplemented or modified from time to time as provided herein.
- (8) "Homebuilder or Builder" shall mean and refer to the individual or entity constructing a home, residence or structure on a Lot located within the Subject Property.
- (9) "Lot" shall mean and refer to the elements of the Subject Property, which are not owned by the Homeowners Association, and which part of the Subject Property described in Exhibit A hereto which is by this reference incorporated herein. The maximum number of Lots into which the Subject Property may be divided is eighty-seven (87).
- (10) "Member" shall mean and refer to a person who is a member of the Homeowners Association by virtue of owning one (1) or more Lots in the Subject Property.
- (11) "Notice of Lien" shall mean and refer to the instrument recorded by the Homeowners Association in the office of the Clerk of Warren County, Kentucky, upon failure of an Owner to timely comply with payment or performance obligations required by this Declaration.
- (12) "Owner" shall mean and refer to the record owner of any Lot as recorded in the office of the Clerk of Warren County, Kentucky.
- (13) "Recorded, Recording and/of Record" shall mean and refer to recorded, recording and/of record in the office of the Clerk of Warren County, Kentucky.
- (14) "Subject Property" shall mean and refer to the property described in Exhibit A hereto.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

SECTION 1. Deletion of Prior Declarations Applicable to this Property. All prior Declarations applicable to the Subject Property comprised of 52.8741 acres more particularly described in Exhibit A hereto are DELETED.

SECTION 2. Submission of Subject Property to Declaration:

A. This Declaration shall constitute covenants running with the land and binding upon all parties now owning or hereafter having or acquiring any right, title or interest in the Subject Property or any part or portion thereof, and shall inure to the benefit of each Owner thereof. Every person hereafter acquiring a Lot or any portion of the Subject Property by acceptance of a deed to any interest in a Lot or any portion of the Subject Property shall accept such interest subject to the terms of this Declaration, and by acceptance of the same shall be deemed to have consented to and agreed to be bound by the terms, conditions and covenants of this Declaration.

ARTICLE III RESTRICTIONS ON THE USE AND OCCUPANCY OF PROPERTY

SECTION 1. USE AND OCCUPANCY:

A. Land Use. Ivan Downs shall be developed into a maximum of eighty-seven (87) single-family residential lots, at least 8,750 square feet in size. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling with a detached garage, and optional storage building. All such detached garages and/or storage buildings shall be constructed of the same quality and the same material type as the main dwelling building. No structures shall exceed three (3) stories. Each Lot shall have a minimum of a two-car garage not to exceed a three-car garage.

B. Use of Other Structures.

- (1) No temporary buildings, sheds, tents, trailers or signs of any kind shall be erected, constructed, permitted or maintained on any Lot at any time.
- (2) No house trailer, mobile home, travel trailer, trailer, tent, camper truck, boat or recreational vehicle of any type may be maintained, stored or kept upon any Lot or portion of the Subject Property unless the same shall be located in such a way as to be completely within an enclosure or screened area so that it is not visible from roads or adjoining Lots. The Association, in its sole discretion, may prohibit the storage or parking of any boat, recreational vehicle or equipment on any Lot. The parking of commercial trucks, rigs, or vans is prohibited on any Lot, except on a temporary basis during construction.

C. Minimum Floor Area.

- (1) The minimum heated floor area of any residence located within IVAN DOWNS shall be 2,100 square feet. In the case of multiple story residences, the ground floor area shall not be less than 1,400 square feet.

(2) The floor areas referred to in this section are those areas that are heated and cooled finished living space. Finished basement areas, garages and open porches are not included in computing floor areas, even if said areas are heated and cooled.

D. Combination and Subdivision. No two (2) or more Lots may be combined and subdivided so as to obtain more lots than existed before combining.

E. Ivan Downs Boulevard. The Subject Property shall have a maximum of three (3) access points from Ivan Downs Boulevard.

F. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of the Subject Property as recorded in Plat Book 38, Page 9, in the office of the Clerk of Warren County, Kentucky. No structure, planting or any other material or mechanical equipment shall be placed or permitted to remain in these easements which may damage or interfere with the installation and/or maintenance of utilities or which may alter a direction of flow or volume of the drainage channels within those easements. The owner of that Lot shall maintain the easement areas of each Lot continuously.

G. Setbacks. The building setback lines shall be as depicted on the plat of the Subject Property as recorded in Plat Book 38, Page 9, in the office of the Clerk of Warren County, Kentucky. No building shall be erected nearer than those setback lines. Side setback lines are seven and one-half feet (7 ½") on all Lots unless otherwise shown on the recorded plat.

H. Noxious or Offensive Activity and Nuisance. No noxious or offensive activity shall be carried on, in, upon or about any of the Subject Property nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the Community.

I. Business Home Occupations. No trade, business, profession or occupation of any kind shall be conducted on any Lot except that members of their recognized professions in the Community may receive the usual ordinary calls at their home. Nothing shall be done on any Lot which may become an annoyance or nuisance to the Community.

J. Animals. No animals, including but not limited to reptiles, livestock, or poultry of an 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, shall at all times be confined to the Lot occupied by the owner of such pet.

K. Use of Common Area. Each Owner of a membership in the Homeowners Association, his or her immediate family, tenants and accompanied guests, shall be entitled to the use and benefit of all Common Areas and Community Facilities in IVAN DOWNS.

L. Location of Garbage and Refuse Receptacles. Solid waste and recycle waste receptacles must be kept from sight other than for scheduled collections.

M. On-Site Parking. Sufficient parking space shall be provided on each Lot for all vehicles to park off of the streets, alleys and off the lawn areas of other Owners and the Common Areas.

N. Window Air Conditioners. Window air conditioners are not permitted.

O. Clothes Lines. No outside clothes lines shall be erected or placed on any Lot or Common Area.

SECTION 2. STRUCTURES:

A. Building Materials. The exterior material of all residential structures located within IVAN DOWNS shall be at least seventy-five percent (75%) brick or masonry material including hardiboard. Vinyl material is permitted at soffits and undersides of porches.

B. Roof. The main roof of all homes located in this Subject Property must be constructed with a minimum pitch of 12/8. Roofs with less pitch may be approved in writing by the ARB.

C. Approval of Plans. The building plans shall be submitted to the ARB for review and written approval prior to construction. Consideration for the approval by the ARB shall be based upon these written restrictions and the conformity with the motif and architecture of the development as a whole. Approval or disapproval of the plans by the ARB shall be made and the determination available within ten (10) business days after receipt of the complete and necessary building plans. The Developer has available graphic representations of the suggested traditional architecture nature of the structures to be used as guidelines.

D. Building Material of Other Structures. Any accessory structure (including but not limited to a detached garage, storage building or outbuilding) shall be constructed of the same material and of the same theme as the principal structure in its design and material and shall be subject to the same restrictions as outlined above, which includes written approval by the ARB.

E. Swimming Pools. No swimming pool shall be installed or constructed without specific written approval from the ARB. Above ground pools will not be permitted.

F. Driveways. All driveways and driveway aprons shall be concrete. Builders will construct driveways of concrete using ARB-approved concrete contractors, specifications, quality control, and construction inspection procedures.

G. Site Planning. All buildings shall be sited perpendicular and parallel to streets.

H. Foundation. No part of the foundations of the homes located in the Subject Property shall be left exposed or incomplete. All foundations must have masonry veneer. No exposed concrete masonry unit (hereinafter "CMU") will be allowed.

I. Duplicate House Plans. No house plan submitted to the ARB shall be duplicated unless waived in writing by the ARB. The goal is that each house shall have its own individuality.

J. Dish and Satellite Antennas. No exterior antennas of any kind shall be allowed or maintained upon any portion of the Subject Property, including any Lot, or portion thereof, without the prior written consent of the ARB. No free standing antennas whatsoever shall be placed on any Lot. Satellite dishes, no larger than twenty-four inches (24") in diameter, shall be permitted; provided it is properly screened to be concealed from view from neighboring properties and the street.

K. Curb and Gutter. All streets in Ivan Downs shall be developed with curb and gutter; except that eighteen (18) foot alleyway shall not require curb and gutter.

L. Fire Hydrants. Ivan Downs shall be developed with sufficient water supply and fire hydrants to meet the fire control standards of Warren County, Kentucky.

SECTION 3. LANDSCAPING:

A. Sidewalks. Ivan Downs shall be developed with five foot (5') wide sidewalks on one side of each street, and on both sides of Ivan Downs Boulevard. Builders will use and adhere to the ARB's approved concrete contractors, specifications, quality control, and construction inspection procedures.

B. Lawns. All lawns are to be sodded in the front and sides of the home to the edge of the street pavement. All back lawns are to be seeded or sodded. All sodding and/or seeding shall be completed on or before construction of the home is completed.

C. Minimum Landscaping Requirements. The owners desire that Ivan Downs continue to be developed as a tranquil and ornate area through the voluntary planting and maintenance of trees, shrubbery, bulbs, seasonal and annual plants, landscape beds, etc. As a minimum, the Homeowner or Builder shall plant and maintain two (2) two-inch (2") diameter trees and a basic foundation planting. Additional landscaping is highly encouraged.

D. Fences. Any yard fence must be approved by the ARB in writing. The fence shall be aesthetically pleasing and conform to the nature of the general area. Chain link fence, barbed wire, or chicken wire fences are not acceptable. No fences shall be constructed closer to the front property line than the rear corners of the home.

E. Ornamental Yard Furniture. Ornamental yard furniture, hardware, statues, etc., are to be kept to a minimum in the front lawn areas and should be screened in the rear areas so as to not create an objectionable nuisance.

F. Mechanical Equipment and Utilities. All mechanical equipment, utilities, solid waste receptacles, and service areas are to be screened from the public view.

G. Mail and Paper Boxes. Mailboxes and paper boxes must be uniform. The mailboxes, paper boxes, and accompanying hardware shall be placed at each home by the Builder and must satisfy the ARB's specifications. Placement must comply with the requirements of the U.S. Postal Service.

H. Lighting.

1. Seasonal. All exterior lighting visible from the street shall require the written approval from the ARB, except for seasonal decorative lights for the sixty (60) day period beginning on November 15 of each year.

2. Street Lighting. Street lighting at Ivan Downs shall be uniform, with light poles of metal, fiberglass or composite construction materials subject to the written approval of the ARB.

I. Walking Trails. A twenty-five foot (25') natural landscape buffer will be reserved along the western property lines. The Homeowners Association will maintain a portion of the area as a walking trail.

SECTION 4. CONSTRUCTION ACTIVITY AND GUIDELINES:

A. Site Cleanliness. Site cleanliness shall be maintained at all times during construction. Extreme care should be given to minimize debris spillage while driving to and from the Lots during construction. It is imperative that all sites be maintained in a clean and tidy manner. All construction materials must be kept within the property lines and a clear street right-of-way should be maintained. Access to the site should be limited to the proposed driveway location. Access over or through adjoining properties is expressly forbidden without written permission from the affected Owner(s). The storage of materials should be in an inconspicuous area of the site and should be neat and orderly.

B. Penalties for Improper Maintenance. Should the ARB determine, in its sole discretion, that a site is not being maintained properly, the ARB may undertake to have the site maintained properly and will deduct the cost of such from any deposit and/or levy fines in an amount not to exceed \$100.00 per day. The ARB may issue a "Stop Work" order if corrective action has not been completed after first warning.

D. Continuous Construction Schedule. The Builder shall work continuously on the construction of the house or structure after the initial footings have been placed. The Builder must work in a sustained satisfactory progression and shall work diligently to complete construction in no more than a fifteen (15) month period from the date on which the building permit for such house or structure shall have been issued to the final completion. Should construction progress cease for more than ninety (90) days, then the ARB must be notified in writing by the Owner.

E. Final Grading. The final Lot grading shall conform to the drainage plan approved by the City-County Planning Commission of Warren County.

F. Silt Control. The Homeowner and Builder shall be held jointly responsible for silt control and tracking of mud onto streets during the construction period. Also, any areas where vegetative growth is disturbed shall be given attention so as to employ appropriate soil stabilization methods so as to prohibit erosion.

G. General Lot Housekeeping. The Homeowner and Builder shall be held jointly responsible for controlling blowing debris and the general housekeeping on their Lot during the construction phase. The Builder shall supply a container for all construction debris for the proper disposal, or make other arrangements to ensure no waste is allowed to impact neighboring Lots or remain in an unsightly condition on the Lot.

H. Burning. The burning of construction material on the Subject Property shall not be permitted.

I. Utilities. Throughout construction, all utilities shall be underground.

SECTION 5. MAINTENANCE:

A. Lot Lawn Maintenance Prior to Construction. Until construction commences, each Lot Owner shall keep his or her Lot maintained as a completed lawn of less than fifteen inches (15") in height.

B. Storm Water Retention Upkeep. Owners of Lots encompassing storm water retention areas are responsible for the maintenance of the portion of the basin on their property. Maintenance shall include:

- (1) Grass shall be maintained so as not to exceed fifteen inches (15") in height.
- (2) Basin areas shall be maintained and clear of all debris and all objects.
- (3) No permanent structures of any type shall be placed in these areas.
- (4) Landscaping in these areas is encouraged.
- (5) Should erosion occur at any time, it is the Owner's responsibility to stabilize the erosion, repair and re-vegetate the affected area.

C. Rubbish and Debris Accumulation. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Subject Property and no odor shall be permitted to arise therefrom which is or may become detrimental to property in the vicinity thereof and the occupants thereof. No nuisance shall be permitted to exist upon any portion of the Subject Property that is or may be offensive or detrimental to any property in the vicinity thereof or to its occupants.

D. Building and Yard Maintenance. No building or structure upon the Subject Property shall be permitted to fall into a state of disrepair. Every such building and structure shall at all times be kept in good condition and repair and adequately painted and maintained. No buildings, structures, or improved yards on the Subject Property shall be permitted to deteriorate in appearance so as to detract from the Community.

E. Notice of Deficiencies and Assessments. Should the Homeowners Association determine that a Lot, yard or dwelling is being permitted to become unsightly or hazardous or is not being properly maintained, they shall notify the Owner in writing of the deficiencies. If these deficiencies have not been corrected within thirty (30) days, the Homeowners Association may correct such deficiencies and levy a special assessment against that Lot and Owner for the costs of such correction.

SECTION 6. GENERAL COVENANTS:

A. Association Membership. The Owner of each Lot shall be required to join and participate financially in the Homeowners Association. A mandatory Homeowners Association annual fee will be required. Annual Fees will be used for the upkeep, insurance, mowing and maintenance of Common Areas and Community Facilities. The rights and responsibilities associated with the Homeowners Association shall be further defined below in Article V and in its Bylaws.

B. Review by ARB. All construction, landscaping and aesthetic control is subject to review by the ARB.

C. Use of Firearms. The use of firearms in the Community is prohibited.

D. Grade Changes and Excavation. No elevation changes shall be permitted which will materially affect the surface grade of a Lot without the prior written consent of the ARB. No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose.

E. Compliance with Local Laws and this Declaration. Owners will comply with the rules and regulations of the City-County Planning Commission of Warren County and the protective covenants, obligations, regulations and restrictions contained within this Declaration.

F. Compliance with Other Laws. Each Owner shall conform to and observe all governmental building codes, health regulations, zoning restrictions and other regulations applicable to Owner's Lot. In the event of any conflict between the provisions of this Declaration and any governmental restriction, the more restrictive shall apply.

ARTICLE IV ARCHITECTURAL REVIEW BOARD

SECTION 1. INTENT:

A. Purpose & Intention of ARB. An Architectural Review Board shall be appointed to regulate the external design, construction, appearance and location of improvements on the Subject Property and to assure that the installation, construction and alternation of any structure on any Lot conforms with the existing standards in the Community and that the external design and quality is in harmony with the development, in such a manner as to promote those qualities in the environment which bring value to the Subject Property and to foster the attractiveness and functional utility of the Community as a place to live, including a harmonious relationship among structures, vegetation and topography. It is the intention that review by the ARB will deal with the design concept of IVAN DOWNS as a whole, including such matters as landscaping and site layout and such structures as antennas and swing sets, etc., beyond the normal understanding of matters "architectural" in order to benefit the entire development, economically and aesthetically, by fostering the attractiveness of IVAN DOWNS. The ARB, in examining applications considers the various aspects of design, with special emphasis on the following objectives:

- (1) Landscape and Environment. To prevent the unnecessary destruction or blighting of the natural landscape or of the achieved man-made environment.
- (2) Relationship of Structures and Open Spaces. To ascertain that the treatment of build-up and open spaces is designed so that they relate harmoniously to the terrain and to existing buildings that have a visual relationship to the proposed development.
- (3) Protection of Neighbors. To protect neighboring Owners and users by making sure that reasonable provision has been made for such matters as surface water drainage, sound and sight buffers, the preservation of views, light and air, and other aspects of design which may have substantial effects on neighboring property.

B. Composition. The ARB shall consist of three (3) members appointed by the Board of Directors of the Homeowners Association, and the Board is empowered to appoint their successors should a vacancy occur. Their names shall be maintained in the minutes of the Board of Directors.

C. Enforcement. The Board of Directors of the Homeowners Association shall have the responsibility of enforcing the requirements and restrictions set forth in this Article.

SECTION 2. REQUIRED REVIEW OF PLANS:

A. Plan Submission. Before commencing the construction, reconstruction, remodeling, alteration or addition to any Building or structure, fence, wall, driveway, mailbox, receptacle for newspapers or other publications, path or other improvement of any nature, the Owner shall first submit its building plans, specifications, site and landscape plans, drainage plans, and an elevation sketch (collectively the "Plans") of all improvements to the ARB, as hereinafter described, for its written approval. The Plans shall include all materials for driveways, walls, fences, and other improvements (including but not limited to swimming pools). It shall be the responsibility of the Owner to secure, in writing, the approval of the Plans, which written approval shall be a condition precedent to any construction, reconstruction, remodeling, alteration, or addition by Owner. Construction of the improvements shall not begin without the written approval of the ARB. The Plans shall be delivered to the Association President or by certified mail at the address to be designated from time to time by the Association.

B. Requirements and Approval of Plans. Plans for any improvements must conform to certain restrictions as set forth hereinbelow, and further, must conform to the other requirements of this Declaration. The ARB shall be the sole judge or arbiter of such conformance or nonconformance. Further, the ARB may approve or disapprove plans when the ARB, in its sole discretion, determines that the proposed improvements or any feature of the Plans are not architecturally or aesthetically compatible with IVAN DOWNS.

C. Periodic and Final Inspections, Final Written Approval and Changes. Construction of the improvements shall not begin without the written approval of the ARB. If the ARB approves the Plans, the actual construction in accordance with the Plans shall be the responsibility of the Owner; provided, however, upon the completion of the improvements, and prior to occupancy, the Owner shall have the improvements inspected by the ARB to insure that the construction was completed in accordance with the Plans approved by the ARB prior to construction. Also, the ARB shall have the right, in its discretion, to make periodic inspections during construction in order to verify compliance with the approved plans. It shall be the responsibility of the Owner to secure, in writing, the approval of the ARB of the improvements. Should Owner fail to get such written approval, the right of the ARB to approve the improvements shall in no way be waived. In the event an Owner has made changes from the original Plans approved by the ARB and such changes were not previously approved by the ARB, occupancy of the subject improvements shall be delayed until the necessary corrections have been made.

D. Failure to Complete Project Pursuant to Approved Plans and Remedies for Same. In the event any Owner shall fail to complete his residence or other improvements according to the approved Plans or to maintain the improvements situated upon his or her Lot in a manner satisfactory to the ARB, same shall be reported by the ARB to the Association who may, upon the vote of two-thirds (2/3) of the Board, and after ten (10) days' written notice to the Lot Owner, and in the event of his continued failure to commence the correction of the matter in issue, enter upon said Lot and complete, repair, maintain or restore the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject and the Owner shall be personally liable for the cost of such maintenance so incurred.

Upon failure of an Owner to make timely payment, the Association shall have the right to file a Notice of Lien.

E. ARB's Right to Waive Minor Violations. In addition to the approval of Plans and other matters herein set forth, the ARB shall have the right to waive minor violations and allow minor variances where the same resulted unintentionally or without gross carelessness on the part of any Owner and are not materially harmful to the Subject Property. If such waiver is granted in writing, then, thereafter, such matters so waived shall no longer be deemed a violation of these restrictions.

ARTICLE V THE HOMEOWNERS ASSOCIATION

SECTION 1. MEMBERSHIP IN THE HOMEOWNERS ASSOCIATION:

A. Qualifications for Membership. The Owner of any Lot, upon acquiring record title, shall automatically then become a member of the Association and shall remain a member until he or she is no longer the record title Owner of said Lot for any reason, at which time his or her membership in the Association shall automatically cease. Membership is mandatory upon acquisition of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

B. Voting. Each Lot which is not part of the Common Areas or Common Facilities shall be entitled to one (1) vote, regardless of the manner in which title to the Lot is held. If two (2) Lots are held by the same person or entity that person or entity shall be entitled to two (2) votes. If two (2) or more Lots are combined by replatting into a single Lot, the owner thereof shall be entitled to one (1) vote for such Lot.

SECTION 2. POWERS OF THE HOMEOWNERS ASSOCIATION:

In addition to the powers delegated to it by the heretofore mentioned Articles and/or Bylaws of the Association, and without limiting the generality thereof, the Association shall have the power and authority to perform each of the following duties:

A. Management, Maintenance and Control of Common Areas. To construct, improve, maintain and repair each and every portion of the trails, entrance signs, fencing, traffic control devices and all improvements of whatever purpose; to incur expenses therefore; to enter into any and all contracts for the management, maintenance, and control of these Common Areas not inconsistent with this Declaration, and to determine what improvements and facilities shall be constructed in the Common Areas subject to the restrictions of this Declaration. The Homeowners Association reserves the right to change, abandon or close any said Common Area.

B. Recreation Areas. To acquire, erect, construct, light, improve, maintain and operate recreation areas and Community Facilities (including but not limited to the playground), as the Homeowners Association deems desirable for the use of Owners of Lots in the Community.

C. Payment of Taxes. To pay taxes and assessments, if any, which may include any governmental authority upon streets in IVAN DOWNS and any other open spaces, Common Areas or

Community Facilities maintained, but are not limited to, those imposed by and lands used or acquired for the general use of the Owners of Lots or building sites within IVAN DOWNS, including taxes and assessments, if any, which may be levied by any governmental authority on entrance ways, and other ornamental features, whether taxes are assessed as a part thereof, or separately, and on any property of the Homeowners Association.

D. Assessments. To levy assessments on the Owners of Lots, and to enforce payment of such assessments.

E. Insurance. To purchase, carry, and at all times maintain in force insurance covering all of the Common Areas and the improvements and appurtenances thereto in such amounts and with such endorsements and coverage as shall be considered sound insurance coverage for like structures, activities, locations and developments in Warren County, Kentucky, including but not limited to fire insurance, public liability and property damage insurance and such other forms of insurance as shall be deemed from time to time necessary or desirable.

F. Enforcement of Restrictions. To exercise such powers of enforcement, control, interpretation, modification and cancellation of this Declaration which now are or hereafter may be vested in, delegated to, or assigned to the Homeowners Association, and to pay all expenses incidental thereto; to commence and maintain in its own name on behalf of itself and/or any Owner of any Lot, or in the name of or on behalf of and as the agent of, any Owner of any such Lot, actions and suits to restrain and enjoin the breach or threatened breach of this Declaration, or any portion thereof, and to enforce this Declaration and to pay the expenses therefore.

G. General Powers. Generally to do any and all things that a non-profit corporation can lawfully do in operating for the benefit of its members and without profit to said corporation, except as expressly limited in its Articles of Incorporation and this Declaration, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Homeowners Association or for the peace, health, comfort, safety, and/or general welfare of the Owners of any property subject to the jurisdiction of the Homeowners Association, including acquiring and holding title to real property.

H. Agency. The authorized powers of the Homeowners Association are set forth in its Articles of Incorporation and/or Bylaws and in this Declaration. The Homeowners Association, acting by and through its Board of Directors, is irrevocably appointed agent and attorney-in-fact of each and all of the Lot Owners to exercise the powers delegated by the Homeowners Association and by this Declaration.

SECTION 3. CHARGES, ASSESSMENTS AND LIENS:

A. In general. Each Lot within the Subject Property, shall be subject to general and special charges and assessments and liens to secure the payment of same. The Homeowners Association shall have the sole authority to fix and establish the amounts of the charges and assessments provided for in this Declaration.

B. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each Lot owned, to pay such Assessments as may be assessed hereunder and

under the Bylaws of the Association. Any Assessment, when established, shall become a charge with the land, and constitute a lien upon the Lot, together with any reasonable attorney's fees incurred by the Association in connection with the collection and enforcement of same. In the event any assessment remains unpaid for a period of thirty (30) days after written notification from the Association to the Lot Owner the assessment is due, the Association shall be entitled, but not required, to place a Notice of Lien with respect to said assessment on said Lot of record in the office of the Clerk of Warren County, Kentucky.

C. Determination of Annual Assessment and Due Date.

- (1) The Board shall at least once during the year make an estimate of the cash requirements reasonable necessary or proper for:
 - (a) The operation of the Homeowners Association in keeping with its powers as herein defined.
 - (b) The creation of reserve for such future improvement, maintenance, acquisition or repair as may seem proper.
 - (c) The creation of reserve for payment of any obligations or liabilities incurred or to be incurred.
- (2) Such estimates of cash requirements and the whole thereof, shall be apportioned equally among all the Lots in the subject property and the sum so apportioned shall be fixed, determined and levied as the annual assessment.
- (3) The annual assessment shall be fixed, determined and levied by the Board during the month of January for each calendar year and shall be due and payable in full within thirty (30) days after written notification from the Homeowners Association to the Lot Owner.
- (4) The annual assessment upon each Lot shall not exceed the sum of \$550.00 except upon an affirmative vote of seventy percent (70%) of the members present and voting in person or by proxy at an annual or special meeting of the membership of the Homeowners Association at which a quorum is present.

D. Special Assessments. In addition to the annual assessments authorized herein, the Homeowners Association may levy in any assessment year one (1) or more special assessments for that year only for the purpose of defraying in whole or in part any deficiency between the expenses and income of the Homeowners Association from the previous year; or the cost of any construction or reconstruction; or unexpected repair or replacement of a capital improvement upon the Common Areas or Community Facilities. Any such special assessment shall be approved by an affirmative vote of seventy percent (70%) of the members present and voting in person or by proxy at an annual or special meeting of the membership of the Homeowners Association at which a quorum is present. Any such special assessment shall be due and payable on the date or dates which are fixed by the resolution of the Association authorizing such special assessment.

E. Special Charges. The Homeowners Association shall be entitled to reimbursement from the record owners of any Lot for any material or services provided by the Homeowners Association to or for the benefit of such individual Lot or the Owner or Owners thereof if said material or services were requested by such Owner or were provided by the Homeowners Association in the exercise of any of its powers under this Declaration. Such special charges shall be due and payable in full within thirty (30) days after written notification from the Homeowners Association to the Lot Owner.

F. Delinquency. Any annual assessment, special assessment or special charges will be delinquent if

not paid in full by the date due and shall bear interest at the rate of twelve percent (12%) per annum from said due date until paid.

G. Effect of Non-Payment of Assessment or Other Charges. If any annual or special assessment is not paid on the date due, or if any sum or special charge agreed to be paid by Owners is not paid when due, then the Homeowners Association may bring an action at law against the Owner personally and/or foreclose the lien against the Lot by court action, as herein provided, and there shall be added to the amount of such assessment, sum or charges all reasonable attorneys' fees and costs incurred by the Homeowners Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessments at the highest rate of interest allowed by law. Upon such failure to make timely payment, the Association shall have the right to file a Notice of Lien.

H. Enforcement of Lien by Judicial Sale. For and in consideration of the privileges and protections granted herein, and for the express purpose of securing the payment of the assessments, other sums and charges described above, court proceedings may be initiated by the Homeowners Association against the Owner for the enforcement of the lien described above, and each Owner accepting a deed to a Lot, their heirs, administrators, successors and assigns, does hereby agree to the following terms and conditions:

- (1) Said Owners agree to pay all assessments, sums and charges when due, and upon demand of the Homeowners Association, to pay, discharge or remove any and all liens (except a mortgage which may be hereafter placed against said Owner's Lot which shall adversely affect the lien granted herein, and in case the Association shall hereafter be required to appear in any court to enforce, or defend the title to, or possession of, said Lot or the lien granted herein, or appear in any court to prove said indebtedness, all costs and expenses of such appearance or proceedings, together with a reasonable attorneys' fee, shall be allowed and be payable to Owner upon demand of the Homeowners Association, and upon failure to do any of these things, then said Homeowners Association may do any or all of said things and the amounts so paid shall bear interest from the date of payment at the rate of twelve percent (12%) per annum and shall be and become a part of the indebtedness secured hereby.
- (2) If said assessments, sums or charges, or interest thereon, are not paid promptly when due or within any period of cure allowed above, or if after said Owners fail to pay any other sums due as above provided, or further, fail to reimburse the Homeowners Association within the time period due for such sum, the Owner's Lot shall be subject to a lien, created by this Declaration, and the said Homeowners Association is hereby authorized and empowered to file a foreclosure action in the Warren Circuit Court whereby the Owner's Lot is to be sold at judicial sale to the highest bidder to cash at public outcry, free from the equity of redemption, statutory right of redemption, homestead, dower/curtesy, and all other exemptions of every kind which are hereby expressly waived. The Association may bid at any sale. In case of sale hereunder, the proceeds shall be applied as follows:
 - (a) To the payment of all costs, charges and expenses of enforcing said lien as herein provided, also reasonable attorneys' fees for advice and counsel in the proceedings, or for instituting or defending any litigation which may arise on the account of the enforcement of said lien; also, the expenses of any such litigation.
 - (b) To the payment of all taxes which may be unpaid on said Lot(s).

- (c) To the payment of all unpaid indebtedness hereto secured.
 - (d) The residue, if any, to be paid pursuant to the Judgment of the Court.
- (3) The lien described herein shall be subordinate to the lien of a recorded mortgage encumbering any such Lot; provided, however, in the event the holder or owner of such mortgage becomes the Owner of such Lot after foreclosure thereof, such purchaser shall become subject to the lien reserved herein for the purpose of securing all assessments, sums and charges becoming due from and after the date such purchaser accepts a deed to said Lot or enters into possession of said Lot, whichever shall first occur.

I. Transferee Liability. The transferee(s) of any Lot, regardless of the manner in which title thereto is acquired, shall become personally liable to pay any and all assessments upon the Lot required by such transferee(s) as have become a lien and as become a lien together with all costs of suit and a reasonable attorney's fees as hereinabove provided.

SECTION 3. USE OF ASSESSMENTS:

Assessments collected by the Homeowners Association may be utilized for the acquisition, construction, improvement or maintenance of Common Areas, Community Facilities, streets, roads, paths and trails in or upon the Subject Property or for any purpose which it may from time to time deem to be in the best interest of its members or to be necessary or desirable for the benefit or protection of its members or for the benefit or protection of the Subject Property or any portion thereon; provided, however, that such assessments may not be utilized for any capital expenditure in excess of \$10,000.00 unless said capital expenditure has been duly authorized by an affirmative vote of a majority of the members present and voting in person or by proxy at an annual or special meeting of the membership of the Homeowners Association at which a quorum is present.

ARTICLE VI ENFORCEMENT AND SUSPENSION OF RIGHTS

SECTION 1. ENFORCEMENT BY ASSOCIATION:

All provisions herein may be enforced by the Association, by proceeding at law or in equity against the person, firm or other entity violating or attempting to violate any covenant(s), either to restrain the violation thereof or to recover damages, together with reasonable attorneys' fees and court costs. Further, in the event the Association fails to act to enforce any restriction herein, any Owner of any Lot may enforce these restrictions as aforesaid against any other Owner.

SECTION 2. SUSPENSION OF RIGHTS:

The rights and privileges of any Owner (except the right to use the common roads and streets in said property) may be suspended for any period during which any assessment or special charge to which his or her interest is subject remains delinquent and unpaid and during any period of time during which such Owner is in violation of any provision of this Declaration.

SECTION 3. NON-WAIVER:

Failure of the Homeowners Association or any other person with any right of enforcement to seek to enforce any limitations, restrictions, conditions or covenants herein contained shall in no event be

deemed a waiver of the right to enforce said limitations, restrictions, conditions and covenants against said violation or any continuing or future violation.

**ARTICLE VII
REGULATION AND MAINTENANCE OF COMMON AREAS**

SECTION 1. REGULATION OF COMMON AREAS:

Each Owner of a membership in the Homeowners Association, his or her immediate family, tenants and accompanied guests, shall be entitled to the use and benefit of all Common Areas and the Community Facilities in IVAN DOWNS, subject to the following powers of the Homeowners Association:

- (1) To borrow money for the purpose of improving the Common Areas and in aid thereof, to mortgage or encumber said properties;
- (2) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure;
- (3) To suspend any or all of the rights and privileges of any owner of a membership (except the right to use the private streets within this real estate development) for any period during which any assessment, or special charge to which his interest is subject remains delinquent and unpaid; and during any period of time during which such owner is in violation of any provision of this Declaration;
- (4) To charge reasonable admission use, rent and other fees, if any shall be charged, for the use of any Community Facilities (including but not limited to the playground); and
- (5) To review the requests of other individuals, groups or organizations to utilize the Community Facilities and to provide written consent for such.

SECTION 2. WALKING TRAILS:

The Owners and guest of any Lot in IVAN DOWNS shall at all times have the rights without cost, to utilize all walking trails situated in, upon, or about said property, subject to reasonable rules and regulations to be promulgated and enforced by the Homeowners Association. Conservation and outdoor organizations may be granted permission to use the walking trails if granted approval in writing by the Homeowners Association subject to reasonable rules, regulations and fees, if any shall be fixed, by the Homeowners Association.

SECTION 3. MAINTAINENCE OF COMMON AREAS AND FACILITIES:

The Homeowners Association shall have the obligation to maintain at its expense, and in case of damages or destruction to replace, repair or restore at its expense the Common Areas and Community Facilities, and all improvements thereon, including any common roads or alleyways.

**ARTICLE VIII
DURATION AND AMENDMENT**

SECTION 1. DURATION:

This Declaration shall be appurtenant to and run with the land and shall be binding upon all Owners and parties hereinafter having an interest in any of the Subject Property and all parties claiming

under them for a period of ninety-nine (99) years from the date of the filing of this Declaration.

SECTION 2. AMENDMENT:

The restrictions, conditions, covenants, reservations, liens and charges of this Declaration may be amended by agreement signed by the Owners of at least two-thirds (2/3) of the Lots. Any such amendment shall not become affective until the instrument evidencing such change has been filed of record. Every purchaser or subsequent grantee of any interest in the Subject Property by acceptance of a deed or other conveyance thereof thereby agrees that the provisions contained within this Declaration may be amended as provided herein.

**ARTICLE IX
MISCELLANEOUS**

SECTION 1. RIGHTS AND OBLIGATIONS:

Every purchaser or subsequent grantee of any interest in the Subject Property, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All future Lot Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. All rights, benefits, and privileges of every character imposed 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 said land, and shall inure to the benefit of such Grantee in like manner, as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

SECTION 2. PARTIAL INVALIDITY:

Any invalidation of any one or more of the restrictions (including, covenants, reservations, liens and changes contained in this Declaration) by judgment, court order, or statute, or failure on the part of the Association or their successors or assigns to enforce any of said restrictions, (including covenants, reservations, liens and changes contained in this Declaration) shall in no way affect any of the other provisions hereof or be deemed as a waiver of the right to enforce such restrictions any time after the violation thereof.

SECTION 3. ABATEMENT:

In the event that any Owner violates any of the terms or conditions of these restrictions and fails to cure the same within ten (10) days after written notice thereof, then the Association, in addition to the other rights and remedies provided for herein, shall have the express right, privilege and license to enter upon any Lot to take any reasonable action to cure such violation, and all reasonable costs thereof shall be at the expense of the Owner of such Lot and shall be payable upon demand by Association.

SECTION 4. EXONERATION OF ARB:

Each Owner of any Lot in the Subject Property expressly agrees that:

- (1) No duty or obligation is imposed upon ARB to enforce or attempt to enforce any of the covenants or restrictions contained herein, nor shall ARB be subject to any liability of any kind or nature whatsoever from any third party from failing to enforce the same; and
- (2) ARB's approval of any building plans, specifications, site or landscape plans or evaluations, or any other approvals or consents given by the ARB shall not be deemed a warranty, representation that any such buildings, improvements, landscaping or other action taken pursuant thereto or in reliance thereon complies with any or all applicable laws, rules, building code requirements or regulations, the sole responsibility for all of same being upon the respective Owner; and all liability in connection therewith. Owner agrees to indemnify and hold the ARB harmless from all loss or damage, including reasonable attorneys' fees, incurred by ARB as a result of any suit or claim made by any party concerning any feature of construction of the improvements made to any Lot, the noncompliance thereof with such laws, rules, building code requirements or regulations, or further, any suit or claim made by any injured or alleged injured party claiming to have been damaged or injured by any failure in the structure of any completed improvement, any negligence in design or workmanship of any component of such completed improvements on such Lot.

SECTION 5. WAIVER AND EXEMPTIONS:

The failure by the Homeowners Association, the ARB or any Owner of any subject to the restrictions of this Declaration to enforce any of the restrictions, limitations, conditions, covenants, reservations, liens or charges to which said property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restrictions, limitations, conditions, reservations, covenants, liens or charges.

IN WITNESS WHEREOF, the owners of two-thirds (2/3) of the eighty-seven (87) Lots comprising the Subject Property have executed this Declaration as of the date set forth above.

[SIGNATURE PAGES TO FOLLOW]

ROB JONES CONSTRUCTION, LLC, a
Kentucky limited liability company

By: _____
Rob Jones
Owner of Lots 2 and 15

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF WARREN)

The foregoing instrument was acknowledged, subscribed and sworn to before me this
_____ day of _____, 2009, by Rob Jones, to me personally known, as the
Manager for Rob Jones Construction, LLC, a limited liability company, and that said instrument
was signed on behalf of said limited liability company by proper authority, and the instrument
was the act of the limited liability company for the purposes stated above.

NOTARY PUBLIC
My Commission Expires: _____