

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BLUEGRASS BUSINESS PARK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration") is made this 4th day of May, 1999, by LEXINGTON UNITED, INC., a Kentucky corporation, whose address is Bluegrass Airport, Suite 38, 4000 Versailles Road, Lexington, Kentucky 40510 (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant intends to develop the "Properties" (as defined herein) as a high quality light industrial park and by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Properties.

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Properties as are now or hereafter subjected to this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the Properties and which shall be binding on all parties having, or hereafter acquiring, any right, title or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof, the Declarant and the "Association" (as herein defined).

ARTICLE I

DEFINITIONS

The terms in this Declaration and the "By-Laws" (as defined herein) shall be construed to have their ordinary, generally accepted meanings unless otherwise specifically defined herein or in the By-Laws. In addition, the following definitions shall apply:

Return To:
Frank L. Wilford, Esq.
Stoll Keenon & Park
201 E. Main St. Suite 1000
Lexington, KY 40507

Section 1 "Area of Common Responsibility" shall mean and refer to the "Common Area" (as defined herein), together with those areas, if any, which by the terms of this Declaration or by contract with any Person become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, may be part of the Area of Common Responsibility.

Section 2 "Association" shall mean and refer to the Bluegrass Business Park Association, Inc., a Kentucky non-profit, non-stock corporation, its successors and assigns, which has been incorporated by the Declarant for the purposes of (i) maintaining and administering the Common Areas, (ii) administering and enforcing the terms and conditions of this Declaration, and (iii) collecting the assessments and charges hereinafter created as all of the foregoing is more specifically hereinafter provided for.

Section 3 "Board of Directors" or "Board" shall be the elected body of the Association having its normal meaning under Kentucky corporate law.

Section 4 "By-Laws" shall mean and refer to the By-Laws of Bluegrass Business Park Association, Inc., attached hereto as Exhibit "C" and incorporated herein by reference, as they may be amended from time to time.

Section 5 "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint all members of the Board of Directors, as specified in Article III, Section 2, of the By-Laws.

Section 6 "Common Area" shall mean (i) all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of the Owners; (ii) the Common Areas and/or rights-of-way which are not dedicated to the public and are shown and identified on the plats recorded by the Declarant or any other Person, pursuant to a plat approved by Declarant, including, but not limited to, private access easements, easements for ingress, egress, construction, reconstruction and maintenance, signage easements and pedestrian access, side walk easements, including without limitation, all improvements and facilities located thereon which shall be deeded to the Association for the common use and benefit of the Owners; and (iii) areas within public right-of-ways as identified on record plats, including, but not limited to, roadways and medians upon which the Declarant has constructed and/or installed improvements for the common use and enjoyment of the Owners, including, but not limited to, landscaping, sprinkler systems, signage and lighting. The Common Area, with the exception of the Common Area which is located within (i) public right-of-ways, and/or (ii) easements, all as described herein, shall be conveyed to the Association at such time as may be determined by the Board of Directors.

Section 7 "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

Section 8 "Community-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined and set forth by the Board of Directors or the "ARC" (as defined herein).

Section 9 "Declarant" shall mean and refer to Lexington United, Inc., a Kentucky corporation, or its successors, successors-in-title or assigns who are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant. In the recorded instrument, the designee must be designated as the "Declarant" hereunder by the designation, which designor shall be the "Declarant" under this Declaration at the time of such designation. Upon the designation of a successor Declarant, all rights of the former Declarant in and to such status as "Declarant" under this Declaration shall cease, it being understood that as to all of the Properties which is now or hereafter subjected to this Declaration, there shall be only one "Declarant" at any point in time.

Section 10 "General Assessment" shall mean and refer to assessments levied to fund Common Expenses for the benefit of all "Members" (as herein defined) of the Association.

Section 11 "Initial Owner" shall mean and refer to Webasto Sunroofs, Inc., a Delaware corporation, who is a party to this Declaration for the purpose of subjecting the part of the Properties owned by it to be covenants, conditions and restrictions set forth in this Declaration.

Section 12 "Lot" shall mean any subdivided tract of land shown upon the final record plats of the Properties and any additional subdivided tracts which may become subject to this Declaration. The term "Lot" shall also include remaining, vacant portions of the Properties intended for development but not included within any final record plat. The term shall include all portions of the lot owned, including any structure thereon.

Section 13 "Member" shall mean and refer to a "Person" (as herein defined) entitled to membership in the Association, as provided herein.

Section 14 "Mortgage" shall mean and refer to a first mortgage and a deed that includes the reservation of a first priority vendor's lien.

Section 15 "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 16 "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 17 "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any Person who is a Mortgagee or holds an interest merely as security for the performance of an obligation, and includes, but is not limited to, the Initial Owner.

Section 18 "Person" shall mean a natural person, a corporation, a partnership, a limited liability company, a trustee or other legal entity.

Section 19 "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property as is hereafter subjected to this Declaration by "Subsequent Amendment" (as herein defined).

Section 20 "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3, of this Declaration.

Section 21 "Subsequent Amendment" shall mean an amendment to this Declaration which subjects additional property to this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

ARTICLE II

PROPERTY RIGHTS

Section 1 Right and Easement of Enjoyment; Exceptions

Every Owner shall have a right and easement of enjoyment in and to the Common Area for the purposes for which such areas are established, which shall be appurtenant to and shall pass with the title to every Lot subject to this Declaration, as it may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association.

Section 2 Delegation of Use

Any Owner may delegate its right of enjoyment to the Common Area and the improvements located thereon to its tenants who maintain a place of business on the Properties. An Owner who leases its Lot shall be deemed to have delegated all such rights to

the Lot's lessee. Membership in the Association may not be conveyed separately from the ownership of a Lot.

Section 3 Sale of Common Area

The Common Area shall not be sold or otherwise disposed of without first offering to dedicate such area to the Lexington-Fayette Urban County Government. This limitation neither applies to a transfer of the Common Area to an organization conceived and established to own and maintain the Common Area as a successor to the Association, nor to the easements, rights and privileges created by Sections 5, 6 and 7 of Article XIII of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1 Membership

Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation, partnership, limited liability company or other legal entity shall be exercised by the individual designated in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the By-Laws.

Section 2 Voting

The Association shall have two (2) classes of membership, Class "A" and Class "B," as follows:

A. Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

The Class "A" Member's voting percentage is its share of voting power allocated to a Member by virtue of being the Owner of a Lot. A Member's voting percentage shall be equivalent to the Lot's percentage share of the total General Assessment as determined pursuant to Article X, Section 2, hereof, for the year in which the voting power is exercised.

In any situation where a Member is entitled personally to exercise the vote for its Lot, and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those persons determine among themselves and advise the secretary of the Association, in writing, prior to

any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

B. Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to a voting percentage equivalent to its share of the total General Assessment as determined pursuant to Article X, Section 2, hereof, for the year in which the voting power is exercised, and, in addition, shall be entitled to appoint all members of the Board of Directors during the Class "B" Control Period as specified in Article III, Section 2, of the By-Laws and to such other rights as are set forth in this Declaration and the Bylaws. The Class "B" membership shall terminate upon the expiration of the Class "B" Control Period and be converted to a Class "A" membership.

ARTICLE IV

MAINTENANCE

Section 1 Association's Responsibility

The Association has been formed for the purpose of maintaining and keeping in good repair the Common Area and certain other areas as provided in this Article IV. The Association shall maintain and keep in good repair the Area of Common Responsibility, unless such obligations are assumed by any municipal or governmental agency or other entity having jurisdiction thereof, such maintenance to be funded as hereinafter provided. This maintenance shall include, but shall not be limited to, maintenance, repair and replacement, reconstruction, subject to any insurance then in effect, of all landscaping and other flora, structures, signage and improvements situated upon such areas, sidewalks, entrance ways, entry walls, ponds, fountains, landscaping on medians and rights-of-way of all public roads and landscaping of buffers within the Properties which lie within an area of Common Responsibility. Notwithstanding the obligation to maintain the Area of Common Responsibility, the Board of Directors may discontinue the operation of any aesthetic device within such Area of Common Responsibility if, in its sole discretion, the Board determines that doing so is in the best interest of the Association.

After the construction and installation of medians, entrance ways and rights-of-way of public roads, and the construction of the entrance wall by the Declarant, the maintenance thereof shall be performed by the Association to the highest standards of care to enable the Members to attract prime tenants and patrons to their Properties and also to provide a visually attractive entrance to the Bluegrass Business Park. Declarant and the Initial Owner hereby grant to the Association a non-exclusive easement in perpetuity over, under and through the Common Areas and any

adjoining portions of the Properties necessary for the purpose of performing its maintenance responsibilities.

Section 2 Owner's Responsibility

Each Owner shall maintain its Lot and all structures, parking areas, retention and detention basins and ponds, landscaping and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, conditions and restrictions, unless such maintenance responsibility is otherwise assumed by the Association pursuant to an amendment to this Declaration applicable to such Lot. If any Owner fails properly to perform its maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article X, Section 3, of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

ARTICLE V

INSURANCE AND CASUALTY LOSSES

Section 1 Insurance

The Board of Directors, or its duly authorized agent, shall have the authority to obtain, on behalf of and for the benefit of the Association, its Members, officers and directors, such insurance coverages and/or bonds as the Board of Directors in its discretion determines, including, but not limited to, blanket all-risk coverage, fire and extended coverage with respect to the Common Areas, public liability, workers' compensation, director's and officer's liability and a fidelity bond. Premiums for all insurance and/or bonds obtained shall be Common Expenses of the Association and shall be included in the General Assessment and as more particularly described in Article X, Section 1, of this Declaration.

Section 2 Disbursement of Proceeds

If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 3 Damage and Destruction

A. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

B. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition, consistent with the Community-Wide Standard.

Section 4 Repair and Reconstruction

If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for General Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 5 Individual Insurance

By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon, such insurance to be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures on its Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration and the Owner shall pay any costs of any repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct,

in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

ARTICLE VI

NO PARTITION

Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII

CONDEMNATION

Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of and under threat of condemnation by the Board of Directors acting on the written direction of Members representing at least two-thirds (2/3) of the total Association vote and the Declarant, as long as the Declarant owns or has an option to purchase any property described on Exhibit "A" or Exhibit "B"), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

A. If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, the Declarant, so long as the Declarant owns or has an option to purchase any property described on Exhibit "A" or Exhibit "B" of this Declaration, and Members, representing at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the above provisions of Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

B. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1 Annexation Without Approval of Class "A" Membership

As the owner thereof, or if not the owner, with the consent of the owner thereof (whether such ownership is in fee simple or is a leasehold estate), Declarant shall subject to the provisions of this Declaration and the jurisdiction of the Association, all or any portion of the real property described in Exhibit "B" attached hereto and by reference made a part hereof at such time as Declarant acquires fee title to all or any portion of such real property, by filing in the Fayette County Clerk's office, Lexington, Kentucky, a Subsequent Amendment annexing such properties. Such Subsequent Amendment to this Declaration shall not require the consent of Members. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A" or Exhibit "B" attached hereto and that such transfer is memorialized in a written, recorded instrument executed by the Declarant. The real property described on Exhibit "B" shall not be affected by or benefit from this Declaration, either expressly or by implication, unless and until annexed as provided herein.

Section 2 Annexation With Approval of Class "A" Membership

Subject to the consent of the owner thereof, the Association may annex real property other than that shown on Exhibit "B," and following the expiration of the right in Section 1, the real property shown on Exhibit "B," to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns or has an option to purchase any property described on Exhibit "A" or Exhibit "B". Annexation shall be accomplished by filing of record in the Fayette County Clerk's office, Lexington, Kentucky, a Subsequent Amendment with respect to the Properties being annexed. Any such Subsequent Amendment shall be signed by the

president and secretary of the Association and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3 Acquisition of Additional Common Area

Declarant may convey or cause to be conveyed to the Association additional real estate, improved or unimproved, located within the properties described in Exhibit "A" or Exhibit "B" which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4 Amendment

This Article VIII shall not be amended without the prior written consent of Declarant so long as the Declarant owns or has an option to purchase any property described in Exhibit "A" or Exhibit "B".

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1 Common Area

The Association shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto, common landscaped areas, signage, entrance walls and medians), and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 2 Personal Property and Real Property for Common Use

The Association, through action of the Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board of Directors, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within the Properties conveyed to it by the Declarant.

Section 3 Rules and Regulations

The Association, through the Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions

may include reasonable monetary fines and suspension of the right to vote. The Board of Directors shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws.

Section 4 Implied Rights

The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, 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 X

ASSESSMENTS

Section 1 Creation of Assessments

There are hereby created assessments for Common Expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 6 of this Article. There shall be two (2) types of assessments:

- A. General Assessments to fund expenses for the benefit of all Members of the Association;
- B. Special Assessments as described in Section 3 below.

General Assessments shall be levied on all Lots as hereinafter set forth. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of its deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay these assessments. The Declarant shall be obligated to pay these assessments as to Lot(s) it owns which are subject to this Declaration in the same manner as all other Owners.

All assessments, together with interest at a rate not to exceed eighteen percent (18%) or the highest rate allowed by Kentucky law as computed from the date the delinquency first occurs, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with 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 the assessment arose, and its grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except to the extent the lien securing same may have been extinguished by judicial proceedings.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such

assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless the Board of Directors otherwise provides, the General Assessment shall be paid in annual installments. Any installment not paid within twenty (20) days of the due date shall be deemed delinquent without notice or demand.

No Owner may waive or otherwise exempt itself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. No diminution or abatement of assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 2 Computation of Assessment

It shall be the duty of the Board of Directors, at least sixty (60) days before the beginning of the calendar year and thirty (30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The amount of the General Assessment to be levied for each calendar year against each Lot under Section 6 below shall be computed as of the 1st day of January of each calendar year for the succeeding calendar year based on the record ownership of each Lot as of such date and each Lot's "Percentage Interest" (as herein defined) of the total "Net Acreage" (as herein defined) of the Properties. Each Lot's "Percentage Interest" shall be determined by dividing the Net Acreage contained within the Lot by the total Net Acreage contained within the Properties. As used in this Section, "Net Acreage" shall mean the total acreage, as shown by final record subdivision plats, excluding any area owned by the Association and any area contained within publicly dedicated streets or Common Areas. The Board shall review all final record subdivision plats for the Properties in effect as of the 1st day of January of each calendar year and shall compute and adjust, if necessary, the Net Acreage contained within Lots and the total Net Acreage contained within

the Properties, including any additional property subjected to this Declaration as of the 1st day of January, pursuant to Article VIII hereof. This computation and adjustment shall be performed only one time each calendar year and any transfers, subdivisions, consolidations and/or annexations pursuant to Subsequent Amendments, or removal of any of the Properties from this Declaration that occur after such date shall not be taken into account until such computation and adjustment is performed the following year. The General Assessment for each Lot shall then be determined by multiplying the total operating budget for the Association by the Lot's Percentage Interest. The Board of Directors shall cause a copy of the budget and the amount of the General Assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting at which the budget will be presented to the Members. The budget and the assessment shall become effective unless disapproved at the meeting by a vote of Members representing at least a majority of the total Class "A" vote in the Association and the disapproval of the Class "B" Member, so long as the Class "B" membership exists.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board of Directors fails for any reason so 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.

Section 3 Special Assessments

In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, such assessment shall have the affirmative vote or written consent of Members representing fifty-one percent (51%) of the Class "A" vote in the Association held by Members other than Declarant and the approval of the Class "B" Member, so long as the Class "B" membership exists. Special Assessments shall be levied against each Lot based on the Lot's Percentage Interest of the total Net Acreage of the Properties in the same manner provided for General Assessments.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and its Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles of Incorporation of the Association, the By-Laws and the Association rules, which Special Assessment may be levied upon the vote fifty-one percent (51%) of the Board of Directors after notice to the Member and an opportunity for a hearing.

Section 4 Lien for Assessments

The General Assessments and Special Assessments and all other sums assessed against any Lot pursuant to this Declaration,

together with late charges, interest, costs and reasonable attorney's fees actually incurred as provided herein, shall be secured by a continuing lien on such Lot in favor of the Association, which lien is created hereby and shall not be diminished in any way by a transfer, subdivision and/or consolidation that occurs after the 1st day of January of each calendar year. Such lien shall be prior and superior to all other liens and encumbrances on such Lot except:

A. all taxes, assessments and other liens which by law would be superior thereto, and

B. the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, to which first Mortgages the lien created herein shall be and hereby is subordinate and inferior in all respects.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period of time which a Lot is owned by the Association following foreclosure:

A. no right to vote shall be exercised on its behalf;

B. no assessment shall be assessed or levied on it; and

C. each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share (based on each Lots Percentage Interest divided by the total Percentage Interest of all other Lots excluding the Lot owned by the Association) of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure.

Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and an opportunity for a hearing, the Board of Directors may temporarily suspend the voting rights of a Member who is in default in payment of any assessment until such assessment and all other amounts then due under this Declaration have been paid in full.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest, then to delinquent assessments, then to any unpaid installments of the General Assessments or Special Assessments which are not the subject matter of suit, in the order of their coming due, and then to any unpaid installments of the General Assessments or Special Assessments which are the subject matter of suit, in the order of their coming due.

Section 5 Capital Budget and Contribution

The Board of Directors shall annually prepare a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board of Directors shall set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution shall be fixed by the Board of Directors and included within and distributed with the budget and assessment as provided in Section 2 of this Article.

Section 6 Date of Commencement of Assessments

The assessments provided for herein shall commence as to all Lots upon the recording of the first deed to any Lot from Declarant to any other Owner other than the Initial Owner. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year at the time assessments commence on the Lot. The Declarant's obligation to pay assessments with respect to Lot(s) its owns shall commence at such time as the assessments commence as to the first Lot deeded to an Owner other than Declarant and the Initial Owner.

Section 7 Capitalization of Association

Upon acquisition of record title to a Lot by the first purchaser thereof other than the Declarant and the Initial Owner, such purchaser and the Initial Owner shall make a capital contribution to the Association in an amount equal to One Thousand Dollars (\$1,000.00) per acre of the Lots owned by such purchaser and the Initial Owner. This amount shall be used by the Association to make improvements to the Common Area, meet unforeseen expenditures, purchasing equipment deemed necessary or desirable, or otherwise covering operating expenses properly incurred by the Association. Such contributions shall not be considered an advance payment of regular assessments.

Section 8 Exempt Property

Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of General Assessments and Special Assessments:

- A. all Common Areas; and
- B. all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks.

Section 9 Failure to Assess

The omission or failure of the Board of Directors to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE XI

ARCHITECTURAL STANDARDS

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee (the "ARC") established in Section 1 of this Article XI. This Article may not be amended without the Declarant's written consent so long as the Declarant owns or has an option to purchase any property described on Exhibit "A" or Exhibit "B".

No construction, which term shall include within its definition staking, clearing, excavation, grading and other site work, erection, modification, addition or alteration of any structures (which shall include any building, fence or wall), and no plantings or removal of plants, trees or shrubs shall take place except in strict compliance with this Article until the requirements thereof have been fully met and until the approval of the ARC has been obtained in writing.

Section 1 Architectural Review Committee

The ARC shall have exclusive jurisdiction over and right to approve all original construction and all modifications, additions or alterations made on or to existing Lots or structures, buildings or improvements on any Lot and the open space, if any, appurtenant thereto on any portion of the Properties. Until the expiration of the Class "B" Control Period, the Declarant retains the right to appoint all members of the ARC, which shall consist of three (3) members, each of whom shall have one (1) equal vote and each of which shall serve at the pleasure of the Declarant. There shall be no surrender of this right prior to the expiration of the Class "B" Control Period, except in a written instrument in recordable form executed by Declarant. Upon the expiration of the Class "B" Control Period, the Board of Directors shall appoint the members of the ARC.

Section 2 New Construction

The ARC shall promulgate detailed design and development guidelines and application and review procedures, which shall include, but not be limited to, architectural, site development,

access, parking, signage, lighting, drainage, irrigation and landscaping requirements. The guidelines and procedures shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend said guidelines and procedures without consent of the Owners. Any amendments shall apply only to construction commenced after the adoption and shall not require modifications to or removal of previously approved construction which has been commenced. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such new construction shall be submitted to the ARC for approval as to quality of workmanship, design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation in accordance with said guidelines and procedures. The ARC shall make the guidelines and procedures available to Owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

Section 3 Modifications

The ARC shall promulgate detailed guidelines and procedures governing modifications, additions or alterations made on or to existing Lots, or structures, buildings or improvements, on any Lot and the open space, if any, appurtenant thereto on any portion of the Properties consistent with the guidelines and procedures developed for new construction. The guidelines and procedures shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend said guidelines and procedures without consent of the Owners. Any amendments shall apply only to construction commenced after the adoption and shall not require modifications to or removal of previously approved modifications which have been commenced. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions or alterations shall be submitted to the ARC for approval as to quality of workmanship, design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation in accordance with said guidelines and procedures. The ARC shall make the guidelines and procedures available to Owners, builders and developers who seek to engage in modifications, additions or alternations upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. No permission or approval shall be required to repaint in accordance with an originally approved color scheme or to repair or rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of its building or to paint the interior of his building any color desired.

Section 4 No Waiver of Future Approvals

The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever, subsequently or additionally submitted for approval or consent.

Section 5 Variance

The ARC may authorize variances from compliance with any of the provisions of the guidelines and procedures developed by the ARC when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall:

- A. be effective unless in writing,
- B. be contrary to the restrictions set forth in the body of this Declaration, or
- C. estop the ARC from denying a variance in other circumstances.

For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

Section 6 Completion of Improvements

A. Upon receipt of approval of the ARC pursuant to this Article, the Owner or occupant to whom the approval is given shall as soon as practicable satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved construction, modifications, additions or alterations. In all cases, work shall be commenced within one (1) year from the date of such approval except for so long as such commencement is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or occupant or its agents. If there is a failure to comply with this paragraph, then the approval given pursuant to this Article shall be deemed revoked unless the ARC, upon request made prior to the expiration of said one (1) year period, extends the time for commencing work.

B. In any event, construction, modification, addition or alteration of any such improvements shall be completed within one (1) year after the commencement thereof except for so long as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, natural calamities, or

other supervening forces beyond the control of the Owner or occupant or its agents. Failure to comply with this Section shall constitute a breach of this Declaration and subject the defaulting party or parties to all the remedies or enforcement procedures available hereunder or at law or in equity.

Section 7 Limitation of Liability

Neither the Association, the Board of Directors, the ARC, or any agent thereof, nor Declarant or any of their officers, members, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events, the Board of Directors, the ARC and their officers, members or employees shall be defended and indemnified by the Association as provided in Article XIII, Section 4, hereof.

Section 8 Time Limit for Review and Automatic Approvals

If the ARC fails to approve or to disapprove any application provided for in this Declaration within thirty (30) days after submission of all information and materials required or reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or implied, shall be inconsistent with the guidelines established by the ARC unless a variance has been granted in writing by the ARC under Section 5 of this Article XI.

Section 9 Failure to Submit Plan; Nonconformity

Any construction, modification, additions or alterations or other work done without approval of the ARC or otherwise in violation of this Article shall be deemed nonconforming. On written request from the ARC, Owners shall, at their own expense, cure such nonconformance to the satisfaction of the ARC or restore the land to substantially the same condition as existed prior to the nonconforming construction, modifications or other work. If an Owner fails to so cure or restore, the Board of Directors, or its designees may do so at the Owner's expense and assess the cost against the benefitted Lot as a Special Assessment under Article X, hereof.

ARTICLE XII

USE AND IMPROVEMENT RESTRICTIONS

The Properties shall be used only for light industrial and associated office, commercial and other uses permitted within the I-1 (Light Industrial) zone by the zoning ordinances and regulations of the Lexington-Fayette Urban County Government, as such ordinances and regulations may be amended from time to time,

and in conformity and compliance with this Declaration, the notes and restrictions contained on any record plat or development plan of the Properties, as may be amended from time to time, and in all respects in compliance with all applicable laws, ordinances and regulations, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association) as may more particularly be set forth in this Declaration, amendments hereto or subsequently recorded declarations creating associations subject to this Declaration. The Association, acting through its Board of Directors, the Declarant and any Owner, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make, to modify and to enforce reasonable regulations and restrictions governing the use of Lots and Common Areas, in addition to those contained herein. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by Members representing a Majority of the total Class "A" votes in the Association and by the vote of the Class "B" Member, so long as such membership shall exist.

Section 1 Occupants Bound

All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot.

Section 2 Use

No part of the Properties shall be used for any purpose other than light industrial, and associated office, commercial or other uses compatible therewith in a high quality industrial park setting, along with uses incidental thereto, all of which such uses shall be in conformity and compliance with all applicable laws, ordinances and regulations. The following operations and uses shall not be permitted on any of the Properties:

- A. Residential;
- B. Trailer courts;
- C. Columbariums and crematories;
- D. Penal or correctional institutions;
- E. Refuse dumps, landfills or incinerators;
- F. Grain drying;
- G. Automobile race tracks;

H. Any use which is principally for warehousing, distribution or a trucking terminal; or

I. Any principal, accessory or conditional use for which a zoning classification of I-2 (Heavy Industrial Zone) is required, as set forth in the Zoning Ordinance-Resolution in effect as of this date for Lexington, Fayette County, Kentucky.

Section 3 Nuisance

No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any property adjacent to the Lot or which will be offensive to the Owners or occupants of other Lots by reason of odor, fumes, discharge of any chemical or industrial waste above or below ground, dust, dirt, fly-ash, smoke, noise, glare, intense heat or which will be hazardous by reason of danger of fire or explosion or any other hazard. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of Properties.

Section 4 Maintenance

It shall be the responsibility of each Owner to maintain its Lot in a condition of good order and repair, including, but not limited to, all sidewalks, driveways, parking areas, landscaping and the exterior of all buildings on each Lot to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on its Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

Section 5 Antennas

No exterior antennas, aerials, satellite dishes or other apparatus for the transmission of television, radio or other signals of any kind shall be placed, allowed or maintained upon any portion of the Properties, including any Lot, without the prior written consent of the ARC. The Declarant and/or the Association shall have the right, without obligation, to erect an antenna, aerial, satellite dish or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties

should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 6 Subdivision or Consolidation of Lot

No Lot(s) shall be subdivided, consolidated or its boundary lines changed without the prior written consent of the Board of Directors. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it owns prior to conveyance by Declarant. Any such subdivision, consolidation boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 7 Guns

This discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

Section 8 Irrigation

No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, retention basins, canals or other waterways within the Properties shall be installed, constructed or operated within the Properties without the prior written consent of the ARC. All sprinkler and irrigation systems shall be subject to approval in accordance with Article XI of this Declaration and shall draw water only from city or county water supplies unless otherwise approved.

Section 9 Tents, Trailers and Temporary Structures

Except as may be permitted by the ARC during initial construction on Lots or during any reconstruction or modification, addition or alteration of structures on Lots, no tent, utility shed, shack, trailer, storage shack or any structure of a temporary nature shall be placed upon a Lot or any part of the Properties.

Section 10 Tree Removal

No trees shall be removed from any portion of the Properties by any person other than Declarant without the prior written consent of the ARC in accordance with Article XI of this Declaration.

Section 11 Utility Lines

No overhead or above ground utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines as required by law, by the public utility providing such lines or for safety purposes or unless consented to in writing by the ARC.

Section 12 Artificial Vegetation, Exterior Sculpture and Similar Items

No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, and similar items must be consented to in writing by the ARC in accordance with Article XI of this Declaration.

Section 13 Energy Conservation Equipment

No solar energy collector panels or attendant hardware or other exterior energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure and unless approved in writing by the ARC in accordance with Article XI of this Declaration.

Section 14 Mail Boxes

All mail boxes shall satisfy applicable postal regulations and shall conform to specifications established by the ARC.

Section 15 Lakes; Retention Basins

No lakes, ponds, streams, retention basins and other water ways shall be used for fishing, swimming, boating, playing or use of personal flotation devices shall be permitted. Neither the Declarant or the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Properties.

Section 16 Fences

No fences of any kind shall be permitted on any Lot except as consented to in writing by the ARC in accordance with Article XI of this Declaration or except as part of the entry features which may be constructed by the Declarant.

Section 17 Parking Areas

All parking of vehicles shall be exclusively within the Lots in parking areas constructed of a size and location to comply with applicable ordinances, resolutions, and regulations of the Lexington-Fayette Urban County Government and otherwise of an adequate size to accommodate all parking needs of such Lot. No Parking shall be permitted in front of any improvements on any Lot other than passenger pickup or drop off areas. No parking shall be allowed on the streets. Only the parking areas approved in writing by the ARC in accordance with Article VI of this Declaration (including, but not limited to, the materials used for such parking areas) shall be allowed.

Section 18 Setbacks

Subject to the right of the ARC to approve the location of all buildings and other structures pursuant to Article XI, no building or other structure shall be located closer than twenty (20) feet from an interior side property line, twenty (20) feet from a rear property line or twenty (20) feet from any street curb; provided, in the event the setback on any recorded plat on any Lot is greater than the foregoing, the setback on such plat shall apply. No Owner shall submit an amended plat of a Lot which proposes to decrease the existing setback without obtaining the prior written consent of the ARC. The following structures and improvements are specifically excluded from the foregoing setback requirements, unless such structures or improvements are prohibited by applicable ordinances, resolutions or regulations of the Lexington-Fayette Urban County Government:

A. Roof overhangs which have been approved in writing by the ARC;

B. Steps, walks and walkways which have been approved in writing by the ARC;

C. Paving and associated curbing which have been approved in writing by the ARC;

D. Landscaping which has been approved in writing by the ARC in accordance with Article XI of this Declaration;

E. Signs which have been approved in writing by the ARC; and

F. Lighting which has been approved in writing by the ARC.

Section 19 Drainage

Drainage of each tract shall conform to the general drainage plans of the Properties as approved by the Lexington-Fayette Urban County Government and the ARC. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system.

Section 20 Dumping

No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers.

Section 21 Hazardous Materials and Waste

Hazardous and/or toxic materials and waste shall be stored, handled and disposed of at the Owner's expense in accordance with the applicable laws, rules and regulations of the United States,

the Commonwealth of Kentucky and the Lexington-Fayette Urban County Government.

Section 22 Curb Cuts

Vehicular entrances shall be in accordance with any recorded plats or approved development plans of the Properties, recorded by Declarant, and other record plats, development plans or amendments which have been approved in writing by the ARC.

Section 23 Outside Storage or Operations

No outside storage or operations of any kind shall be permitted unless such activity is visually screened from public view in a manner which is architecturally compatible and approved in writing by the ARC. No boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, camping rigs off truck, boat rigging, or other vehicles or associated equipment of a recreational or commercial nature shall be parked or stored permanently or semi-permanently on any Lot unless properly screened from public view in a manner approved in writing by the ARC. All sales equipment, fixtures and merchandise shall be displayed only in the interior of a building, unless done in a manner approved in writing by the ARC. Water towers, cooling towers, communication towers, storage tanks, and other structures or equipment shall be architecturally compatible with the aesthetics of the Properties and effectively shielded from public view in a manner approved in writing by the ARC. All utility/service system components and trash pick-up stations shall be integrated with the building or screened by a fence or wall of compatible materials and shall not be visible above such screening.

Section 24 Mechanical Equipment

All rooftop mechanical equipment shall be screened from the view of adjacent streets or buildings with material compatible with the building architecture or by the use of a parapet wall and shall be approved in writing by the ARC. Ground-mounted equipment such as power transformers and air condition equipment shall be screened from public view by fencing or landscaping, all of which must be approved in writing by the ARC.

Section 25 Exterior Illumination

Exterior illumination shall be designed to light only buildings, parking areas and walkways and shall not produce glare on adjacent streets or tracts and shall be approved in writing by the ARC. All ground level floodlighting fixtures shall be approved in writing by the ARC.

Section 26 Signs

All signs and their locations must be approved in writing by the ARC prior to installation and shall comply with all applicable ordinances, resolutions and regulations of the Lexington-Fayette

Urban County Government. No sign of a flashing or moving character shall be installed and no sign shall project above the roof line of a building unless approved in writing by the ARC. Any sign installed without ARC approval may be removed by the ARC, without liability for trespass or other legal wrong. For the purpose of this provision, signing shall include flags/flagpoles, awnings, and canopies. Any sign relating to the sale or leasing of any Lot or the financing of or construction on any of the Properties shall comply with the guidelines established by the ARC for such signs. No more than one (1) sign referred to in the immediately preceding sentence shall be displayed at any one time.

Section 27 Excavation

No excavation shall be made on, and no sand, gravel, soil or other material shall be removed from any Lot, except in connection with the construction of improvements thereon. Upon completion of such construction, exposed openings shall be backfilled to grade, and disturbed ground shall be graded level and paved or landscaped in conformity with the requirements of this Declaration.

Section 28 Freight Loading and Unloading

Improvements on the Lots shall be designed and located so that vehicles will not be loaded or unloaded on or from any street. Sufficient space for loading and unloading (according to the reasonable requirements of the occupant of each Lot) shall be provided on each Lot. Loading and unloading docks shall be located at the rear or on the side of any improvements on any Lot, and shall be screened in a manner approved in writing by the ARC to minimize the effect from the street and from the adjoining Lot(s).

ARTICLE XIII

GENERAL PROVISIONS

Section 1 Term

Except as otherwise provided herein, the covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Declarant, the Association or the Owner of any Properties, their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to terminate said covenants and restrictions, in which case this Declaration shall be terminated as specified therein.

Section 2 Amendment and Termination

The Declarant, pursuant to Article VIII of this Declaration, has the privilege to amend this Declaration for the purposes of annexing certain real property to this Declaration pursuant to recorded Subsequent Amendments. Prior to the conveyance of the first Lot to an Owner other than the Initial Owner, Declarant may unilaterally amend this Declaration. Thereafter, and except as otherwise provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association; provided, however, that during the Class B Control Period any amendment must also be approved by a majority of the Board of Directors. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Fayette County Clerk's office, Lexington, Kentucky.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to so consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3 Removal of Property

Notwithstanding any of the foregoing, the Declarant reserves the right to amend this Declaration unilaterally at any time during the Class "B" Control Period for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, without prior notice and without the consent of any Person other than the Owner thereof, either (a) to the extent such property was included originally in error; or (b) as a result of any changes whatsoever in the plans for Bluegrass Business Park desired to be effected by the Declarant, provided such withdrawal is not inconsistent with the overall uniform scheme of development for Bluegrass Business Park.

Section 4 Easements for Utilities, Etc.

There is hereby reserved unto Declarant, its successors and assigns, and its designees, so long as any of the foregoing own or have an option to Purchase any property described on Exhibit "A" or Exhibit "B", and to the Association and its designees (which may include, without limitation, the Lexington-Fayette County Government, and any utility), blanket easements upon, across, over and under all of the Common Area, and to the extent specifically

dedicated on any record plats, over the Lots for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, sidewalks and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board of Directors shall have, by a two-thirds (2/3) vote, the power to dedicate all or part of the Common Area to the Lexington-Fayette Urban County Government, or any other local, state or federal governmental entity.

Section 5 Easement for Access to Adjacent Property

The Declarant, its successors and assigns, and its duly authorized officers, agents, representatives and employees as well as their successors, assigns, licensees and mortgagees shall have and there is hereby reserved an easement over the Common Areas and for the purposes of enjoyment, use, access and development of the Properties. This easement includes, but is not limited to, ingress and egress over Common Areas for construction of roads and installation of utilities on the Properties. Declarant agrees that it, its successors and assigns shall be responsible for any damages caused to the Common Area as a result of vehicular traffic connected with Declarant's development of the Properties.

Section 6 Severability

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

Section 7 Right of Entry

The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an

Owner fails or refuses to cure within a reasonable time the condition upon written notice by the Board of Directors and shall also include the right to enter upon the land comprising any Lot for the purpose of inspecting for compliance with the requirements of Article XI and for the purpose of performing maintenance of, repairs or replacements within the Common Area, or any equipment, facilities or fixtures affecting or serving other Lots or the Common Area or to make any alteration to any Common Area required by any governmental authority.

Section 8 Perpetuities

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 9 Litigation

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Board of Directors. Any meeting called for such purpose shall be subject to the same notice and quorum requirements and other procedures as provided in the By-Laws for meetings of the membership. This Section shall not apply, however, to:

A. actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens),

B. the imposition and collection of assessments as provided in Article X hereof,

C. proceedings involving challenges to ad valorem taxation, or

D. counterclaims brought by the Association in proceedings instituted against it.

This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

Section 10 Use of the Words "Bluegrass Business Park"

No Person shall use the words "Bluegrass Business Park" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term "Bluegrass Business Park" in printed or promotional matter where such term is used solely to specify that particular property is located within Bluegrass Business Park.

Section 11 Security

The Declarant and/or the Association may, but shall not be obligated to, undertake certain measures designed to increase safety or security in the Properties. Whether or not such measures are taken, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES AND NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND THE ARC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR ARC MAY NOT BE COMPRISED OR CIRCUMVENTED, THAT FIRE PROTECTION AND BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLDUP, OR OTHERWISE, NOR THAT FIRE PROTECTION AND BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, TENANT, GUEST OR INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARC ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARC HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN.

Section 12 Remedies

As remedies at law might not be adequate to compensate for a violation of this Declaration, the Association shall have the right to obtain from any court of competent jurisdiction injunctive relief against any Owner or occupant of any of the Properties, or their agents, contractor or assigns, enjoining any activity which is in violation of this Declaration. The Association shall not be required to post any bond as a condition to the granting of any such injunctive relief (including a preliminary injunction or temporary restraining order), nor shall the Association's right to such injunctive relief be affected by any arbitration provision in any contract executed by such Owner or occupant. The rights and remedies set forth in this Declaration shall be in addition to and not in lieu of any other rights and remedies of the Association, all such rights and remedies shall be cumulative, and the exercise of any one or more of such rights and remedies shall not be deemed an election precluding the exercise of any others. All reasonable costs and expenses incurred in any dispute or litigation involving enforcement of this Declaration (including expert witness fees and reasonable attorney's fees) shall be awarded to the prevailing

party who shall also be entitled to additional costs and expenses incurred in enforcing or collecting any judgment rendered.

Section 13 No Waiver

The failure of the Association to enforce any restriction or covenant contained in this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter nor the right to enforce any other restriction or covenant.

ARTICLE XIV

DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Fayette County Clerk's office, Lexington, Kentucky.

Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, new construction and modification guidelines, and amendments thereto, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant, its successors and assigns, and any builder or developer approved by Declarant, to maintain and carry on sales and promotional activities on Lots owned or leased by Declarant, its successors and assigns, or such builder or developer; and to construct and operate business offices, signs, construction trailers, and sales offices on such Lots.

No rights, privileges and easements granted or reserved herein shall be merged into the title of the Properties but shall be held independent of such title and no such right, privilege or easement shall be surrendered, conveyed or released except by delivery of a quitclaim deed from Declarant releasing such right, privilege or easement by express reference thereto.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained

in this Article shall terminate upon the expiration of the Class "B" Control Period.

ARTICLE XV

DECLARANT'S RIGHT OF FIRST REFUSAL

An undeveloped Lot can only be transferred by its Owner if its Owner first offers to transfer the undeveloped Lot to the Declarant after obtaining an offer to purchase the undeveloped Lot from a bona fide purchaser (the "Offer"). The Offer must be in a form that it legally enforceable against the prospective purchaser and shall state the prospective purchaser's name and address, the offering price, and the other terms of the Offer. The Owner shall deliver the Offer to the Declarant, and by doing so, offers to transfer the undeveloped Lot to the Declarant on the terms and conditions of the Offer. Within thirty (30) days after the Declarant receives the Offer, the Declarant shall notify the Owner in writing of its acceptance or rejection of the Offer. If the Declarant does not notify the Owner of its acceptance or rejection of the Offer within such thirty (30) day time period, the Offer shall be deemed rejected. If the Offer is rejected by the Declarant, the Owner may transfer the undeveloped Lot to the prospective purchaser; provided, said transfer must be strictly in accordance with the terms of the Offer. If the Offer is rejected by the Declarant and the Owner is unable to dispose of the undeveloped Lot to the prospective purchaser pursuant to the Offer, the Declarant shall have the right of first refusal to purchase the undeveloped Lot with respect to any future offers in accordance with this Article XV.

ARTICLE XVI

CONSENTS AND APPROVALS

Whenever the consent or approval of any party is required pursuant to this Declaration, such consent or approval shall not be unreasonably withheld.

ARTICLE XVII

NOTICE

All notices to be given under this Declaration shall be given in writing and either hand delivered, sent by nationally recognized overnight delivery service or deposited in the United States mail, certified or registered, with postage prepaid and addressed to the party to whom notice is to be given at the address set forth above in the case of the Declarant and to the address of the Lot in the case of an Owner, unless such Owner has provided the Declarant and the Association with notice of a different address. Notices shall be deemed delivered when hand delivered or delivered by nationally recognized overnight delivery service or three (3) days after being deposited in the United States mail as above provided. Change of

address must be given by notice in the same manner as above specified.

IN WITNESS WHEREOF, the undersigned Declarant and the Initial Owner have executed this Declaration of Covenants, Conditions and Restrictions for Bluegrass Business Park this 4th day of May, 1999.

LEXINGTON UNITED, INC.,
a Kentucky corporation

BY: William M. Year, Jr.

ITS: Chairman

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing Declaration of Covenants, Conditions and Restrictions for Bluegrass Business Park was subscribed, sworn to and acknowledged before me this 4th day of May, 1999, by William M. Year, Jr. as Chairman of Lexington United, Inc., a Kentucky corporation, for an on behalf of the corporation.

David C. Johnson

Notary Public

My commission expires Aug 14 1999

This instrument was prepared by:

STOLL, KEENON & PARK, LLP
201 East Main Street, Suite 1000
Lexington, Kentucky 40507-1380
(606) 231-3000

BY: 

Richard A. Nunnelley

EXHIBIT "A"

Real Property Subject to Declaration

Being all of Lots 1 and 2 of (Pemberton Farm) Bluegrass Business Park, Lexington, Fayette County, Kentucky, as shown by the 2nd Amended Final Record Plat thereof of record in Plat Cabinet K, Slide 867, in the Fayette County Clerk's Office.

EXHIBIT "B"

Real Property which may be made subject to Declaration

Being all of Lots 3, 4 and 5 of (Pemberton Farm) Bluegrass Business Park, Lexington, Fayette County, Kentucky, as shown by the 2nd Amended Final Record Plat thereof of record in Plat Cabinet K, Slide 867, in the Fayette County Clerk's office.