

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**OWL CREEK COMMUNITY ASSOCIATION, INC.  
OF JEFFERSON COUNTY, KENTUCKY**

**Note: This document was transcribed from the original document for printing purposes. While thought to be accurate, its accuracy is not guaranteed. The original documents recorded in the Jefferson County Clerk's office should always be reviewed when taking any action involving these restrictions.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OWL CREEK, ("Declaration"), is made on May 14, 1986, by NTS/OWL CREEK, INC., a Kentucky corporation with principal office and place of business at 10172 Linn Station Road, Louisville, Kentucky 40223 ("Developer").

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

NOW, THEREFORE, Developer hereby declares that all of the property described in this instrument, and such additional property as may be hereafter made subject to this Declaration pursuant to Article I, 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 the real property. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

**ARTICLE I -- PROPERTY SUBJECT TO THIS  
DECLARATION; ADDITIONS**

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

BEING ALL LOTS as shown on the plat of Owl Creek of records in Plat and Subdivision Book 35, in the Office of the Clerk of Jefferson County, Kentucky.

BEING the same property acquired by Developer by Deed dated December 9, 1985, of record in Deed Book 5546, Page 363, in the Office of the Clerk of Jefferson County, Kentucky.

**Section 2. Additions to Existing Property.** Additional residential property and common areas may become subject to this Declaration, or may be annexed to the real property subject to this Declaration, as follows:

(a) Additions in Accordance with a General Plan of Development. Developer intends to make this section a part of a larger community to be developed in accordance with current plans and known as Owl Creek ("Owl Creek"). Additional land now owned by NTS/Owl Creek Investment Partnership, Ltd., a Kentucky limited partnership, described in instrument recorded in Deed Book 5509, Page 642, in the Office of the Clerk of Jefferson County, Kentucky, may be included by Developer as other sections of Owl Creek, including certain common properties which will contain recreational facilities.

Developer reserves the right to create cross easements and to restrict all of the properties according to the terms of this Declaration. The common area initially covered by this Declaration shall inure to the benefit of the owners of any new lots within Owl Creek which may become subjected to this Declaration or a similar set of deed restrictions and any additional lots on other real estate which may hereafter be annexed to and made a part of Owl Creek and subjected to this Declaration or a similar set of deed restrictions, and the common area allocable to the owners of all such lots shall inure to the benefit of the owners of lots recorded earlier, each to enjoy the common area of the other and to have and to hold the same as if each new lot had been developed and subjected to this Declaration simultaneously.

All additions shall be made by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The Supplementary Declaration may contain additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(b) Other Additions. Additional residential property and common area which are not presently a part of the general plan of development of Owl Creek may be annexed to Owl Creek by Developer.

## **ARTICLE II -- USE RESTRICTIONS**

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

**Section 2. Nuisances.** No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

### **Section 3. Use of Other Structures and Vehicles.**

(a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds, field offices or sales offices used by a builder or Developer, which shall be removed when construction or redevelopment is completed. See Article III - Section 8

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

(c) No trailer, truck, motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a garage or basement. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in the subdivision. No trailer, boat, truck or other vehicle, except an automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four hours in any one calendar year.

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

**Section 4. Animals.** No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, provided they are not kept, bred or maintained for any commercial or breeding purposes.

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

(a) No outside clotheslines shall be erected or placed on any lot.

(b) No fence or wall of any nature may be extended toward the front or street side property line beyond the front or side wall of the residences, and all fences shall be constructed so that the finished side thereof shall face away from the lot upon which such fence is constructed. All fences, as structures, are subject to prior written approval by Developer under Section 1, Article III of this Declaration. No wire or chain link fences are permitted in Owl Creek, except for tennis court fences, permitted under Section 5 (c) below.

(c) No tennis court fence shall be erected on any lot in the subdivision unless the fencing is coated with black or green vinyl and the plan for such fence has been approved by the Developer in writing pursuant to Section 5 (b) above.

(d) No aboveground swimming pools shall be erected or placed on any lot unless its design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonably withheld.

(e) No antennae (except for standard small television antennae) or microwave and other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any lot unless its design and placement are approved by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonably withheld.

#### **Section 6. Duty to Maintain Lot.**

(a) From and after the date of purchase of a lot until construction of a single family residence is started, Developer shall have the exclusive right to perform all maintenance on the lot, including but not limited to mowing. Each owner shall be assessed an annual fee payable in January at the rate of \$10.00 per month for the first two (2) years following the date the lot owner acquires title to a lot; thereafter, Developer may assess the lot owner at an amount Developer determines necessary to maintain the lot.

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

#### **Section 7. Duty to Repair and Rebuild.**

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

(b) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty.

**Section 8. Business; Home Occupations.** No trade or business of any kind (and no practice of medicine, dentistry, chiropractic, osteopathy and other like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof or of Section 1 of this Article II, a new house may be used by a builder thereof as a model home for display or for the builder's own office provided said use terminates within eighteen months from completion of the house or at the expiration of such additional period of time as may be expressly agreed to in writing by Developer.

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

**Section 10. Drainage.** Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage

system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

**Section 11. Disposal of Trash.** No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers.

**Section 12. Underground Utility Service.**

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

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

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

(b) Easements for overhead transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including park, open and drainage space area) outlined by dash lines and designated for underground and overhead facilities.

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

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

(c) The electric and telephone easements hereby dedicated and reserved to each lot owner, as shown on the recorded plat of Owl Creek, Section 2, shall include easements for the installation, operation and maintenance of cable television service to the lot owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission mediums.

**Section 13. Rules of Common Area.** The Owl Creek Community Association, Inc. of Jefferson County (the "Community Association") is authorized to adopt rules for the use of the Owl Creek common area and such rules shall be furnished in writing to the lot owners.

**ARTICLE III -- ARCHITECTURAL CONTROL**

**Section 1. Approval of Construction and Landscape Plans.**

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

(b) In addition to the plans referred to in subparagraph (a) of this Section 1, a landscape plan shall be submitted to the Developer for its approval in writing, which plan shall show the trees, shrubs and other plantings then existing or to be planted on the lot. Each landscape plan for a lot submitted to the Developer shall show that the lot has or will have a minimum of two trees (at least 2-1/2 inches in diameter) in the front yard of the lot and an

additional two trees (at least 1-1/2 inches in diameter) on the lot and shall further obligate the lot owner to install (to the extent the same are not already located on the lot) trees, shrubs and other plantings having a current fair market value of not less than \$750.00.

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

## **Section 2. Building Materials; Roof; Builder.**

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

(b) The roof pitch of any residential structure shall not be less than a plane of 6 inches vertical for every plane of 12 inches horizontal for structures with more than one story, and a plane of 7 inches vertical for every plane of 12 inches horizontal for one story structures.

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

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

(a) The ground floor area of a one story house shall be a minimum of 1,600 square feet, exclusive of the garage.

(b) The ground floor area of a one and one-half story house shall be a minimum of 1,300 square feet, exclusive of the garage.

(c) The total floor area of a tri-level house shall be a minimum of 2,000 square feet, exclusive of the garage.

(d) The ground floor area of a two-story house shall be a minimum of 1,000 square feet, exclusive of the garage.

(e) Finished basement areas, garages and open porches are not included in computing floor areas under this Section 3.

**Section 4. Setbacks.** No structure shall be located on any lot nearer to the front lot line than the minimum building setback lines shown on the recorded plat, except bay windows and steps may project into such area, and open porches may project into such area not more than six feet. No structure shall be located on any lot nearer any side lot line or side street line than the distance of ten (10) feet on one side and five (5) feet on the other, except bay windows and steps may project into said areas. Developer may vary the established building lines, in its sole discretion, to the extent the same will not conflict with applicable zoning regulations.

## **Section 5. Garages; Carports.**

(a) The openings or doors for vehicular entrances to any garage located on a lot shall not face the front lot line unless otherwise approved in writing by the Developer. All lots shall have at least a two-car garage and no detached garages are allowed. Garages, as structures, are subject to prior plan approval under Section 1 of this Article III.

(b) No carport shall be constructed on any lot in Owl Creek,

Section 2.

**Section 6. Landscaping; Sidewalks; Driveways; Trees.**

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

(b) Each lot owner shall cause a sidewalk to be constructed on his lot within one year from the date construction of a residence on 80% of the lots in Owl Creek, Section 2 has begun, whether or not the lot owner has begun construction on that particular lot.

*(c) All new and reconstructed driveways shall be constructed with concrete, brick or cobblestone materials and all driveway modifications and reconstructions shall be subject to written approval by the Association.*

(d) Upon construction of a residence, the lot owner shall cause to be planted two trees (at least 2-1/2 inches in diameter) in the front yard of the lot and additional two trees (at least 1-1/2 inches in diameter) on the lot, unless otherwise agreed to by the Developer. No tree shall be removed from any lot without the prior written approval of Developer.

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

**Section 7. Mail and Paper Boxes; Hedges.** No mailbox, paper holder or hedge shall be placed or planted on any lot unless its design and placement or planting is approved in writing by Developer.

**Section 8. Playhouses, Swing sets, Outdoor Play Equipment.** No playhouse, swing set, outdoor play equipment, or other similar structures (collectively hereinafter "Play Structures") shall be placed or erected on any lot unless its design and placement are approved in writing by the Board of Directors, which approval shall be at the sole and absolute discretion of the Board of Directors and may be arbitrarily and unreasonably withheld. Any placement, additions or alterations to existing Play Structures shall also be subject to the aforementioned approval, and any previous approval of design and placement shall not be binding on future determinations. The Board of Directors may prepare standards and or guidelines for acceptable Play Structures, and may amend such standards and or guidelines at its own discretion. However, in no event shall any play structure be permitted to have electricity, water, or other utilities, nor shall any play structure be used for storage or as a utility shed.

**ARTICLE IV -- COMMUNITY ASSOCIATION**

**Section 1. Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass with the title to every lot. The common area means and refers to all non-residential lots and areas, which are shown on any recorded final subdivision plat within any portion of Owl Creek, made subject to the Community Association. Any entranceways to Owl Creek and/or Owl Creek, Section 2, which are constructed in areas dedicated for public use, are also or shall become part of the common area subject to maintenance by the Community Association. The right of enjoyment is subject to the following provisions:

(a) The right of the Community Association to permit the use of and to charge reasonable admission and other fees for the use of the lodge and any recreational facilities situated upon the common area. The Board of Directors of the Community Association may, as part of the operation of the lodge and recreational facilities, permit nonresidents of Owl Creek to use the lodge and recreational facilities for a reasonable annual fee, payable to the Community Association. Such users shall not be members of the Community Association.

(b) The right of the Community Association to borrow money for the purpose of improving the common area or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage encumbering all or a part of the common area;

(c) The right of the Community Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his lot remain unpaid, and for a period of time for any infraction of its published rules and regulations; and

(d) The right of the Community Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Community Association. Developer may dedicate utility or service easements at its sole discretion so long as there is in existence the Class B membership in accordance with Section 13 of this Article IV, and so long as additions are permitted under Article I, Section 2.

Additionally, the residents of a proposed development to be known as Stone Bridge at Anchorage ("Stone Bridge at Anchorage"), and/or the residents of any section thereof, shall have the right and opportunity upon such development to use the lodge and all other recreation facilities of Owl Creek and/or Owl Creek, Section 2, for a reasonable annual fee and subject to the rules and regulations for use of the same established by the Community Association, in accordance with the provisions of this Declaration and the provisions of any other similar set of deed restrictions now or hereafter recorded with respect to Owl Creek and/or Stone Bridge at Anchorage.

**Section 2. Delegation of Use.** Any lot owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family or to his tenants or contract purchasers who reside on the property. Membership in the Community Association may not be conveyed separately from ownership in the lot.

**Section 3. Community Association's Right of Entry.** The authorized representative of the Community Association or the Board shall be entitled to reasonable access to the individual lots as may be required in connection with the preservation of property on an individual lot or in the event of an emergency or in connection with the maintenance of, repairs or replacements within the common area, or any equipment, facilities or fixtures affecting or serving other lots or the common area or to make any alteration required by any governmental authority.

**Section 4. Assessments; Creation of the Lien and Personal Obligation.** Each lot owner, except Developer, by acceptance of a deed for the lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Community Association (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as provided in this Article IV. Developer shall be responsible for the maintenance costs of the Community Association, incurred over and above assessed amounts payable to the Community Association by the lot owners, until Developer transfers control of the Community Association. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 5. Purpose of Assessments.**

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

entranceways, streets, crosswalks, medians, storm drains, basins, lakes, recreational areas and facilities including but not limited to tennis courts, swimming pools, lodge facilities, gymnasium, recreation field and running track.

(b) Developer may construct certain recreational facilities on part of the common area owned or to be owned by the Community Association. In order to finance this construction of any such recreational facilities, Developer reserves the right to subject the particular common area and the improvements thereon to a mortgage which for the initial construction, furnishings and similar improvements shall not exceed \$500,000.00. If the mortgage is made after transfer of ownership of that particular common area to the Community Association, the Community Association shall be the mortgagor. If the mortgage is made before transfer of ownership of that particular common area, the Community Association shall assume the mortgage upon the transfer of ownership. In either event, the loan secured by the mortgage shall be used solely for the purpose of constructing, furnishing and improving the recreational facilities. The assessments described in this Article IV shall be used in part to make principal and interest payments on the mortgage.

(c) Until Class B membership ceases and is converted to Class A membership pursuant to Section 13 of this Article IV, Developer or its nominee shall administer the assessments and receipts there from, which may only be used for purposes generally benefiting Owl Creek, as permitted in this Declaration.

#### **Section 6. Maximum Annual Assessment.**

(a) Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be set at a rate not to exceed \$30.00 per month per lot. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than 25% above the maximum assessment for the previous year without a vote of two-thirds of each class of members pursuant to the Bylaws.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. The Board of Directors shall determine when the assessments shall be paid.

**Section 7. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Community Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto. Any such assessment shall have the assent of the members of the Community Association in accordance with the Bylaws.

**Section 8. Uniform Rate of Assessment.** Both annual and special assessments shall be fixed at a uniform rate for all lots except those owned by Developer. The Board of Directors may at its discretion waive the assessment for any year or part of a year for any lot not occupied as a residence.

~~**Section 9. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for in this Article IV shall begin as to any lot subject to the assessment at the time the lot is occupied as a residence. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when the lot is first occupied as a residence. (This section deleted effective 4-1-95. Recorded 9-22-97 Book 6939, pg 427)~~

**Section 10. Effect of Nonpayment of Assessments; Remedies of the Community Association.** Any assessment not paid by the due date shall bear interest from the due date at the maximum rate of interest then allowable by Kentucky law. The Community Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action of foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

**Section 11. Priority of the Assessment Lien.** *The lien of the assessments provided for herein shall have priority if recorded prior to any mortgage, encumbrance or other liens on the lot. Sale or transfer of any lot shall*



*not affect the assessment lien or liens provided for in the preceding sections. No sale or transfer shall relieve such lot from liability for any assessments previously due, or that thereafter become due, or from the lien provided for herein, until the assessments, and interest, have been paid.*

**Section 12. Membership.** Developer and every owner of a lot, which is subject to an assessment, shall be a member of the Community Association. Such owner and member shall abide by the Community Association's By-laws, Articles of Incorporation and rules and regulations, shall pay the assessments provided for in this Declaration when due, and shall comply with decisions of the Community Association's Board of Directors. Membership shall be appurtenant to and may not be separated from ownership of any lot, which is subject to assessment.

**Section 13. Classes of Membership.** The Community Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all lot owners, with the exception of Developer, and shall be entitled to one vote for each lot owned.

(b) Class B. The Class B member shall be Developer. Developer shall be entitled to ten votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) Transfer of control by Developer no later than 20 years from the date of sale of the first lot to a lot owner other than Developer; or

(ii) When ninety percent of the lots which may developed in Owl Creek have been sold by Developer.

## **ARTICLE V -- GENERAL PROVISIONS**

**Section 1. Enforcement.** *Enforcement of these restrictions shall be by proceeding at law or in equity, brought by the Community Association or any owner against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or recover damages. In the event the Community Association or any owner prevails in the proceeding by establishing that any party has violated or attempted to violate any covenant or restriction, the Community Association or owner shall recover court costs and reasonable attorney fees from the violating party. Failure of any owner or the Community Association to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.*

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

**Section 3. Restrictions Run With Land.** *Unless cancelled, altered or amended by a majority of the voting population of the entire development, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten years, unless an instrument signed by a majority of the then owners of the front footage of all lots subject to these restrictions has been recorded agreeing to change these restrictions and covenants in whole or in part. These restrictions may be cancelled, altered or amended at any time by the affirmative action of two thirds of the homeowners in all of the sections of Owl Creek including the "Estate Section".*

**Section 4. Limitation upon Power of Amendment.** Notwithstanding the power of amendment of this Declaration and of the covenants and restrictions contained herein as set forth in Section 3 of this Article, no amendment of this Declaration which accomplishes any of the following may be undertaken without the consent and approval of the Louisville and Jefferson County Planning Commission or its successor agencies:

(a) Additional Land. The addition of additional residential property or common area to the real property subject to this Declaration other than those additions permitted by Section 2(a) of Article I of this Declaration.

(b) Landscape Requirements. Alteration of the landscape plan requirements set forth in Section 1(b) of Article III of this Declaration.

(c) Common Area Rights and Easements. Alteration of the rights and obligations concerning the Rights and Easements of Enjoyment of the Common Areas as established by Section 1 of Article IV of this Declaration or alteration of the rights and obligations regarding maintenance of the Common Areas.

(d) Extent of Common Areas. Diminution or elimination of the Common Areas as described in Section 1 of Article IV of this Declaration.

(e) Common Recreational Facilities. Elimination or substantial and material alteration affecting the service and function of any common recreational facility depicted upon recorded plats of the land described by that certain deed of record in Deed Book 5509 at Page 641 in the Office of the Clerk of Jefferson County, Kentucky.

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

**Section 6. Board's Determination Binding.** In the event of any dispute or disagreement between any owners relating to the property subject to this Declaration, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Board shall be final and binding on each all such owners.