

Mail  
P.O. Box 170  
Mt. Washington

**DECLARATION  
OF  
REGULATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

027543

This Declaration of Covenants and Restrictions (hereinafter referred to as "Declaration") is made on the 14<sup>th</sup> day of September, 2007, by OAKBROOKE PROPERTIES, LLC, and a Kentucky Limited Liability Company, hereinafter referred to as "Developer".

**RECITALS**

- A. Developer owns certain real property in Bullitt County, Kentucky, known as Eastbrooke Pointe, Section 1, a plat of which is recorded in Plat Cabinet 3, Slide 139 in the office of the Bullitt County Court Clerk.
- B. Developer, its agents, successors and assigns intend to develop the Property in several Lots (as more particularly described below) for multiple uses, including retail, office and other commercial uses pursuant to this Declaration.
- C. Developer desires to ensure that the Development and use of each lot be achieved in accordance with high standards in order to enhance the appearance of the entire Development and the value of each lot.
- D. Developer desires to establish and to impose upon the Property, and upon each and every portion thereof, and upon the use, occupancy and enjoyment thereof, the covenants, conditions, restrictions and easements established here in for the purpose of enhancing and protecting the value and desirability of the Property, all for the general welfare and common benefit of the present and future purchasers, owners, mortgagees, lessees and grantees of the Property, their respective successors and assigns.
- E. Developer further desires to grant, declare and establish certain easements, reciprocal rights and benefits for and to impose certain duties and obligations upon, the present and future purchasers, owners, mortgagees, lessees and grantees of the Property, and upon all persons acquiring any interest therein.
- F. Developer may establish a not-for-profit corporation or Lot Owners Association for the purpose of maintaining and administering the duties and responsibilities as assigned by the Developer.

NOW, THEREFORE, Developer, its successors and assigns, declares that the Development may hereafter be held, leased, sold and conveyed subject to the following restrictions, covenants, easements and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real estate. These covenants, restrictions, regulations and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties, or any part thereof, and shall inure to the benefit of each owner thereof. The foregoing recitals are specifically incorporated into and made a part of this Declaration.

Article and Section Captions. The article and section captions as to contents of particular paragraphs herein are inserted only for convenience, and shall not be construed as a limitation on the scope of the particular paragraphs to which they refer. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.

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## RESTRICTIONS

The DECLARANT (Owner/Developer), intending to establish a general plan for the use, occupancy and enjoyment of said subdivision, hereby declares that for the mutual benefit of its present and future owners, all lots therein shall be subject to the following restrictions.

### ARTICLE I – THE DEVELOPMENT

Section 1.1. Designation of Lots. The property is developed in a number of lots. The legal description and a numerical designation of each “Lot” is set forth in Plat Cabinet 3, Slide 139, in the Office of the Bullitt County Court Clerk. If any Lot is subdivided after the date of this Declaration, such subdivided parcels shall each be deemed a “Lot” for the purpose of this Declaration.

### ARTICLE II – EASEMENTS

Section 2.1. The Declarant hereby establishes a perpetual non-exclusive easement over the Common Area of each Lot therein to permit the construction, maintenance and use of all apparatus necessary to provide utility services to a Lot, including telephone, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of the easement by reason of the use of this easement shall be kept to a minimum and such area forthwith shall be restored by the Lot Owner disrupting the easement, at its expense, to the easements original condition.

Section 2.2. Nothing herein shall create a gift or dedication of any portion of the Development to the general public. Notwithstanding any other provision hereof to the contrary, each Owner periodically may restrict ingress and egress on its Lot in order to prevent a prescriptive easement from arising by continued public use of same. Any restriction on ingress or egress shall be limited to the minimum legal time period necessary to prevent the creation of a prescriptive easement from arising by continued public use of same, and shall occur at such times as to have minimum effect on the construction or operation of the Development.

### ARTICLE III – ARCHITECTURAL CONTROL

Section 3.1. Architectural Review.

(a) No structure or other improvement shall be constructed or erected or placed or maintained 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) height of the structure and number of square feet contained in it, (iv) the type and color of exterior material (including delivery of a sample thereof), (v) the location and size of and the material constituting the parking lot and any private streets or driveways, and (vi) the size, type and location of any signs requiring Developer’s approval pursuant to this Declaration under Section 3.2, including, without limitation, tenant signs, financing signs, and construction signs, shall have been approved in writing by the Developer. Front and side exteriors of all buildings shall be decorative masonry units, brick, drivit, or a combination may be approved with review and written approval by the Developer. The rear of the exterior may be decorative masonry units, brick, drivit, painted

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smooth wall masonry units (tan, taupe, beige, etc.) or other innovative developer approved products. On lots 16-26 rear only (facing the rear property line) the exterior may have painted commercial rated metal in the following light earth tone colors (tan, taupe, beige, etc.). Various roofing materials may be approved. Colors and sample materials shall be submitted with plans for review and approval.

(b) In addition to the plans referred to in the previous subparagraph, no structure or landscaping may be erected, placed or altered on any Lot until a landscape plan shall have been approved in writing by the Developer, which plan shall show at a minimum the location, type and number of trees, shrubs, flowers and other plantings.

(c) After any structure has been erected and the initial landscaping material has been installed, no alterations or additions that affect the external appearance of the structure or landscaping shall be undertaken until the plans have been approved in writing by the Developer. Notwithstanding the foregoing, replacements of dead, unsightly or dying landscape material may be made without the approval of the Developer provided the replacements are of a kind and quality equal to the material being replaced.

(d) References to "structure" in this Section shall include any building, fence, wall, sign, trash enclosure, antenna and microwave and other receivers and transmitters (including those currently called "satellite dishes") and any other structure that affects the appearance of the development on a Lot.

(e) Notwithstanding anything to the contrary in this Declaration, no approval of Developer shall be needed for the removal of any structure on any Lot provided that the area upon which the structure was located is left in a safe, clean and sightly condition.

(f) In the event of any damage or destruction to any structure on any Lot, the owner of such Lot shall promptly either (i) repair the structure within 60 days, or (ii) replace or demolish and remove the damaged or unusable structure within 180 days and fill, grade, pave or landscape the area from which the structure was removed in a safe, clean and sightly manner.

### Section 3.2. Site Improvements

- I. Drainage. No construction or improvement on said site shall commence until Purchaser/Owner has constructed proper and required silt and run off controls. Purchaser/Owner must comply with the Clean Water Act which follows the EPA, Federal, State, County and City requirements. Each lot must remain in compliance.
- II. Signs
  - a. Approval. No sign shall be constructed without prior written approval of the Developer. All signs shall comply with the Zoning Regulations and with all other laws, regulations and ordinances of the Commonwealth of Kentucky or any subdivision or agency thereof.
    1. No signs or other advertising devices shall be installed or permitted on any Lot except to the extent specifically permitted in this Declaration.

2. Painted lettering, symbols or identification of any nature shall not be utilized.
  3. NON FIXED building or ground mounted flashing, blinking, animated, audible or any portable signs shall not be permitted.
  4. No exposed wiring, conduits, tubing, lamps, ballast boxes or raceways shall be permitted.
  5. All cabinets, conductors, transformers, ballasts, attachment devices, and other equipment shall be concealed.
- b. Building Mounted Sign(s).
1. No building mounted sign or any portion thereof may project above the parapet wall or top of the exterior wall or building façade upon which it is mounted.
  2. No rooftop signs of any type shall be permitted.
  3. No signs perpendicular to the face of the building or façade shall be permitted.
  4. The length of any building mounted sign shall not exceed the lesser of 50% of the length of the wall or façade upon which the sign is mounted or 25'; nor shall the height of any façade, or any sign mounted thereon, exceed 60".
  5. The letters on all signs shall be script or individual block type. All boxed signs shall be submitted to the Developer for approval.
- c. Freestanding Sign(s).
1. No freestanding sign or sign not attached to a building may be installed on any parcel other than: (i) one permanently affixed, freestanding or monument type sign identifying the business and business products or name of the occupant of the building, (ii) directional signs, and (iii) a menu-board and/or speaker post in connection with a drive-thru facility.
  2. The maximum height of any sign structure shall not exceed twenty (20) feet and the maximum height of the sign panel shall not exceed eight (8) feet.
  3. The maximum width of the sign structure shall not exceed ten (10) feet.
  4. The maximum thickness of the structure shall not exceed twenty-four (24) inches.
- d. Development Sign. Notwithstanding anything contained in this Section 3.2, the Developer shall be permitted to erect signage near the intersection of Kentucky Highway 44 and the By Pass in excess of the limitations stated herein for the purpose of identifying the Development. Such signage shall only identify the name of the Development and/or the names or trade names of the Occupants of the Development. The Developer, Association, or assignee of the developer shall be responsible for maintaining the structural portion (including interior or exterior illumination) of any such signage in a safe and business like manner. Any Lot Owner having a fascia or other identification on such signage shall be responsible for maintaining such fascia or identification in a safe and business like manner. Any Lot Owner desiring to exercise its right of access to such signage under this

paragraph shall notify Developer at least three (3) days in advance that it will be accessing the signage for repair, or, in case of emergency, as soon as circumstances permit.

- e. Banners. No banners shall be attached to or displayed on any building, or otherwise displayed in any manner on any Lot, without prior written approval of the Developer. If approved by Developer the maximum time a banner shall be attached or displayed is sixty (60) days. After the expiration of said sixty (60) days any such banner shall be removed.
- III. Buffer Strip. A landscaped buffer strip at least five (5) feet wide shall be maintained around the perimeter of each Lot; except that the buffer strip may be reduced to four (4) feet wide in those areas where the Lot is adjacent to another Lot, and no above-ground improvements shall be erected thereon, except that sidewalks, directional parking signs and accent lighting fixtures may be installed upon written approval of the Developer. A Lot Owner may use a portion of the right-of-way adjacent to its Lot to meet the five (5) foot buffer strip requirement if necessary and upon written approval of the Developer.
  - IV. Curbs. Concrete curbs shall be constructed on or adjacent to each Lot in each of the following locations:
    - a. around the entire perimeter of the Lot at the edge of the pavement to separate the paved area from the adjacent landscaped buffer;
    - b. on both sides of the landscaped buffer in those areas where the buffer separates the Lot from the Development peripheral cruising land and/or adjacent public roadways;
    - c. at all vehicular entrances to the Lot from the peripheral cruising lane of the Development, adjacent public roadways, and contiguous Lots. All such curbs shall be a minimum depth of 12" poured-in-place concrete type curbs: no bumper blocks, precast, extruded or asphalt curbs shall be permitted.
  - V. Sidewalks. A sidewalk shall be constructed along the street side of any Lot. The sidewalk location shall be as designated by Developer.
  - VI. Buffer & Island Landscaping. All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover in a uniform manner consistent with the Development landscaping. All parking areas shall have internal landscaping which shall account for at least 5% of the parking area, including the buffer strips. All internal landscaping shall be protected from vehicular encroachment by concrete curbing.

Section 3.3. Standard of Review. Approval of structures, signs and landscaping shall be based, among other things, on adequacy of site dimensions, harmony of external design with neighboring structures, improvements, proposed use, relation of topography, grade and finished ground elevation of the Lot being improved to that of neighboring Lots; proper facing of main elevations with respect to nearby streets; and conformity of the plans and specifications to the purpose and general planning scheme of the Declaration. The Developer may not arbitrarily or unreasonably withhold its approval of structure or landscape plans. By approving any plans and specifications, the Developer makes no representation that the plans and specifications comply

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with any law, ordinance or regulation of any governmental agency having jurisdiction over the Development.

Section 3.4. Procedure.

- a. Complete plans and specifications in accordance with Sections 3.1 and 3.2 above shall be submitted to the Developer in triplicate.
- b. The Developer shall have a period of 30 days in which to review the plans and specifications. If not disapproved within that period, the plans and specifications shall be deemed approved. The Developer shall provide an explanation for any disapproval. Following approval of the plans and specifications, the Developer shall return two sets marked "Approved" to the Lot owner and shall retain one set on file at the office of the Developer. Notwithstanding anything in the foregoing to the contrary, if plans have been previously approved showing items on a Lot which will not change in connection with proposed alterations or replacements, plans and specifications showing such items need not be resubmitted.

Section 3.5. Duties of Owners or Tenants. Each Lot owner or tenant shall at all times properly maintain all structures and improvements, landscaping, parking areas and the grounds of its Lot in a safe, clean, sightly and wholesome condition, to include maintaining each Lot in a good order and condition, free of any accumulation of trash or debris, and in good repair, and shall comply in all respects with all governmental, health and fire requirements and regulations. If necessary to prevent loitering on its Lot, each Lot Owner shall post a "No Loitering" sign.

Section 3.6. Maintenance Developer and Lot Owners. Developer shall maintain, repair, replace and renew the Common Areas not otherwise delegated by this Declaration, or cause the same to be maintained, repaired, replaced or renewed in a clean, sightly and safe condition. Each Lot Owner shall pay its proportionate share of the costs of maintenance. A management fee of fifteen (15) percent shall be assessed against the total fee to each Lot Owner. Lot Owner's proportionate share of the maintenance costs shall be calculated by the area of the Property owned by the Lot Owner divided by the total acreage of the Property. The said acreage being 18.18 acres as shown on Eastbrooke Pointe, Section 1, of record in Plat Cabinet 3, Slide 139 in the Office of the Bullitt County Court Clerk.

#### ARTICLE IV – GENERAL PROVISIONS

Section 4.1. Enforcement. Enforcement of these restrictions shall be by a proceeding at law or in equity, brought by any Lot owner and/or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Any such action shall be brought in the Bullitt Circuit Court, Shepherdsville, Kentucky. Failure of any Lot Owner or Developer 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 that violation, or any subsequent violation of the provisions of this Declaration irrespective of the number of violations or breaches which may occur. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration or any part thereof. This Declaration shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the

Commonwealth of Kentucky including, without limitation, matters affecting title to all real property described herein.

Section 4.2. Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 4.3. Restrictions Run with the Land. These covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of 30 years from the date this Declaration is recorded, except to the extent cancelled, altered or amended in a recorded document executed by all of the owners of Lots in the Development. The covenants and restrictions shall be extended automatically for successive periods of ten years, unless an instrument signed by all of the Lot Owners in the Development has been recorded agreeing not to extend. Notwithstanding anything to the contrary in this Declaration, the easements and licenses in this Declaration shall be perpetual. Also notwithstanding anything to the contrary in this Declaration, no changes shall be made to any streets or easements unless required by law, without the prior written approval of the owners of all Lots in the Development.

Section 4.4. Use Restrictions. The Lots shall only be used for commercial businesses as defined by Bullitt County Planning and Zoning requirements of B-1 and B-2, (as currently defined) and not withstanding the foregoing, the Lots shall not be used in any of the following ways:

- a. A use which shall produce any obnoxious odor or noise or sound which is a source of annoyance or which unreasonable interferes with the quiet and peaceful possession or use of the Property by the Owners and Occupants or which is in violation of this Declaration and constitutes a public or private nuisance, or the use of outdoor speakers, except that normal restaurant cooking odors and operation of exterior menu boards and speaker posts in accordance with the provision of this Declaration in connection with a restaurant shall be permitted;
- b. For warehousing (excluding any indoor storage areas in connection with retail sales at the Subject Property), assembling, manufacturing, distilling, refining, smelting, agricultural mining operation or other industrial use. Outdoor warehousing of new or used inventory is also prohibited;
- c. As a mobile home, trailer court, junkyard, or animal raising establishment (except for a pet shop and except further that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
- d. For dumping, disposing, incineration or reduction of garbage, sewage or refuse (exclusive of garbage compactors or dumpsters located in the rear of any building);
- e. Dumpsters and garbage compactors shall be enclosed by a vinyl fence or masonry fence or slatted chain link fence. There shall be no wooden fences used to enclose dumpsters or garbage compactors;
- f. For any auction sale, fire sale, bankruptcy sale (unless pursuant to a court order), going out of business sale or auction house operation;
- g. As a dry cleaning plant (excluding laundry or a dry cleaning Pickup/Drop-off service);

- h. For automobile, truck, motorcycle or recreational used vehicle sale, maintenance or repair shop except in connection with a tire store or automobile oil and lubricating service facility;
- i. No Owner or Occupant shall cause or allow any draining, dumping or other discharge of any noxious, toxic or hazardous waste products or other materials in violation of applicable law upon any portion of the Property. Any violations of this provision shall be immediately corrected and/or removed by, and at the sole expense of, the Owner or Occupant responsible for the same. Such noxious, toxic or hazardous waste products include, but are not limited to, any substance, pollutant, contaminant, waste, by-product, or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act. (42 USC Sec. 9601 et seq.);
- j. As living quarters, sleeping apartments or lodging rooms attached to a business; except that a hotel or motel business is specifically excluded from this prohibition;
- k. No Owner or Occupant shall permanently or temporarily park or store in the Common Areas, or in any other portion of the Property, any boat, airplane, helicopter, house trailer, camper or recreational vehicle. Parking in parking areas shall be limited to conventional passenger automobiles, vans, trucks, motorcycles, bicycles or other vehicles reasonably required for the transportation of Owners and Occupants of the Property and their employees, agents and invitees and the operation of such Owner's and Occupant's business. Nothing contained herein shall prohibit Developer from temporarily parking or storing any of its construction vehicles on the Property during construction period, provided it obtains the consent of the Owner, if the vehicle is parked or stored on a portion of the Property that is not owned by the Developer or the Association or is an open space.
- l. As a mortuary or crematorium;
- m. As any business which, as a component thereof, exhibits or features pornographic movies or so-called "adult entertainment" and/or Adult Book Store;
- n. To use or permit the area outside of any building for the conduct of any business, occupation or undertaking without the Developer's prior written approval, which may be withheld in Developer's sole discretion;
- o. To use any portion thereof for any unlawful purpose, all laws, ordinances and regulations of all governmental and quasi-governmental agencies or authorities shall be observed, and violations of said requirements shall be immediately corrected and/or removed by, and at the sole expense of, the Owner responsible for the same.

Section 4.5. Lot Owner Breach. Each Lot Owner shall indemnify and save harmless the Developer, the other Lot Owners and their tenants and licensees from all claims, liens, damages and expenses, including but not limited to, reasonable attorneys' fees, arising out of the Lot Owner's acts or omissions or of the acts or omissions of an Occupant of the Lot Owner's part or portion of the property, causing a breach of any of Lot Owner's duties or obligations in this Declaration.



Section 4.6. Non-liability of Developer. The Developer shall not be personally liable for any acts or omissions of any nature whatsoever, except for any acts or omissions found by a court to constitute negligence, actual fraud, breach or willful misconduct. The Lot Owners shall hold harmless the Developer, its heirs, executors, administrators, successors and assigns, except for acts of negligence, actual fraud, breach or willful misconduct, whether direct or indirect, caused or initiated by Developer, its employees, agents, contractors or invitees.

Section 4.7. Lot Owner's Association. Developer may form a Lot Owner's Association, at such time when 50% of the Lots of the Development are sold or transferred. The Lot Owner's Association shall only undertake and perform all duties and responsibilities as assigned by Developer pursuant to these Declarations and Restrictions, except any such duties and responsibilities which may have been assumed by any municipal or governmental agency having jurisdiction thereof. Each Lot Owner, by accepting a deed to a Lot in the Development agrees to accept membership in, and shall become a member of, the Lot Owner's Association at such time as it is formed. Upon formation of the Lot Owner's Association by the Developer, any approval rights granted to the Developer may be granted to the Lot Owner's Association.

Section 4.8. Delay in Performance – Force Majeure. If the performance of any act or obligation under this Declaration is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lock-out, action of labor union, condemnation, threatened condemnation, requisitions, laws and orders of government or civil or military authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the person required to perform such act or obligation, then such person shall be excused from the performance of such act or obligation for so long as such person is so prevented or delayed by reason thereof. This force majeure provision shall apply only to the non-monetary obligations created by this Declaration and imposed on the Association, Developer and every Owner of a part or portion of the Property.

Section 4.9. Amendment. This Declaration may be amended only by Developer until such time as Developer forms Lot Owners Association. Lot Owners Association shall amend pursuant to by-laws of the Association. No amendment of this Declaration shall become effective until an instrument stating such amendment is recorded in the Office of the Bullitt County Clerk. Notwithstanding anything herein to the contrary, (a) no provision of this Declaration affecting the rights, privileges and duties of the Developer may be modified without Developer's written consent and (b) the Developer shall at all times have the right to correct clerical or typographical errors in this Declaration or any exhibit thereto or any supplement or amendment thereto.

Section 4.10. Notice. Any notice or communication to be given pursuant to this Declaration shall be given by registered or certified mail or by next-business day commercially recognized delivery service maintaining proof of delivery, if to an owner of a Lot, to the address where tax bills for such Lot are sent by the tax collecting authority, and if to the Developer, c/o Oakbrooke Properties, LLC, 337 N. Bardstown Road, PO Box 170, Mt. Washington, KY 40047, provided that any Owner or Developer may change its notice address by sending notice of such change to the others.

WITNESS the signature of Developer by its duly authorized officer on this 14<sup>th</sup>  
day of September, 2007.

OAKBROOKE PROPERTIES, LLC

By:

Kenneth E. Stout  
Kenneth E. Stout,  
Managing Member

STATE OF KENTUCKY

COUNTY OF BULLITT

I, the undersigned, a Notary Public, within and for the State and County aforesaid, do hereby certify that on this day the foregoing instrument was produced to me in said State and County, and was signed, subscribed, sworn, acknowledged, and delivered by KENNETH E. STOUT, as Managing Member of OAKBROOKE PROPERTIES, LLC, a Kentucky Limited Liability Company, to be his lawful act and deed for the purposes therein stated.

WITNESS my hand this 14<sup>th</sup> day of September, 2007.

My commission expires: 08/10/2010

Ashley Sade  
NOTARY PUBLIC, STATE AT LARGE, KY

This Instrument Prepared by:

K. E. Stout  
K. E. Stout  
Oakbrooke Properties, LLC  
P.O. Box 170  
Mt. Washington, KY 40047  
502-955-7516

REC'D TAX  
2007 SEP 14 PM 1:06  
BULLITT COUNTY CLERK  
BY DP

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