

Docket No. 14PARK1002

Parking waiver to allow on-street parking, not directly adjacent to the site, a waiver of 2 parking spaces

Highland Restoration Group, LLC
c/o Gene Crawford

Attorneys: Bardenwerper Talbott & Roberts, PLLC

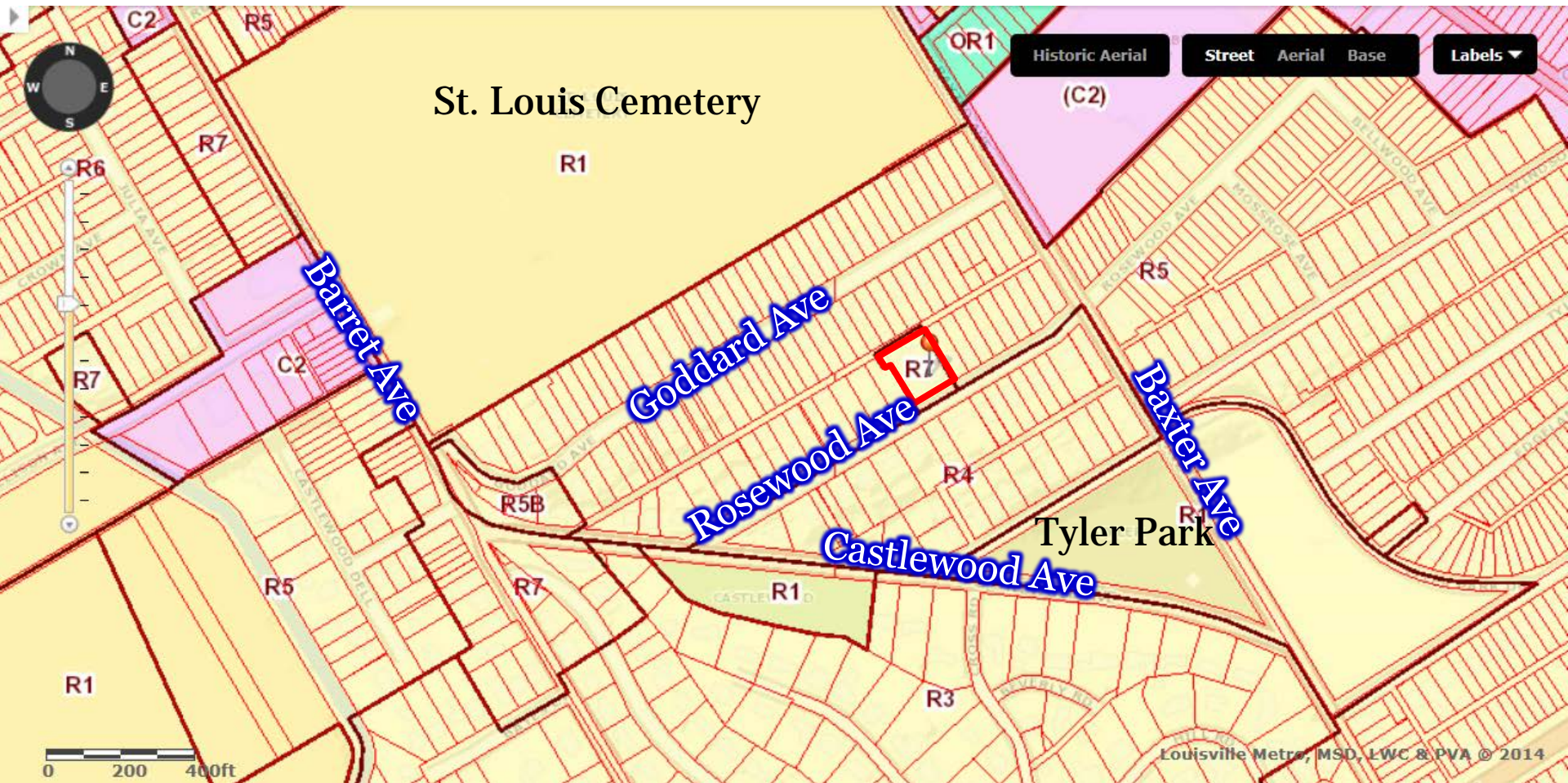
Land Planners, Landscape Architects and Engineers: Milestone Design Group

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Tab 1.

LOJIC zoning map and aerial



St. Louis Cemetery

Historic Aerial Street Aerial Base Labels

Barret Ave

Goddard Ave

Rosewood Ave

Castlewood Ave

Baxter Ave

Tyler Park

0 200 400ft

Louisville Metro, MSD, LWC & PVA © 2014



Tab 2.

Original zoning minutes and
subsequent BOZA minutes including
plat approved with said minutes

5-1-69

Docket No. 9-94-69
 Subject: Ordinance to change the zoning from R-5 Residential to R-7 Apartment on the northwest side of Rosewood Avenue, 370' more or less southwest of Baxter Avenue, fronting on Rosewood Avenue 125' and extending northwest 165' to an alley, with a frontage thereon of 146'.

Applicant Mr. Patrick H. Mitchell
 & Owner: 1520 Castlewood Avenue
 Louisville, Kentucky 40204

Notice of this public hearing appeared in the Louisville Times on April 22, 1969, and a notice was posted on the property.

The reasons given in the application for this proposal are stated in quotes in the following staff report, which was read by the Director at the public hearing:

"This is a request filed on April 10, 1969, for a change of zoning from R-5 Residential to R-7 Apartment on the northwest side of Rosewood Avenue, 370' more or less southwest of Baxter Avenue as shown on the maps being displayed on the screen and attached hereto. These maps also show, in color code, the existing zoning in the general vicinity, the current use of land therein, and the zoning district change herein requested.

The reasons the applicant thinks this property is not correctly zoned are as follows:

'The subject property presently is improved with an old three story apartment building constituting a non-conforming use. The improvements are antiquated and outmoded. The owner desires to raze the existing improvements and construct a modern garden type apartment building in keeping with the neighborhood with provisions for adequate off-street parking. Such a project would, in the opinion of the applicant, increase property values of adjacent properties.'

This is the same request made under Docket 9-62-67 which was denied.

The applicant has not submitted a development plan or a statement concerning the proposed number of units, heights, densities, ground coverage and floor area ratios and usable open space.

The neighborhood is predominately developed with single family residences with several duplexes and apartments.

Future land use studies indicate that the most appropriate development of this area is for medium density residential.

Under the proposed R-7 classification, 17 dwelling units could be built on the lot at a density of approximately 34 units per acre.

5-1-69

Docket No. 9-94-69 (Continued)

It is recommended that the request for R-7 Apartment be denied and that R-6 be approved which would permit development which would be in harmony with the present and most appropriate future development of the neighborhood.

It is further recommended that no final action be taken until the applicant has submitted to a development plan of the site which would limit development on the site to not more than 20% ground coverage, and a floor area ratio not to exceed .35."

Mr. William G. Hume, Attorney, 406 Louisville Trust Bldg., spoke representing the applicant.

Mr. Friend H. Lodge, 1509 Rosewood, spoke in opposition and filed for the record a petition signed by 18 persons objecting to the change.

A transcript of the public hearing is on file in this docket.

On a motion made and seconded, the following resolution was unanimously adopted:

WHEREAS, the neighborhood is predominantly developed with single family residences with several scattered duplexes and apartments; and

WHEREAS, neighborhoods of good quality single family residences should be amply protected against the invasion of other types of land use; and

WHEREAS, the applicant does have a non-conforming use on the subject property which gives him an advantage over the nearby single family residences;

NOW, THEREFORE, BE IT RESOLVED, That the Louisville and Jefferson County Planning Commission does hereby recommend to the Board of Aldermen of the City of Louisville that the proposed amendment of the Zoning District Map of the City of Louisville and of Jefferson County, Kentucky, outside cities of the fourth class, from R-5 Residential to R-7 Apartment on the following described property be DENIED:

BEGINNING at a point in the northwesterly line of Rosewood Avenue 10' southwestwardly from the line common to Lots 28 and 29, Block 2, as shown on the revised plan to E. A. Goddard's Subdivision, plat of which is of record in Plat and Subdivision Book 3, Page 38, in the Office of the Clerk of the County Court of Jefferson County, Kentucky, said point also being 370' southwestwardly from Baxter Avenue; running thence southwestwardly with the northwesterly line of Rosewood Avenue, 125'; thence northwestwardly in a line parallel with the line common to Lots 28 and 29, aforesaid, 127'; thence southwestwardly in a line parallel with the northwesterly line of Rosewood Avenue, 21'; thence northwestwardly in a line parallel with the line common to Lots 28 and 29 aforesaid 38' to the southeasterly line of an alley; thence northeastwardly with the southeasterly line of said alley, 146'; thence southeastwardly in the line parallel with the line common to said Lots 28 and 29, aforesaid, 165' to the beginning.

7-6-67

Docket No. 9-62-67
Subject: Ordinance to change the zoning from R-5 Residential to R-7 Apartment on the northwest side of Rosewood Avenue 370' more or less southwest of Baxter Avenue, fronting on Rosewood Avenue 125' and extending northwest 165' to an alley, with a frontage thereon of 146' and being known as 1505 Rosewood Avenue.

Applicant Mr. Patrick H. Mitchell
& Owner: 1520 Castlewood Avenue
Louisville, Kentucky 40204

Notice of this public hearing appeared in the Louisville Times on June 27, 1967, and a notice was posted on the property.

The reasons given in the application for this proposal are stated in quotes in the following staff report, which was read by the Director at the public hearing:

"This is a request for a change of zoning from R-5 Residential to R-7 Apartment on the northwest side of Rosewood Avenue, 370' more or less southwest of Baxter Avenue, fronting on Rosewood Avenue 125' and extending northwest 165' to an alley, with a frontage thereon of 146' and being known as 1505 Rosewood Ave.

The application, signed by Patrick H. Mitchell, owner and applicant, states,

'The subject property presently is improved with an old three story apartment building constituting a non-conforming use. The improvements are antiquated and outmoded. The owner desires to raise the existing improvements and construct a modern garden type apartment building in keeping with the neighborhood with provisions for adequate off-street parking. Such a project would, in the opinion of the applicant, increase property values of adjacent properties.'

The subject property is occupied by a non-conforming, well-kept apartment structure in a R-5 Residential District. All adjoining properties and except for a few scattered duplexes, all surrounding properties, are occupied by single family uses. From the standpoint of zoning this is an unbroken R-5 Residential area.

In 1958 this property was the subject of an exhaustive case before the Board of Zoning Adjustment, Docket No. ZV-31-58. At that time the applicant sought to convert the use of the property from six apartments to twelve. The Board decided it had no jurisdiction in the case. The applicant then took his request to the Circuit Court where he was given the right to double the density.

7-6-67

Docket No. 9-62-67 (Continued)

R-7 Apartment zoning as now requested would permit the establishment of 17 units on this lot.

Future development plans, now being prepared by the Advance Planning Section, show this area remaining in a single family land use category.

The staff feels that the applicant has had adequate use of his property in its non-conforming condition as a high density use in this single family neighborhood. The high densities permitted in the R-7 Apartment District, as well as the disruptive results of 'garden type' apartment living (i. e. noise and traffic) would prove detrimental to this reserved single family neighborhood. This is spot zoning for the benefit of the owner rather than the neighborhood which is contrary to good zoning practice. The staff recommends denial."

Mr. William G. Hume, Attorney, 406 Louisville Trust Building, spoke in favor of this change.

Mr. Pat Mitchell, 1520 Castlewood, the owner, was also present.

Those present who spoke in opposition were:

Mr. Friend H. Lodge, 1509 Rosewood, who filed a petition signed by 9 residents
Mr. Bruce Miller, Attorney, 1415 Kentucky Home Life Building, representing Mrs. Paul Woodson
Mercedes Rosebery, 1435 Rosewood
Juliet Frantz, 1423 Rosewood
Louise Eager, 1446 Rosewood

A petition circulated at the public hearing was signed by two persons objecting to the change.

Following a discussion a motion was made and seconded and the following resolution was unanimously adopted:

WHEREAS, for the reasons stated in the above staff report this proposal should be denied;

NOW, THEREFORE, BE IT RESOLVED, That the Louisville and Jefferson County Planning Commission does hereby recommend to the Board of Aldermen of the City of Louisville that the proposed adjustment of the Zoning District Map of the City of Louisville and of Jefferson County outside cities of the 4th Class from R-5 Residential to R-7 Apartment on the following described property be DENIED:

7-6-67

Docket No. 9-62-67 (Continued)

BEGINNING at a point in the northwesterly line of Rosewood Avenue 10 feet southwestwardly from the line common to Lots 28 and 29, Block 2, as shown on the revised plan to E. A. Goddard's Subdivision, plat of which is of record in Plat and Subdivision Book 3, page 38, in the Office of the Clerk of the County Court of Jefferson County, Kentucky, said point also being 370 feet southwestwardly from Baxter Avenue; running thence southwestwardly with the northwesterly line of Rosewood Avenue, 125 feet; thence northwestwardly in a line parallel with the line common to Lots 28 and 29, aforesaid, 127 feet; thence southwestwardly in a line parallel with the northwesterly line of Rosewood Avenue, 21 feet; thence northwestwardly in a line parallel with the line common to Lots 28 and 29 aforesaid 38 feet to the southeasterly line of an alley; thence northeastwardly with the southeasterly line of said alley, 146 feet; thence southeastwardly in the line parallel with the line common to said Lots 28 and 29, aforesaid, 165 feet to the beginning.

MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT

MAY 16, 2005

DOCKET NO. B-74-05W

Applicant/Owner: Kevin Orr

Subject: An application for variances and waivers from the Land Development Code to allow a reduction in the Private Yard Area and for the proposed garage addition to encroach into the required side yard.

Premises affected: On property known as 1505 Rosewood Avenue and being in Louisville Metro.

Appearances for Applicant:
Kevin Orr, 3911 Leland Road, Louisville, Kentucky 40207.

Merle Molen, 550 South 4th Street, Louisville, Kentucky , whom submitted a rendering.

Appearances-Interested Party:
No one.

Appearances Against Applicant:
Joe Lee, 1509 Rosewood Avenue, Louisville, Kentucky 40204.

David Thomas, 1508 Goddard Avenue, Louisville, Kentucky 40204.

Mr. Orr spoke in rebuttal and answered questions posed by the Board.

On April 25, 2005, Kevin Orr, filed an application for a variation from the requirements of the Land Development Code to allow a reduction in the Private Yard Area and the proposed garage addition to encroach into the required side yard.

On May 16, 2005, a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

MINUTES OF THE MEETING
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DOCKET NO. B-74-05W

A video of the site and surrounding area was shown

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and Design Services Office.

The recording of this hearing will be found on the CD of the May 16, 2005 proceedings.

After the public hearing and a further discussion of the case by the members of the Board in open business session, on a motion by Member Anderson, seconded by Member Rhodes, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, and the evidence and testimony submitted at the public hearing the proposed garage addition will encroach into the required side yard; and

WHEREAS, the Board finds the size and shape of the lot and the location of the existing structures on site are special circumstances which do not generally apply to land in the general vicinity or in the same zone; and

WHEREAS, the Board finds the chief result of a denial of these variances would be that the applicant would not be able to develop the site as planned; therefore, the strict application of the provisions of the regulations would create an unnecessary hardship on the applicant; and

WHEREAS, the Board finds that the applicant is not responsible for the size and shape of the lot and the location of the existing structures on site; such special circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

WHEREAS, the Board finds the site is rectangular in shape; that the Private Yard will still be 3,592 square feet and will include a landscaped brick courtyard; that the garage addition will be adjacent to the neighboring yard which the owner has stated no objections; that there are similar encroachments throughout the neighborhood; that the setback from Rosewood Avenue will be maintained; therefore, the granting of these variances will not adversely affect the public health, safety or welfare, will not alter the essential character of the general

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vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations;

NOW, THEREFORE, BE IT RESOLVED, that the variances are hereby **APPROVED**.

The variances allow:

1. The Private yard Area between the proposed multi-residence and existing/proposed garages to be 3,592 square feet.
2. The proposed garages to be located 0 feet from the west side property line.

The vote was as follows:

YES: Members Anderson, Rhodes, Queenan, Stewart, Crowder and Francis.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Grisanti.

ABSTAINING: No one.

WAIVERS

In conclusion and upon further discussion of the case by the members of the Board in open business session, a motion was made by Member Anderson, seconded by Member Rhodes, the following resolution was adopted:

WHEREAS, the Board finds that the proposal will conform to the applicable guidelines and policies of the Comprehensive Plan by allowing the applicant to have access from the alley for the existing garage renovation and access from Rosewood Avenue for the new construction;

MINUTES OF THE MEETING
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MAY 16, 2005

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WHEREAS, the Board finds the strict application of the provisions of the regulations would deprive the applicant the reasonable use of the land by refusing the access to Rosewood Avenue and thus eliminating the option of covered parking and off-street parking; and

WHEREAS, the Board finds that the waiver provide the minimum necessary relief to the applicant; that the ability to have the underneath parking for the new condominium units with the access from Rosewood Avenue; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the waiver to allow the new structure/garage to have access from Rosewood Avenue.

The vote was as follows:

YES: Members Anderson, Francis, Rhodes, Crowder, Stewart and Queenan.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Grisanti.

ABSTAINING: No one.

Tab 3.

Declaration establishing Rosewood
Condominiums, Amendments and
condo plat relating thereto

DECLARATION AND MASTER DEED

DB 08871 PG 0375

Establishing

ROSEWOOD CONDOMINIUMS

THIS DECLARATION AND MASTER DEED (the "Master Deed") has been prepared at the direction and caused to be recorded by **HIGHLANDS RESTORATION GROUP, LLC**, (hereinafter referred to as "Declarant") a Kentucky limited liability company having an office at 1505 Rosewood Ave., Louisville, KY 40207; to wit:

RECITALS:

A. Declarant is the owner in fee simple of a certain tract of land located on 1505 Rosewood Ave. in Jefferson County, Kentucky, being more particularly described as follows:

BEGINNING at a point in the Northwestern line of Rosewood Avenue 10 feet Southwestwardly from the line common to Lots 28 and 29 Block 2, as shown on the revised plan of E A Goddard's Subdivision, plat of which is of record in Plat and Subdivision Book 3, Page 38, in the office of the Clerk of the County Court of Jefferson County, Kentucky, said point also being 370 feet Southwestwardly from Baxter Avenue running thence Southwestwardly with the Northwestwardly line of Rosewood Avenue, 125 feet; thence Northwestwardly in a line parallel with the line common to lots 28 and 29, aforesaid, 127 feet, thence Southwestwardly in a line parallel with the Northwestern line of Rosewood Avenue, 21 feet, thence Northwestwardly in a line parallel with the line common to Lots 28 and 29 aforesaid, 38 feet to the Southeasterly line of an alley, thence Northeastwardly with the Southeasterly line of said alley, 146 feet, thence Southeastwardly in a line parallel with the line common to said Lots 28 and 29 aforesaid, 165 feet to the beginning.

BEING the same property acquired by Highlands Restoration Group, LLC by Deed dated September 15, 2004, of record in Deed Book 8488, Page 271, in the office of the Clerk of Jefferson County, Kentucky.

B. Declarant desires to create a residential condominium project by submitting the Land, together with the improvements and structures now existing and hereafter erected by or at the direction of Declarant thereon, and all easements, rights, and appurtenances belonging thereto (said Land, improvements, structures, easements, rights, and appurtenances are together referred to hereinafter as the "property") to the provisions of the Kentucky Horizontal Property Law, found at KRS 381.805 to KRS 381.910:

NOW, THEREFORE, Declarant hereby submits said property to the provisions of the Kentucky Horizontal Property Law and declares that said property shall be a condominium project (hereinafter referred to as the "condominium project") as defined in and pursuant to said Kentucky Horizontal Property Law, and pursuant to the following provisions:

ARTICLE I

Definitions

The words listed in this article I when used in this Master Deed shall have the meanings set forth for each in this article I, in addition to other defined terms set forth elsewhere in this Master Deed:

- (A) "Articles of Incorporation" means the Articles of Incorporation of the Council, a Kentucky non-stock, not-for-profit corporation known as "Rosewood Condominium Council, Inc.", which shall govern and control, in part, the affairs and administration of the condominium project.
- (B) "Board of Directors" means the Board of Directors of the Council who shall be elected and serve and shall have the powers and duties provided herein and in the Articles of Incorporation and the Bylaws.
- (C) "Buildings" means all of (i) the one (1) three-story existing apartment building to contain eight (8) units, which units are established by this Master Deed, (ii) the existing garage building that contains certain garage Limited Common Elements as set forth below and which may contain one unit (see section T of this Master Deed), and (iii) one (1) proposed three-story condominium building which may contain up to three (3) units as set forth in section T of this Master Deed. The location of the existing Buildings on the Land, the number by which each Unit in the building shall be designated, and the area of each of the Units are initially as set forth on the plans as may be expanded as contemplated by section T of this Master Deed.
- (D) "Bylaws" means the Bylaws of the Council, approved and adopted by the Board of Directors, which shall govern and control, in part, the affairs and administration of the condominium project.
- (E) "Common Elements" shall consist of all the property as set forth on the set of floor plans of the buildings, excepting the individual units, including but not be limited to, the land (including the Land under the Units), the foundation; structural columns; exterior walls; floors; roofs of the buildings (other than interior decorated surfaces thereof located within the boundaries of individual units); attics; the portion of the basement of the existing Building that is not a Unit and that is not Limited Common Elements as set forth below; the porch that leads into the main entrance to the existing Building and that is not designated on the plans recorded with this Master Deed as a Limited Common Element; elevator; structural parts of the buildings; windows; outside lighting; outside retaining walls; pipes; ducts; conduits and electrical wiring constituting part of the overall systems designed for the general service of the building; parking areas; sidewalks; grass areas; landscaping; garbage and refuse areas; public utility lines; and foyers; the stairways located therein and the exterior doors leading from the outside of the buildings to the foyers which serve as the points of entry to the buildings. Common elements shall include tangible personal property used for the maintenance and operation of the Condominium Project even though

owned by the Council hereinafter described. All areas designated as general common elements are to be maintained by the Council.

- (F) "Condominium Documents" means, collectively, the Master Deed, Articles of Incorporation, Bylaws, and rules and regulations.
- (G) "Council" means, Rosewood Condominium Council, Inc., a Kentucky non-stock, not-for-profit corporation, the members of which shall be each an owner of record of a Unit or Units in the condominium project.
- (H) "Limited Common Elements" means those portions of the Common Elements which are reserved by this Master Deed or amendments to this Master Deed, by the recorded floor plans, by agreement of all Owners, or in the case of garage spaces by the designation of Developer at the time of conveyance of Units (which garage Limited Common Elements are designated "Garage LCE ---" as set forth on the plans recorded with this Master Deed), or in the case of certain storage spaces by the designation of Developer at the time of conveyance of Units (which storage Limited Common Elements are designated "Storage LCE ---" as set forth on the plans recorded with this Master Deed), and certain porches that are designated Limited Common Elements on the plans recorded with this Master Deed; all of which Limited Common Elements are for the use of a certain Unit or number of Units to the exclusion of other Units, including without limitation: (1) interior unfinished surfaces of each Unit's perimeter walls, ceilings and floors and space between floors; (2) entrances and exits to the Unit; (3) attics (meaning any space between the roof of a building and the ceiling of a Unit), crawl spaces, certain storage basements (if any, and if not included in a Unit as shown on the final "as built" plans referred to in Section 2.2), slabs, balconies, stoops, patios, storage areas and decks, if any, now (or hereafter if approved by the Board) attached to or assigned to a particular Unit and whether or not shown on the "as built" plans; and (4) utility service facilities serving a Unit or several Units, including the air conditioning and heating equipment and systems.

ARTICLE II

(A) Description of Buildings; Units and Commons Area; Amendments to Declaration and Master Deed to Comply with Law.

The Master Deed and Declaration initially establishes eight (8) units in one (1) three-story existing apartment building with right to construct and establish as part of the condominium regime an additional building with up to 3 units and to create a unit in the garage building, as contemplated by section T of this Master Deed. The location of the buildings on the Land, the number by which each Unit in the building shall be designated, and the area of each of the Units are as set forth on the plans.

(B) Identification and Ownership of Units; Responsibilities of Unit Owners.

- (a) For purposes of identification, each unit has been assigned a number as indicated on Exhibit A attached hereto and made a part hereof. No unit bears the same identification number as any other unit.
- (b) The location, dimensions and limited common area to which each unit has

access are set forth in and on the aforementioned floor plans. The legal description of each unit shall consist of its number as indicated on Exhibit A together with the words Condominium Unit, in Rosewood Condominiums. Each unit shall consist of the space enclosed and bounded by the interior finished surfaces of the perimeter walls, floors of each unit as are shown on the set of floor plans filed of record simultaneously herewith or with any amendment hereto and shall include the exclusive right to use the limited common elements immediately adjacent to said unit.

(c) No unit may, by deed, plat, court decree or otherwise, be subdivided or partitioned or in any other manner separated into tracts or parcels smaller than the whole unit as shown on the floor plans, except in the manner provided for in the Horizontal Property Law and upon the prior written approval of the holder(s) of any mortgage(s) on such unit and approval by the Declarant.

(d) Each unit owner shall obtain fee simple ownership of the unit acquired, the appurtenant undivided interest in the general common elements of the Condominium Project, and, if applicable, any limited common elements appurtenant to the unit. Each unit owner shall be a member of the Council. The form of ownership of a unit may be individual, corporate, partnership, joint with right of survivorship, tenancy in common, tenancy by the entirety, or (subject to the other provisions of the condominium documents) any other estate in real property recognized by law and which may be conveyed and encumbered.

(e) The owner of each unit shall be responsible for any and all ad valorem or real estate taxes and special assessments that may be assessed against the unit and its percentage of ownership in the common elements by any governmental authority with jurisdiction over the unit. Nothing contained in this Declaration and Master Deed shall be construed as giving to any unit owner any right of contribution or adjustment against any other unit owner on account of any deviation by any governmental authority from the percentages of ownership set forth in any valuation or assessment against the unit owned by such unit owner.

(f) It shall be the responsibility of each unit owner with respect to the unit owned by such unit owner:

(i) To maintain, repair, and replace, at the expense of such unit owner, all portions of the unit except the portions to be maintained, repaired, and replaced by the Council, including all decorating and redecorating, painting, tiling, carpeting, papering, plastering, or varnishing which may be necessary to maintain the good appearance and condition of the unit.

(ii) To maintain, repair, and replace at the expense of such unit owner, the main door leading directly from a unit into a foyer, windows and, if any, window screens, and the appliances and fixtures located in the unit, or located in the limited common elements, if any, appurtenant to the unit, or located in the general common elements but benefiting the unit to the exclusion of any other unit, including, but not limited to, any plumbing fixtures, water heaters, furnaces, air conditioning equipment, interior lighting fixtures, appliances, sinks, doors, drop ceilings, telephones, or any electric, gas, or water pipes or lines or wires or conduits or ducts serving any such appliances, elevator and fixtures.

(iii) To report promptly to the Council any defect or need for repairs for which the Council is responsible.

(iv) To maintain, repair, or replace at the expense of such unit owner all portions of the unit which may cause injury or damage to the other units or to the common elements, hereinafter defined.

(v) To perform the responsibilities of such unit owner in such a manner and at such reasonable hours so as not to unreasonably disturb other unit owners in the building.

(g) A unit owner shall be liable for the entire expense of any maintenance, repair, or replacement of any part of the Condominium Project, whether part of a unit or part of the general common elements or limited common elements, if such maintenance, repair, or replacement is rendered necessary by any negligent act or omission of the unit owner, or any employee, family member, guest, agent, or lessee of such unit owner. If any unit owner fails to undertake any such maintenance, repair, or replacement within 10 days after the Board of Directors of the Council notifies such unit owner in writing that the Board of Directors has determined that such maintenance, repair, or replacement is the responsibility of such unit owner under this section of this Declaration and Master Deed, the Board of Directors of the Council may undertake such maintenance, repair, or replacement, and the cost thereof shall be a lien on the unit owned by such unit owner until paid by the unit owner, and such lien shall be subject to the same remedies as are provided in this Declaration and Master Deed for nonpayment by a unit owner of common charges and assessments.

(h) No alteration or improvement to a common element, including the exterior of any door leading from a unit to a common foyer or to the exterior of the building or to the unit which would alter or affect the common elements or any other unit may be made by any unit owner other than the Declarant without the prior written consent of the Board of Directors of the Council. No application shall be filed by any unit owner other than Declarant with any governmental authority for a permit covering an addition, alteration, or improvement to be made in a unit which alters or affects the common elements or other units, unless approved and executed by the Board of Directors of the Council. Such approval and execution shall not evidence any consent to any liability on the part of the Board of Directors of the Council, or any individual member of the Board of Directors, to any contractor, subcontractor, material man, architect, or engineer by reason of such addition, alteration, or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing through the manager or the managing agent, if any, or through the president or secretary of the Board of Directors of the Council if no manager or management agent is employed. The Board of Directors of the Council shall have the obligation to answer within 30 days. The Board of Directors of the Council may require that the unit owner making such improvement, alteration, or addition obtain such insurance coverage and in such amounts as the Board of Directors of the Council deems proper.

(C) Percentage Interest in Common Elements.

(a) Unless otherwise provided herein, the percentage of the undivided interest in the common elements pertaining to each unit and its owner for all purposes is as set forth in Exhibit A attached hereto and made a part hereof, which is calculated by dividing the floor area of a unit by the sum of the floor areas for all units.

(b) Each unit owner shall own an undivided interest in the percentage hereinabove set forth in the common elements as a tenant in common with all the other unit owners, and,

except as otherwise limited by this Declaration and Master Deed, shall have the right to use and occupy the common elements for all purposes incident to the use and occupancy of a unit as an residence and for such other incidental uses permitted by this Declaration and Master Deed, which right shall be appurtenant to each unit. Notwithstanding the unit owners' joint title to elements, no unit owner shall use any common element in any manner calculated to disturb or annoy any other owner in the peaceable possession and enjoyment of a unit.

(c) The term "unit" as used herein and throughout this Declaration and Master Deed shall mean a "unit" as defined herein and in KRS 381.810 (1), together with the percentage of undivided ownership interest in the common elements allocated to such unit as hereinabove set out. Any conveyance of an individual unit shall be deemed also to convey the undivided interest of the owner in the common elements, both general and limited, appertaining to said unit, without specifically or particularly referring to same. Such interest shall remain undivided and shall not be the object of an action for partition or division of the co-ownership, except as provided by the Horizontal Property Law.

(D) Common Expenses and Collection of Assessments.

(a) "Common expenses" of the Condominium Project means all charges, costs and expenses incurred by the Council, the Board of Directors of the Council, and/or the managing agent for and in connection with the operation and administration of the Condominium Project. Common expenses include, but are not necessarily limited to, those expenses for maintenance of the building (except to the extent of the units comprising a part of same), including the roofs, attics and foyers and all portions of a unit which constitute a part of the exterior of the building, as well as the repair of utility services, the provision of water service, insurance premiums, garbage removal, painting of the common elements, including the exterior of all surfaces, doors leading to the exterior of the building, care and replacement of exterior lighting fixtures, asphalt and concrete repair and replacement, costs of Condominium Project materials, supplies, equipment and tools, management, legal, accounting and engineering service fees, repairs and replacements of common element utility lines and equipment, and repayment of any loans obtained to pay for common expenses and to establish reserves to be maintained to cover future replacement costs and contingencies.

(b) The making and collection of assessments against unit owners for common expenses of the Condominium Project, as defined above, shall be pursuant to the bylaws of the Council and subject to the following provisions:

(i) Each unit owner shall be liable for its proportionate share of the common expenses and shall share in the common surplus (after due allowance for the retention of any reserve to cover future common expenses), such shares being the same as the unit owner's undivided share in the common elements. No unit shall be exempt from contribution toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the unit owned by such unit owner or by claiming that the quantity or quality of services does not warrant such payment or is not as contemplated by such unit owner as of the time of purchase; provided, however, the Board of Directors of the Council may, but is not required to, abate or reduce a unit owner's contribution for a reasonable period of time during which the unit owned by such unit owner is uninhabitable as the result of damage or destruction.

(ii) Assessments and installments on such assessments paid on or before 10 days after the day when due shall not bear interest, but all sums not paid on or before 10 days after the date when due, including any sums due as a result of acceleration of unpaid assessments as may be provided in the bylaws, shall bear interest from the date when due until paid at the rate of interest per annum provided in the bylaws. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(iii) Except as provided in paragraph (v) of this section of this Declaration and Master Deed, any unpaid common expenses assessed to a unit owner shall constitute a lien against the unit owned by such unit owner and against such unit owner's interest in the Condominium Project prior to all other liens except the lien of a first mortgage on the unit and tax or assessment liens on the unit by the taxing subdivision of any governmental authority, including, but not limited to, state, county, city, and school district taxing agencies. The lien created by this paragraph of this section of the Declaration and Master Deed shall be deemed to be incorporated by reference in and reserved by each deed or the instrument conveying any interest in a unit whether or not such deed or instrument by its express terms refers to said lien. In addition to any other remedies or liens provided by law, if any unit owner is in default in the payment of any common expenses assessed to such unit owner for 30 days, including any sums due as a result of acceleration of unpaid assessments as may be provided in any of the condominium documents, the Council may bring suit for and on behalf of itself and as representative of all unit owners to enforce collection of the assessment and all costs of collection thereof, including reasonable attorney fees, and to foreclose the aforesaid lien in accordance with the laws of the Commonwealth of Kentucky, in like manner as a mortgage on real property. The lien for unpaid assessments shall also secure legal interest and reasonable attorney fees incurred by the Council incident to the collection of such assessment or enforcement of such lien. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid common charges, the unpaid balance shall be charged to all unit owners as common expense.

(iv) A unit owner shall not be liable for any common expenses accruing after the sale of his unit and the recording of a deed to the purchaser. The purchaser of a unit subject to any lien arising under this Declaration and Master Deed prior to the date of purchase and the recording of the deed shall take title to the unit subject to the lien; provided, however, that at the request of any unit owner or a prospective purchaser of the unit, the board of directors shall provide a statement disclosing whether the unit owner is then in default under any of the obligations hereunder and whether and in what amount a lien exists against the unit owned by the unit owner as set forth above, which statement shall be conclusive as to the facts stated therein as against the Council and the other unit owners and may be relied upon by a prospective purchaser or mortgagee or assignee of any mortgage upon the unit of such unit owner.

(v) Where the mortgagee of a first mortgage of record or the purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage, or by voluntary conveyance in lieu of such foreclosure, said mortgagee or purchaser shall not be liable for the shares of common expenses or assessment by the Council pertaining to such unit or chargeable to a former unit owner of such unit which became due prior to acquisition of title by said mortgagee or purchaser as a result of the foreclosure or voluntary conveyance in lieu of said foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the other unit owners of units, including a successor or assign of the mortgagee. The waiver of liability granted herein for the payment of past due assessments shall not apply to a unit owner who takes back a purchase money mortgage or to any other mortgagee which is not an "institutional

mortgagee." The term "institutional mortgagee" herein used shall mean a first mortgage holder which is a bank, savings and loan association, life insurance company, pension fund, trust company, credit union, or other similar institutional lender.

(vi) In any foreclosure of a lien for assessments, the unit owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit, and the Council shall be entitled to the appointment of a receiver to collect the same. Anything to the contrary contained in this Declaration and Master Deed or in the bylaws of the Council notwithstanding, until the Declarant transfers control and management to the Council, the Declarant shall not be liable for the payment of any assessment, monthly or otherwise, for common expenses, or reserve or contingency accounts or other assessments, and the units owned by the Declarant, prior to the Declarant transferring control to the Council, shall not be subject to any lien therefore; and Declarant shall not have any liabilities of a unit owner. The Declarant shall, however, until the Declarant transfers control to the Council, be responsible for the maintenance costs of the Condominium Project incurred over and above assessments or amounts paid by unit owners for common expenses and other appropriate charges.

(vii) For an unoccupied Unit owned by the Declarant, Declarant is only liable for ninety (90%) of the assessment which it would otherwise have to pay for the Unit, such reduction being based on the provisions of KRS 381.870 allowing an adjustment based on such considerations as the fact that such Units are unoccupied and have a lower or non-existent demand on common utilities such as water and sewer and garbage collection. If the Unit becomes occupied, the Declarant must thereafter begin paying a full assessment for that Unit

(E) Administration of the Condominium Project.

Administration of the project, including the use, maintenance, repair, replacement and restoration of the common elements, including signage on doors leading to a common foyer or on the outside of the building, and any additions and alterations to them, shall be in accordance with the provisions of the Kentucky Horizontal Property Law, this Declaration and Master Deed, the bylaws of the Council and all rules and regulations adopted by the Board of Directors of the Council.

The maintenance and operation, including landscaping, gardening, snow removal, cleaning, painting and all other repair of the common elements shall be the responsibility and expense of the Council, unless and except as otherwise expressly provided elsewhere in this Declaration and Master Deed or in the bylaws. Notwithstanding the duty of the Council to manage, operate, maintain, and repair the Condominium Project, subject to and in accordance with the provisions of this Declaration and Master Deed and bylaws, the Council shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Condominium Project required to be maintained and repaired by the Council, or caused by the weather or other elements, or by other unit owners or persons, including, but not limited to, defects which are the result of characteristics common to the materials used, damage due to ordinary wear and tear and normal use, and damage due to wind, rain, snow, hail, and condensation on or expansion or contraction of materials due to weather.

(F) Use and Occupancy of Units and Common Areas.

The building and the units therein are intended for and restricted exclusively for residential purposes as approved by the Declarant or the Board of Directors of the Council, and the use and occupancy thereof shall be no greater than the present permitted

usage under the existing zoning classifications. In addition, the following restrictions shall apply:

(a) No "For Sale" or "For Rent" signs, advertising, or other displays shall be maintained or permitted on any part of the property except at such location and in such form as shall be determined by the Declarant and/or the Board of Directors of the Council.

(b) There shall be no obstruction of the common elements and nothing shall be stored in the common elements without the prior consent of the Declarant and/or the Board of Directors except as herein expressly provided. Each unit owner shall be obligated to maintain and keep his or her own unit in good, clean order and repair.

(c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance on the building or contents thereof without the prior written consent of the Declarant and/or the Board of Directors of the Council. No unit owner shall permit anything to be done or kept in his or her unit or in common elements or limited common elements which will result in the cancellation of insurance on the buildings or contents thereof or which would be in violation of any law. No waste shall be committed in the common elements or limited common elements.

(d) Unit owners shall not cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of the building, and, no awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls, the doors leading to a unit from a common foyer or to the outside of the building, windows, or roof of any part thereof, without the prior written consent of the Declarant and/or Board of Directors of the Council.

(e) No animals, including reptiles, livestock or poultry of any kind, shall be raised, bred or kept in any Unit or in the Common Elements for any commercial purposes except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, providing they are not kept, bred or maintained for any commercial purposes and further provided that no such pet weights in excess of 30 pounds. Notwithstanding the foregoing, and based solely on prior contractual obligations, the initial purchaser of Unit 4 shall have the right to have one existing pet that exceeds the weight limitation, that pet being an approximately 75 pound Sheppard that is approximately 10 years old; when that existing pet dies the owner of Unit 4 may not replace it with any pet other than a pet that meets the foregoing weight limits of this subsection (e). All household pets, including dogs and cats, shall at all times be confined to the Unit occupied by the owner of such pet; provided, however, that household pets may be walked within the Common Elements, but when not in a unit, any such acceptable pets must be on a leash and at all times under the control of a resident and the owner or handler of such pet must clean up and remove any animal feces from any area in which it is deposited. The Board of Directors may impose a fine of not more than \$50 on any unit owner not abiding by this requirement. No pet may be kept or maintained in a Unit if it is or becomes a nuisance. Actions that constitute a nuisance include, but are not limited to, repeated barking, an attack on a person, or more than one unprovoked attack on other animals. Abnormal or unreasonable crying, barking, scratching, or failure to have the pet licensed and inoculated, or fleas or other vermin infesting the pet (if not eradicated promptly after the discovery of such infestation), or repeated defecation that is not immediately cleaned up by

cleaned up by the pet's owner, shall be cause for the Board of Directors to require and force removal of the pet from the condominium regime. The decision of the Board of Directors as to whether any pets violate this Rule is final and binding on all owners. Pet owners are fully responsible for personal injuries and property damage caused by their pets and shall (and do hereby) indemnify and hold harmless the Board of Directors, the Council and all other Unit Owners from and against losses, costs, claims and expenses, including without limitation attorney fees and court costs, caused by such pets.

(f) No noxious or offensive activity shall be carried on in any unit or on the property, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants or constitute waste at common law.

(g) Nothing shall be done in any unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building, except as otherwise provided herein.

(h) No personal property or other articles shall be left out or exposed on any part of the common elements. The common elements and the limited common elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) Nothing shall be altered on, constructed in, or removed from the common elements or limited common elements, except upon the written consent of the Declarant and/or the Board of Directors of the Council.

(j) No trailer, boat, motorcycle, or any recreational vehicle shall be kept or parked on the premises at any time except with the express consent of the Declarant and/or Board of Directors of the Council.

(k) Other rules and regulations may be made by the Declarant and/or the Board of Directors of the Council as to the usage of the units.

(G) Violation of Declaration.

The violation of any restriction or condition or regulation adopted by the Board of Directors of the Council or the breach of any covenant or provision herein contained or contained in the Horizontal Property Law shall give the Board of Directors of the Council the right, in addition to any other rights provided for in this Declaration and Master Deed:

(a) to enter upon the unit or any portion of the property upon which, or as to which, such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof; and the Council, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass.

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. Should the Council prevail in said legal proceeding, the unit owner in breach shall be liable to the Council for the expenses it incurs to enjoin, abate or remedy said breach including, without limitation, reasonable attorney fees and costs. Furthermore, if any unit owner (either by his or her own conduct or by the conduct

of any other occupant of his unit) shall violate any of the covenants of this Declaration and Master Deed or the bylaws of the Council or regulations adopted by the Council and such violation shall continue for 30 days after notice in writing from the Board of Directors of the Council or shall reoccur more than once thereafter, then the Council shall have the power to issue to the defaulting unit owner a 10 day notice in writing to terminate the rights of the said defaulting unit owner to continue as a unit owner and to continue to occupy, use or control his or her unit; and thereupon an action in equity may be filed by the Council against the defaulting unit owner for a decree of mandatory injunction against the unit owner or occupants, or, in the alternative, a decree declaring the termination of the defaulting unit owner's right to occupy, use or control the unit on account of the breach of covenant and ordering that all the right, title and interest of the unit owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting unit owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney fees, and all other expenses of the proceeding and sale; and all such items shall be taxed against the defaulting unit owner in said decree. Any balance of the proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the unit owner.

Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the unit and immediate possession of the unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration and Master Deed and to the bylaws of the Council.

(H) Damage or Destruction.

The Council, acting by and through its Board of Directors, shall acquire full replacement value insurance protection for the Condominium Project, including but not exclusively, casualty, liability and employee workmen's compensation insurance, if needed, without prejudice to the right of co-owners to insure their units on their own account and for their own benefit. The premiums on such insurance shall be considered common expenses, enforceable under lien rights, provided that, should the amount of any insurance premium be affected by a particular use of a unit or units, the owners of such units shall be required to pay any increase in premium resulting from such use. In case of fire or other destruction or damage and the Condominium Project's insurance indemnity is not sufficient to cover the cost of reconstruction or repair, the cost (or added cost) shall be paid by the co-owners as a common expense, and the Council by a majority vote will be authorized to borrow funds therefore and to amortize the repayment of same over a period of time not exceeding the reasonable life of the reconstruction or repairs. In the event of fire or damage, reconstruction and repairs of the building shall be mandatory regardless of the nature and extent of the damage. Reconstruction and repairs shall be made to follow and conform as closely as possible to the original basic architectural design of Rosewood Condominiums, and any mortgage existing prior to damage to the property shall attach and be continuing as a lien on the reconstructed property. All insurance proceeds resulting from said damage or destruction payable to unit owners and first mortgagees (as their interests may appear) shall be deemed assigned to the Board of Directors of the Council (representing the Council), which shall immediately deposit all proceeds in a trust account with a federally insured bank or thrift institution selected by

the Board of Directors of the Council. Said trust account shall be entitled "Rosewood Condominiums, Trust Account for Repairs and Reconstruction". The Board of Directors of the Council, with qualified supervision, shall oversee all repairs and all reconstruction.

(I) Easements and Encroachments.

(a) Easements are hereby declared and granted by each unit owner in favor of each other unit owner and reserved by Declarant for all utility purposes as they exist on the date of the recording of this Declaration and Master Deed or as are contemplated by the plans, or as may be required to be incorporated in the final construction of the building and the common elements. Each unit owner shall have an easement in common with all other unit owners to use all pipes, wires, ducts, cables, conduits, public utility lines, and other common elements located in any of the other units and serving the unit(s) of such unit owner. Each unit shall be subject to an easement in favor of all other unit owners to use the pipes, ducts, cables, wires, conduits, public utility lines, and other common elements serving such other units and located in such unit. Easements are further declared and granted and reserved for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes as are now and from time to time may exist upon the common elements; and for vehicular traffic over, through, and across such driveways, parking areas (subject to the rights of applicable unit owners in parking spaces which are limited common elements), and other portions of the common elements as are now and from time to time may be paved and intended for such purposes. All easements and rights described in this Declaration and Master Deed are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon the Declarant, unit owners, and any other person having any interest in the Condominium Project, but shall be subject to and limited by the provisions of the condominium documents. The deed of conveyance of any unit, or any mortgage or trust deed or other evidence of obligation shall be subject to the easements and rights described in this Declaration and Master Deed, and reference to this Declaration and Master Deed shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of such units as fully and completely as if such easements and rights had been recited fully and set forth in their entirety in such documents.

(b) The Council may grant further easements for utility purposes for the benefit of the Condominium Project, including, without limitation, the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, cable television wires and equipment, and electrical conduits and wires over, under, along, and on any portion of the Condominium Project, and each unit owner hereby grants the Declarant, its successors and assigns, or, after control of the Condominium Project is transferred to the Council, the Council (acting through its president) an irrevocable power of attorney coupled with an interest to execute, acknowledge, and record, for and on behalf of each unit owner, such instruments or documents as may be necessary to effectuate such easements; provided, however, that any easement through a unit shall be only according to the plans and specifications for the building in which such unit is located, or as such building is constructed, unless approved in writing by the unit owner. The power of attorney granted by this section of this Declaration and Master Deed shall survive any disability or death of the unit owner and shall be binding on each successive unit owner.

(c) The Council shall have a right of access to each unit upon reasonable prior notice and at reasonable hours:

(i) to inspect the same for compliance with the provisions of the condominium documents.

(ii) for the maintenance, repair, replacement, or improvement of any portion of the common elements (or any portion of the unit which is the responsibility of the board of directors) including any pipes, wires, ducts, cables, conduits, and public utility lines located in or adjacent to any unit.

(iii) to prevent damage to the common elements or any other unit.

(iv) to abate any violation of law, order, rules, or regulations of any governmental authority having jurisdiction thereof; and (v) to abate any violation of any provision of any of the condominium documents. The Council shall have such other right of access to each unit as may be provided under any other provisions of the condominium documents. The Council shall be obligated to repair any damage to a unit incurred by reason of exercise of this right of access.

(d) Declarant reserves unto itself, its successors and assigns the right, with respect to its marketing of units, to use the common elements for the ingress and egress of itself and for prospective purchasers and lessees of units, including the right of such prospective purchasers and lessees to park in parking spaces which are not limited common elements. Any damage to the common elements resulting from this easement shall be repaired by Declarant promptly after the same occurs.

(e) Declarant reserves unto itself, its successors and assigns the right, for the purpose of completing the development of the Condominium Project, including the building and units, to have access to the common elements and (but only to the extent reasonably necessary and only upon reasonable prior notice to the applicable unit owner and at reasonable hours) to any units presently existing, for the ingress and egress of itself and its subcontractors, material men, and suppliers for the purpose of constructing, installing, maintaining, and repairing equipment and fixtures pursuant to such development, and for other activities reasonably necessary in connection with such development, including the right to use the roadways and to park in those parking spaces which are not limited common elements at the Condominium Project. Declarant agrees to repair any damage which may be caused to the building or to any unit resulting from the actions of Declarant permitted by this section of this Declaration and Master Deed promptly after Declarant is notified that such damage has occurred.

(f) An easement shall exist for any portion of a unit or the common elements which encroaches upon any other unit or the common elements as a result of;

(i) the original or future construction or settling or shifting of any part of the building, or

(ii) any repair or restoration undertaken by the Board of Directors of the Council, or

(iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings. Such easements as provided in this section of this Declaration and Master Deed shall exist so long as the building in which the encroachment exists (or any replacement thereof permitted under any condominium document) shall stand.

(g) The Board of Directors of the Council shall have the right to grant such additional easements burdening the common elements as are reasonably determined by it to be compatible with the intended uses and future development of the Condominium Project, including, without limitation, additional easements for ingress and egress to and from and over the land.

(J) Bylaws; Initial Authority Vested Exclusively in Declarant or its Assigns.

The bylaws for Rosewood Condominiums shall be adopted and exercised initially, as set forth therein, by the Declarant, its successors or assigns in order for the Declarant, its successors or assigns to be able to develop same into the Condominium Project described and to assure the placing of the Council on a sound basis for the protection of all owners in this Condominium Project. Each unit owner's ownership and use of the unit(s) owned by such unit owner may also be subject to certain rules and regulations promulgated initially by the Declarant, its successors or assigns and ultimately by the Board of Directors of the Council from time to time, which rules and regulations shall be applicable to all unit owners including Declarant, its successors and assigns. A copy of the rules and regulations, including any amendments thereto, shall be furnished initially by the Declarant or its successors or assigns and ultimately by the Board of Directors of the Council, to all unit owners and residents of the Condominium Project upon request. Subsequent to adoption of the bylaws, the administration of this condominium regime shall be governed by the bylaws of the Council, and they may be amended from time to time by amendment procedure set forth therein. The preceding sentence, the above paragraph of this section and anything to the contrary notwithstanding, the administration and control of the condominium regime and the property, including but not limited to the adoption and amendment of the bylaws, adoption of condominium regime rules, assessment of common expenses and all other rights relating to the governing, managing and administration of this condominium regime and the property and all rights and powers which would otherwise be vested in the Council or Board of Directors of the Council shall be all vested in the Declarant or its successors or assigns until 100% of the units have been sold, transferred and recorded, or 7 years after the date of the filing of this Declaration and Master Deed, whichever first occurs. Until that time, the Declarant or its successors or assigns shall possess the irrevocable proxy of the unit owners, which proxy each unit owner automatically gives the Declarant, its successors or assigns, upon acceptance of a deed to a unit, and all unit owners agree to such administration by the Declarant or its successors or assigns in accepting unit conveyances. Notwithstanding the foregoing or anything in the bylaws to the contrary, Declarant or its successors or assigns, in their sole discretion, may elect to transfer all or less than all rights and powers which would otherwise be vested in the Council or Board of Directors of the Council, but for this section of this Declaration and Master Deed, to said Council or Board of Directors at any time.

(K) Grantees.

Each grantee of Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration and Master Deed and the provisions of the Horizontal Property Law, as amended from time to time, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having, at any time, any interest or estate in said land and shall inure to the benefit of such owner in like manner as though the provisions of this Declaration and Master Deed were recited and stipulated at length in each and every deed of conveyance.

(L) Assignment.

Declarant shall have the right to assign any or all of its interest and any right, power,

duty, privilege and benefit reserved unto it by this Declaration and Master Deed and in the Bylaws with respect to the Condominium Project, including, without limitation, the special power of attorney granted to Declarant pursuant to the authority of this Declaration and Master Deed, to a third party or parties and any such third party or parties shall have and hold such interest with the same power and authority as same are/were held by Declarant.

(M) Incorporation.

Declarant has or will cause the formation of a Kentucky non-stock, not-for-profit corporation known as "Rosewood Condominiums Council, Inc.", to act as the Council of Co-owners as defined in KRS § 381.810 and governing body for all unit owners in the administration and operation of the property. Each unit owner or owners shall be a member of such corporation, which membership shall terminate upon the sale or other disposition of such member of his or her unit, at which time the new unit owner or owners shall automatically become a member of the corporation.

(N) Failure to Enforce.

No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

(O) Notices.

Notices required or permitted to be given to the Council, the Board of Directors of the Council or any unit owner may be delivered, respectively, to any officer of the Council, member of the Board of Directors of the Council or such unit owner at his or her unit or as set forth in the bylaws.

(P) Amendments.

(a) In addition to the authority of Declarant under section T of this Declaration and Master Deed, if, during the construction period or before Declarant, its successors or assigns relinquishes control of this Condominium Project as set forth in section J of this Declaration and Master Deed, it is found that an error exists on the part of the draftsman of this instrument or on the part of the surveyor or engineer, an amendment setting forth the error and correction may be filed by the Declarant, its successors or assigns without the consent of any other party thereto, and shall become a part of this Declaration and Master Deed. No further change shall be made except by amendment procedures immediately following.

(b) To the extent authority for amendment to this Declaration and Master Deed does not exist under other applicable provisions of this Declaration and Master Deed and after Declarant, its successors or assigns relinquishes control of this Condominium Project as set forth in Section J, the provisions of this Declaration and Master Deed may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification signed and acknowledged by the owners of units who, in the aggregate, own 66.66% or more of the general common elements of the condominium and by the first mortgagees of same, if any, having bona fide liens of record against said units. The bylaws, unless otherwise provided, shall be amended, changed or modified only in accordance with the procedures governing amendments as set forth in the bylaws.

(c) Any amendment, change or modification to this Declaration and Master Deed shall conform to the provisions of the Horizontal Property Law and shall be effective upon recordation thereof. Bylaws and any amendments thereto need not be recorded.

(Q) Severability.

The invalidity of any restriction hereby imposed, or any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and Master Deed, and all of the terms hereof are hereby declared to be severable.

(R) Captions.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration and Master Deed nor the intent of any provision hereof.

(S) Construction.

The provisions of this Declaration and Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of an Residential Condominium Project.

(T) Expandable Regime. This is an expandable condominium regime. In other words, additional buildings may become a part of this Regime at the option of Declarant, its successors and assigns, as follows. Declarant currently contemplates that this condominium regime will consist of up to 12 units in 3 Buildings, as follows: 8 units in the existing Building as such units are established by this Master Deed and the plans recorded with this Master Deed; 1 unit in the area above the garage Limited Common Elements in the existing garage Building (which Declarant may or may not convert into a Unit; and one new Building with up to 3 units in it), but this expression of intent does not obligate Declarant, its successors or assigns, to construct all such units nor does this expression of intent prohibit Declarant from constructing more units, and Declarant expressly reserves the right to construct the one additional Building referenced in this Master Deed. If expanded, the percentage of common interest appurtenant to each unit in this condominium regime shall be redistributed on an as-built basis upon completion of additional units. The redistribution shall be done by an amendment or amendments to this Master Deed. Declarant hereby reserves for itself, its successors and assigns, for a period of ten (10) years from the date of this Master Deed, the right to execute on behalf of all contract purchasers, unit Owners, mortgagees or other lien holders, or other parties claiming a legal or equitable interest in this condominium regime, any amendment, agreement or supplement that may be required to expand this condominium regime, and by taking any interest in this condominium regime or by taking any interest in a unit, each such person or entity shall be deemed to have granted to Declarant a power of attorney for such purposes, coupled with an interest, running with this condominium regime or unit, as applicable, and binding upon the successors or assigns of any of the foregoing parties, with that power of attorney not being affected by the death or disability of any principal. Declarant, for itself, and for its successors and assigns, reserves an interest in any real estate, including this condominium regime and each unit, for these purposes. This interest reserved by Declarant and the power of attorney hereby granted by each interest holder includes the right to amend the percentage of common interest appurtenant to each unit and otherwise to amend this Master Deed to supplement the floor plans to accomplish the expansion of this condominium regime, as contemplated by this section.

(U) Consent of Mortgage Holders

Joining in this instrument is (i) PBI Bank, Inc. ("Bank"), holder of one mortgage on the subject property, of record in Mortgage Book 9878, Page 604, in the office of the Clerk of Jefferson County, Kentucky, and (ii) Tunny, LLC, holder of a mortgage on the subject property, dated September 15, 2004, of record in Mortgage Book 8932, Page 146, in the office of the Clerk of Jefferson County, Kentucky, to indicate their consent to the terms of this Declaration, the Declarant agreeing that the lien rights of Central Bank and Tunny, LLC are hereby transferred to the individual units of the Regime herby established or to be established, together with the development rights vested in Declarant pursuant to this Declaration.

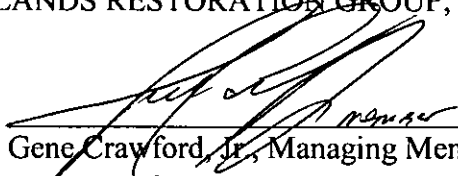
(V) Mortgagee of Declarant.

Any mortgagee of Declarant which acquires title by foreclosure or by deed in lieu thereof shall enjoy all the rights of the Declarant hereunder and under the bylaws of the Council.

[Signatures and Acknowledgements on Separate Counterpart Pages Following]

HIGHLANDS RESTORATION GROUP, LLC

By:


Gene Crawford, Jr., Managing Member

State of Kentucky)
) SS
County of Jefferson)

The foregoing Master Deed was executed and acknowledged before me on July 20, 2006, by GENE CRAWFORD, Managing Member of Highlands Restoration Group, LLC, a Kentucky limited liability company, on behalf of the company.

My commission expires: 11/17/2007


Notary Public

Rosewood Condominiums

Unit No.	Unit Location and Type	Unit Floor Area	Percentage of Common Interest
1	See Plans	1,978	13.2%
2	See Plans	1,697	11.4%
3	See Plans	1,446	9.7%
4	See Plans	2,018	13.5%
5	See Plans	1,681	11.2%
6	See Plans	1,216	8.1%
7	See Plans	1,991	13.3%
8	See Plans	2,920	19.5%
		<u>14,947</u>	<u>100.0%</u>

Recorded in Condo Book
 No. 115 Page 13-17
 Part No. 2271

Document No.: DM2006115995
 Lodged By: salyers
 Recorded On: 07/21/2006 11:47:40
 Total Fees: 46.00
 Transfer Tax: .00
 County Clerk: BOBBIE HOLSCAW-JEFF CO KY
 Deputy Clerk: DONREI

END OF DOCUMENT

3
DHC

**AMENDMENT TO
DECLARATION AND MASTER DEED**

ROSEWOOD CONDOMINIUMS AT THE HIGHLANDS

This Amendment is made and entered on July 21, 2006, by HIGHLANDS RESTORATION GROUP, LLC, a Kentucky limited liability company, 11915 Creel Lodge Drive, Louisville, Kentucky 40223 ("**Developer**").

1. Recitals. Developer placed of record a Declaration and Master Deed Establishing Rosewood Condominiums, which is of record in Deed Book 8871, Page 375, in the office of the Clerk of Jefferson County, Kentucky (the "**Master Deed**"). The correct name of the condominium regime is "Rosewood Condominiums at the Highlands" not simply "Rosewood Condominiums". Developer is the owner of all units in the regime and as developer and owner of all units has the right to amend the Master Deed.

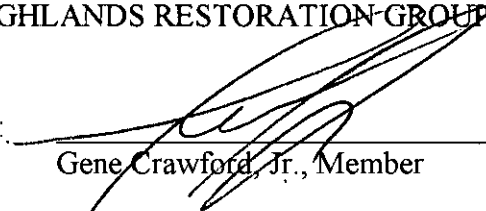
2. Amendment. All references in the Master Deed to the regime being known as "Rosewood Condominiums" are hereby changed to Rosewood Condominiums at the Highlands', and the regime shall be known as "Rosewood Condominiums at the Highlands". All references on the plans recorded in Condominium (Apartment Ownership) Book 116, Pages 73 to 77 inclusive, in the office of the Clerk of Jefferson County, Kentucky, to "Rosewood Condominiums" are hereby changed to Rosewood Condominiums at the Highlands". Exhibit A to the Master Deed is replaced and restated by Exhibit A to this Amendment.

3. Ratification. In all other respects, Developer ratifies and affirms all of the terms and provisions of the Master Deed.

WITNESS the signature of Developer on the above date.

HIGHLANDS RESTORATION GROUP, LLC

By:


Gene Crawford, Jr., Member

COMMONWEALTH OF KENTUCKY)

) SS

COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on July 21, 2006, by Gene Crawford, Jr., member of Highlands Restoration Group, LLC, a Kentucky limited liability company, on behalf of the company.


Notary Public

Commission expires: 11/17/2007

08 08872PG 0514

This Instrument Prepared By:
David B. Buechler
Salyers & Buechler, P.S.C.
Suite 204, The 1000 Building
6200 Dutchmans Lane
Louisville, Kentucky 40205

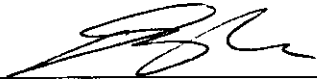


EXHIBIT A

DB 08872PG0515

Rosewood Condominiums
at the Highlands

Unit No.	Unit Location and Type	Unit Floor Area	Percentage of Common Interest
1	See Plans	1,978	13.2%
2	See Plans	1,697	11.4%
3	See Plans	1,446	9.7%
4	See Plans	2,018	13.5%
5	See Plans	1,681	11.2%
6	See Plans	1,216	8.1%
7	See Plans	1,991	13.3%
8	See Plans	2,920	19.5%
		<u>14,947</u>	<u>100.0%</u>

Document No.: DN2006116850
 Lodged By: SALYERS
 Recorded On: 07/24/2006 12:30:38
 Total Fees: 12.00
 Transfer Tax: .00
 County Clerk: BOBBIE HOLSCLOW-JEFF CO KY
 Deputy Clerk: EVENAY

END OF DOCUMENT

**SECOND AMENDMENT TO
DECLARATION AND MASTER DEED**

ROSEWOOD CONDOMINIUMS AT THE HIGHLANDS

This Second Amendment is made and entered on June 21, 2007, by HIGHLANDS RESTORATION GROUP, LLC, a Kentucky limited liability company, 11915 Creel Lodge Drive, Louisville, Kentucky 40223 ("Developer").

RECITALS

A. Developer placed of record a Declaration and Master Deed Establishing Rosewood Condominiums, which is of record in Deed Book 8871, Page 375, as amended by Amendment of record in Deed Book 8872, Page 513, in the office of the Clerk of Jefferson County, Kentucky (the "Declaration"), which submitted to a horizontal [condominium] property regime (the "Regime") certain real property described in the Declaration.

B. Pursuant to section (T) of the Declaration, Developer reserved for itself and on behalf of any Unit owners and mortgagees in the Regime the right to expand the Regime by creating additional units and by adding additional land to the Regime.

NOW, THEREFORE, pursuant to its powers reserved in the Declaration, Developer hereby amends the Declaration to create certain additional Units as part of the Regime, as follows:

1. Simultaneously with the recording of this Second Amendment, there has been filed in the office of the Clerk of Jefferson County, Kentucky, at Condominium (Apartment Ownership) Book 120, Pages 56 and 57, a set of floor plans showing the layout, location, Unit numbers and dimensions of the Units and Limited Common Elements created by and submitted to the Regime by this Second Amendment; stating the name of the Regime; and bearing the verified statement of a registered professional engineer certifying that the plans fully and accurately depict the layout, location, unit number and dimensions of the existing Units as built. Those floor plans, recorded as set forth above, supplement and amend the initial floor plans of the Regime recorded in Condominium (Apartment Ownership) Book 115, Pages 73 to 77 inclusive, in the office of the Clerk of Jefferson County, Kentucky.

2. The new unit created by and submitted to the Regime by this Second Amendment have appurtenant to each Unit that Unit's percentage of common interest in the Common Elements of the Regime, and Exhibit A to the Declaration is hereby supplemented, amended and restated by Exhibit A to this Second Amendment. The stairway leading from the ground to Unit 9 created by this Second Amendment is declared a Limited Common Element appurtenant to Unit 9 and is to be maintained by the owner of Unit 9.

3. In all other respects, Developer ratifies and affirms all of the terms and provisions of the Declaration.

WITNESS the signature of Developer on the above date.

EXHIBIT A

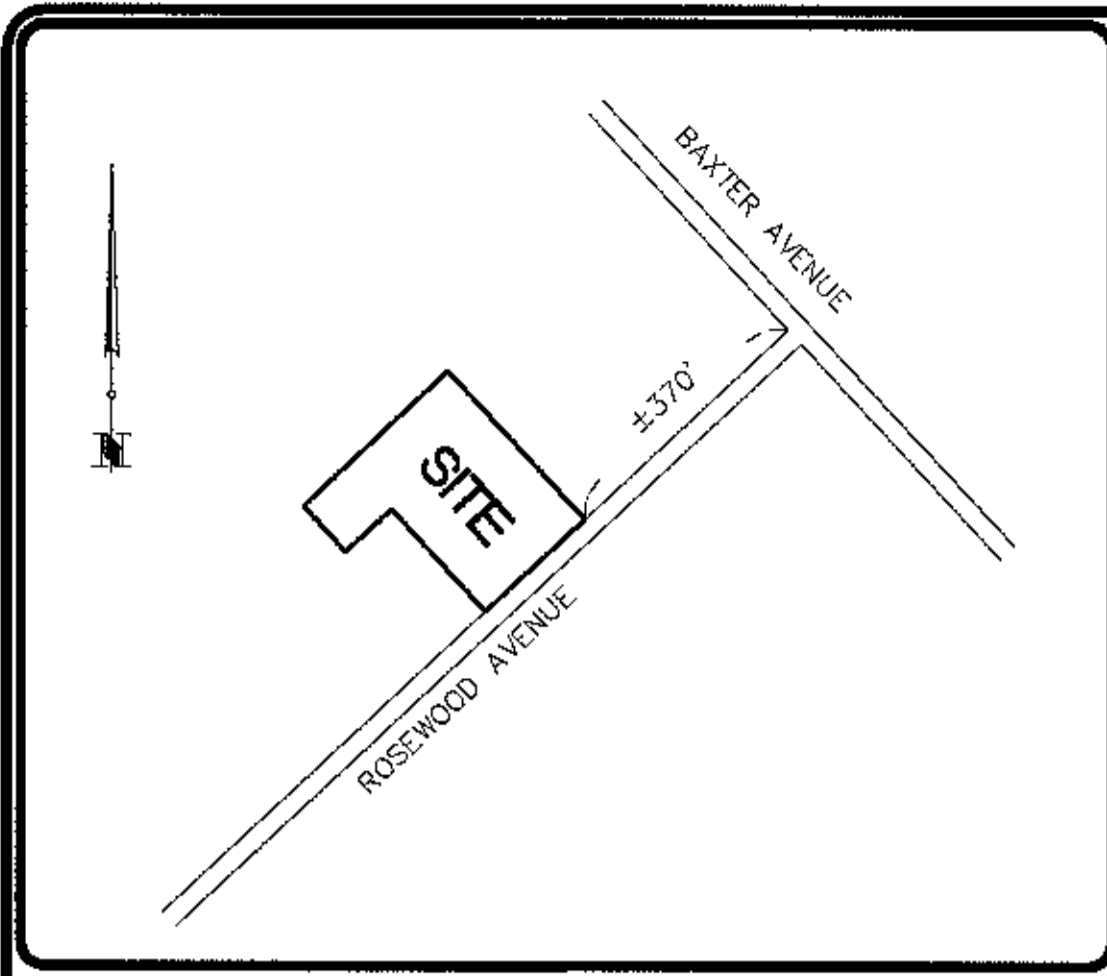
Rosewood Condominiums
at the Highlands

Unit No.	Unit Location and Type	Unit Floor Area	Percentage of Common Interest
1	See Plans	1,978	12.7%
2	See Plans	1,697	10.9%
3	See Plans	1,446	9.3%
4	See Plans	2,018	13.0%
5	See Plans	1,681	10.8%
6	See Plans	1,216	7.8%
7	See Plans	1,991	12.8%
8	See Plans	2,920	18.7%
9	See Plans	636	4.1%
		<u>15,583</u>	<u>100.0%</u>

Recorded in Condo Book
 No. 120 Page 56-57
 Part No. 2453

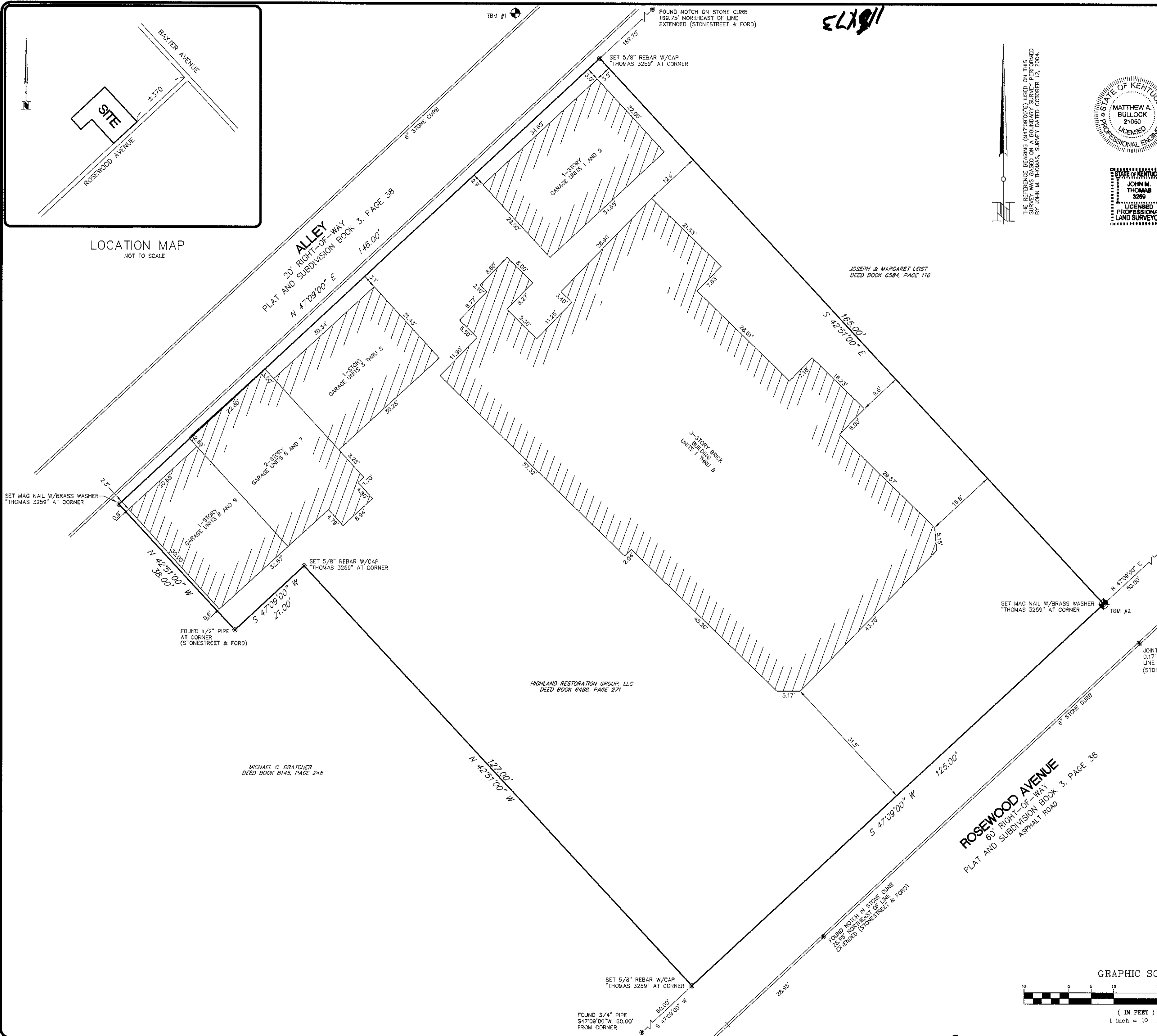
Document No.: DN2007100412
 Lodged By: SALYERS
 Recorded On: 06/22/2007 10:39:38
 Total Fees: 13.00
 Transfer Tax: .00
 County Clerk: BOBBIE HOLSCLOW-JEFF CO KY
 Deputy Clerk: CARNAR

END OF DOCUMENT



LOCATION MAP
NOT TO SCALE

115x73



LEGEND

- PROPERTY CORNER AS NOTED
- FFE FINISH FLOOR ELEVATION

ENGINEER'S CERTIFICATE

I HEREBY CERTIFY THAT THIS CONDOMINIUM PLAT WAS PREPARED UNDER MY SUPERVISION AND THAT IT FULLY AND ACCURATELY DEPICTS THE LAYOUT, LOCATION, UNIT NUMBERS, AND DIMENSIONS OF THE UNITS AS BUILT.

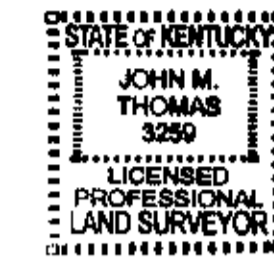
Matthew A. Bullock 7-17-06
MATTHEW ALAN BULLOCK P.E. # 21050 DATE



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS CONDOMINIUM PLAT WAS PREPARED UNDER MY SUPERVISION AND THAT IT FULLY AND ACCURATELY DEPICTS THE LAYOUT, LOCATION, UNIT NUMBERS, AND DIMENSIONS OF THE UNITS AS BUILT.

John M. Thomas 7-17-06
JOHN M. THOMAS P.L.S. # 3259 DATE

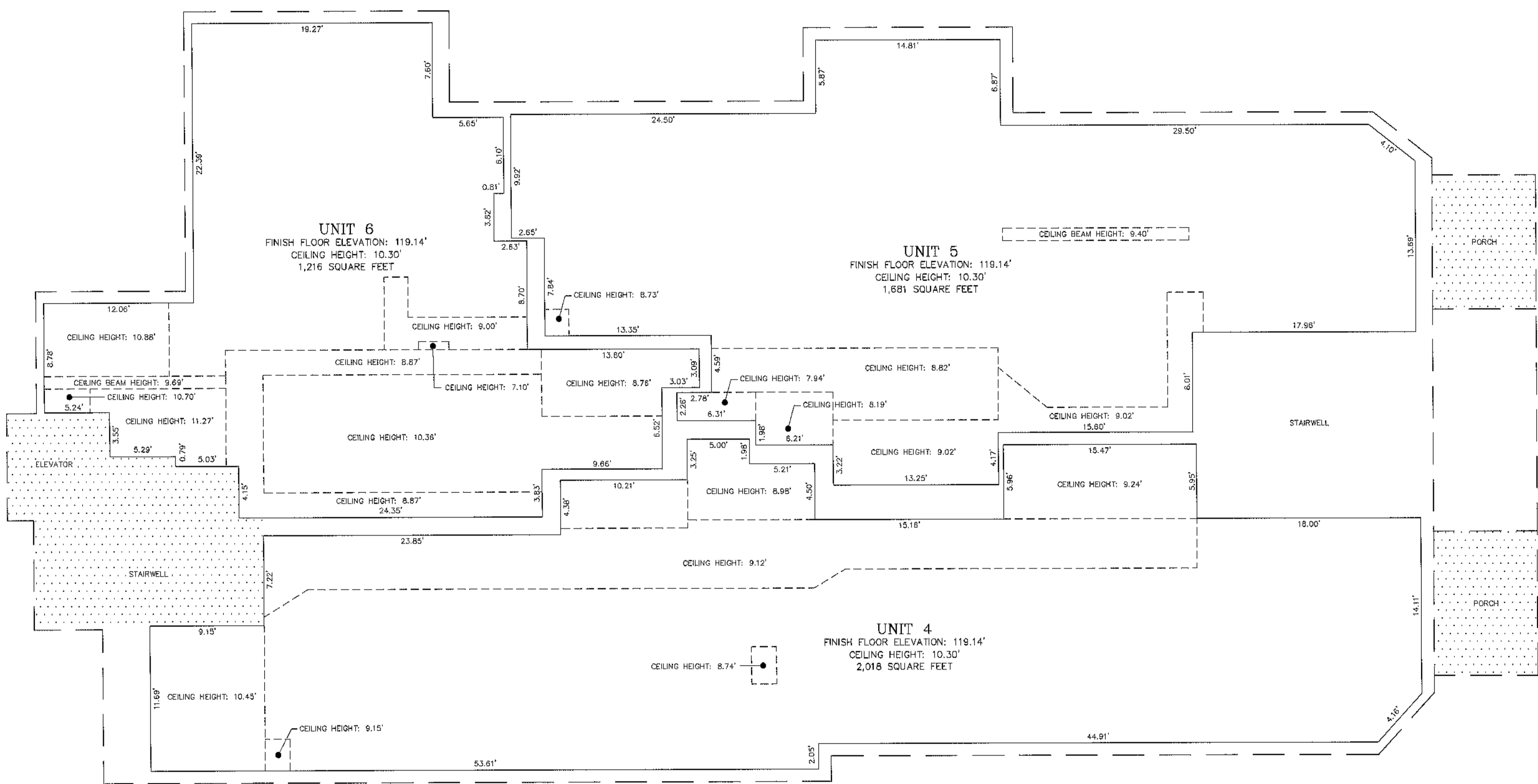
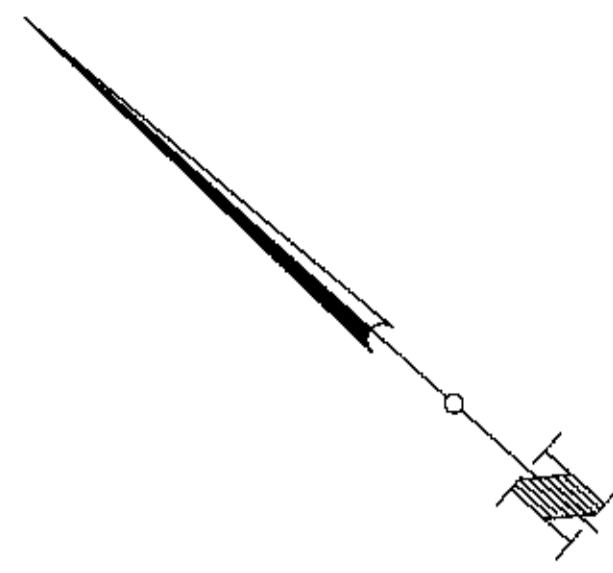


THE CERTIFICATION WAS SWORN TO BEFORE ME BY JOHN M. THOMAS AND MATTHEW ALAN BULLOCK OF BTM ENGINEERING, INC. ON THE 17 DAY OF July 2006.

MY COMMISSION EXPIRES: September 20, 2009

Laurel D. Sany
NOTARY PUBLIC

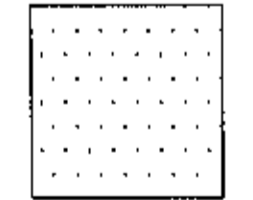
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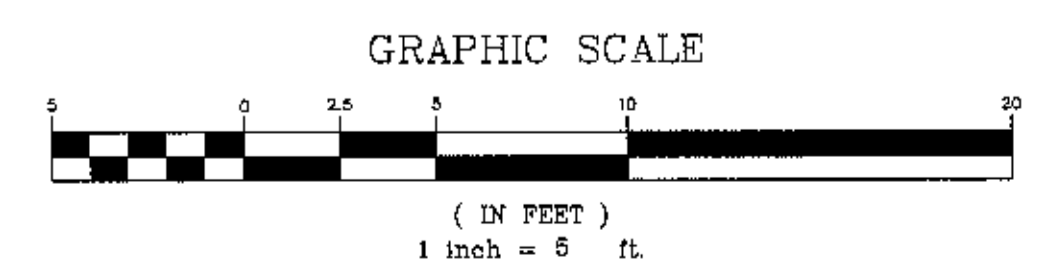
115X75

115X75

LEGEND



LIMITED COMMON SPACE
AREA EXCLUDED FROM
UNIT SQUARE FOOTAGE



115X75

CLIENT:
HIGHLAND RESTORATION GROUP, LLC
ATTN: MR. GENE CRAWFORD
11915 CREEL LODGE DRIVE
LOUISVILLE, KENTUCKY 40223

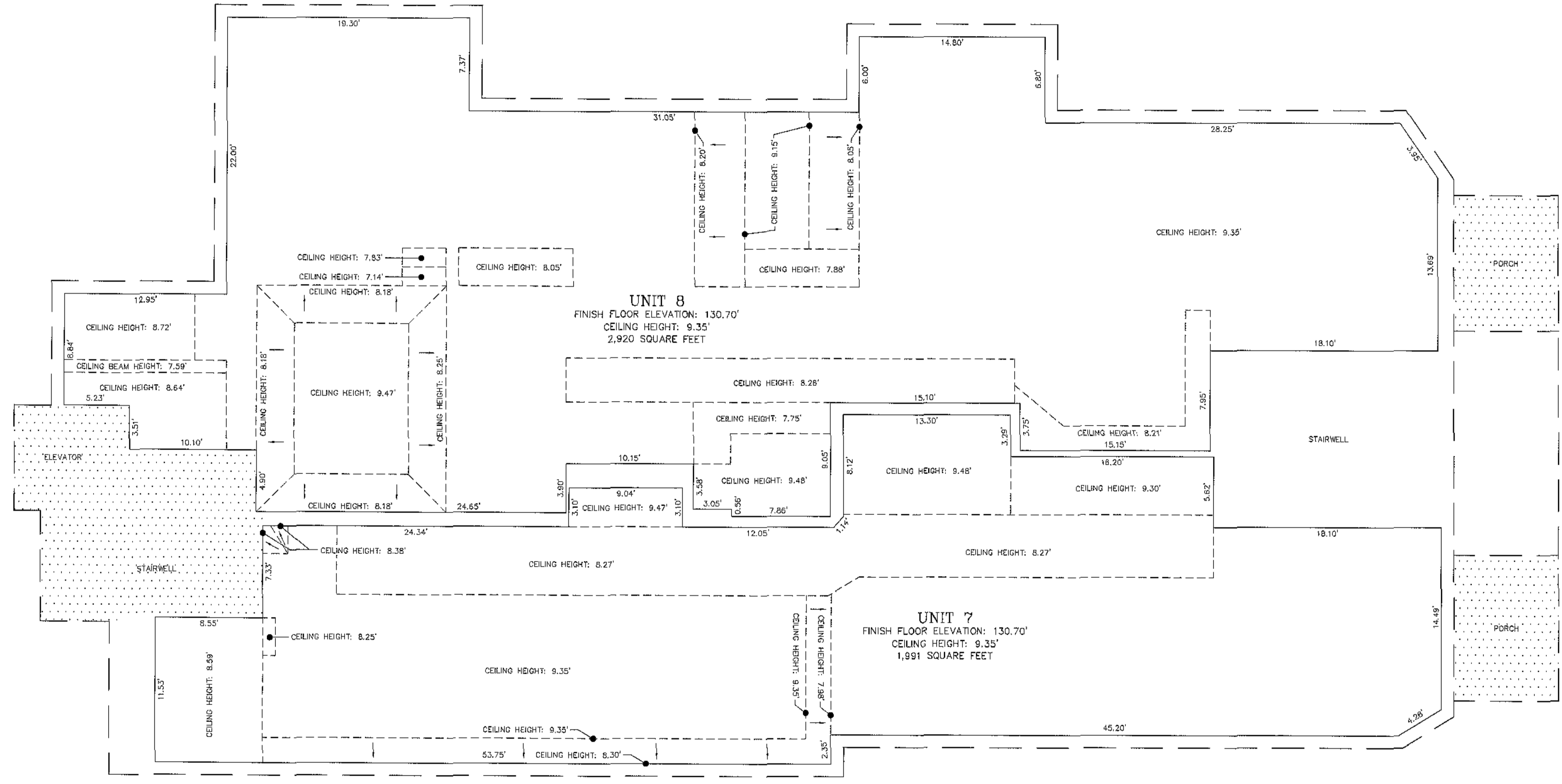
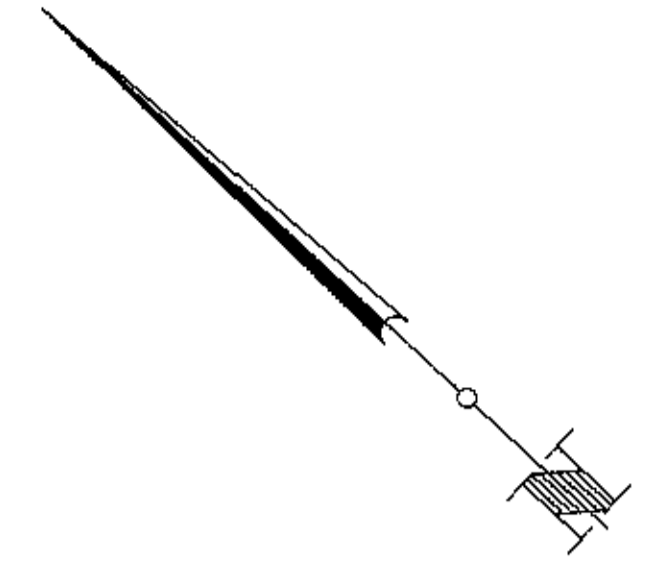
BTM
BTM ENGINEERING, INC.
Consulting Engineers Landscape Architects Planners
3001 Taylor Springs Drive
Louisville, Kentucky 40220
(502)-459-8402 Phone
(502)-459-8427 Fax

**SECOND FLOOR
ROSEWOOD CONDOMINIUMS
UNITS: 4, 5 AND 6**
1505 ROSEWOOD AVENUE
LOUISVILLE, JEFFERSON COUNTY, KENTUCKY 40204
TAX BLOCK 27E, LOT 79
DEED BOOK 8488, PAGE 271

DRAWN BY:	TL	CHECKED BY:	JT/MB
DATE:	7-17-06		
DRAWING:	040320-FLOOR		
SCALE:	1"=5'		
SHEET	3	OF	5

UB: 8871 PG 1375
Document No.: DME88611994
Lodged By: 8/1/06
Recorded On: 8/7/06 11:46:38
Total Fees: 75.00
Transfer Tax: 0.00
County Clerk: ROBBIE HOLSCAM-JEFF CO KY
Deputy Clerk: PUNNET
Recorded in Condo Book
No. 115 Page 75
Part No. 2271

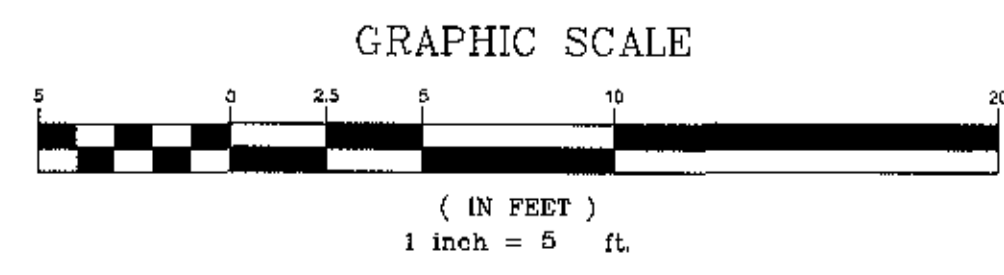
9LX76/11



LEGEND

-  LIMITED COMMON SPACE
AREA EXCLUDED FROM
UNIT SQUARE FOOTAGE
-  CEILING SLOPES DOWN

DRAWN BY:	CHLOE BITT
DATE:	7-17-06
DRAWING:	040320-FLOOR
SCALE:	1"=5'
SHEET	4 OF 5



CLIENT:
 HIGHLAND RESTORATION GROUP, LLC
 ATTN: MR. GENE CRAWFORD
 11915 GREL LODGE DRIVE
 LOUISVILLE, KENTUCKY 40223

BTM ENGINEERING, INC.
 Consulting Engineers Landscape Architects Planners
 3001 Taylor Springs Drive
 Louisville, Kentucky 40220
 (502)-459-8402 Phone
 (502)-459-8427 Fax

**THIRD FLOOR
 ROSEWOOD CONDOMINIUMS
 UNITS: 7 AND 8**
 1505 ROSEWOOD AVENUE
 LOUISVILLE, JEFFERSON COUNTY, KENTUCKY 40204
 TAX BLOCK 27E, LOT 79
 DEED BOOK 8488, PAGE 271

06-8871PG-375

Document No.: DM288615994
 Logged By: sally
 Recorded On: 07/21/2006 11:46:38
 Total Fees: \$5.00
 Taxation Unit: 08
 County Clerk: BOBBIE HOLSOBY-JEFF CO KY
 Deputy Clerk: BONNIE

Recorded in Condo Book
 No. 115 Page 76
 Plat No. 2271

115x76

115x76

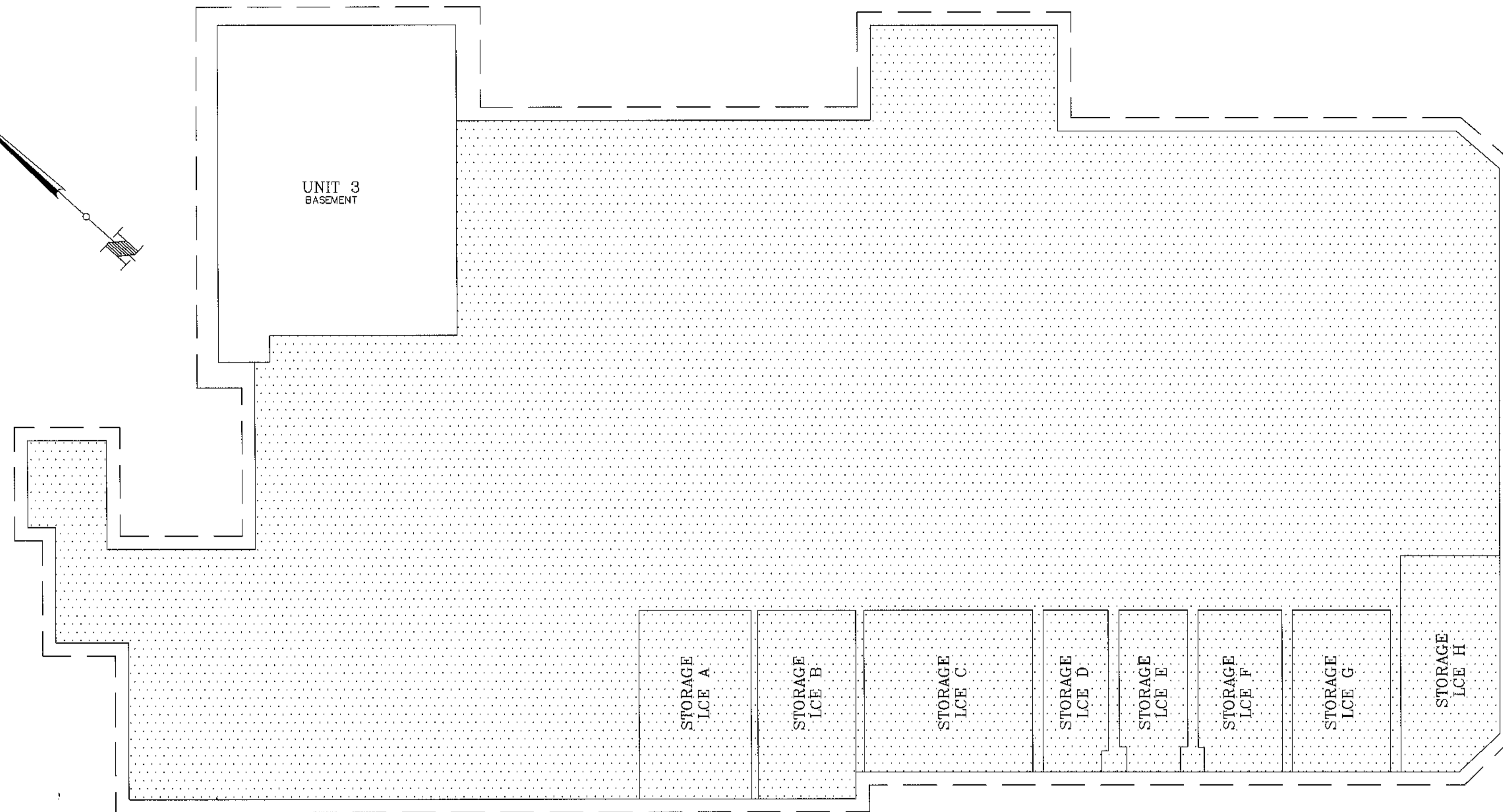
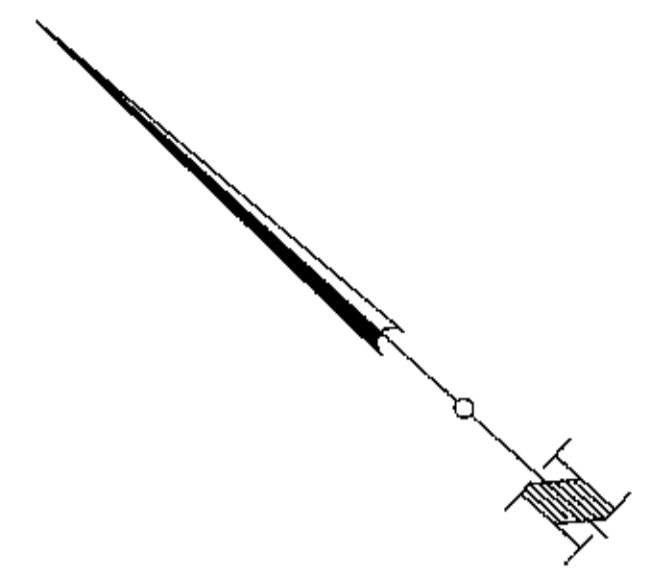
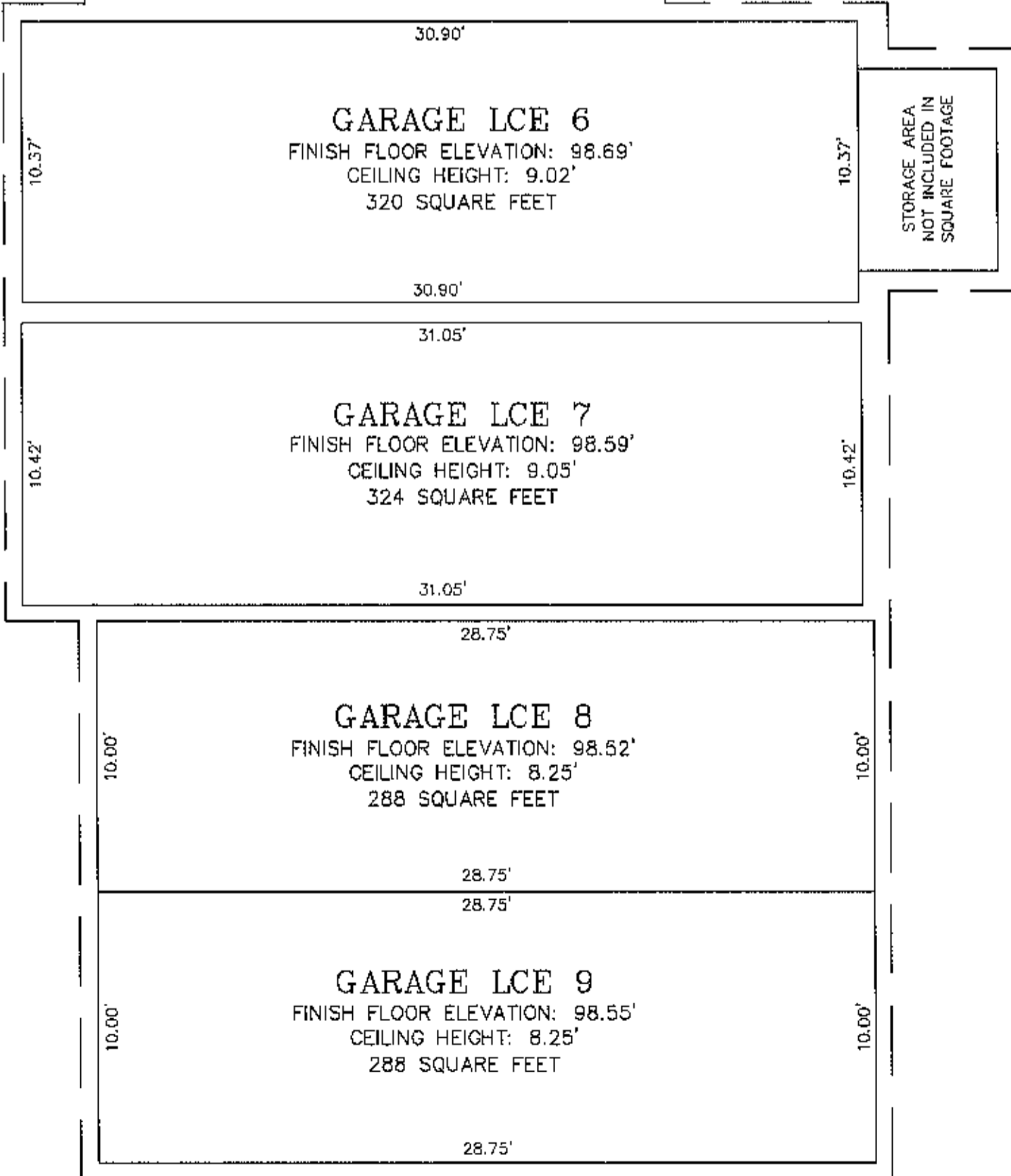
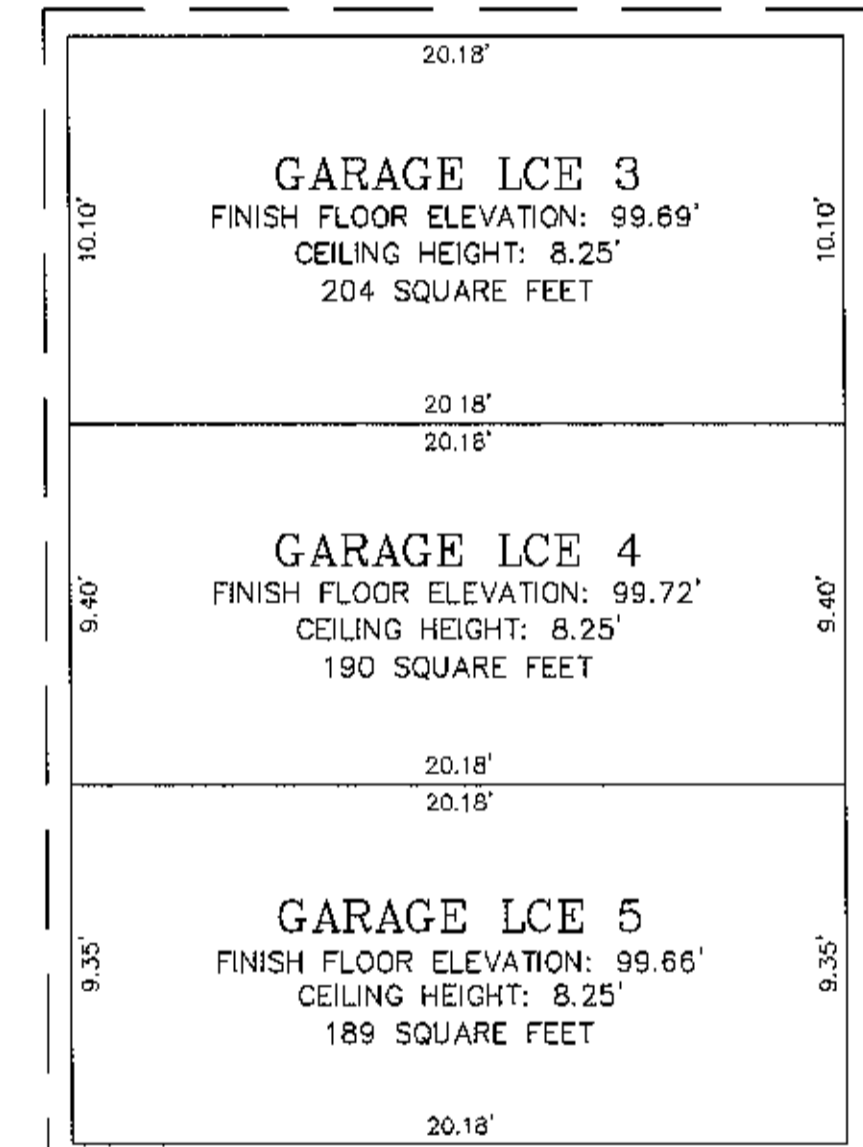
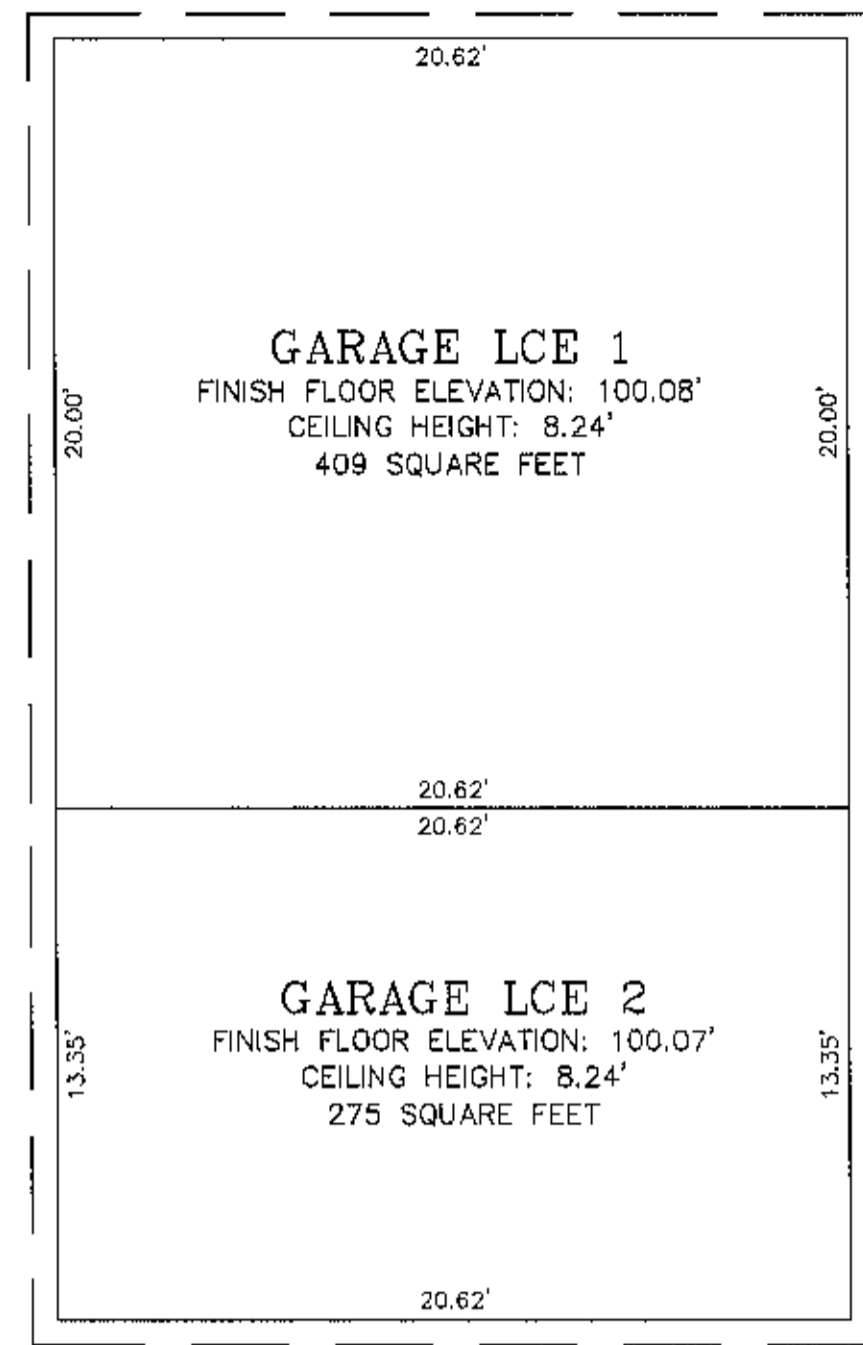
115x76

115x77

115x77

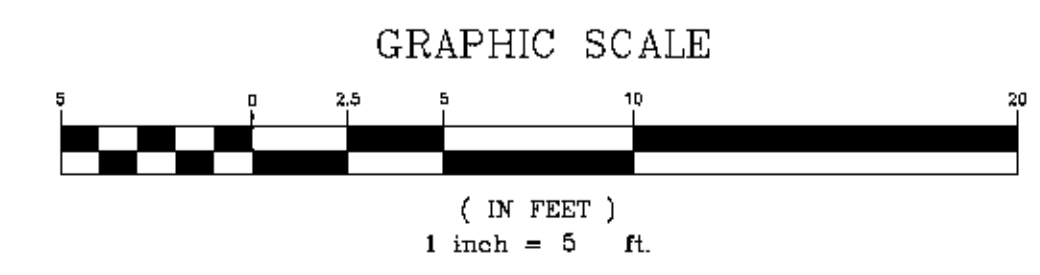
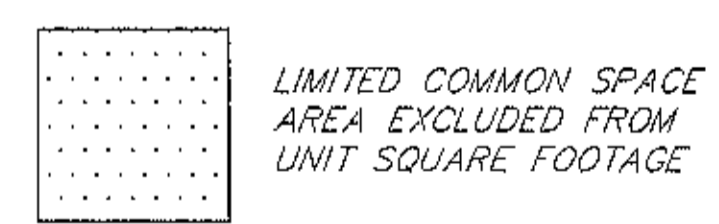
115x77

115x77



STORAGE AREA
NOT INCLUDED IN
SQUARE FOOTAGE

LEGEND



CLIENT:
HIGHLAND RESTORATION GROUP, LLC
ATTN: MR. CENE CRAWFORD
11915 CREEL LODGE DRIVE
LOUISVILLE, KENTUCKY 40223

BTM ENGINEERING, INC.
Consulting Engineers Landscape Architects Planners
3901 Taylor Springs Drive
Louisville, Kentucky 40220
(502) 459-8402 Phone
(502) 459-8427 Fax

**GARAGES AND BASEMENT
ROSEWOOD CONDOMINIUMS
GARAGES 1 THRU 9**
1505 ROSEWOOD AVENUE
LOUISVILLE, JEFFERSON COUNTY, KENTUCKY 40204
TAX BLOCK 27E, LOT 79
DEED BOOK 8488, PAGE 271

DRAWN BY:	CHKD. BY:
TL	JTZ/MB
DATE:	7-17-06
DRAWING:	0403320-FLOOR
SCALE:	1"=5'
SHEET	5 OF 5

Document No.: BR2006115994
Lodged By: sallys
Recorded On: 8/7/2006 11:46:38
Total Fees: 76.00
Transfer Tax: 36
County Clerk: BURRELL HOLDSLOAN-JEFF CO KY
Deputy Clerk: BURRELL

Recorded in Condo Book
No. 116 Page 77
Part No. 2271

Tab 4.

E-mail from PVA explaining why the Developer has been tax assessed on his remaining developer rights

Nanci Dively

From: Bill Bardenwerper
Sent: Thursday, August 14, 2014 1:52 PM
To: Nanci Dively
Subject: Gene Crawford's developer's development rights for which he is being taxed by the PVA

From: GENE CRAWFORD [mailto:g Crawfordjr@yahoo.com]
Sent: Thursday, August 07, 2014 9:06 AM
To: Bill Bardenwerper
Cc: Mark Madison; Nick Pregliasco
Subject: Re: Gene Crawford re Porter

I have attached a rebuttal to S. Porter's contention below that "no public agency decision" has been made for building of 3 additional units. Sure seems like it has, since they have been taxing the development right for years!

Hi Mr. Crawford, This email is in response to your inquiry on why a tax bill is still being sent to you (Highland Restoration Group LLC) for Parcel ID: 027E00790000. **The reason is because, per the Rosewood Condominiums Master Deed (Book: 8871 Page: 375, Article II, Section T), the developer reserves the right to build additional units on this parcel. Since development potential still exists for the land, there must be a value associated with it. Once there is taxable value on the land, a tax bill is generated.** If you have any further questions, please feel free to contact me.
Sincerely,

Conrad Meertins, Jr.

Deputy PVA
Office of the Jefferson County
Property Valuation Administrator
Residential Research and Development
(502) 574-6380 ext. 9359
cmeertins@jeffersonpva.ky.gov

Begin forwarded message:

From: <Stpinlou@aol.com>
Date: August 6, 2014 at 3:21:21 PM EDT
To: <Joe.Reverman@louisvilleky.gov>
Cc: <Julia.Williams@louisvilleky.gov>, <Jonathan.Baker@louisvilleky.gov>, <John.Carroll@louisvilleky.gov>, <wbb@bardlaw.net>, <emily.liu@louisvilleky.gov>, <james.mims@louisvilleky.gov>
Subject: Re: Zoning Change at 1505 Rosewood Ave.

Joe et al.,

I do not understand your position. It is long established in law and in practice that the Planning Commission does not enforce deed restrictions or private agreements among private parties. That is what the possible right to construct three additional units is: a private right between private parties. Your agency cannot enforce private rights. That right is always subject to compliance with local ordinances and regulations. Except for the density allowance from the original zoning in 1967, there is no public agency decision which has granted HRG the absolute right to construct the three-story building. If that zoning were changed (as is the prerogative of the Metro Council), HRG would be free to build anything it wants within the confines of the new zoning and the regulations in the Land Development Code.

Again, neither PDS nor the Planning Commission has the right to enforce private agreements. Therefore, the application for rezoning should proceed and the Commission can make whatever decision it can justify under Cornerstone 2020. The Rosewood Condominium Council, Inc. is the undisputed owner of this property and, therefore, has the right to file this application and have it processed in a normal manner. Has the Jefferson County Attorney given advice on this? I would like the opportunity to meet with you and Jon or John to discuss this.

If your position does not change for some reason, I would like a formal letter from the Director, dated so we have a final action from which we may appeal.

Steve Porter

In a message dated 8/6/2014 12:04:52 P.M. Eastern Daylight Time, Joe.Reverman@louisvilleky.gov writes:

I apologize for the delay. Our position as of now is that HRG has certain rights to construct the proposed 3-unit building on 1505 Rosewood Ave. And that construction of this 3-unit building would cause the proposed rezoning pre-application under case number 14ZONE1034 to be improper. We will not review the rezoning request until such time that we have some assurance that the proposed 3-unit building is no longer proposed, or until we have reason to believe that HRG no longer has rights to construct the 3-unit building.

Joseph Reverman, AICP
Planning Supervisor
Louisville Metro Department of Codes & Regulation
Division of Planning & Design Services
444 S. 5th St., Suite 300
Louisville, KY 40202
Phone: (502) 574-6246
Fax: (502) 574-8129

From: Stpinlou@aol.com [<mailto:Stpinlou@aol.com>]
Sent: Wednesday, August 06, 2014 11:28 AM
To: Reverman, Joe
Cc: Williams, Julia; Baker, Jonathan; Carroll, John G.; wbb@bardlaw.net
Subject: Re: Zoning Change at 1505 Rosewood Ave.

Joe,

I am following up my e-mail of July 31, 2014, regarding the application by the Rosewood Condominium Council, Inc. for the rezoning of 1505 Rosewood Ave. Is that application being processed? Thanks for your help.

Steve

Stephen T. Porter, Attorney
2406 Tucker Station Road
Louisville, KY 40299
502-297-9991
stpinlou@aol.com



Tab 5.
Color Development Plans

ALLEY 20' R/W

Ex. Brick Pavers
N 47°09'00" E 146.00'

N 42°10'00" W 38.00'

S 47°09'00" W 21.00'

N 42°10'00" W 100.00'

S 42°10'00" E 103.00'

33 Rosewood Ave
Pro L. & Robert J.
Danzonier
S 9799, Pg 0011
Zone: R5
Town District: TN

100
Janna
Co
08
Fa

10.00'
31.00'

15' REG. FRONT YARD

S 47°09'00" W 125.00'

6 SPACES

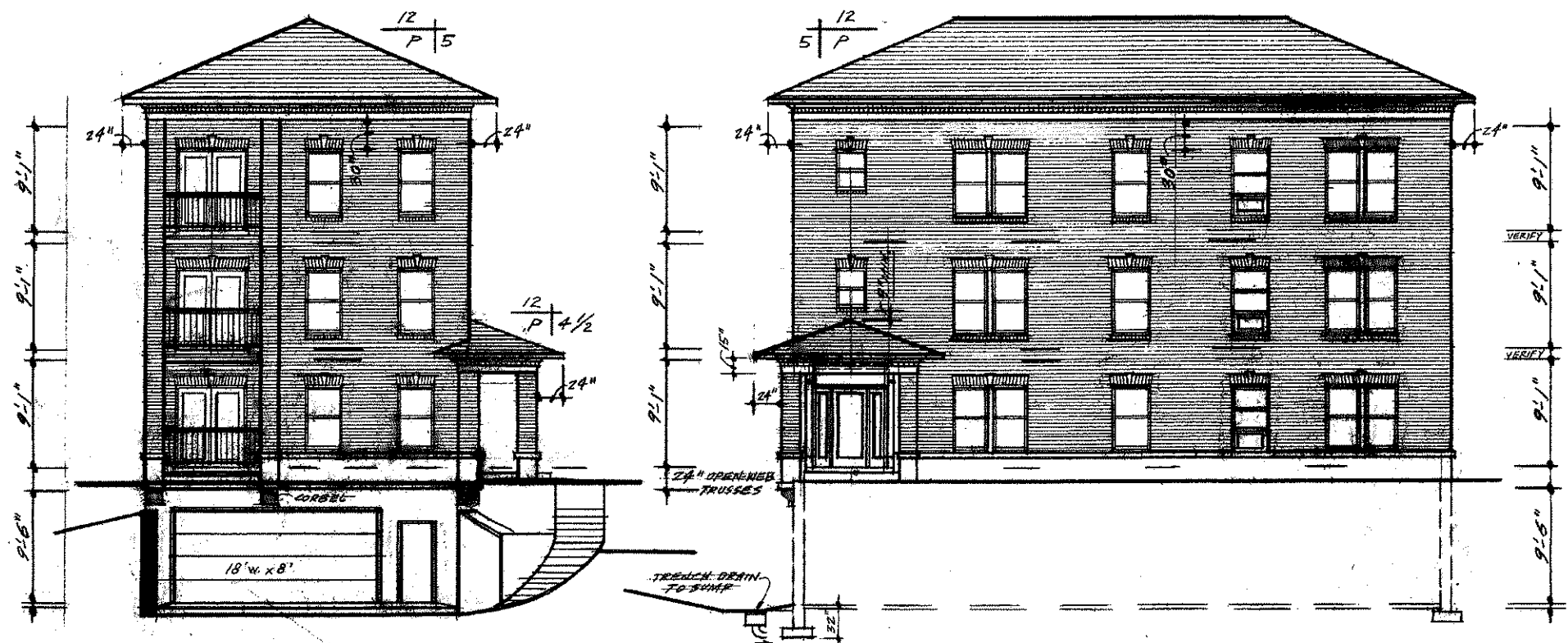
ROSEWOOD AVENUE 60' R/W



Tab 6.

Original building design with garage -
garage since eliminated in favor of
parking waiver

CRAWFORD



FRONT ELEVATION

COURTYARD SIDE



Tab 7.

Building Permits



Building Permit

Permit Number:	359231	Issue Date:	01/10/2014	Expiration Date:	08/06/2014
Contractor:	RESTORATION GROUP LLC HIGHLANDS 11915 CREEL LODGE DR LOUISVILLE, KY 40223	Owner:	RESTORATION GROUP LLC HIGHLANDS 11915 CREEL LODGE DR LOUISVILLE, KY 40223	Inspector:	JOHN ORTHOBER (502) 773-0808
Location:	1505 ROSEWOOD AVE LOUISVILLE, KY 40204	Estimated Cost:	\$66,000.00	Work Type:	New
Dept. of Commerce:	Multi Family	Total Square Feet:	1596	Occupancy:	CONDO BUILDING UNIT 2 OF 3
Work Description:	1596 SF THIRD FLOOR CONDO OF WOOD FRAME CONSTRUCTION. SHALL COMPLY WITH KBC - 2007. SEPARATE PERMIT REQUIRED FOR ELECTRICAL, PLUMBING, HVAC, AND SUPPRESSION. OWNER HAS WATER MANAGEMENT SINGLE LOT RESIDENTIAL GRADING AND EROSION PREVENTION AND SEDIMENT CONTROL CERTIFICATE SIGNED AND APPROVED PER JOHN SELCH ON 04/16/2013 FOR FULL BUILD CONSTRUCTION. OWNER HAS TRANSPORTATION STAMPED AND SIGNED APPROVAL PER TAMMY MARKERT ON 01/29/2013 FOR FULL BUILD CONSTRUCTION. OWNER HAS LANDSCAPING STAMPED AND SIGNED APPROVAL SHOWING SAME NOT NEEDED PER SHERRIE LONG ON 01/25/2013 FOR FULL BUILD CONSTRUCTION.- HH				

Permit Detail

Total New Bedrooms:	2	Total Bedrooms:	6	Stories:	3
Single Family Units:	1	Total Single Family Units:	3		
Occupancy Date:					
Use Group	R-2C	Square Footage	1596	Construction Type	5-B

Payments Received

Description	Amount
Building Permit Fee	\$207.00

Inspection History

Inspection Number	Inspection Date	Type	Inspector	Complete Date	Result	Inspector Comments
2049558	02/07/2014	FOUNDATION	JORTHOBER	02/07/2014	PRTIALPASS	stop work issued per george pate. 2/6/14

Print Options



Building Permit

Permit Number:	359232	Issue Date:	01/10/2014	Expiration Date:	08/06/2014
Contractor:	RESTORATION GROUP LLC HIGHLANDS 11915 CREEL LODGE DR LOUISVILLE, KY 40223	Owner:	RESTORATION GROUP LLC HIGHLANDS 11915 CREEL LODGE DR LOUISVILLE, KY 40223	Inspector:	JOHN ORTHOBER
				Phone:	(502) 773-0808
				Email:	john.orthoher@louisvilleky.gov
Location:	1505 ROSEWOOD AVE LOUISVILLE, KY 40204	Estimated Cost:	\$66,000.00	Work Type:	New
Dept. of Commerce:	Multi Family	Total Square Feet:	1596	Occupancy:	CONDO BUILDING UNIT 3 OF 3
Work Description:	1596 SF FOURTH FLOOR CONDO OF WOOD FRAME CONSTRUCTION. SHALL COMPLY WITH KBC - 2007. SEPARATE PERMIT REQUIRED FOR ELECTRICAL, PLUMBING, HVAC, AND SUPPRESSION. OWNER HAS WATER MANAGEMENT SINGLE LOT RESIDENTIAL GRADING AND EROSION PREVENTION AND SEDIMENT CONTROL CERTIFICATE SIGNED AND APPROVED PER JOHN SELCH ON 04/16/2013 FOR FULL BUILD CONSTRUCTION. OWNER HAS TRANSPORTATION STAMPED AND SIGNED APPROVAL PER TAMMY MARKERT ON 01/29/2013 FOR FULL BUILD CONSTRUCTION. OWNER HAS LANDSCAPING STAMPED AND SIGNED APPROVAL SHOWING SAME NOT NEEDED PER SHERRIE LONG ON 01/25/2013 FOR FULL BUILD CONSTRUCTION.- HH				

Permit Detail

Total New Bedrooms:	2	Total Bedrooms:	6	Stories:	3
Single Family Units:	1	Total Single Family Units:	3		
Occupancy Date:					
Use Group	R-2C	Square Footage	3192	Construction Type	5-B

Payments Received

Description	Amount
(PLAN REVIEW FEE)	\$207.00

Inspection History

Inspection Number	Inspection Date	Type	Inspector	Complete Date	Result	Inspector Comments
2049562	02/07/2014	FOUNDATION	JORTHOBER	02/07/2014	PRTIALPASS	stop work issued per george pate. 2/6/14.

Print Options



Building Permit

Permit Number:	359225	Issue Date:	01/10/2014	Expiration Date:	08/06/2014
Contractor:	RESTORATION GROUP LLC HIGHLANDS 11915 CREEL LODGE DR LOUISVILLE, KY 40223	Owner:	RESTORATION GROUP LLC HIGHLANDS 11915 CREEL LODGE DR LOUISVILLE, KY 40223	Inspector:	JOHN ORTHOBER
				Phone:	(502) 773-0808
				Email:	john.orthober@louisvilleky.gov
Location:	1505 ROSEWOOD AVE LOUISVILLE, KY 40204	Estimated Cost:	\$118,000.00	Work Type:	New
Dept. of Commerce:	Multi Family	Total Square Feet:	3192	Occupancy:	CONDO BUILDING UNIT 1 OF 3
Work Description:	1596 SF SECOND FLOOR CONDO OF WOOD FRAME CONSTRUCTION WITH 1596 SF 3 CAR GARAGE BELOW SAME CONDO. SHALL COMPLY WITH KBC - 2007. SEPARATE PERMIT REQUIRED FOR ELECTRICAL, PLUMBING, HVAC, AND SUPPRESSION. OWNER HAS WATER MANAGEMENT SINGLE LOT RESIDENTIAL GRADING AND EROSION PREVENTION AND SEDIMENT CONTROL CERTIFICATE SIGNED AND APPROVED PER JOHN SELCH ON 04/16/2013 FOR FULL BUILD CONSTRUCTION. OWNER HAS TRANSPORTATION STAMPED AND SIGNED APPROVAL PER TAMMY MARKERT ON 01/29/2013 FOR FULL BUILD CONSTRUCTION. OWNER HAS LANDSCAPING STAMPED AND SIGNED APPROVAL SHOWING SAME NOT NEEDED PER SHERIE LONG ON 01/25/2013 FOR FULL BUILD CONSTRUCTION.- HH				

Permit Detail

Total New Bedrooms:	2	Total Bedrooms:	6	Stories:	3
Single Family Units:	1	Total Single Family Units:	3		
Occupancy Date:					
Use Group	R-2C	Square Footage	3192	Construction Type	5-B

Payments Received

Description	Amount
(PLAN REVIEW FEE)	\$414.00

Inspection History

Inspection Number	Inspection Date	Type	Inspector	Complete Date	Result	Inspector Comments
2049560	02/07/2014	FOUNDATION	JORTHOBER	02/07/2014	PRTIALPASS	stop work issued from george pate 2/6/14

Print Options

Tab 8.

Bill Bardenwerper letter in response to condo unit owner's effort through attorney Steve Porter to down zone and Mr. Porter's response thereto

Nanci Dively

From: Bill Bardenwerper
Sent: Thursday, August 14, 2014 12:53 PM
To: Nanci Dively
Subject: Gene Crawford-Rosewood condominiums
Attachments: Master Deed DB 8871, Pg 375.pdf; MD Condo Plat Bk 115, Pg 73.pdf; 05 16 05 BOZA Minutes.pdf; 9-94-69 PC Minutes.pdf; 9-62-67 Minutes.pdf; 2005 Approved Plan.pdf; SKMBT_C36014072416350.pdf

From: Bill Bardenwerper
Sent: Thursday, July 24, 2014 5:45 PM
To: Baker, Jonathan (Jonathan.Baker@louisvilleky.gov); Carroll, John G. (John.Carroll@louisvilleky.gov); Stpinlou@aol.com
Cc: 'Reverman, Joe'; Nick Pregliasco; gcrawfordjr@yahoo.com; Mark Madison (markmadison@milestonedesign.org); Liu, Emily (emily.liu@louisvilleky.gov)
Subject: Gene Crawford-Rosewood condominiums

Jon, John and Steve: I mentioned this to you the other day, Jon. And since Steve has asked below, we will answer him simultaneously as we are advising you.

As all or some of you know, we here have worked on many dozens of condo regimes over the years, establishing dozens and representing both the developers thereof and the many associations in their on-going condo business. We were also actively involved with the small committee of lawyers and legislators in amending the Kentucky condo statute on two occasions. I mention this because our answer to Steve's underlying question is one we know without equivocation, to wit: once the land is put into the condo regime it is true that the first unit owner and thereafter other unit owners as they come into ownership of units "own" the "common elements", like the land. But all rights both under the Master Deed establishing the condo regime and under state law are subject to the continuing rights of the developer, if any, to complete his condo project in accordance with the total number of units and initial stated timeframe to complete those units set forth in the yellow highlighted "expansion" provisions of the attached Master Deed. In this instance, there exists zero legal authority, indeed it would be a violation of state statutory law, the owner's contractual obligations as to the developer, and a slander of title for the condo owners to attempt to deprive the condo developer of his right to complete the condo regime as stated, AND as set forth in the Kentucky Court of Appeals case reproduced below.

There are a very small number of published cases in Kentucky pertaining to condos, and the below is one of them -- a new case directly on point affirming a developer's retained development rights to complete his condo project in accordance with the Master Deed. In this instance, Gene Crawford had at time of recording of the Master Deed, which continues to this day (which is within the 10 years he had to complete the regime), the unilateral right to build 12 units. (The 7-year period set forth in the Master Deed has to do with the transfer of condo association administrative rights and do not diminish the developer's retained development rights. About this the Master Deed, Kentucky's condo statutes and case law are perfectly clear.)

The recent condo owners' filing of a pre-application to down-zone the property is illegal under all of these established laws and legal instruments. The condo residents have only those rights that the Master Deed and Kentucky's condominium statutes and interpretive case law give them; and those rights unequivocally do NOT include the rights to attempt to diminish the developer Gene Crawford's rights to complete the condo regime, as each and every one of these condo unit owners knew them to be when they purchased their individual units.

Also attached to this email are the 1967 and 1969 minutes whereby the property was rezoned (pre-"Plan Certain") to the R-7 zoning district, plus the 2005 plan and minutes where his additional building was approved. Mark Madison with

Milestone Design Group and our firm have filed an application for a parking waiver such that the added units can be constructed by Gene, relying on available on-street parking. If the waiver isn't granted, he will proceed with the construction of an on-site garage.

This should fully answer your question, Steve, and further provide you, Jon and John, with what you need to advise DPDS staff that they cannot allow the down-zoning effort to proceed, which would be a completely illegal act.

Please feel free to contact either of us if you need to discuss any of this further. Many thanks.

Bill Bardenwerper
Nick Pregliasco
Bardenwerper Talbott & Roberts, PLLC
Building Industry Association of Greater Louisville Building
1000 N. Hurstbourne Parkway, Second Floor
Louisville, Kentucky 40223
502-426-6688 (W)
502-419-7333 (Bill's M)
502-777-8831 (Nick's M)
www.bardlaw.net

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From: Stpinlou@aol.com [<mailto:Stpinlou@aol.com>]
Sent: Thursday, July 24, 2014 3:30 PM
To: jonathan.baker@louisvilleky.gov; john.carroll@louisvilleky.gov
Cc: Bill Bardenwerper
Subject: Rosewood Condominiums application for rezoning

Jon and John,

Is one (or both) of you familiar with the question about ownership of this condo property? It seems clear to me that the condo association is now in control of the property and the 9 individual unit owners are the overall owners of the common elements, including the land. The developer, Highlands Restoration Group, LLC, may have some remaining development rights, but it is no longer the owner of the common elements. Therefore, the condo association has the right to file an application at PDS. Let's all talk. I think Bill represents the developer.

Stephen T. Porter, Attorney
2406 Tucker Station Road
Louisville, KY 40299
502-297-9991
stpinlou@aol.com

From: Nick Pregliasco
Sent: Thursday, July 24, 2014 5:22 PM
To: Bill Bardenwerper
Subject: Rosewood

The Kentucky Court of Appeals has already ruled on this exact issue, being that the expansion rights granted in the Master Deed trumps conflicting provisions of the Master Deed regarding the termination of the right to amend to create new units.

Section T of the Declaration and Master Deed establishing Rosewood Condominiums of record in Deed Book 8871, Page 375 provides that Declarant has the power to amend the Master Deed for 10 years (until July 2016) to create additional

units, with each owner granting Declarant a power of attorney coupled with an interest to do so. Page 16 is attached hereto. Here is the provision:

shall be done by an amendment or amendments to this Master Deed. Declarant hereby reserves for itself, its successors and assigns, for a period of ten (10) years from the date of this Master Deed, the right to execute on behalf of all contract purchasers, unit Owners, mortgagees or other lien holders, or other parties claiming a legal or equitable interest in this condominium regime, any amendment, agreement or supplement that may be required to expand this condominium regime, and by taking any interest in this condominium regime or by taking any interest in a unit, each such person or entity shall be deemed to have granted to Declarant a power of attorney for such purposes, coupled with an interest, running with this condominium regime or unit, as applicable, and binding upon the successors or assigns of any of the foregoing parties, with that power of attorney not being affected by the death or disability of any principal. Declarant, for itself, and for its successors and assigns, reserves an interest in any real estate, including this condominium regime and each unit, for these purposes. This interest reserved by Declarant and the power of attorney hereby granted by each interest holder includes the right to amend the percentage of common interest appurtenant to each unit and otherwise to amend this Master Deed to supplement the floor plans to accomplish the expansion of this condominium regime, as contemplated by this section

The above provision is almost the exact same (the language is highlighted below showing it grants the same rights) as the one that the Kentucky Court of Appeals held to be sufficient, despite conflicting provisions regarding the Declarant's right to amend.

387 S.W.3d 352

Court of Appeals of Kentucky.

The VILLAS AT WOODSON BEND CONDOMINIUM ASSOCIATION, INC.;
Robert Lucas; Reed Hall; Vicki Cooper; Ron Miller; Geraldine Mize;
Melinda Washburn and Hugh Whitaker, Appellants

v.

SOUTH FORK DEVELOPMENT, INC. and Citizens National Bank,
Appellees.

No. 2010–CA–000578–MR.

Dec. 7, 2012.

Synopsis

Background: Condominium owners association brought action to enjoin developer from undertaking any future development within the condominium project without the majority consent of the existing unit owners, as allegedly dictated by the master deed. The Circuit Court, Pulaski County, Jeffrey T. Burdette, J., initially granted partial summary judgment in favor of the association, but then rescinded the order entered order granting partial summary judgment to developer. Association appealed.

Holding: The Court of Appeals, [Nickell, J.](#), held that developer was not precluded from undertaking future development within condominium project without renewed majority consent of existing unit owners.

Affirmed.

West Headnotes (7)[Collapse West Headnotes](#)

[Change View](#)

1 **Deeds**



[Intention of parties](#)

Deeds



[Language of instrument](#)

In determining the proper interpretation of a deed, courts look to the intentions of the parties which are deduced from the four corners of the instrument.

[Cases that cite this headnote](#)



120Deeds

120III Construction and Operation

120III(A) General Rules of Construction

120k93 Intention of parties



120Deeds

120III Construction and Operation

120III(A) General Rules of Construction

120k95 Language of instrument

2 **Deeds**



[Language of instrument](#)

It is to be assumed by the courts that the parties to a deed intended each of its provisions to have some effect from the very fact that the words were used; words in a deed that are not technical must be construed as having their ordinary connotation, and courts are required to use the common meaning and understanding of the words used in a deed and will not infer or substitute intent for what was actually said.

[Cases that cite this headnote](#)



120Deeds

120III Construction and Operation

[120III\(A\)General Rules of Construction](#)

[120k95Language of instrument](#)

3Deeds



[Language of instrument](#)

A deed shall be construed based upon its provisions as a whole.

[Cases that cite this headnote](#)



[120Deeds](#)

[120IIIConstruction and Operation](#)

[120III\(A\)General Rules of Construction](#)

[120k95Language of instrument](#)

4Common Interest Communities



[Amendment](#)

Under master deed, condominium developer was not precluded from undertaking future development within condominium project, beyond four-year marketing interval expressed in deed, without a renewed majority consent of existing unit owners; under “consent to amendment” provision imposed on each unit purchaser, any amendments to condominium master deed for limited purpose of bringing additional units into the condominium regime and altering the interests in the common elements as a necessary consequence of future development were done with the unanimous consent of the unit owners, and there was no indication that developer intended to complete all construction activities within the four-year time period.

[Cases that cite this headnote](#)



[83TCommon Interest Communities](#)

[83TIICreation, Modification, and Termination](#)

[83Tk22Declaration or Other Similar Instrument](#)

[83Tk26Amendment](#)

5Contracts



[Signing in ignorance of contents in general](#)

A party is bound by his agreement with the terms of a contract he has signed and had an opportunity to review, and ignorance of the terms thereof is not a defense to the rights and obligations set forth therein.

[Cases that cite this headnote](#)



[95Contracts](#)

95I Requisites and Validity

95I(E) Validity of Assent

95k93 Mistake

95k93(2) Signing in ignorance of contents in general

6 Common Interest Communities



Association and members of its board

Condominium association lacked standing to assert a claim of fraud against developer that would render deeds invalid because all deeds were between individual unit purchasers and developer, and the association was not a signatory to any of the deeds.

Cases that cite this headnote



83T Common Interest Communities

83TVII Actions and Proceedings

83Tk142 Right of Action; Persons or Entities Entitled to Sue; Standing

83Tk144 Association and members of its board

7 Action



Persons entitled to sue

Standing requires that a party have a judicially recognizable interest in the subject matter of the suit.

Cases that cite this headnote



13 Action

13I Grounds and Conditions Precedent

13k13 Persons entitled to sue

Attorneys and Law Firms

*353 [Michael M. Hirn](#), [Michael C. Merrick](#), Louisville, KY, for Appellant.

[Richard G. Meyer](#), Crestview Hills, KY, for Appellee.

Before [LAMBERT](#), [NICKELL](#), and [VANMETER](#), Judges.

Opinion

OPINION

[NICKELL](#), Judge:

The Villas at Woodson Bend Condominium Association, Inc. (“The Association”), and several of its members have appealed from the Pulaski Circuit Court’s November 12,

2009, order rescinding its prior grant of partial summary judgment in their favor and instead granting partial summary judgment in favor of South Fork Development, Inc. ("South Fork"). Following a careful review of the record, we affirm.

In March 2001, South Fork purchased an approximately 160 acre parcel of land located on Lake Cumberland in Pulaski County, Kentucky. South Fork then began developing a condominium plan known as The Villas at Woodson Bend. On April 21, 2002, South Fork filed a Master Deed establishing the condominium regime pursuant to Kentucky's Horizontal Property Law.¹ Approximately forty-eight acres of the parcel were to be utilized in the construction of the condominium project, an additional twenty acres was dedicated for a sewer treatment facility, and the remaining acreage was retained by South Fork for uses other than the condominium project. At the time of the filing of this appeal, 61 condominium units had been constructed, along with a clubhouse, swimming pool and boat dock to service the development's residents. All but three of the condominiums were sold between July 2002 and November 2008.

Unfortunate difficulties and disputes arose between South Fork and the Association culminating in the filing of the instant suit in May of 2008 by the Association and several representative members. Among numerous other claims not pertinent to this appeal, the Association sought to enjoin South Fork from undertaking any future development within the condominium project without the majority consent of the existing unit owners. The Association claimed the express language of the Master Deed required South Fork to *354 complete all construction and development activities at the condominium project within a period of four years from the date the Master Deed was recorded. It further claimed that at the conclusion of that time, South Fork was required to turn over control and responsibility for the condominium property to the Association and take no further unilateral action with respect to the development.

In response, South Fork asserted that the language of the Master Deed did not set a time limitation on the construction phase of the development. Rather, the language placed restrictions on the total number of units and the aggregate square footage of the units which could be constructed within the project boundaries. It further alleged it had reserved unto itself the right to amend the Master Deed at any time to increase the number of units subject to the regime on an "as-built" basis up to the maximum set forth in the original Master Deed, and no consent from the unit owners was necessary to make such amendments.

On February 19, 2009, the trial court granted partial summary judgment in favor of the Association. It found "[t]he language of the master deed is clear that [South Fork's] ability to amend or modify the master deed without the approval of more than 50% of the interest in the common elements is limited to the four year period or the marketing interval." Because that period ended in April of 2006, the trial court ruled as a matter of law that South Fork could construct only such units as had been designated in the Master Deed or

any amendments thereto filed prior to the expiration of the four year time limitation. Any further construction activities must be approved by a vote of greater than a fifty percent ownership interest in the common elements. The trial court specifically disagreed with South Fork's assertion that it had retained the right to unilaterally amend the Master Deed to add additional units to the regime.

Upon obtaining new counsel, South Fork subsequently moved to vacate the February 19, 2009, order. In an accompanying legal memorandum supportive of its request for relief, South Fork argued the trial court had been misinformed by its former counsel regarding the source of the language of the Master Deed, and insisted the language in the document had been copied verbatim from a publication known as Kentucky Forms and Transactions, authored by two well-respected real estate attorneys. South Fork further alleged the trial court had erred in its interpretation of the Master Deed and had relied on improper sections thereof in reaching its conclusion. For the first time, South Fork agreed it did not have the power to unilaterally amend the Master Deed, but argued that Article XIII of the Master Deed, entitled "Future Development," contained a "consent to amendment" provision expressly imposed on each purchaser upon their acceptance of a deed of conveyance to one of the condominium units.² Thus, South Fork argued any amendments to *355 the Master Deed purporting to increase the number of units subject to the regime was accomplished with the consent of all of the unit owners of record.

Contrary to the Association's position, South Fork alleged Article XIII stood "independent, free and clear of Articles XIV and VI(F)"³ and was the only section of *356 the Master Deed which addressed future development within the project. As an alternative request for relief, South Fork sought to have the trial court designate its February 19, 2009, order as final and appealable. The Association responded and urged the trial court to uphold its earlier ruling.

On May 12, 2009, the trial court denied South Fork's motion to vacate but agreed to designate the February 19, 2009, order as final and appealable. Due to a clerical mistake, the order was improperly designated as an "Agreed Order." Further compounding the confusion, the clerk distributed the order to South Fork's former counsel who did not forward same to South Fork's new counsel. Before counsel was made aware of the May 12, 2009, order, South Fork moved for summary judgment on the same counts which were subject to the February 19 and May 12 orders. Upon learning of the entry of the May 12, 2009, order, South Fork moved to vacate the order and allow its motion for summary judgment to proceed. The trial court agreed to rescind the May 12, 2009, order and allow the Association time to respond to the summary judgment motion after which the matter would stand under submission.

On November 12, 2009, the trial court entered a seven-page order granting partial summary judgment to South Fork. The trial court found its earlier rulings were correct—that South Fork could not unilaterally amend the Master Deed beyond the marketing

interval. However, it went on to find that when the Master Deed was amended to allow for future development, Article XIII controlled and any such amendment was made with the consent of the unit owners, not unilaterally by South Fork. Thus, as a matter of law, the Master Deed could be amended to include up to a maximum of 200 units or 475,000 square feet, and South Fork was not restricted from constructing such units outside the four-year marketing interval. On March 5, 2010, the trial court designated the November 12, 2009, order as final and appealable. The Association timely appealed.

The sole issue to be resolved in this appeal is the proper interpretation of the Master Deed—specifically Articles VI(F), XIII, and XIV—to determine whether South Fork maintained the ability to undertake additional construction within the *357 condominium project or if its rights to do so ended upon expiration of the marketing interval. The Association contends the Master Deed contains internal inconsistencies regarding future development which should be resolved against South Fork as the drafter of the document. When so construed, the Association believes it was entitled to summary judgment and the trial court erred in failing to grant same in its favor. The Association argues the trial court's error was further compounded by its reliance on Article XIII as controlling in granting summary judgment in favor of South Fork permitting future development. We disagree and affirm.

The well-settled standard of review of a trial court's grant of summary judgment is whether the trial court correctly found there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky.1991). Here, the trial court's factual findings are not in issue and the soundness of the grant of summary judgment is based purely on a matter of law—that being the proper construction of a deed, see *Phelps v. Sledd*, 479 S.W.2d 894, 896 (1972). Thus, our review is *de novo*. *Florman v. MEBCO Ltd. Partnership*, 207 S.W.3d 593, 600 (Ky.App.2006) (citing *Morganfield National Bank v. Damien Elder & Sons*, 836 S.W.2d 893, 895 (Ky.1992)).

123 In determining the proper interpretation of a deed, we look to the intentions of the parties which we deduce from the four corners of the instrument. *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky.2000); *Phelps v. Sledd*, 479 S.W.2d 894, 896 (Ky.1972). “It is to be assumed that the parties to a deed intended each of its provisions to have some effect from the very fact that the words were used. The rule is well settled that words in a deed that are not technical must be construed as having their ordinary connotation.” *Id.* We are required to use the common meaning and understanding of the words utilized in a deed and will not infer or substitute intent for what was actually said. *Id.* “Further, a deed shall be construed based upon its provisions as a whole.” *Florman*, 207 S.W.3d at 600 (citing *Brown v. Harlow*, 305 Ky. 285, 286, 203 S.W.2d 60, 61 (1947)). We concur with the trial court's conclusion that the terms of the Master Deed were not ambiguous. Thus, we are not constrained to construe the terms of the Master Deed strongly against South Fork as

preparer of the instrument. *McIntire v. Marian Coal Co.*, 190 Ky. 342, 227 S.W. 298, 299 (1921) (“The rule is that a deed which grants land and certain specified rights and privileges, there being no ambiguity in the instrument, will be construed according to its terms, and enforced strictly according to its terms. But, where there is ambiguity or uncertainty in the deed, it will be construed most strongly against the grantor and in favor of the grantee.”).

The arguments on appeal essentially parrot arguments the parties made in the trial court. The Association contends Articles VI(F) and XIV limit South Fork's ability to unilaterally amend the Master Deed to the four-year marketing interval which, undisputedly, ended in mid-2006. It alleges the provisions of Article XIII are directly contrary to the time limitations and the Association's rights to control the common elements contained in Articles VI and XIV. South Fork asserts it obtained unanimous consent from the unit owners to conduct additional development activities and to shift and reallocate owner percentages of ownership in the common elements by virtue of the express language contained in Article XIII and any amendments to the Master Deed were *358 done pursuant to that unanimous consent. The trial court agreed with South Fork that Article XIII controlled and was dispositive of the issue of future development and we concur. Article VI(F) contains a number of restrictions on the actions of the Association during the four-year marketing interval. It further contains restrictions on the ability of South Fork to unilaterally amend the condominium documents. These restrictions are undisputed. However, contrary to the Association's arguments, and as the trial court correctly found, this section does not displace the contents of Articles XIII and XIV relating to the amendment of the condominium documents, including the Master Deed. To construct the language of Article VI(F) in the manner urged by the Association would not give meaning to the words used in each section and would operate to make some of the provisions of the Master Deed—most especially Article XIII—meaningless.

4 Article XIII contains specific provisions relating to future development of the condominium regime and is consistent with other provisions of the Master Deed relating to amendment to shift and reallocate the interest of unit owners in the common elements to reflect the “as-built” nature of an ongoing development. Article II(A) indicates there shall be a maximum of 200 units constructed and subject to the condominium regime. That article further authorizes South Fork, “without any requirement to obtain the consent of any unit owner or other person,” to amend the Master Deed upon completion of the construction of all units to ensure the percentage interest of each unit owner in the common elements conforms “to the area in square feet and percentage interest of those units as built.” Article III specifies each unit shall have a fixed interest in the common elements based upon the square footage of the individual unit as a percentage of the square footage covered by the entire condominium regime. That article goes on to state that such percentage interest in the common elements “shall remain constant” and

adjustments of such percentages are prohibited without prior written approval of all unit owners “*except as provided in section III(A), and article XIII of this master deed...*” (emphasis added). As the trial court expressly found, Article XIII contains clear and specific language concerning the consent of the owners to future development⁴ and the shifting and reallocation of their interests in the common elements garnered through acceptance of their respective deeds. Based upon this language—as the trial court again correctly concluded—any amendments to the Master Deed for the limited purpose of bringing additional units into the condominium regime and altering the interests in the common elements as a necessary consequence of future development, are done with the unanimous consent of the unit owners and not unilaterally as the Association urges.

567 The Association's claim that such verbiage is ineffective as many purchasers would not and did not read the Master Deed prior to executing the deeds conferring their particular units is without merit. It is abundantly clear that a party is bound by his agreement with the terms of a contract he has signed and had an opportunity to review, and ignorance of the *359 terms thereof is not a defense to the rights and obligations set forth therein. See *Prewitt v. Estate Building & Loan Ass'n*, 288 Ky. 331, 156 S.W.2d 173, 174 (1941) (general principle is that a person given opportunity to read contract he signs is bound by it, unless there was fraud in obtaining his signature).⁵

We cannot determine from the language of the Master Deed, in the cited provisions or otherwise, where the time restriction on additional development urged by the Association is located or supported. No such express restrictive language appears anywhere in the document. Article XIII specifically reserves to South Fork, its successors and assigns, with the consent of all record unit owners, the right to amend the Master Deed for purposes of shifting and reallocating interests in and to the common elements as future development occurs. There is absolutely no indication that South Fork, in drafting the Master Deed and other condominium documents, intended to (or inferred it would) complete all construction activities within a four-year time period. It did, however, impose a definite restriction on the acreage, number of units and total square footage of buildings which could be included in the development. Although South Fork could have amended the Master Deed during the marketing interval to increase these numbers, it did not, and any future attempt to do so would be improper and ineffective. Thus, contrary to the Association's concerns, while reserving the right to continue construction beyond the four-year marketing interval, South Fork did not retain the right to conduct unlimited future development as the Master Deed clearly placed finite limits on the scope of the condominium project. The Association wrongly focuses on time when the critical factor is the Master Deed's limitation on the maximum number of units and total square footage available for possible development within the regime. The trial court correctly concluded that South Fork retained the right to pursue future development activities beyond the four-year marketing interval. For the foregoing reasons, the judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

Footnotes

1

[Kentucky Revised Statutes \(KRS\) 381.805 et seq.](#)

2

In pertinent part, Article XIII states:

Villas at Woodson Bend (Condominiums) as built consists of four (4) units in the buildings previously constructed, and may consist of additional units contained in additional buildings which may be constructed. These buildings and the units therein together with the common elements appurtenant thereto will automatically become subject to this condominium regime by amendment(s) to the master deed upon filing of their respective floor plans. Declarant specifically reserves the right, from time to time, to further amend the master deed to the extent of adding additional units and general common elements (not to exceed two hundred (200) units containing four hundred seventy-five thousand (475,000) square feet in the aggregate) and limited common elements and, once added by amendment, the units therein shall have the same rights, privileges, and obligations as appear herein. In furtherance of the foregoing, an irrevocable power coupled with an interest is hereby granted and reserved unto declarant, its successors and assigns (however, individual unit owners shall not be included within the meaning of successors and assigns as used in this paragraph), to SHIFT AND REALLOCATE from time to time the percentage of ownership in the common elements appurtenant to each unit to the percentages set forth in each amendment pursuant to this paragraph. Each execution of a deed of conveyance, mortgage, or other instrument with respect to a unit, and the acceptance thereof, shall be deemed a grant, and an acknowledgment of and conclusive evidence of the parties thereto to the consent of such reservation of power to declarant as attorney in fact and shall be deemed to reserve to declarant and its successors and assigns the power to shift and reallocate from time to time the percentages of ownership in the common elements appurtenant to each unit set forth in each such recorded amendment. Further, declarant specifically reserves unto itself, and its successors and assigns, the rights to determine the location of all future units, common elements, and limited common elements; it being provided, however, that all future development of the condominium project shall be

restricted to the property and the condominium project shall not be expanded to include any other property.

Each unit owner by acceptance of a deed to a unit further acknowledges, consents, and agrees to this master deed and to each such amendment that is recorded, as follows:

* * * *

(H) Each unit owner by acceptance of the deed conveying his unit agrees for himself and all those claiming under him, including mortgagees, that the master deed and each amendment is and shall be deemed to be in accordance with the Horizontal Property Law and, for purposes of the master deed and the Horizontal Property Law, any changes in the respective percentages of ownership in the common elements as set forth in each such amendment shall be deemed to be made by agreement of all unit owners and mortgagees.

(I) Declarant reserves the unilateral right to amend the master deed for the purpose of shifting and reallocating the percentages of ownership in the common elements in the manner provided by this article and any applicable law....

* * * *

No future board acting for and on behalf of the council shall amend the master deed or adopt or amend any bylaws which would hinder, obstruct, or jeopardize declarant's interest in the present or future development of the condominium project.

3

Article XIV, captioned "Amendment to Declaration," sets forth the mechanism required to amend the Master Deed. It states in pertinent part: This master deed may be modified, altered, amended or added to by declarant pursuant to an instrument recorded by declarant in the office of the county clerk of Pulaski County, Kentucky, subject to and in accordance with section VI(F), or by an instrument signed by each unit owner of record (and by declarant, if the consent of declarant to such amendment is required under the terms of the condominium documents), or by a vote of greater than 50% in interest in the common elements at any duly called meeting of unit owners....

Article VI discusses the role of the council of co-owners. Subsection (F) discusses situations in which the declarant's written consent is necessary. Anything to the contrary contained in any of the condominium documents notwithstanding, during the interval (the "declarant's marketing interval") from the date of recordation of this master deed until the earlier of such time

as (1) declarant or its designee(s) shall cease to own any units in the condominium project, or (2) four years from the date of recording this master deed, the board of directors may not, without the declarant's prior written consent (1) amend any of the condominium documents; (2) make any addition, alteration, or improvements to the common elements or to any unit; (3) assess any common charges for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund if the effect of such assessment would be to increase the amount of such reserve, contingency, or surplus fund in excess of an amount equal to that proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the condominium project bears to the total amount of such initial budget of estimated expenses; (4) hire any employee in addition to the employees, if any, provided for in the initial budget; (5) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a unit; (6) borrow money on behalf of the condominium project; or (7) reduce the quantity or quality of services to or maintenance of the condominium project. During the declarant's marketing interval, in addition, declarant may unilaterally amend any condominium document so long as such amendment does not (1) alter the undivided interest in the common elements appurtenant to any unit not owned by declarant or its nominee at the time of such amendment, (2) increase the share of common expenses which are the obligation of unit owners other than declarant at the time of such amendment, or (3) materially alter the responsibilities and obligations of declarant as developer of the condominium project to other unit owners under the condominium documents.

4

We also note that Article XIII contains express language that the Association is prohibited from taking any action "which would hinder, obstruct, or jeopardize the declarant's interest in the present or future development of the condominium project." We are unable to ascertain how the Association squares its current position of opposition to future development with this restriction.

5

Although the Association makes a minor attempt to allege fraud on the part of South Fork based on marketing brochures for the development, their argument rings hollow. Moreover, were we inclined to address the issue, the Association lacks standing to assert such a claim because all of the deeds were between individual unit purchasers and South Fork; the Association

was not a signatory to any of the deeds. Standing requires that a party “have a judicially recognizable interest in the subject matter of the suit.”

HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc., 697 S.W.2d 946, 947 (Ky.1985). The Association is a legal stranger to the deeds and cannot be said to have any legal interest in a claim of fraud based thereon.

End of Document

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502-297-9991 or 502-905-9991

July 29, 2014

Ms. Julia Williams
Louisville Metro Planning & Design Services
444 S. 5th Street
Louisville, KY 40202

Re: 1505 Rosewood Ave.
Application for Rezoning
Rosewood Condominium Council, Inc.

Dear Ms. Williams:

I represent the Rosewood Condominium Council, Inc., which is the owner of the common elements, including the land, of the Rosewood Condominium at 1505 Rosewood Ave. The Board of Directors of that corporation has submitted a rezoning application to Planning & Design Services. I understand you have delayed any staff reviews of that application until you have proof that the property is owned by the applicant.

As you know, one of the entities that can file such an application is the owner of a parcel of property. Rosewood Condominium Council, Inc. is clearly the owner. The Declaration and Master Deed Establishing Rosewood Condominiums is filed in DB 08871, Page 0375-0394, and was originally filed on July 21, 2006. KRS 381.9167(d) clearly gives a unit owners' association the right to "Institute...administrative proceedings in its own name on behalf of itself...on matters affecting the condominium." On page 14 (DB 08871, P 0388) of the Master Deed, it clearly states that the original developer controls the Council until "7 years after the date of the filing of this Declaration and Master Deed". After that time, the Council is controlled by the unit owners. That 7-year time elapsed on July 21, 2013. Therefore, the unit owners are now in control of the Council, not the original developer, Highlands Restoration Group, LLC.

On page 2 (DB 08871 P 0376) of the Master Deed, the "Common Elements" are defined as consisting "of all the property as set forth on the set of floor plans of the buildings, excepting the individual units, including but not limited to, the land (including the Land under the units)..." As with all condominiums, the common elements are owned proportionately by the individual unit owners and are maintained and controlled by the Council. In this case, the individual unit owners are acting through their representative Council, as authorized on page 14 of the Master Deed.

Even Mr. Bardenwerper, attorney for the original developer, in his e-mail of July 24, 2014, admits as follows::

once the land is put into the condo regime it is true that the first unit owner and thereafter other unit owners as they come into ownership of units “own” the “common elements”, like the land.

Any other arguments put forth by Mr. Bardenwerper are items between the developer and the Council, not items of any concern to PDS. The only concern to PDS is the ownership of the property, and **all** agree that is the owners of the units, as represented by the Council. Therefore, we respectfully request this application be processed as usual.

Sincerely,

Stephen T. Porter

pc: Jonathan Baker
John Carroll
Bill Bardenwerper
Rosewood Condominium Council, Inc.



Tab 9.
Parking Waiver Justifications

Rosewood II

Parking Waiver Application Attachment

The requested parking waiver is to allow the applicant to reduce the minimum requirements by 2 parking spaces and / or to utilize the available on-street parking to meet the requirements of the two parking spaces being waived.

1. A parking study in accordance with the requirements of the LDC and Metro Public Works has been performed and is attached to this application. For this reason this request is in compliance with the comprehensive plan.
2. The applicant has made every effort to provide parking on-site. Unfortunately, other options were not code compliant and will require variances and waivers. The request presented appears to be the least impactful on the neighborhood.

-
1. The request is the minimum reduction of two parking spaces. This meets the minimum requirements for the entire parcel (the existing building and the proposed building).
 2. Since a parking study has been performed that indicates a surplus of parking available. This proposal will not adversely affect nearby properties.
 3. The requirements stated in table 9.1.2 do accurately reflect the parking needs of the proposed use and while the requested parking waiver is to reduce the required number of parking spaces, the parking study clearly demonstrates that there is adequate surplus parking to accommodate the two parking spaces needed to be in compliance with the aforesaid table 9.1.2. All of the “applicable reductions” listed in table 9.1.1 are not applicable except for the number 6, which states “a parking waiver must be obtained to reduce the minimum number of required parking spaces, except as provided in table 9.1.1”.
 4. The parking study has been performed indicates a surplus of parking available.

-
1. N/A – The applicant is not requesting a waiver to exceed the maximum parking required.
 2. N/A – The applicant is not requesting a waiver to exceed the maximum parking required.

Parking Waiver Justification:

In order to justify approval of any parking waiver, the Planning Commission considers the following criteria. Please answer **all** of the following items. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

Reason for Request: The requested parking waiver is to allow the applicant to reduce the minimum requirements by 2 parking spaces and/or to utilize the available on-street parking to meet the requirements of the two parking spaces being waived.

For all Parking Waivers:

- 1. The Parking Waiver is in compliance with the Comprehensive Plan.**
A parking study in accordance with the requirements of the LDC and Metro Public Works has been performed and is attached to this application. For this reason, this parking waiver request complies with the applicable Guideline 3, Policy 24 and Guideline 7, Policy 10 recommendations with respect to provision for adequate parking.
- 2. The applicant made a good faith effort to provide as many parking spaces as possible on the site, on other property under the same ownership, or through joint use provisions.**
The applicant has made every effort to provide parking on-site. Unfortunately, other options would not be fully LDC compliant and might require design waiver or variances. The request presented appears to be the least impactful on the neighborhood.


For Waivers to reduce the minimum number of required parking spaces; OR use on-street parking spaces that are not directly adjacent to or abutting the development site; OR use parking spaces located in a public parking lot:

- 1. The requested waiver is the smallest possible reduction of parking spaces that would accommodate the proposed use.**
The request is the minimum reduction of two parking spaces. This meets the minimum requirements for the entire parcel (the existing building and the proposed building).
- 2. Adjacent or nearby properties will not be adversely affected.**
That is because a parking study has been performed which has determined that a surplus of on-street parking is available. Consequently, use of demonstrated surplus on-street parking will not adversely affect nearby properties.
- 3. The requirements found in Table 9.1.2 do not accurately depict the parking needs of the proposed use and the requested reduction will accommodate the parking demand to be generated by the proposed use.**
n/a
- 4. There is a surplus of on-street or public spaces in the area that can accommodate the generated parking demand.**
The parking study submitted with this application demonstrates that a surplus of on-street parking available.

Waivers to provide more parking spaces than the maximum allowed:

- 1. The requirements found in Table 9.1.2 do not allow the provision of the number of parking spaces needed to accommodate the parking needs.**
n/a
- 2. The requested increase is the minimum needed to do so.**
n/a



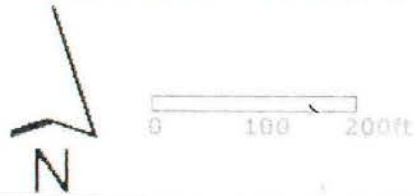
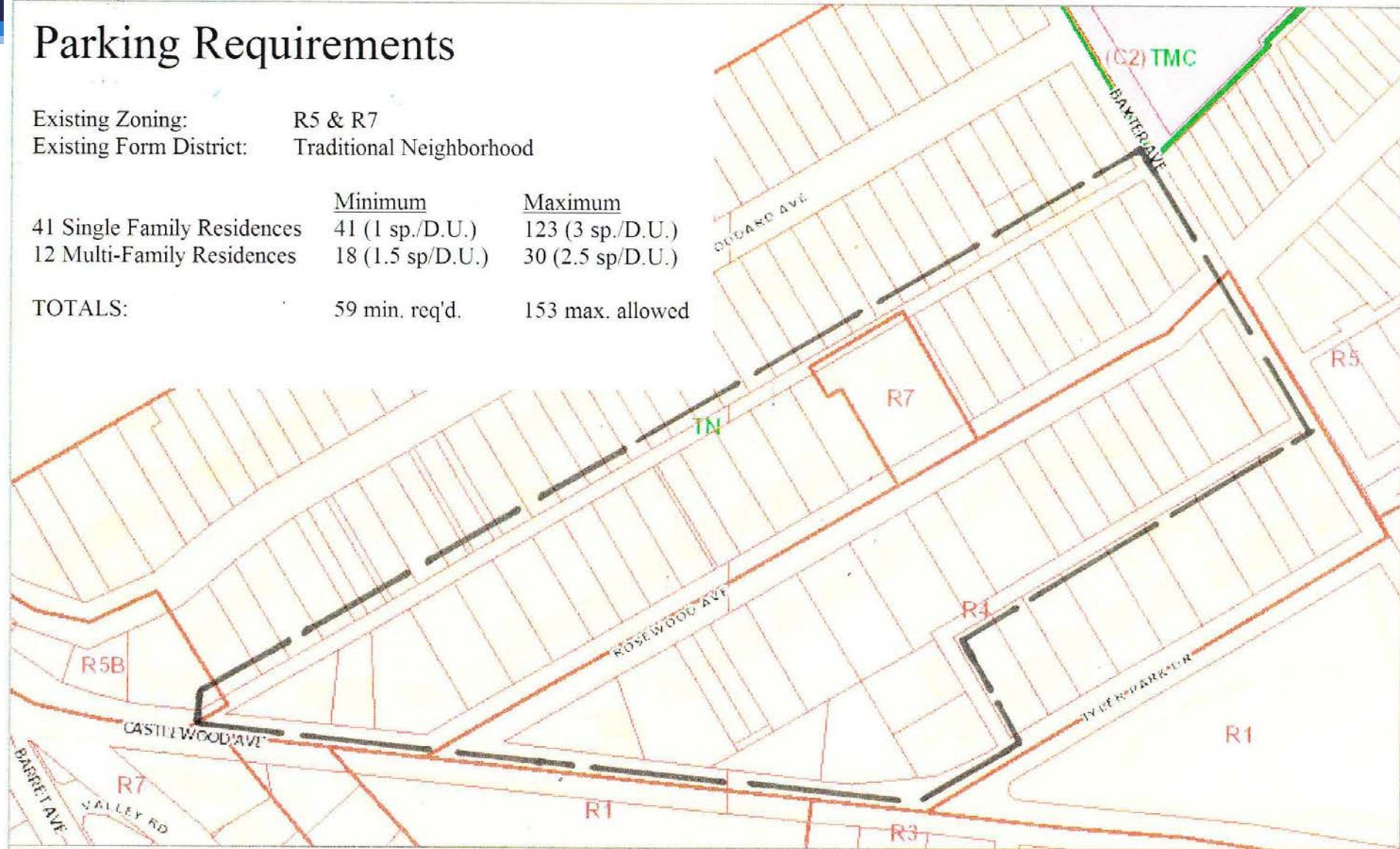
 REPRESENTS NO PARKING THAT ARE WITHIN SIGHT TRIANGLES, ADJACENT TO FIRE HYDRANTS OR IN FRONT OF EXISTING DRIVEWAYS.

FOR THE PURPOSE OF THIS STUDY ALL ON STREET PARKING SPACES SHALL BE A MINIMUM OF 20 FEET IN LENGTH.

Parking Requirements

Existing Zoning: R5 & R7
 Existing Form District: Traditional Neighborhood

	<u>Minimum</u>	<u>Maximum</u>
41 Single Family Residences	41 (1 sp./D.U.)	123 (3 sp./D.U.)
12 Multi-Family Residences	18 (1.5 sp/D.U.)	30 (2.5 sp/D.U.)
TOTALS:	59 min. req'd.	153 max. allowed



— Limits of Study

5/27/2014 10:43:01 AM

ROSEWOOD AVENUE PARKING STUDY

= Max Occupied

Location	Available Spaces			
	Carport	Space	Garage	Total
Rosewood Avenue	0	101	7	108
Alley North of Rosewood	2	11	46	59
Alley South of Rosewood	0	2	8	10
Total Spaces	2	114	61	177

Thursday May 15, 2014 - Spaces Occupied									Average Occupied	Average Unoccupied
7:00 PM	7:15 PM	7:30 PM	7:45 PM	8:00 PM	8:15 PM	8:30 PM	8:45 PM	9:00 PM		
34	34	34	35	39	41	40	39	43	38	70
53	54	54	54	54	55	55	56	56	55	4
10	10	10	10	10	10	10	10	10	10	0
97	98	98	99	103	106	105	105	109	102	75

*Note - For purpose of this study, all garage spaces are assumed to be occupied in the parking counts.

Location	Available Spaces			
	Carport	Space	Garage	Total
Rosewood Avenue	0	101	7	108
Alley North of Rosewood	2	11	46	59
Alley South of Rosewood	0	2	8	10
Total Spaces	2	114	61	177

Friday May 16, 2014 - Spaces Occupied									Average Occupied	Average Unoccupied
8:00 PM	8:15 PM	8:30 PM	8:45 PM	9:00 PM	9:15 PM	9:30 PM	9:45 PM	10:00 PM		
45	50	49	51	53	49	51	50	51	50	58
52	52	53	54	54	55	54	53	53	53	6
10	10	10	10	10	10	10	10	10	10	0
107	112	112	115	117	114	115	113	114	113	64

*Note - For purpose of this study, all garage spaces are assumed to be occupied in the parking counts.

Location	Available Spaces			
	Carport	Space	Garage	Total
Rosewood Avenue	0	101	7	108
Alley North of Rosewood	2	11	46	59
Alley South of Rosewood	0	2	8	10
Total Spaces	2	114	61	177

Saturday May 17, 2014 - Spaces Occupied									Average Occupied	Average Unoccupied
2:00 PM	2:15 PM	2:30 PM	2:45 PM	3:00 PM	3:15 PM	3:30 PM	3:45 PM	4:00 PM		
36	37	36	36	27	39	40	40	41	37	71
53	52	52	53	53	54	53	53	54	53	6
10	10	10	10	10	10	10	10	10	10	0
99	99	98	99	90	103	103	103	105	100	77

*Note - For purpose of this study, all garage spaces are assumed to be occupied in the parking counts.

Location	Available Spaces			
	Carport	Space	Garage	Total
Rosewood Avenue	0	101	7	108
Alley North of Rosewood	2	11	46	59
Alley South of Rosewood	0	2	8	10
Total Spaces	2	114	61	177

Sunday May 18, 2014 - Spaces Occupied									Average Occupied	Average Unoccupied
2:00 PM	2:15 PM	2:30 PM	2:45 PM	3:00 PM	3:15 PM	3:30 PM	3:45 PM	4:00 PM		
44	48	48	46	46	46	46	45	45	46	62
55	57	56	55	56	58	58	58	56	57	2
9	9	9	9	9	9	9	10	10	9	1
108	114	113	110	111	113	113	113	111	112	65

*Note - For purpose of this study, all garage spaces are assumed to be occupied in the parking counts.

Location	Available Spaces			
	Carport	Space	Garage	Total
Rosewood Avenue	0	101	7	108
Alley North of Rosewood	2	11	46	59
Alley South of Rosewood	0	2	8	10
Total Spaces	2	114	61	177

Tuesday May 20, 2014 - Spaces Occupied									Average Occupied	Average Unoccupied
6:00 PM	6:15 PM	6:30 PM	6:45 PM	7:00 PM	7:15 PM	7:30 PM	7:45 PM	8:00 PM		
63	61	58	60	59	57	56	51	49	57	51
59	59	59	59	59	59	57	55	55	58	1
10	10	10	10	10	10	10	10	10	10	0
132	130	127	129	128	126	123	116	114	125	52

*Note - For purpose of this study, all garage spaces are assumed to be occupied in the parking counts.

Tab 10.

Parking Waiver Findings of Fact

Parking Waiver Findings of Fact

Parking Waiver to reduce the minimum requirements by 2 parking spaces and/or to utilize the available on-street parking to meet the requirements of the two parking spaces being waived.

WHEREAS, a parking study was conducted in accordance with the requirements of the LDC and Metro Public Works and was entered into the record at the Planning Commission Public Hearing; this parking waiver request complies with the applicable Comprehensive Plan Guideline 3, Policy 24 and Comprehensive Plan Guideline 7, Policy 10 recommendations with respect to provision for adequate parking; and

WHEREAS, the applicant has made every effort to provide parking on-site; and the original plan for a garage would cause building complications; and so the request appears to be the least impactful on the condominium community or neighborhood; and

WHEREAS, the requested waiver is the smallest possible reduction of parking spaces that would accommodate the proposed use; and this meets the minimum requirements for the entire parcel (the existing building and the proposed building); and

WHEREAS, adjacent or nearby properties will not be adversely affected because a parking study has been performed which has demonstrated that a significant surplus of on-street parking is available; and the use of demonstrated surplus on-street parking will not adversely affect nearby properties; and

WHEREAS, the requirements stated in Table 9.1.2 accurately reflect the parking needs of the proposed use; and while the requested parking waiver is to reduce the required number of parking spaces, the parking study clearly demonstrates that there is adequate surplus parking to accommodate the two parking spaces needed so as to assure compliance with the aforesaid Table 9.1.2; and all of the “applicable reductions” listed in Table 9.1.1 are not applicable except for #6, which states “a parking waiver must be obtained to reduce the minimum number of required parking spaces, except as provided in Table 9.1.1”; and

WHEREAS, there is a surplus of on-street or public spaces in the area that can accommodate the generated parking demand; and the parking study submitted with this application demonstrates that a surplus of on-street parking available;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves the Parking Waiver.