




Tom Leatherwood
Shelby County Register

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08/03/2018	11:20 AM
69 PGS	
DONALD 1767509-18078487	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	345.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	347.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

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

Final Development Plan

Phase I

Re-subdivision of

Lot B and Lot C

WINSTEAD FARMS

PLANNED MIXED USE DEVELOPMENT

RESIDENTIAL DEVELOPMENT

in

Lakeland, Tennessee

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C
WINSTEAD FARMS
PLANNED MIXED USE DEVELOPMENT**

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and executed this 27th day of July 2018, by **Renaissance Developments, LLC**, a Tennessee limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of all that certain real property situated in the City of Lakeland, County of Shelby, State of Tennessee, which is known as Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development, and consists of 7.36 acres of residential property, as shown on plat of record at Plat Book 278, Page 23 in the Register's Office of Shelby County, Tennessee (the "Plat") (as the same may be amended or re-recorded), to which Plat reference is hereby made for a more particular description of the planned mixed use development and of the residential lots contained therein (the "Mixed Use Development"). A copy of the Plat is attached to this Declaration as Exhibit "A";

WHEREAS, the Mixed-Use Development, excluding the commercial property contained therein, contains 12 residential "Lots" (as hereinafter defined) and the "Common Area" (as hereinafter defined), which Lots and Common Area are within the portion of Mixed Use Development which is more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Residential Development");

WHEREAS, Declarant desires to convey the Lots in the Residential Development with or without improvements thereon, subject to certain protective covenants, conditions, restrictions and reservations, as hereinafter set forth, which Declarant deems necessary and proper for the common good and benefit of the "Lot Owners" (as hereinafter defined); and

WHEREAS, Declarant further desires to establish a homeowners' association for the Residential Development, of which each of the Lot Owners shall be a Member (the "Association", as hereinafter defined), to administer and enforce the provisions of this Declaration, the Bylaws and other Governing Documents, and which, upon performance and satisfaction of all of Developer's construction and maintenance obligations as more fully described hereinbelow, shall be solely responsible for the ownership, operation and maintenance of all Common Areas and facilities located therein within the Residential Development.

NOW, THEREFORE, Declarant hereby declares that (i) the Residential Development and each of the Lots therein, shall be held, sold, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the following restrictions, each of which is included for the purpose of enhancing and protecting the value, desirability and attractiveness of the Residential Development; (ii) the covenants, conditions and restrictions contained herein shall be applicable to, and run with the title to the real property located within the Residential Development and

subjected to this Declaration; and (iii) the covenants, conditions and restrictions contained herein shall be binding upon all parties having any right, title or interest in any portion of the real property located within the Residential Development and subject to this Declaration, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any Lot or Lots within the Residential Development.

ARTICLE I DEFINITIONS

The terms used in this Declaration and in the Exhibits, shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.01 **"ACB"** means the Architectural Control Board, as described in Article 9.

1.02 **"Additional Property"** shall mean any real property that is contiguous to, abutting or located near the Residential Development (as defined below), which Declarant may subject to this Declaration pursuant to Section 2.02.

1.03 **"Annual Assessments"** shall mean and refer to those Assessments, as defined below, levied in accordance with Section 7.02 below.

1.04 **"Assessments"** means and refer to those payments due pursuant to Article 7, whether Annual Assessments, Special Assessment, Emergency Assessments or Specific Assessments (as hereinafter defined) or combination thereof.

1.05 **"Association"** shall mean and refer to "Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development HOA", a non-profit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns. The Association Charter and Bylaws, each of which are defined below, are attached hereto and marked Exhibit "C" and Exhibit "D" respectively.

1.06 **"Board of Directors"** or **"Board"** means the body responsible for administration and governance of the Association selected as provided in the Bylaws and serving as the Board of Directors pursuant to T.C.A. Sections 48-58-101(a) and 48-51-201(2) of the Tennessee Nonprofit Corporation Act.

1.07 **"Builder"** shall mean and refer to all general contractors who purchase Lots from Declarant for the purpose of constructing single family residences thereon, and selling such residences to homeowners, and the successors and assigns of such general contractors.

1.08 **"Bylaws"** shall mean and refer to the Bylaws of the Association, as they may be amended, a copy of which is attached hereto as Exhibit "D".

1.09 **"Charter"** shall mean and refer to the Charter of the Association as filed with the Secretary of State of the State of Tennessee, as it may be amended, which is attached hereto as Exhibit "C".

1.10 "**Common Area(s)**" shall mean all real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit and enjoyment of the Members of the Association and all improvements and fixtures located thereon. The term shall also include the Limited Common Area (as hereinafter defined).

1.11 "**Common Area Fencing**" shall mean all fencing, walls and gates located within the Common Areas of the Residential Development and all fencing (excluding any fencing located on a Lot) installed on the perimeter of the Residential Development, if any.

1.12 "**Common Expenses**" shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.13 "**Declarant**" shall mean and refer to RENAISSANCE DEVELOPMENTS, LLC, a Tennessee limited liability company. Declarant shall be synonymous with "Developer" for purposes of this Declaration.

1.14 "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereafter, as this Declaration may, from time to time, be amended in accordance with its terms.

1.15 "**Development Period**" shall mean the period of time during which the Declarant either owns any property, including any Lot or Residence, subject to this Declaration or, for a period of five (5) years from the recording of this Declaration has the unilateral right to subject additional real property to this Declaration pursuant to Section 2.02 below.

1.16 "**Development-Wide Standard**" means the standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Development. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ACB.

1.17 "**Eligible Holder**" shall mean any institutional holder, beneficiary, grantee, insurer, or guarantor of a first Mortgage (as hereinafter defined) who has provided a written request to the Association in accordance with Section 12.01 hereof.

1.18 "**Emergency Assessment**" shall mean any Assessment levied in accordance with Section 7.04 below.

1.19 "**Governing Documents**" shall mean the Plat, the Declaration, Charter, Bylaws, rules and regulations of the Association, and all additional covenants and/or restrictions governing any portion of the Residential Development, or any of the above, as each may be supplemented and/or amended from time to time.

1.20 "**Improvements**" shall mean any buildings, including Residences, walls, pavement, plantings, underground installations, slope alterations, painting, siding, roofing, shutters, windows, exterior materials, antenna, steps, lights, roads, driveways, utility facilities and lines,

parking areas, fences, satellite dishes, rooftop installations, screening walls and barriers, retaining walls, stairs, decks, patios, windbreaks, railings, plantings, landscaping or yard improvements of any kind, planted trees or shrubs, poles, signs, and any other structures and additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within such Lot, as referred to hereafter. In the event, that by reason of construction, settlement, or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

1.21 "**Limited Common Area**" shall mean any portion of the Common Area which primarily benefits of one (1) or more, but less than all, Lots, as more particularly described in Section 3.03 below.

1.22 "**Lot**" shall mean a portion of the Residential Development (other than the Common Area), whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a single-family detached Residence (as hereinafter defined). The term shall refer to the real property which is part of the Lot as well as any Improvements thereon. The term shall include within its meaning single-family detached Residences on separately platted Lots, as well as vacant land intended for development as such, but shall not include property owned by the Association or property dedicated to the public. In addition, "Lot" or "Lots" shall mean and refer to the plots of land designated with numbers I through 116 on the Plat and such additions as may be made pursuant to Section 2.02 below.

1.23 "**Lot Owner**" or "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest as security for the performance of an obligation; provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

1.24 "**Member**" shall mean and refer to every person who holds membership in the Association.

1.25 "**Mixed Use Development**" shall mean and refer to all that certain real property situated in the City of Lakeland, County of Shelby, State of Tennessee, which is known as Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development, and consists of approximately 7.36 acres of residential and commercial property, as shown on the Plat (as defined hereinabove).

1.26 "**Mortgage**" shall mean any mortgage, deed of trust, deed to secure debt, or other form of security instrument affecting title to any Lot.

1.27 "**Mortgagee**" shall mean a beneficiary, grantee or holder of a Mortgage.

1.28 "**Person**" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

1.29 "**Plat**" means and refers to the Plat defined on Page I of this Declaration.

1.30 "**Residence**" means a detached private dwelling constructed on any Lot intended for occupancy by a single-family.

1.31 "**Residential Development**" shall mean, prior to any additions thereto pursuant to Section 2.02, the 27 residential Lots and Common Area Which Lots and Common Area are within the portion of Mixed Use Development which is more particularly described in Exhibit "B" attached hereto and made a part hereof.

1.32 "**Special Assessments**" shall mean and refer to any Assessment levied in accordance with Section 7.03 below.

1.33 "**Specific Assessments**" shall mean and refer to any Assessment levied in accordance with Section 7.05 below.

ARTICLE II **PROPERTY, ROADS AND SEWERS**

2.01 Property subject to Declaration.

That certain real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Tennessee, and is more particularly described in the attached Exhibit "B".

2.02 Declarant's Right to Add Additional Property to the Residential Development.

During the Development Period, Declarant shall have the right, in its sole discretion and subject to all required governmental approvals, to add Additional Property to the Residential Development by annexing the same to the terms of this Declaration. Such annexation may be accomplished by the recordation of an Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Amended and Restated Declaration") with the Register's Office of Shelby County, Tennessee, which shall incorporate the terms, covenants, conditions, and restrictions of this Declaration. Declarant shall have the right to record such instrument and impose the terms thereof on the Residential Development without the consent or joinder of the Association, or any Owner or Mortgagee of any of the property within the Residential Development; provided, that the terms, covenants and conditions of the Amended and Restated Declaration are substantially identical to this Declaration. Upon recordation of such Amended and Restated Declaration, the owners of such Additional Property shall be and become subject to this Declaration, including assessment by the Association for their pro-rata share of the Common Expenses.

2.03 Declarant's Right to Withdraw Property from the Residential Development.

During the Development Period, Declarant shall also have the right, subject to all required governmental approvals, to withdraw property from the Residential Development as long as such property has not previously been conveyed to an Owner. The withdrawal by Declarant shall not require the consent or joinder of the Association, or any Owner or Mortgagee of any of the property within the Residential Development, but shall be at the sole option of the Declarant.

ARTICLE III

PROPERTY RIGHTS

3.01 **Owners' Easement of Enjoyment.** The Common Area within the Residential Development is intended to be available for the mutual benefit and enjoyment of all Owners, except for those portions of the Common Area which are designated as Limited Common Areas. In furtherance of this intention, every Lot Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) Restrictions, limitations and other provisions contained in this Declaration, the Plat and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association.
- (c) The right of the Board to adopt, amend and repeal rules and regulations regarding the use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;
- (d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;
- (e) The right of the Association, as provided in its Charter, Bylaws and/or this Declaration to suspend any Member's use, access and/or enjoyment rights of the Common Areas and facilities for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (f) The right of the Association to provide for and establish easements and rights-of-way created hereby on all streets, and to regulate parking, motorized and non-motorized vehicular traffic, and to maintain the Common Area;
- (g) The right of the Board to permit use of any facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;
- (h) The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of maintaining and improving the Common Areas which the Association is to maintain;
- (i) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred subject in all events to the same being subordinate to the rights of Owners and the City of Lakeland under this Declaration;
- (j) The right of the Association, acting through the Board, to dedicate or transfer all or any

portion of the Common Area to any public agency, authority, or utility for such purposes, subject to any approval requirements set forth in the Governing Documents;

- (k) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated as "Limited Common Area", as more particularly described in Section 3.03 below; and
- (l) A Lot Owner shall enjoy no actual ownership interest in the Common Areas, including the improvements thereto, to the extent the same are located within dedicated public rights-of-way and/or on an Owner's Lot.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided, however, that the Owner shall remain responsible for payment of all Assessments and other charges and shall remain liable for compliance with all terms and conditions set forth in the Governing Documents.

3.02 **Private Streets.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets, roads, overpasses, alleys and access ways, if any, within the Residential Development ("Private Streets"), whether or not such Private Streets are Common Area or whether or not such Private Streets are located on individual Lots, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Lot, subject to:

- (a) The restrictions, limitations and other provisions contained in this Declaration, the Plat and all other Governing Documents;
- (b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules and regulations regarding the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;
- (c) The right of the Declarant to dedicate all or any part of Private Streets;
- (d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners and the City of Lakeland contained in this Declaration;
- (e) The rights of the Association to maintain the Private Streets; and
- (f) The reserved right and privilege of Declarant and its successors and assigns, and following the conveyance to the Association of the Private Streets within the Residential Development, then of the Association (a) to limit, restrict or deny the ingress of any person, except Owners and Mortgagees, who, in the sole determination

of Declarant or the Association, does not belong or have business within the Residential Development, or who may create or participate in a disturbance or nuisance within any part of the Residential Development, or who is otherwise undesirable, and to accomplish the same through use of a controlled or guarded entranceway, or through such other means and upon such terms and conditions as Declarant or the Association may reasonably determine; (b) to control and regulate all types of vehicular traffic and parking on all or any part of the Private Streets; (c) to require the removal of any shrub, bush, fence, wall, tree or other item of any sort which might, in the sole opinion of Declarant or the Association impair or obstruct a motorist's vision on any of the Private Streets or public roads adjacent to the Residential Development; (d) to enforce claims against any Owner responsible for damages to any Private Streets within the Residential Development; (e) to adopt other rules and regulations governing the use of the Private Streets within the Residential Development; and (f) to assign in whole or in part the rights reserved herein to any person, including, without limitation, the Association. Such rights shall be permissive and neither Declarant nor the Association shall have any obligation to exercise such rights.

3.03 Limited Common Area. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Lots. By way of illustration and not limitation, Limited Common Areas may include shared driveways, landscaped medians and cul-de-sacs, and other portions of the Common Area benefiting certain Lots. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be assessed as a Specific Assessment against the Owners of Lots to which the Limited Common Area is assigned.

During the Development Period, any Limited Common Area shall be designated as such by Declarant, and the exclusive use thereof shall be assigned in the contract of sale relating to any Owner's Lot, in the deed by which the Limited Common Area is conveyed to the Association, in this Declaration, in any Amended and Restated Declaration and/or on the Plat relating to such Limited Common Area. Any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Lots during the Development Period. Any assignment of a Limited Common Area shall be for the term and subject to the conditions specified in the assignment and may be limited to a period of ownership by the Owner of the Lot to which such assignment has been made.

3.04 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

3.05 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area shall be taken by or conveyed

under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by an affirmative vote of at least sixty-seven percent (67%) of the Members and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking, Members holding at least sixty-seven percent (67%) of the total votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ACB. Section 7.03 below regarding Special Assessments for the repair or reconstruction of the Common Area shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

3.06 **View Impairment.** Neither the Declarant nor the Association guarantees or represents that any view from Lots over and across the Common Area, or over any Lot or other portion of the Residential Development, will be preserved without impairment. The Association shall have no obligation to prune or thin trees or other landscaping except as may be provided in the Plat, and shall have the right, in its sole discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Common Area from time to time.

The ACB may approve Improvements to Lots in accordance with the terms of this Declaration and the restrictions contained in the Plat. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Common Area and Lots or any other portion of the Residential Development.

ARTICLE IV

USE, RESTRICTIONS, IMPROVEMENTS AND

PROTECTIVE COVENANTS

4.01 **General.** This Article sets forth certain use restrictions and protective covenants which must be complied with by all Owners and occupants of any Lot. The Residential Development shall be used only for residential, recreational and related purposes (which may include, without limitation, model homes, sales offices for Declarant and/or Builder, an information center and/or

a sales office for any real estate broker retained by the Declarant and/or Builder to assist in the sale of the Lots and Improvements, offices for any property manager retained by the Association, business offices for the Declarant or the Association and related parking facilities) consistent with this Declaration, as may be amended from time to time.

4.02 **Incorporation of Plat Restrictions.** Those restrictions and protective covenants set forth in the Plat are incorporated herein by specific reference and in the event of any conflict between the restrictions and covenants set forth in the Plat and those set forth herein, the restrictions and covenants in the Plat shall prevail.

4.03 **Residential Use.** Lots may be used only for residential purposes of a private single-family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Residential Development; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Residential Development; (d) the activity does not increase traffic or include frequent deliveries within the Residential Development; and (e) the activity is consistent with the residential character of the Residential Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Residential Development, as may be determined in the sole discretion of the Board. There shall be no solicitation by any person in the Residential Development for charity, food delivery or for any cause whatsoever.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board of the Association. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required. The leasing of a Lot shall not be considered a business or trade within the meaning of this Section.

No Lot shall be subdivided so as to reduce the size of the Lot. All buildings and other structures erected upon any Lot shall be of new construction, and no buildings or structures shall be moved from other locations onto any Lot. No structure, except as otherwise provided, shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single family residence not to exceed two (2) stories in height, with an attached private garage for not more than four (4) cars. The foregoing shall not prohibit the construction of one residence upon two (2) or more Lots. No buildings or structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used as a residence, either temporarily or permanently.

Further, no garage or accessory building door openings shall be taller than ten feet (10'). No accessory building or other free-standing structure of any type (storage, shed shop, etc.) may be placed on any Lot without prior written approval of the ACB, and no proposed accessory

building or other free-standing structure exceeding four hundred (400) square feet shall be approved by the ACB. Additionally, approval from the ACB shall not be given for any manufactured units or "kit" buildings. All materials used for any accessory building, outbuilding or free-standing structure must be of equivalent standards and the construction must be of like methods to that of the main Residence located on the Lot. All buildings and other free-standing structures must be on a slab.

Finally, this Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the property and improvements within the Residential Development or its use of any Lots which it owns within the Residential Development.

4.04 **Prohibited Uses and Nuisances.** In order to provide for a congenial occupation of the Residences within the Residential Development, and to provide for the protection of the values of the entire Residential Development, the use of the Lots and Residences located thereon shall be in accordance with the following provisions:

- (a) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Plat and this Declaration;
- (b) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Builder to maintain on Lots purchased by Builder, during the period of the sale of said Lots, upon such portion of Builder's Lots as Builder deems necessary, model homes and sales offices;
- (c) No Residence erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the Residence being fully completed;
- (d) No animals, livestock or poultry of any kind shall be raised, bred or kept on any of the Lots, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Excessive numbers of pets shall not be kept. If the number of pets kept becomes unsanitary or a nuisance to neighbors, then the number shall be considered "excessive";
- (e) No advertising signs (except one of not more than five (5) square feet "for sale" sign per Lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any other Lot or any resident thereof. No business, trade or similar activity of any kind, except as specifically permitted above, shall be conducted in any building or in any portion of any Lot; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of the Declarant or any Builder approved by the Declarant, its agents and assigns during the construction of the Residences on the Lots and sales period of such Residences and Lots in the Residential Development;

- (f) All property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge, shrub or other obstruction shall be placed or permitted to remain where it would cause a traffic or sight problem;
- (g) All equipment, garbage or trash cans/containers, service yards, woodpiles or storage piles must be placed in areas so that they shall not be visible from adjoining Lots or from the street. All rubbish, trash, or garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. However, any portion of the Residential Development not yet developed by Declarant and/or Builder, shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition;
- (h) Unless expressly authorized by the Board of Directors, the outside burning of trash, leaves, debris, or other materials, except during the normal course of construction, is strictly prohibited;
- (i) Unless expressly authorized by the Board of Directors, the dumping of garbage, grass clippings, leaves, or other debris, fertilizers, or other potentially toxic substances at any location within the Residential Development is strictly prohibited. An exception from this rule is provided for application of fertilizer on Lots, provided that care is taken to minimize runoff, and Declarant and Builder may dump and bury rocks removed from a building site on such building site;
- (j) There shall be no storage of gasoline, kerosene, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency and normal household purposes, including, but not limited to, operation of lawn mowers, grills, and similar tools or equipment, and except as may be approved in writing by the ACB. No gas tank, gas container, or gas cylinder (except those placed by the Declarant and/or Builder or approved by the ACB in connection with the installation of swimming pools and/or permanent barbecues, indoor ranges, hot water heaters, back-up generators, home heating equipment and fireplaces, and except those used for portable barbecues) shall be permitted to be placed on or about the outside of any Residence or any ancillary building, and all such items (except those placed by the Declarant and/or Builder in connection with the installation of swimming pools and/or permanent barbecues, and except those used for portable barbecues) shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the ACB;
- (k) Except as may be installed by the Declarant and/or Builder, or as may be permitted by the ACB, no antennas, satellite dishes, aerials, or lines, wires or other devices for communication or transmission of current shall be placed on any portion of the Residential Development; provided, however, the following are permitted on a Residence: (a) direct broadcast satellite (DBS) antennas and multipoint distribution service (MDS) antennas eighteen (18") in diameter, and television broadcast antennas of any size. Such items shall be installed in the least conspicuous location available on the

Residence which permits reception of an acceptable signal, and must be installed in accordance with the rules of the Federal Communication Commission ("FCC") and any requirements of the ACB and Association that are consistent with the rules of the FCC. In no event, however, shall lines or wires for communication or the transmission of current be constructed, placed, or permitted to be placed within any portion of the Common Area unless the same shall be installed by the Association for the common use of all Members, and shall be protected cables, and any of said lines or wires which are not located in buildings shall be constructed or placed and maintained underground. Any line or wire installations permitted by the ACB pursuant to this Section shall be protected cable and shall only be installed underground;

- (l) No action shall at any time be taken by the Association or its Board of Directors which, in any manner, would discriminate against any Owner or Owners in favor of the other Owners;
- (m) Grass, weeds, underbrush, vegetation, debris and other unsightly growth shall be kept mowed and cleared at regular intervals by the Lot Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants that die shall be promptly removed from each Lot. In the event that an Owner shall fail or refuse to keep his Lot free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon such Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. Until a Residence is constructed on a Lot, Declarant, at its option and its discretion, may mow and have dead trees and debris removed from such Lots and the Lot Owner shall be obligated to reimburse Declarant for the cost of such work should he refuse or neglect to comply with the terms of this paragraph;
- (n) No obnoxious or offensive trade or illegal activity shall be carried on upon any Lot in the Residential Development, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Residential Development or any other Lot Owner;
- (o) No activities shall be carried on which emit foul or obnoxious odors;
- (p) Unless expressly authorized by the Board of Directors, the use or discharge of any radio, loudspeaker, horn, whistle bell, or other sound device so as to be an unreasonable annoyance or disturbance to others, as determined in the sole discretion of the Board, except alarm devices used exclusively for security purposes, is prohibited;
- (q) In the event of any question as to what may be or become a nuisance, such question shall be submitted in writing to the Board for a decision in writing, which decision shall be final;
- (r) The development, construction and sale activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of any Owner or occupant;

- (s) No hazardous or toxic materials shall be discharged, maintained, stored, or disposed of in or under any portion of the Residential Development, except in strict compliance with all applicable federal, state and local laws and rules. Flammable, combustible or explosive fluids or materials for ordinary household use may be stored or used within the Residential Development, subject to strict safety codes and shall be stored in containers specifically designed for such purposes;
- (t) The discharge of firearms within the Residential Development is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and fire arms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge;
- (u) No Owner shall install an irrigations system which draws upon ground or surface waters nor from any ponds, or other body of water within the Residential Development. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Area and any other areas maintained by the Association (including Lots);
- (v) No screen enclosures may be constructed on any Lot except as approved by the ACB and after all necessary approvals and permits have been obtained from all necessary governmental authorities;
- (w) No Lot shall be used except for residential and ancillary purposes as described above. Temporary uses for model homes, parking lots, construction trailer, construction storage areas and/or sales offices shall be permitted for the Declarant and/or any Builders;
- (x) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Residential Development nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Residential Development. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to the covenants, conditions and restrictions provided herein;
- (y) Improvements shall be located in conformance with the requirements of the City of Lakeland and the approval of the ACB;
- (z) No building material of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence construction of improvements. Building materials shall not be placed or stored in streets or between the curb and property lines;
- (aa) Structures, equipment, or other items on the exterior portions of a Lot which become rusty, dilapidated, or otherwise have fallen in repair are strictly prohibited;

- (bb) Activities and hobbies which tend to cause an unclean, unhealthy, or untidy condition outside of enclosed structures on the Lot are prohibited unless permission is received from the Board of Directors;
- (cc) There shall be no violation of any rules and/or regulations which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership, and the Board of Directors is hereby, and elsewhere in the Bylaws authorized to adopt such rules and regulations;
- (dd) All boats, motorcycles, trucks and recreational vehicles must be kept behind the Residence erected upon the Lot and shall be fenced or otherwise screened from view from neighboring streets. Such items shall not protrude beyond any building line and shall not be kept or parked upon any other portion of a Lot, street or open space; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or other portion of the Residential Development;
- (ee) No outside clothes lines shall be erected or placed on any Lot;
- (ff) No fence, wall or other structure shall be erected in the front, back, or side yard except as approved by the ACB or as initially installed by Declarant or Builder;
- (gg) No hedge shall be erected in the front yard except as approved by the ACB or installed by Declarant, Builder or their respective agents, employees or representatives;
- (hh) Window treatments shall consist of draperies, blinds, shutters, decorative panels or other tasteful window coverings, of the type customarily found in single-family homes, and no newspaper, sheets or other temporary window treatments are permitted, except for periods not exceeding two (2) months after an Owner first moves into a Residence or when permanent window treatments are being cleaned or repaired;
- (ii) No single-story residence containing less than two thousand three hundred (2,300) square feet of heated space and no two-story residence containing less than two thousand seven hundred (2,700) square feet of heated space shall be constructed on any Lot.
- (jj) Every Residence shall have a minimum of nine (9') foot ceilings on the ground-level floor.

4.05 **Common Area Restrictions and Uses.** In order to provide for congenial use of the Common Areas within the Residential Development, and to provide for the protection of values of the entire Residential Development, the use of the Common Areas shall be in accordance with the following provisions:

- (a) There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association;
- (b) No motorized vehicles of any description shall be allowed on the Common Areas with the exception of lawn and gardening equipment. "Motorized vehicles" as used herein shall include without limitation, motorcycles, motorboats, all-terrain vehicles, go carts and motorized scooters;
- (c) With the prior written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

4.06 **Leasing of Lots.** Any lease entered into with respect to a Lot located within the Residential Development must be in accordance with the following provisions:

- (a) No lease may be entered into for less than a one (1) year period, and all leases must be in writing;
- (b) Owners are required to provide to the Association, within ten (10) days of the execution of the lease, the Owner's current mailing address, together with the names of those residing on the Lot, along with such other additional information as the Board may require;
- (c) Each Owner shall be responsible for delivering to the lessee copies of this Declaration and all other Governing Documents for the Residential Development;
- (d) Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing on his Lot, and for all guests, and/or invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to any portion of the Common Area, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, the Charter or the Bylaws, by any resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner;

- (e) With respect to any tenant or any person present on any Lot or any portion of the Residential Development, other than an Owner and the members of his immediate family permanently residing with him in the Lot, if such person shall materially violate any provision of this Declaration or the Governing Documents, or be a source of annoyance to the residents of the Residential Development, or shall willfully damage or destroy any portion of the Common Area or property of the Association, then upon written notice by the Association, such person shall be required to immediately leave the Residential Development and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Residential Development and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

4.07 Landscaping of Easements. In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the Plat. Within these easements, no Improvement, structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Residential Development and the Association, and its successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots and/or the Common Area under and through the utility easements as shown on the Plat. Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the Residential Development, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

4.08 Occupants Bound. All provisions of this Declaration, the Governing Documents and all rules and regulations and use restrictions governing the conduct of Owners/Members and establishing sanctions against Owners/Members shall also apply to any and all occupants even though occupants are not specifically mentioned.

4.09 Rules and Regulations. The Board shall have the power to make and enforce reasonable rules and regulations and to impose fines, in accordance with Section 5.10 below and the Bylaws, in order to enforce the provisions of this Section.

4.10 Enforcement. In the event, any Owner or occupant violates the restrictions and protective covenants contained herein, the Board, on behalf of the Association, shall have the right to enforce the provisions hereof by entering the Lot and repairing, maintaining and/or restoring the Lot or the Improvements thereon so that the Owner or occupant is not in violation of the terms hereof. The costs incurred by the Board in enforcing the terms hereof, including reasonable attorneys' fees, shall be added to and become part of the Assessments to which such

Lot is subject. In addition, the Board may also fine Owners for such non-compliance, which fines shall be established by the Board.

ARTICLE V

THE ASSOCIATION

5.01 **Membership.** Every Person, as defined, who is a record owner of a fee or undivided fee interest in any of the Lots within the Residential Development shall be a Member of the Association, as defined: provided however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 5.04 below and in the Bylaws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership of any of the Lots. Ownership of such Lot shall be the sole qualification for membership.

5.02 **Secured Parties.** No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered an Owner, and such individual or entity shall not be entitled to membership in the Association or to cast any votes on any question or matter affecting the administration or governance of the Association.

5.03 **Voting Rights.** The voting rights of the membership shall be appurtenant to ownership of a Lot, and each Owner shall be entitled to one (1) vote for each Lot owned; provided, however, that Declarant shall be entitled to three (3) votes for every Lot owned by Declarant until the later to occur of the following:

- (a) The sale of seventy percent (70%) of all Lots in the Residential Development (including any additional Lots added pursuant to Section 2.02 as of the date of any vote); or
- (b) The lapse of five (5) years from the date of the recordation of this Declaration. Thereafter, Declarant shall be entitled to one (1) vote for every Lot then owned by Declarant.

5.04 **Voting.** At every meeting of the Members, each Member shall have the right to cast his vote on each question addressed at such meeting. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by provisions of statute or the Governing Documents, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one Person shall be exercised as such Persons among themselves determine

or as provided herein or in the Bylaws, if so provided, and may be exercised by any one of them present at any meeting unless any objection or protest by any other Owner of such membership is noted at such meeting. In the event, all of the co-Owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

5.05 **Interested Directors or Lot Owners.** It is hereby acknowledged that certain members of the Declarant may also be Lot Owners or officers or directors of the Association. In such regard, the Association and each Lot Owner hereby acknowledges and consents to such relationship and agrees that no conflict of interest is created by such relationship.

5.06 **Proxies.** A Member may appoint any other Member or the Declarant or any other person permitted by law or by the Bylaws as his proxy. In no case, may any Member (except the Declarant) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Bylaws.

5.07 **Quorum.** The presence either in person or by proxy of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast with respect to any question, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

5.08 **Function of the Association.** The Association shall be the entity responsible for ownership, management, maintenance, operation and control of the Common Area and all Improvements located thereon within the Residential Development, except for: (1) the Existing Pond, which shall be owned, operated and maintained jointly by the Association and the Commercial Property Owners' Association; provided, however, that the Association shall be solely responsible for the operation and maintenance of the Existing Pond until the Commercial Property Owners' Association is formed; and (2) the Path, which the Association shall jointly maintain and operate with the Commercial Property Owners' Association; provided, however, that the Association shall be solely responsible for the operation and maintenance of the Path until the Commercial Property Owners' Association is formed. For purposes of maintenance and operation of the Existing Pond and the Path, "jointly" shall mean that the Association and the Commercial Property Owners' Association shall each pay a pro rata share of the costs and expenses for maintenance and operation of the Existing Pond and the Path based on the portions of the Existing Pond and the Path located within the Residential Development and the commercial development, respectively. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules and regulations as the Board may adopt pursuant to Section 5.10 below. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Tennessee. In addition to the powers otherwise provided in the Governing Documents, the Association, through action of the Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations to provide management

services, and may delegate any of its duties or obligations to such managing agent(s) duly authorized by the Board of Directors.

5.09 Conveyance of Common Area. Declarant and the Association agree that the Common Area, including all Improvements thereon, shall be conveyed to the Association in its "WHERE IS, AS IS" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the condition, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

5.10 Rules and Regulations/Enforcement. The Association, through the Board of Directors, may make and enforce reasonable rules and regulations governing the conduct of the Owners/Members and the use of property in the Residential Development, including the Common Area and the Lots. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of such rules and regulations and the Governing Documents after compliance with the notice and hearing procedures set forth in the Bylaws. Such sanctions may include, without limitation:

- (a) Imposing monetary fines which shall (unless prohibited by Tennessee law) constitute a lien upon the Lot of the violator and be collectable as a Specific Assessment in accordance with Section 7.05 below;
- (b) Filing notices of violations in the Public Records of Shelby County providing record notice of any violation of the Governing Documents;
- (c) Suspending an Owner's right to vote (as further set out in Section 5.03 and 5.04 above);
- (d) Suspending any person's right to use any recreational facilities within the Common Area and any part of the Limited Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
- (e) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;
- (f) In addition, the Board, or the covenants committee if established, may elect to enforce the Governing Documents by exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other

violation of the Governing Documents). The Association may levy Specific Assessments in accordance with Section 7.05 below to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents; and

- (g) Enforcement by suit at law to recover monetary damages or in equity to enjoin any violation or both.

In the event that any lessee, occupant, guest or invitee of a Lot violates the rules and regulations or any of the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed, the fine may, but is not required to be, first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the rules and regulations or the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, incurred in such action, regardless of whether suit is filed and including any appeals.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal laws and ordinances, if applicable, and permit local and other governments to enforce laws and ordinances within the Residential Development for the benefit of the Association and its Members.

5.11 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws or other Governing Document(s), or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the other Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

5.12 During the Development Period. The Declarant may designate sites within the Residential Development for utility facilities and other public or quasi- public facilities. No membership approval shall be required for such designation. The sites may include portions of the Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by

Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

5.13 **Indemnification.** The Association shall indemnify every officer, director, ACB member and committee member against all damages, liabilities, and expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ACB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Charter and Tennessee law.

The officers, directors, ACB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ACB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ACB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ACB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ACB member or committee member may be entitled. The Association shall, through the Annual Assessment, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.14 **Dedication of or Grant of Easements on Common Area.** The Association may dedicate or grant easements across portions of the Common Area to any other local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company.

5.15 **Personal Security.** Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Residential Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Residential Development. Neither the Association, the Declarant, nor any successor to the Declarant shall in any way be considered insurers or guarantors of security within the Residential Development nor have any duties in respect to security or safety, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. To the extent permitted by the City of Lakeland, the Association may, at its election, maintain and operate one or more entry gates which will control vehicular access to and from the Residential Development, but no representation or warranty is made that the entry gate or gates will be permitted by the City of Lakeland, or that such entry gates, if permitted and installed, cannot be circumvented or that it can prevent illegal activity within the Residential Development, nor is any representation or warranty made that any entry gate is to serve as a method to provide security. No representation or warranty is made that any system or measure, cannot be compromised or circumvented, nor that any such system or measure undertaken is provided to prevent loss or provide safety. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt adequately to illuminate all of the Common Area, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its

tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor to Declarant are not insurers or guarantors of safety and security within the Residential Development and that each person within the Residential Development assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties. Neither Declarant nor the Association shall be liable or responsible for any personal injury or for any loss or damage to the Residential Development which may occur within the Residential Development regardless of whether it is due to failure of the limited access entry system, or procedures for operation adopted from time to time.

5.16 **Relationship with Tax-Exempt Organizations.** The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Residential Development. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be included as a line item in the Association's annual budget and shall be a Common Expense included within the Annual Assessment charged to each Member in accordance with Section 7.02 below. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

5.17 **Provision of Services.** The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as part of the Annual Assessment provided the service or facility is provided to all Lots or as Specific Assessments under Section 7.05 below. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, home monitoring, caretaker, utilities, and similar services and facilities. The Board, without the consent of the Members of the Association shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association. Each Owner consents to the Association providing to the provider of any such service the name and contact information of such Owner so as to allow the owner the opportunity to receive such services.

5.18 **Rezoning.** During the Development Period, no Owner or any other person may apply or join in an application to amend, vary or modify any governmental rule, regulation or zoning ordinance imposed by any governmental entity applicable to or rezone or apply for any zoning variance or waiver as to all or any portion of the Residential Development without the prior written consent of Declarant. Each person that acquires any interest in the Residential Development acknowledges that the Residential Development is a part of the Mixed-Use Development, the development of which is likely to extend over multiple years, and agrees not to protest or challenge (a) changes in uses or density of property within the Mixed-Use Development, or (b) changes in the Plat of the Mixed-Use Development. During the

Development Period, Declarant may apply for rezoning as to any portion of the Mixed-Use Development owned by it at any time.

5.19 **Transfer Fee.** The Association reserves the right to establish a transfer fee to be paid by each of the Owners or grantees upon transfer of his Lot, which fee and procedures therefore shall be established by the Board. Under no circumstances shall a transfer fee be levied upon transfer of title to a Lot to the Declarant or to a Builder solely for purposes of development and resale.

5.20 **Personal Services.** The employees of the Association shall not be required to attend to any personal matters or business of Owners, nor shall they be permitted to leave the Residential Development on any private business of Owners. The uses and functions of such employees shall be governed by the Board of Directors. In the event, personal services are provided to Owners by any employees of the Association, the Association will not assume any responsibility or be liable for, in any manner, the quality of such services or work provided, nor shall it warrant such services or work. In addition, the Association shall not be liable for any injury to persons or damage to Residential Development resulting from any act or omission by those performing such personal work or services for Owners.

ARTICLE VI

MAINTENANCE AND REPAIR OF LOTS AND COMMON AREAS

6.1 **Association's Responsibilities for Common Area.** Commencing with the date this Declaration is recorded, except as stated hereafter, the Association shall be responsible for the upkeep, maintenance and repair of the Common Area and Improvements thereon (whether the same have been conveyed or transferred to the Association or not), and such other areas as are available for the collective use and enjoyment of the Owners in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Area within the Residential Development, if any, and any Improvements thereon accruing from and after the date this Declaration is recorded; provided, however, that the Association, upon formation of the Commercial Property Owners' Association, shall (1) act jointly with the Commercial Property Owners' Association with respect to the upkeep, maintenance and repair of the Existing Pond and the Path as provided by the requirements and restrictions contained in the Plat, and (2) share in liability with the Commercial Property Owners' Association for the payment of any taxes assessed against the Existing Pond and any other portion of the Common Area owned jointly with the Commercial Property Owners' Association based on their respective ownership interests in any such jointly owned property. The Association shall at all times insure, maintain in good repair, and shall replace as scheduled any and all of the Common Area and Improvements of which it has ownership or for which it has maintenance obligations. It is anticipated that the Association shall maintain all private, non-public internal roads, if any, inside of the Residential Development in good repair and shall resurface or repave said roads as necessary. All work required pursuant to this Section 6.01 shall be completed in a manner that, in the sole and exclusive judgment of the Board, is deemed satisfactory. Notwithstanding the foregoing, the Association's responsibilities for the Common Area are only applicable to the extent such responsibilities are not included within the responsibilities or obligations of the Declarant, the Commercial Property Owners' Association or any other party under the terms of the Governing Documents.

6.02 **Street Lighting.** To the extent such services are not provided by the City of Lakeland, the Association shall have the obligation for maintenance of any street lighting facilities installed in Common Areas of the Residential Development owned by the Association, if any, from the date of recording this Declaration or from the date of installation of the street lighting, whichever occurs first. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. In the event the Declarant, in its sole discretion, elects to install such street lighting, Declarant shall be entitled to all rebates or refunds of the installation charges and the Association hereby assigns such rebates or refunds to Declarant and the Association shall forthwith pay same to the Declarant.

6.03 **Lot Maintenance.**

- (a) **Landscaping.** Subject to Article IV above, grass cutting and maintaining landscaping/irrigation as originally installed by the Declarant, its designees or assigns, or any Builder, shall be the maintenance responsibility of the Association. The Association shall not be responsible for adding any landscaping or for re-mulching of the Lots. The maintenance and/or repair of landscaping on an Owner's Lot damaged due to the negligence or intentional acts of such Owner shall be the responsibility of such Owner. The maintenance of all landscaping/irrigation installed or altered on a Lot by the Owner(s) thereof which is in addition or alteration to and not a replacement of the landscaping originally installed shall be the complete maintenance responsibility of such Owner(s). If a mailbox is installed by the Declarant, its designees or assigns, or any Builder, the Owner shall be responsible for the maintenance, repair and replacement of the mailbox installed. Lawns shall be primarily grass, and shall not be paved or covered with gravel, artificial turf or other covering unless permitted by the ACB, and shall be in conformance with the requirement and restrictions provided in the Plat. All diseased or dead sod, plants, shrubs or flowers as originally installed by the Declarant, its designees or assigns, or any Builder shall be promptly replaced by the Association. Any diseased or dead landscaping installed by an Owner shall be promptly replaced by such Owner. Excessive weeds, underbrush or unsightly growth shall be removed by the Association as part of the landscape maintenance.
- (b) **Residence.** The maintenance of the Residence and related Improvements constructed on the Lot shall be the complete maintenance responsibility of the Owner(s) thereof. Each Owner shall keep all parts of his Lot, including the Residence, clean and free of debris, and in good order and repair except as set out in Subsection (a) above. Such duties shall include, without limitation, repair or replacement of the roof, windows and doors (including glass or screens), and exterior of the Residence. Exterior maintenance and repair, including painting, shall be periodically performed as reasonably required. Paint colors shall not be materially changed without the consent of the ACB, and all paint colors shall be harmonious with other improvements within the Residential Development. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any Improvement on a Lot. All fences other than the Common Area Fencing shall be maintained by the Lot Owner on whose Lot the fence is erected. Each Lot Owner's responsibilities for his Lot as set forth herein are only applicable to the extent such responsibilities are not included within the responsibilities of the Association or the Declarant specifically

set forth in this Declaration.

6.04 Common Area Fencing. All Common Area Fencing located throughout the Residential Development shall be maintained and kept in good order and repair by, and be the complete responsibility of the Association.

6.05 Irrigation System. The Association shall be responsible for the maintenance, upkeep and repair of the common irrigation system, if any, which serves portions of the Common Areas, including the irrigation pump(s), wells, and any main irrigation lines of the common irrigation system. Any and all irrigation lines and sprinkler heads located on the Lots, if any, shall be the maintenance responsibility of the Lot Owner. The Association shall have an easement over the Residential Development, including any Lot, as necessary, to provide maintenance of the common irrigation system, if any. Notwithstanding the foregoing, the maintenance and/or repair of any damage to irrigation lines or sprinkler heads located in the Residential Development caused by an Owner's or any of its guests', invitees', licensees', or lessees' negligence or intentional act(s) shall be the responsibility of such Owner. The Association shall have the sole control of the timing system for irrigation of any portions of the Common Areas. The Owners of Lots subject to any easements shall not construct any Improvements on the easement areas, alter the flow or drainage, or landscape such areas with hedges, trees, or other landscape items that might interfere with the exercise of the easement rights.

6.06 Offsite Signage and Landscaping. The Association shall have the obligation to maintain any signage installed by Declarant, its designees or assigns, any Builder or the Association that advertise and promote the name of the Residential Development and to maintain the landscaping surrounding said signs.

6.07 Storm Water Drainage/Detention Facilities. Subject to the provisions of Section 11.03, the maintenance, repair, or replacement of any storm water drainage and/or detention facilities located within the Residential Development shall be the complete responsibility of the Association.

6.08 Lift Station and Surface Water Management System. Subject to the provisions of Section 11.03, unless and until dedicated or conveyed to a governmental unit or utility company, the Association shall maintain, repair and replace as needed, and pay the electrical usage charges for, any lift station and related lines and equipment located within the Residential Development. It is the responsibility of the Association, at Common Expense, to operate, maintain and repair any portions of any surface water management system located within the boundaries of the Residential Development, and to enforce, or to take such appropriate action as may be necessary to cure violations of, the routine maintenance and non-interference covenants of the Owners and, when appropriate, to levy Special Assessments or Specific Assessments therefore. Maintenance of any surface water management system shall include the exercise of practices that allow the system to provide drainage, water storage, conveyance and other surface water management capabilities.

6.09 Drainage Improvements within Easements. Subject to the provisions of Section 11.03, the Association shall maintain, repair and replace all drainage improvements within the Residential Development, including, without limitation, all such drainage improvements within all platted drainage easements.

6.10 **Maintenance Expense.** Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area and facilities, including the Common Area Fencing and the common irrigation system, shall be a Common Expense to be allocated among all Lots as part of the Annual Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other persons responsible for, certain portions of the Common Area pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Limited Common Areas shall be a Specific Assessment against the particular Lots to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

6.11 **Deficiency in Maintenance.** In the event, that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Development-Wide Standard, the Declarant may, upon not less than ten (10) days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred. If an Owner fails properly to perform his or her maintenance responsibility, the Declarant or the Association, after approval by two-thirds (2/3) vote of the Board of Directors, may perform such maintenance responsibilities and if performed by the Association, assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 7.05 below or, if performed by the Declarant, the Declarant shall be reimbursed by the Association and the Association shall have the rights against the Owner as if the Association performed the maintenance. The Association or Declarant, shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to, an emergency situation. Entry under this Section 6.11 shall not constitute a trespass.

6.12 **Standard of Performance.** Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Development-Wide Standard and all Governing Documents. Neither the Association, the Declarant, nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE VII **ASSESSMENTS**

7.01 **Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (i) Annual Assessments to fund Common Expenses for the general benefit of all Lots, (ii) Special Assessments for capital improvements, (iii) Emergency Assessments duly authorized by the Board of Directors, and (iv) Specific Assessments duly authorized by the Board of Directors.

Such Assessments shall be fixed, established and collected from time to time as hereinafter provided. The Annual, Special, Emergency and Specific Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Person who was the Lot Owner at the time when the Assessment fell due.

7.02 **Annual Assessments.** Each Member of the Association shall pay to the Association an Annual Assessment equal to the Member's proportionate share (which shall equal the number of Lots owned by a Member divided by the total number of Lots then subject to this Declaration) of the sum required by the Association, as estimated and declared by its Board of Directors, to meet its annual Common Expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any;
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any;
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may affect;
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) Subject to obligations of the Declarant or any other party under the provisions of the Governing Documents, the estimated cost of installation, repairs, maintenance and replacement of the common elements and improvements, which may include, without limitation, Common Area Fencing, irrigation systems, wood and masonry walls, lighting (including entry lighting and the utilities therefore), landscaping, jogging trails, biking paths, entryway treatment, common lighting, pedestrian paths, common structures, entrance treatments and common lakes and ponds and such other improvements which may be placed upon Common Areas and upon any common easement areas.

Except as provided in Section 7.10 below, the Board shall determine the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require. Written notice of the Annual Assessment shall be sent to every Lot Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

7.03 **Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association or the Board, as applicable, may levy in any assessment year one or more Special Assessments, applicable to that year only, for the following purposes:

- (a) costs of any construction, reconstruction, unexpected replacement, repair, or

maintenance of a described capital improvement for which the Association is specifically responsible, including fixtures and personal property related thereto;

- (b) any general expense, which exceeds the amount budgeted; and
- (c) any other charge which does not qualify as an Annual Assessment, Emergency Assessment or Specific Assessment.

A Special Assessment required to maintain the Common Area in good condition, including any Special Assessment levied for repair or reconstruction, or to protect the liability of the Association Members may be levied against all Lots by a majority vote of the Board. Any other Special Assessment shall require approval by a majority vote of the Members present and voting at a meeting of the membership called to consider such Special Assessment. The Association shall send written notice of such meeting to all Members at least ten (10) days, but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting. Such Special Assessments shall be allocated among the Lot Owners in the same manner as Annual Assessments are allocated under Section 7.02 above.

7.04 Emergency Assessments. In the event of any, emergency situation, condition or occurrence affecting the life, health, safety or welfare of Members or occupants of the property within the Residential Development, the Board of Directors, acting pursuant to this Section 7.04, may declare an Emergency Assessment in such amount and payable at such time as the Board, in its sole discretion, shall deem necessary. Such Emergency Assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such Emergency Assessment shall be allocated among the Lot Owners in the same manner as Annual Assessments are allocated under Section 7.02. The Board shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was declared in good faith.

7.05 Specific Assessments. The Board of Directors, on behalf of the Association, shall have the power to levy Specific Assessments against a particular Lot or Lots for the following purposes:

- (a) costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities), which Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;
- (b) costs associated with maintenance, repair, replacement and insurance of any Limited Common Area assigned to one (1) or more Lots;
- (c) costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, representatives, licensees,

invitees, or guests; and

- (d) reimbursement for damages caused by an Owner, Owners, their family members, guests, invitees or lessees.

In addition, all late charges, user fees, penalties and fines levied by the Board pursuant to Section 5.10 above shall constitute Specific Assessments.

7.06 Non-Payment of Assessments. Any Assessment levied pursuant to this Declaration, or any installment thereof which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such Assessment is levied and shall bind such Lot or Lots in the hands of the then Lot Owner, his heirs, devisees, personal representatives, assigns and other successors in title. The personal obligation of the Member to pay such Assessment shall however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any Assessment levied pursuant to the Declaration or the Bylaws, or any installment thereof may be maintained without foreclosing or waiving the lien herein and by the aforesaid statute created to secure the same.

Any Assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may, upon resolution of the Board of Directors subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix. The Association may bring an action at law or in equity against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust, upon the Lot or Lots, then belonging to such Member. In either of such events, the Association may collect from such Member interest costs and reasonable attorneys' fees. No Lot Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent Assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or Deed of Trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to it to collect the Assessment that the laws of the State of Tennessee allow. Any such sale shall be made after, first, advertising the sale of such Lot for twenty-one (21) days by three (3) weekly publications in some newspaper of general circulation in Shelby County, Tennessee, giving notice of the time and place of such sale and, second, delivering written notice of the time and place of such sale to the Lot Owner. Any sale of a Lot to enforce a lien for delinquent and unpaid Assessments shall be free from equity of redemption, statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owners and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or

deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Lot and the expenses of litigation, attorneys' fees, and sales commission and; second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded or preferred mortgages or deeds of trust; and third, to the payment of all amounts due the Association under the terms of this Declaration and the Bylaws; and the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any Assessment, the Board of Directors shall have the right to all rents, issues and profits from the Lot in default and shall have the right to secure the payment, through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of this Declaration and the Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by this Declaration and the Bylaws or at law or in equity.

The Association may notify the holder of the first mortgage or deed of trust on any Lot for which any Assessment levied pursuant to this Declaration becomes delinquent for a period in excess of thirty (30) days and in any other case where the Lot Owner is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

7.07 Acceleration of Installment. Upon default in the payment of any one or more installments of any Assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said Assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

7.08 Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any deeds of trust, mortgage, instruments or encumbrances duly recorded on the Lot prior to the Assessment of the lien thereon or duly recorded on such Lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien was current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

7.09 Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration upon any Lot shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage or deed of trust (meaning a mortgage or deed of trust with priority over other mortgages or deeds of trust) upon such interest made in good faith and for value received; provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, and shall not in such instance apply to claims for

a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lot Owners, including the mortgaged Lot. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any Assessments thereafter becoming due nor from the lien of any such subsequent Assessment which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such mortgage or deed of trust (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

7.10 Initial Annual Assessment. The initial Annual Assessment is estimated to be Five Hundred Dollars (\$500.00) per Lot, which shall be payable in twelve (12) equal monthly installments due on the first day of every month. The actual Annual Assessment shall be determined as set out herein and is subject to change from time to time by vote of the Members of the Association. Notwithstanding anything herein to the contrary, no Owner, including, without limitation, Builder, shall be required to pay any Assessment for a Lot it owns until a residential structure has been erected and completed thereon and the Assessments (whether Annual, Special, Emergency or Specific) which would otherwise have been assessed to such Lot shall be paid by Declarant.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

8.01 The Association.

- (a) **Required Coverages.** The Association acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:
 - (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;
 - (ii) Commercial general liability insurance insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, representatives or contractors while acting on its behalf. If generally available at reasonable cost, the commercial

general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits. The liability insurance shall include, but not be limited to, hired and non - owned automobile coverage, if applicable.

- (iii) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law ;
- (iv) Directors' and officers' liability coverage;
- (v) Fidelity insurance covering all persons responsible for handling funds of the Association in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the Annual Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less.

Premiums for all insurance obtained by the Association shall be Common Expenses and shall be included in the Annual Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots.

The Board of Directors of the Association is hereby irrevocably appointed agent for each Member, each Mortgagee and for each holder of any other lien secured by any portion of the Residential Development, for the purpose of compromising and settling all claims arising under insurance policies obtained by the Association and executing and delivering releases upon payment of claims.

- (b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified persons, at least one (1) of whom must be familiar with insurable replacement costs in the location of the Residential Development. The company or companies with whom the Association shall place its

insurance coverage must meet the following requirements: A B Rating Guide, or an A or better rating from, **Demotech, Inc.**

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. Unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$10,000 or 1% of the hazard insurance policy face amount. However, for losses related to a Lot owned by the Association which is covered by a blanket policy, if any, the deductible related to the individual Lot should be the lesser of \$1,000 or 1% of the Lot's replacement cost. The deductible shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 8.01.

- (c) All insurance coverage obtained by the Board shall:
- (i) be written with a company authorized to do business in the State of Tennessee which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
 - (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas of the Residential Development shall be for the benefit of the Association and its Members;
 - (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
 - (iv) contain an inflation guard endorsement;
 - (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
 - (vi) an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and
 - (vii) include a specific endorsement to preclude the insurer's denial of an Owner's claim because of the negligent acts of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which and provide:

- (viii) a waiver of subrogation as to any claims against the Association's Board, officers, employees, agents, representatives and manager, the Owners and their tenants, servants, agents, and guests;
- (ix) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (x) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or

on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

- (xi) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
 - (xii) acrossliability provision;
 - (xiii) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;
 - (xiv) a construction code endorsement; and
 - (xv) a machinery coverage endorsement.
- (d) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association only, the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total votes of the Association and, during the Development Period, the Declarant, decide within sixty (60) days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) days period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Development-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 8.01(a).

8.2 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, including, by way of example, and not limitation, the Residence, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure(s) or landscaping consistent with the original construction and the restrictions contained the Declaration and the Plat, or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Development-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE IX

ARCHITECTURAL CONTROL BOARD

9.01 Establishment of Architectural Control Board. An Architectural Control Board (the "ACB") is hereby established. The initial ACB shall consist of Douglas Swink, Greg Bridgers, and Donnie Culver. These individuals shall serve for a period of three (3) years unless they resign from the ACB prior to the expiration of such three (3) year period by written notice to the Board of Directors of the Association. Upon the expiration of three (3) years from the date hereof, or the earlier resignation of any of such designees, the Board of Directors of the Association shall then appoint the unfilled positions on the ACB. The affirmative vote of the majority of the membership of the ACB shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, rulings or orders or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

9.02 Approvals Necessary, Rules of the ACB and Remedies for Violation. With the exception of improvements made by Declarant (which improvements shall not require plans submissions or approvals), no structure of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots within the Residential Development, nor shall any existing structure, fence or barrier upon any Lot be painted or altered in any way which materially changes the exterior appearance thereof, without the written consent of the ACB, which consent may be withheld in the sole discretion of the ACB; nor shall any new use be commenced on any Lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the ACB. All Such plans and specifications shall be prepared by a licensed architect or other

qualified building designer, unless otherwise approved by the ACB in its sole discretion, and shall be in such form and shall contain such information as may be required by the ACB, but in any event, shall include:

- (a) A site plan of the Lot showing the nature, exterior, color scheme, kind, shape, size, materials, and location with respect to such Lot (including proposed front, rear and side setback of all structures, fences or barriers, and location of all parking spaces and driveways on the Lot); and
- (b) Information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction for the Lot.

Each application to the ACB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ACB, nor the distribution and review of the plans by the ACB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ACB shall hold the members of the ACB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

The ACB may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Lots including, without limitation, the exterior lighting and planting, architectural styles or details, or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the ACB at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the ACB to approve or disapprove any feature or matter subject to approval or to waive the exercise of the ACB in its discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the ACB in its discretion to disapprove such plans or specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided that the plans and specifications as approved in any condition attached to any such approval have been adhered to and complied with in regard to all structures fences or barriers on and uses of the Lot in question.

In reviewing and acting upon any request for approval, the ACB shall have the authority to approve or disapprove such request in its sole discretion, and such decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ACB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with the design and construction standards and restrictions of the Residential Development.

In the event the ACB fails to approve or disapprove any plans and specifications as herein

provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required; provided, that such plans and specifications meet any and all other requirements and restrictions contained herein or in the Plat.

If any structure, fence, or barrier shall be altered, erected, placed or maintained upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the ACB as required herein, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein and upon written notice from the ACB any such structure, fence or barrier so altered, erected, placed or maintained upon any Lot in violation hereof, shall be removed or re-altered, and such use shall be terminated so as to extinguish such violation.

If within fifteen (15) days after the notice of such violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, the Association by its officers or directors shall have the right through its agents and employees to enter upon such Lot and to take such steps as may be necessary to extinguish such violation and the costs thereof shall be a binding personal obligation of such Lot Owner as well as a lien upon the Lot in question upon the recording of such with the Office of the Register of Shelby County, Tennessee.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the ACB, the ACB shall, upon written request of the Lot Owner issue a certificate of compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such certificate shall be at the expense of the Lot Owner of such Lot. Any certificate of compliance issued in accordance with the provisions of this Section 9.02 shall be prima facie evidence of the facts therein stated and, as to any purchaser or encumbrancer in good faith and for value or as to any title insurer, such certificate shall be conclusive evidence that all structures on the Lot and the use or uses described therein comply with all the requirements as to which the ACB exercises any discretionary or interpretive powers.

The ACB may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these restrictions, which fee shall be payable at the time such plans and specifications are so submitted.

Any agent of Declarant or the ACB may, at reasonable times, enter upon and inspect any Lot and any Improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions of these restrictions, and no such person shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

The Association or any Owner of any Lot shall have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot in the Residential

Development. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

Should any request to the ACB come from a member of the ACB (other than the Builder), the other members of the ACB shall select a disinterested Lot Owner to take the place of the ACB member making the request for the purpose of considering and making a determination with respect to such request. Following such determination, the original ACB member shall resume his position on the ACB.

9.03 **Delinquent Assessments and Other Charges.** Notwithstanding the provisions of this Article IX, any application for the approval of plans and specifications as set forth herein shall be deemed to be disapproved unless and until any and all delinquent Assessments and other charges, late fees, user fees, fines and penalties permitted by this Declaration or the Bylaws have been paid current by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of any plans and specifications submitted pursuant to this Article IX, if the Owner shall become delinquent in the payment of Assessments or any other charges, late fees, user fees, fines or penalties permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in this Article IX or in Section 4.10 above.

ARTICLE X

RESERVED RIGHTS OF DECLARANT

10.01 **Sales Activity.** Notwithstanding any provision herein to the contrary, until the Declarant and Builders who have purchase Lots from Declarant have completed, sold and conveyed all of the Lots within the Residential Development, neither the Owners, nor the Association nor their use of the Common Area shall interfere with the completion of the contemplated Improvements and the sale of Lots and any other sales activity of the Declarant and/or Builders, whether related to the Residential Development or other developments of the Declarant. The Declarant (or its duly authorized agents or assigns, including any Builders authorized by Declarant), may make such use of the unsold Lots and Residences, and the Common Areas as may facilitate such completion and sale including, but not limited to, (a) the maintenance of sales and administrative offices, construction trailers, storage areas, model homes, and/or parking lots for the showing of property, (b) the display of signs, billboards, flags, placards and visual promotional materials, and (c) tournaments, charitable events, and other promotional events. Declarant shall have the right to use unimproved Lots for temporary parking for prospective purchasers and such other parties as Declarant determines. Each Lot and the Common Area is hereby subjected to an easement for the purposes set forth herein. Declarant may permit the use of any facilities situated on the Common Area by persons other than Owners without the payment of any use fees and may restrict Owners from using the Common Area during any promotional activities.

10.02 **Re-platting.** It may be necessary for the Declarant to re-plat a portion of the Mixed-Use Development. To the extent permitted by applicable law, the Declarant shall have the right to re-plat unsold (not yet conveyed) portions of the Mixed-Use Development without requiring the joinder or consent of any Owner or Mortgagee holding a Mortgage on any Lot.

10.03 Utility and Construction Payments and/or Deposits. In the event a utility company or governmental authority requires a deposit to be made by the Declarant or any Builder, and such deposit shall be refunded at some time in the future, then the Declarant or any such Builder which made such a deposit (and not the Association) shall be entitled to receipt of the refunded funds. In addition, should construction payments made by the Declarant or any Builder be refunded by a utility company or governmental authority at some time in the future, then the Declarant or any such Builder (and not the Association) shall be entitled to receipt of the refunded funds or the Association shall reimburse the Declarant or any such Builder for such payments prior to the time that Owners other than the Declarant elect a majority of the members of the Board of Directors of the Association.

10.04 Declarant's Right to the Common Areas. Declarant and its designees shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Common Areas that Declarant elects to build. Declarant may grant easements to Owners adjacent to Common Areas for overhangs, protrusions and encroachments of any portion of the Improvements to a Lot constructed by Declarant. The Declarant shall have the right to dedicate the Common Areas or a portion thereof to any governmental authority or utility company, or to grant an easement over the Common Areas in favor of any governmental authority or utility company, without requiring the joinder or consent of any other Owner or Mortgagee holding a Mortgage on any Lot.

10.05 Assignment of Declarant Rights. The Declarant shall have the right to assign to any other person or entity, including the Association, any or all of the Declarant's rights reserved in this Declaration, in whole or in part, with respect to all or any portion of the Residential Development. In the event of an assignment, the assignee shall not be liable for any action of a prior developer and Declarant automatically shall be released from any and all liability arising with respect to such transferred rights and obligations. Acquisition, development or construction lenders acquiring title to the Residential Development or any portion thereof by foreclosure or deed in lieu of foreclosure shall have the right, but not the obligation, to assume the Declarant's rights. Such acquisition, development or construction lender shall have the right to assign the Declarant's rights to a subsequent purchaser, without regard as to whether the lender assumed the Declarant's rights. No such assignment or transfer shall be effective unless in a recorded instrument signed by the Declarant and recorded in the public records.

10.06 Right of the Declarant to Disapprove Actions. Until the Declarant no longer owns any portion of the Residential Development or has the right to annex any Additional Property unilaterally pursuant to the terms of this Declaration, the Declarant shall have the rights set out in this Section 10.06 and the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Residential Development, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Governing Documents. With regard to Declarant's right to disapprove actions, the following terms and provisions shall apply:

- (a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association which notice complies with the Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as any Member may waive its right to receive notice of action as provided in the Bylaws.
- (b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.
- (c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.
- (d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

10.07 **Additional Covenants.** So long as Declarant owns any portion of the Residential Development, Declarant has the right to review and approve, in writing, any additional declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Residential Development, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

10.08 **Additional Covenants and Easements.** The Declarant may unilaterally subject any portion of the Residential Development to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in an Amended and Restated Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Amended and Restated Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the

Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

10.09 **Use of Facilities.** The Declarant and Builders authorized by Declarant may establish within the Residential Development, including within any clubhouse, or Declarant, or Builder owned Lot or Residence, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Residential Development and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model units, tents, sales offices, sales or design centers and related parking facilities (hereinafter collectively referred to as the "Sales Offices"). During the Development Period, Owners may be excluded from use of all or a portion of Sales Offices in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Residential Development for access, ingress, and egress and use of the Sales Offices. In addition, the Declarant, affiliates of Declarant, and Builders authorized by Declarant may use the Sales Offices to promote and sell other lots, projects and developments, owned or controlled by the Declarant or affiliates of the Declarant. Declarant may permit the use of any facilities situated on the Common Area by persons other than Owners without the payment of any use fees.

ARTICLE XI **EASEMENTS**

To the extent herein specifically provided, Declarant hereby reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, the City of Lakeland, and each of their respective successors-in-title.

11.01 **Easements of Encroachment.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots and between each Lot and any adjacent Common Areas due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions). However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

11.02 **Easements for Utilities, Etc.**

- (a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association and the designees of each (which may include, without limitation, the City of Lakeland, any other governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Residential Development (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and

other devices for sending or receiving data and/or other electronic signals; monitoring, limited access or similar systems; roads, fences, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sanitary, sewer, telephone, gas, and electricity systems, lines and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Residential Development, as necessary, to exercise the easements described above.

Declarant may assign, grant and convey to the City of Lakeland and/or the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television/satellite service provider or any utility sub-metering company, the easements set forth herein across the Residential Development for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

All utilities, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground; provided, however, that control panels for utilities may be installed and maintained above ground.

- (b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the property within the Residential Development or any Additional Property which may be subjected to this Declaration.
- (c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section 11.02 shall promptly be repaired by, and at the expense of, the person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any person damaging a Lot or any portion thereof as a result of the exercise of this easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.
- (d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any person or entity holding, or intending to hold, an interest in the Residential Development, or at any other time, (i) to release all or any portion of the Residential Development from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.03 Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself, its designees, authorized Builders, the Association and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

- (a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;
- (b) drainage of natural or man-made water flow and water areas from any portion of the Residential Development;
- (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area;
- (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Residential Development; and
- (e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Residential Development.

Notwithstanding any other provision herein to the contrary, all drainage emanating from real property adjacent to the Residential Development and discharging onto other property adjacent to the Residential Development shall be considered public. With respect to such public drainage, Declarant and/or the Association, as appropriate shall grant, convey and assign such easements as may be requested by the City of Lakeland or other public authorities for the use, maintenance and repair of such public drainage.

11.04 Easements to Serve Additional Property. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its successors and assigns over the Common Area, including all Private Streets, if any, for the purposes of enjoyment, use, access, and development of any Additional Property which may be subjected to this Declaration pursuant to Section 2.02 above, whether or not any such Additional Property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving any Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such Additional Property.

11.05 Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association officers, committee members, agents, employees and managers of the Association and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.06 Easements for Maintenance and Enforcement.

- (a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Residential Development, including each Lot, but excluding the interior of any Residence, to (i) perform its maintenance responsibilities, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.
- (b) The Association may also enter a Lot, excluding the interior of any Residence, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.
- (c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 11.02.

11.07 Easements for Pond Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the Association the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon any ponds, streams, and wetlands located within Common Area, if any, to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Common Area; (b) draw water from such sources for purposes of irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association and their designees shall have an access easement over and across any of the Residential Development abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Common Area and Lots (but not the Residences thereon) adjacent to or within twenty (20) feet of any ponds, lakes, streams and wetlands located within the Common Area, if any, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Residential Development; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain any ponds, lakes, streams, and wetlands within the Common Area; (c) maintain and landscape the slopes and banks pertaining any such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials upon such areas. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any person holding, or intending to hold, an interest in the Residential Development, or at any other time, (a) to release all or any portion of the Residential Development from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 11.07, or (b) to define the limits of any such easements.

11.08 **Lateral Support.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and any Improvement which contributes to the lateral support of another portion of the Common Area or of another Lot for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.09 **Easement for Special Events.** Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct marketing, sales, educational, cultural, entertainment, promotional or sporting events, and other activities regarding sales and marketing of Lots or Residences or action of a common interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.10 **Rights to Storm Water Runoff, Effluent and Water Reclamation.** Declarant hereby reserves for itself and its designees, all rights to ground water, surface water, stormwater runoff, and effluent located or produced within the Residential Development, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Residential Development for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.11 **Easement for Greenbelt Maintenance.**

- (a) Declarant reserves for itself and its successors, assigns, designees and the Association the nonexclusive right and easement, but not the obligation, to enter upon greenbelts, buffer zones and non-disturbance areas located within the Common Area, if any, to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section 11.11 shall be automatically transferred to the Association at the expiration of the Development Period or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association and their designees shall have an access easement over and across any of the Residential Development abutting or containing any portion of greenbelt, buffer zone or non-disturbance area to the extent reasonably necessary to exercise their rights under this Section.

- (b) Encroachment of structures into, over, or across any greenbelts, buffer zones and non-disturbance areas shown on any Plat of the Residential Development is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of the Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with the requirements and restrictions contained in this Declaration and the Plat. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.
- (c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any person holding, or intending to hold, an interest in the Residential Development, or at any other time, (i) to release all or any portion of the Residential Development from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 11.11, or (ii) to define the limits or scope of any such easements.

11.12 **Improvements to the Common Area.** Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as it deems appropriate in its sole discretion.

11.13 **Liability for Use of Easements.** No Owner shall have a claim or cause of action against the Declarant, the Association, their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any Plat for the Mixed-Use Development, except in cases of willful or wanton misconduct.

11.14 **Grant of Easements to The City of Lakeland And Other Governmental Authorities.** Notwithstanding any other provision herein to the contrary, upon request by the City of Lakeland or other governmental authorities, Declarant and/or the Association, as appropriate, shall execute and deliver in recordable form such easements as may be required to grant and convey to the City of Lakeland and/or other governmental authorities easement rights for the installation and maintenance of public sanitary sewers, public water, fire and police service and all other public utilities and public safety services.

ARTICLE XII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Residential Development. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

12.01 **Notices of Action.** An institutional holder, beneficiary, grantee, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, beneficiary, grantee, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Residential Development or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of Assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or the Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.02 **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.03 **Notice to the Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.04 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.05 **Construction of Article 12.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, the Bylaws, or Tennessee law for any of the acts set out in this Article.

ARTICLE XIII **MISCELLANEOUS**

13.01 **Duration and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association, any Owner and their respective legal representatives, heirs, assigns, and other successors in title to any portion of the Residential Development or any Additional Property subjected to this Declaration pursuant to Section 2.02 above for a period of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

During the Development Period, the Declaration may not be amended without the consent of the Declarant. Thereafter, the Declaration may be amended by an instrument signed by Owners holding not less than seventy-five percent (75%) of the Lots. Any amendment must be properly recorded to be effective.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, IN ADDITION TO DECLARANT'S RIGHTS SET FORTH IN ARTICLE X OR ELSEWHERE HEREIN, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF TEN (10) YEARS TO UNILATERALLY AMEND THIS DECLARATION IN WHOLE OR IN PART, FOR ANY PURPOSE WHICH DECLARANT DEEMS NECESSARY OR DESIRABLE.

13.02 Notice of Sale or Transfer of Title. Any Owner, excluding, however, Declarant, desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

13.03 Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been received on the third (3'd) business day after it is mailed, postage paid to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

13.04 Compliance and Enforcement. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply any provision of the Governing Documents shall be grounds for an action by the Association, the Declarant, or by any aggrieved Owner(s) against such non-complying Owner or occupant to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to any other enforcement powers granted to the Association in this Declaration, and against the land of such non-complying Owner or the land of such non-complying occupant's Owner to enforce any lien created by these covenants. Failure by the Association, Declarant or any aggrieved Owner(s) to enforce any provision contained in this Declaration or the other Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. All expense of enforcement shall be chargeable to such non-complying Owner or such non-complying occupant's Owner and shall constitute a lien on the Lot, collectable in the same manner as assessments hereunder.

13.05 Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Declaration or any other provision of the Governing Documents, or because of any alleged dispute, breach, default, or misrepresentation, in connection with any provision(s) of this Declaration or any provision(s) of the other Governing Documents, and such action is successful, the prevailing party(s) shall be entitled to recover reasonable attorneys' fees, court costs, and all reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appear) incurred in that action or pending to any other relief to which such party(s) may be entitled.

13.06 Severability. Invalidation of any provision of this Declaration by judgment or court

order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

13.07 **Waiver.** No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

13.08 **Gender, Etc.** Whenever in this Declaration the context so requires the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

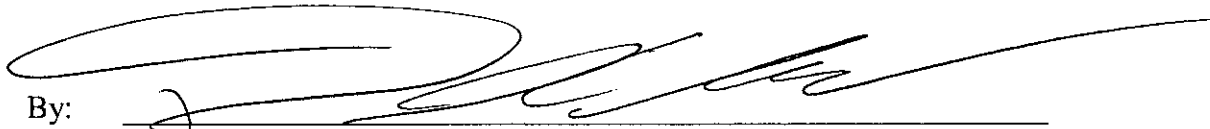
13.09 **Captions.** The captions preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as any aid in the construction of any provision hereof.

13.10 **Construction.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THIS DECLARATION ARE TO BE CONSTRUED IN CONJUNCTION WITH THE ORDINANCES AND REGULATIONS OF THE CITY OF LAKELAND AND THE REQUIREMENTS AND RESTRICTIONS CONTAINED IN THE PLAT, AND IN NO EVENT SHALL ANY USE OR ACTIVITY BE EXPRESSLY OR IMPLIEDLY PERMITTED THAT IS OTHERWISE PROHIBITED BY THE ORDINANCES AND REGULATIONS OF THE CITY OF LAKELAND OR ANY OF THE REQUIREMENTS OR RESTRICTIONS CONTAINED IN THE PLAT. TO THE EXTENT THERE IS A CONFLICT AND/OR INCONSISTENCY BETWEEN THESE COVENANTS, CONDITIONS AND RESTRICTIONS AND THE ORDINANCES AND REGULATIONS OF THE CITY OF LAKELAND AND/OR ANY OF THE REQUIREMENTS OR RESTRICTIONS CONTAINED IN THE PLAT, SAID ORDINANCES AND REGULATIONS AND/OR REQUIREMENTS OR RESTRICTIONS CONTAINED IN THE PLAT SHALL CONTROL AS THE MINIMUM STANDARD OF USE OR ACTIVITY AND SAID MINIMUM STANDARD SHALL BE HEIGHTENED, TO THE EXTENT IT IS NOT INCONSISTENT WITH SAID ORDINANCES AND REGULATIONS OF THE CITY OF LAKELAND AND THE REQUIREMENTS AND RESTRICTIONS CONTAINED IN THE PLAT, BY THESE COVENANTS, CONDITIONS AND RESTRICTIONS.

[Signature Page to Follow]:

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and delivered by their duly authorized representatives as of the day and year first above written.

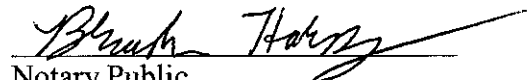
Renaissance Developments, LLC
a Tennessee limited liability company

By: 
Douglas C. Swink, Manager

STATE OF TENNESSEE
COUNTY OF FAYETTE

Before me, the undersigned Notary Public in and for the aforesaid jurisdiction, personally appeared Douglas C. Swink, personally known to me, or proven upon satisfactory evidence, to be the person described in and who executed the foregoing instrument, and who further acknowledged himself to be the manager of Renaissance Developments, LLC, the within named bargainor, a Tennessee limited liability company, and that, being first duly authorized, he executed the foregoing instrument on behalf of said company for the purposes therein contained, by signing the name of the company, by himself as such manager.

Witness my hand and seal at office, this the 27th day of July, 2018.


Notary Public

**My Commission Expires
September 4, 2019**

My Commission Expires: _____

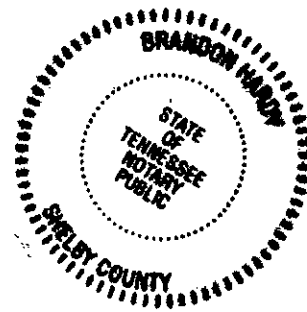


EXHIBIT "A"

PLAT OF THE MIXED-USE DEVELOPMENT

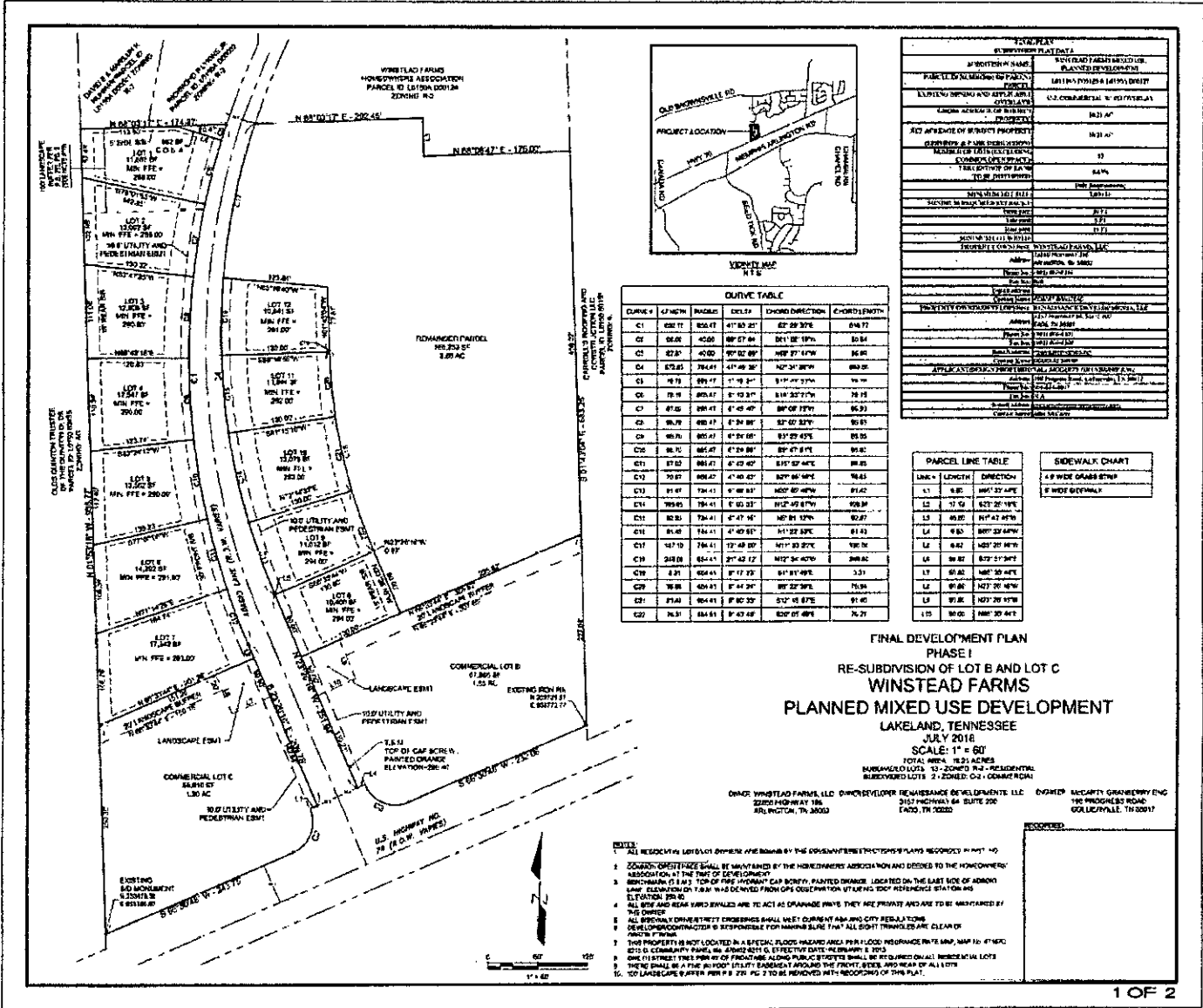


EXHIBIT "B"

**DESCRIPTION OF THE RESIDENTIAL
DEVELOPMENT**

Land situated in the City of Lakeland, Shelby County, Tennessee:

Being Lots 1 through 12 and COS "A" as shown on the Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development as recorded in the Register's Office of Shelby County, Tennessee.

EXHIBIT "C"

CHARTER OF THE ASSOCIATION

(See attached document)

CHARTER

FINAL DEVELOPMENT PLAN – PHASE I RE-SUBDIVISION OF LOT B AND LOT C WINSTEAD FARMS PLANNED MIXED USE DEVELOPMENT HOA

The undersigned, acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act (the "Act"), hereby adopts the following Charter for such corporation:

- I. The name of the corporation is Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C, Winstead Farms Planned Mixed Use Development HOA (herein the "Corporation").
 2. The Corporation is a mutual benefit corporation.
 3. The Corporation is not a religious corporation.
 4. The street address of the initial registered office of the Corporation is 3157 Hwy 64 #200, Eads, TN 38028, and the initial registered agent for the Corporation at that office is Douglas C. Swink.
 5. The name and address of the sole incorporator is Bryan K. Smith, 6410 Poplar Ave, Suite 190, Memphis, TN 38119.
 6. The street address of the principal office of the Corporation is 3157 Hwy 64 #200 Eads, Tennessee 38028.
 7. The Corporation is not for profit.
 8. The Corporation will have members. Every person or entity who is a record owner of a fee or undivided fee interest in any "Lot"(as defined in the Declaration, which is defined hereafter) that is subject to the Declaration of Covenants, Conditions and Restrictions for Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development., as said declaration may be amended from time to time pursuant to the terms thereof (the "Declaration"), shall be a member of the Association; provided, however, that anyone who holds such interest solely as security for the performance of any obligation shall not be a member. In any event, there shall be one (1) membership for each of the Lots , and one (1) vote per Lot, except that RENAISSANCE DEVELOPMENTS, LLC, a Tennessee limited liability company (the "Declarant"), shall be entitled to three (3) votes per Lot until the later to occur of the following: (i) the sale of seventy percent (70%) of all Lots in the Residential Development (as defined in the Declaration) (including any additional Lots added pursuant to Section 2.02 of the Declaration as of the date of any vote); or (ii) the lapse of five (5) years from the date of the recordation of the Declaration with the Register's Office of Shelby County, Tennessee. Thereafter, the Declarant shall be entitled to one (1) vote per Lot then owned by the Declarant. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

9. To the extent allowed by the laws of the State of Tennessee, no present or future director of the Corporation (or his or her estate, heirs and personal representatives) shall be liable to the Corporation or any member for monetary damages for breach of fiduciary duty as a director of the Corporation. Any liability of a director (or his or her estate, heirs and personal representatives) shall be further eliminated or limited to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.

10. With respect to claims or liabilities arising out of service as a director or officer of the Corporation, the Corporation shall indemnify and advance expenses to each present and future director and officer (and his or her estate, heirs and personal representative) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

11. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, officers, or other private individuals or persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes of the Corporation.

DATED this 27th day of July, 2018.

Bryan K. Smith, Incorporator

EXHIBIT "D"

BYLAWS OF THE ASSOCIATION

(See attached document)

BYLAWS OF

FINAL DEVELOPMENT PLAN – PHASE I - RE-SUBDIVISION OF LOT B AND LOT C WINSTEAD FARMS PLANNED MIXED USE DEVELOPMENT HOA

ARTICLE I

Section I. **Name.** The name of this corporation is Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development HOA. Its principal place of business is 3157 Hwy 64 #200 Eads, Tennessee 38028. The corporation may have such other offices within or without the State of Tennessee as the Board of Directors or the Members may from time to time designate.

ARTICLE II

Section I. **Applicability.** These Bylaws and each provision hereof shall be applicable to all "Lots" and "Members", as defined in the Declaration of Covenants, Conditions and Restrictions for Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development, Residential Development dated the 27th day of July, 2018 (the "Declaration"), which is recorded at Instrument Number 18078487 in the Register's Office of Shelby County, Tennessee and is adopted in connection with the residential portion of the property located within the planned mixed-use development known as Final Development Plan – Phase I - Re-subdivision of Lot B and Lot C Winstead Farms Planned Mixed Use Development, as shown on plat of record at Plat Book 278, Page 23 in said Register's Office, and any other property which is subsequently annexed thereto in accordance with Section 2.02 of the Declaration (the "Residential Development").

ARTICLE III

The following sections of this Article III shall apply to membership in the Association.

Section I. **Eligibility.** The owner or owners of a Lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration, including these Bylaws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the owner of each Lot that is unsold by it. Ownership of a Lot shall be the sole qualification for membership of the Association. No individual or legal entity holding title to a Lot as security for any debt or obligation shall be entitled to membership in the Association or be entitled to vote on matters or questions subject to a vote by Members of the Association.

Section 2. **Voting Rights.** The owner or owners of a Lot shall be entitled to one (1) vote per Lot at all meetings of the Association, except that RENAISSANCE DEVELOPMENTS, LLC, a Tennessee limited liability company (the "Declarant"), shall be entitled to three (3) votes per Lot until the later to occur of the following: (i) the sale of seventy percent (70%) of all Lots in the Residential Development (including any additional Lots added pursuant to Section 2.02 of the

Declaration as of the date of any vote); or (ii) the lapse of five (5) years from the date of the recordation of the Declaration with the Register's Office of Shelby County, Tennessee. Thereafter, the Declarant shall be entitled to one (1) vote per Lot then owned by the Declarant. The foregoing is not intended to include persons who or entities which who hold an interest solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The vote for any membership which is owned by more than one person shall be exercised as such persons among themselves determine, and may be exercised by any one of them present at any meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event, all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question.

Section 3. **Lien and Other Rights.** The Association shall have a lien on the outstanding memberships in order to secure payment of any sums that may become due from the holders thereof to the Association for any reason whatsoever. No Member, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, shall: (i) be eligible to vote, either in person or by proxy; (ii) be elected to the Board of Directors; or (iii) be entitled to any other rights or privileges appertaining to such membership.

ARTICLE IV

Section I. **Place of Meeting.** Meetings of the membership shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. **Annual Meetings.** The annual meeting of the Members of the Association shall be held at 7:00 p.m. on the third Monday in March of each year. At such meeting, there shall be elected by secret written ballot of the Members the directors of the Association in accordance with the requirements the Declaration and Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

Section 3. **Special Meetings.** It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by Members representing at least twenty percent (20%) of the total number of votes outstanding having been presented to the Secretary. The notice of any special meeting unless waived in writing or by attendance, shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice. The Declarant shall have the right, at any time, to call a special meeting for the purpose of electing new officers and directors to replace the initial officers and directors appointed by the Declarant.

Section 4. **Notice of Meeting.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member of record, at his address as it appears on such record as his/her last known place

of address at least ten (10) days but not more than ninety (90) days prior to such meeting. Service may also be accomplished by the hard delivery of any such notice to a Member at his/her last known address by deposit in the Member's box or slot for the United States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him/her of the time, place and purpose thereof.

Section 5. **Quorum.** The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 6. **Adjourned Meetings.** If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. **Voting.** At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of Members representing a fifty-one percent (51%) majority of the total votes entitled to be cast shall decide any question brought before such meeting, unless the question is one upon which, by express provision of a statute, the Charter, the Declaration, or these Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

Section 8. **Proxies.** Any Member may appoint any other Member or Declarant or any other person permitted by law or by these Bylaws as his proxy. In no case, may any Member (except Declarant) cast more than one (1) vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by these Bylaws.

Section 9. **Action by Written Consent.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if all Members entitled to vote on the action consent in writing to taking such action without a meeting. If all Members entitled to vote on the action consent in writing to taking such action without a meeting, the affirmative vote of Members representing a fifty-one percent (51%) majority of the total votes entitled to be cast shall be the act of the Members. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each Member entitled to vote on the action in one (1) or more counterparts, indicating each signing Member's vote or abstention on the action and delivered to the Association for inclusion in the minutes or filing with the corporate records of the Association.

Section 10. **Order of Business.** The order of business at all regularly scheduled meetings of the Members shall be as follows:

- (a) Roll call and certification of proxies.

- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officer, if any.
- (e) Reports of committees, if any.
- (f) Unfinished Business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

In the case of special meeting, items (a) through (d) shall be applicable and, thereafter, the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Section 1. **Number and Qualification.** The affairs of the Association shall be governed by the Board of Directors composed of not less than three (3) persons, and not more than seven (7) persons. At meetings of the Board of Directors, each director shall have the right to cast one vote.

Section 2. **Initial Directors.** The initial directors shall be appointed by the Declarant and need not be Members of the Association. The names of the directors who shall act as such from the date upon which the Declaration is recorded in the Register's Office of Shelby County, Tennessee, until the first annual meeting of the Members or until such time as their successors are elected and duly qualified are as follows:

Douglas C. Swink
Greg Bridgers
Donnie Culver

Section 3. **Power and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the Residential Development, and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include but not be limited to, the following:

- (a) To own, manage, administer and operate, as the Members deem necessary, the Residential Development;
- (b) To establish and collect assessments and/or dues and fees from the Members for the management, repair, operation, care and maintenance of the Residential Development and easements and for the assessment and/or enforcement of liens therefore in a manner consistent with law and the provisions of these Bylaws and the Declaration;
- (c) To designate, hire and/ or dismiss the personnel necessary for the repair, operation, care and maintenance of the Residential Development and to provide services for the Members in a manner consistent with law and the provisions of these Bylaws and the Declaration or to retain a manager or management company to perform necessary

services; provided, however, that no management contract shall require the payment of any penalty or an advance notice of more than ninety (90) days to terminate.

Any management contract entered into during the period of the Declarant's control of the Association shall give the Association the right to terminate such contract without cause and the right of termination can be exercised at any time after the control of the Association has been turned over to the Lot owners upon sixty (60) days written notice to the manager or management company;

- (d) To promulgate and enforce such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use and maintenance of the Residential Development, all of which shall be consistent with law and the provisions of these Bylaws and the Declaration;
- (e) To do all other things necessary and proper for the management, maintenance, repair, operation, use and enjoyment of the Residential Development by the Members; and
- (f) To do all other things required or permitted pursuant to the terms and provisions of the Declaration; and
- (g) To do all other necessary and proper things and acts permitted by law.

Section 4. **Election and Term of Office.** The term of the directors named herein shall expire when their successors have been elected and are duly qualified. At the first annual meeting of the Members after expiration of the term of the initial directors, and consistent with these Bylaws, the Members shall elect the directors to serve on the Board of Directors for the following year. The term of office for each director shall be for a period of one (1) year and until their successors shall have been elected and are duly qualified.

Section 5. **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Membership shall be filled by vote of the remaining directors, even though they may constitute less than a quorum and each person so elected shall be a director until a successor is elected by the Members at the next annual meeting.

Section 6. **Compensation.** No compensation shall be paid to directors for their services as directors. After the first annual meeting of the Members, no remuneration shall be paid to any director who is also a Member of the Association for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 7. **Organizational.** The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting; provided, that a majority of the whole Board of Directors shall be present.

Section 8. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of directors. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or facsimile, at least ten (10) days prior to the day named for such meeting.

Section 9. **Special Meetings.** Special meetings of the Board of Directors may be called by the President on five (5) days' notice to each director, given personally or by mail, telephone or facsimile, which notice shall state the time and place (as hereinabove provided) and purposes of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the directors.

Section 10. **Waiver of Notice.** Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all directors are present and remain present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meetings.

Section 11. **Quorum.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business and the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such subsequent meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 12. **Action Without Meeting.** Any action of the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting. If all directors consent to taking such action without a meeting, the affirmative vote of a majority of the directors shall be the act of the Board of Directors. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action or actions taken.

Section 13. **Fidelity Bonds.** The Board of Directors may require officers and employees of the Association handling or responsible for the funds of the Association to furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE VI

Section 1. **Designation of Initial Officers.** The Declarant shall designate the initial President, Vice-President, Secretary and Treasurer of the Board of Directors, who shall serve as such President, Vice-President, Secretary and Treasurer of the Association until the expiration of the term of the initial directors. The officers shall have the general powers and duties set forth in these Bylaws. The officers may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be filled by the same person.

Section 2. **Election of Officers.** At the first annual meeting of the Members after the expiration of the term of the initial directors and consistent with these Bylaws, the directors shall

determine the number of additional officers, if any, to be elected to serve until the next annual meeting. Thereafter, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 3. **Removal of Officer.** Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors.

Section 4. **President.** The President shall be the chief executive officer of the Association. In the event, he is also a member of the Board of Directors, he shall preside at all meetings of the members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an Association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. **Vice-President.** In the absence of the President or in the event of his inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 6. **Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of Members of the Association. The Secretary shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct and shall, in general, perform all the duties incident to the office of Secretary.

Section 7. **Treasurer.** The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VII

Section I. **Liability and Indemnification of Officers and Directors.** The Association shall indemnify every officer and director of the Association against any and all expense, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the Board of Directors of the Association) to which he may be made a party of reason of being or having been an officer or director of the Association whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to

any contract or other commitment made by them, in good faith, on behalf of the Association, (except to the extent that such officers or directors may also be owners of Lots within the Residential Development) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association, or former officer or director of the Association may be entitled.

Section 2. **Common Interested Directors.** The directors shall exercise their powers and duties in good faith and with a view to the interests of the Association and the Residential Development. No contract or other transaction between the Association and one or more of its directors, or between the Association and any corporation, firm or association (including the Declarant) in which one or more of the directors of the Association are directors or officers or are peculiarly or otherwise interested, is either void or voidable because such director or directors are present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if the conditions specified in the following subparagraphs exist:

- (a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- (b) The contract or transaction is commercially reasonable and advantageous to the Association at the time it is authorized, ratified, approved or extended.

Common or interested officers or directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction with the like force and effect as if such common or interested officers or directors were not such officers or directors of such other corporation or not so interested.

ARTICLE VIII

Section 1. **Management and Common Expenses.** The Association, acting by and through its Board of Directors, shall manage and operate the affairs of the Association and, for the benefit of the Members thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for those matters set forth in the Declaration or as determined by the Board of Directors.

Section 2. **Duty to Maintain.** Except for maintenance requirements imposed herein or in the Declaration upon the Association, the owner of any Lot shall, at his own expense maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment, and fixtures therein situated, and its other appurtenances in good order, condition and repair and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances.

Section 3. **Right to Enter.** For the purpose, solely of performing any of the repairs or maintenance required or authorized by these Bylaws or the Declaration, or in the event of a bona fide emergency involving illness or potential danger of life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable effort to give notice to the owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

ARTICLE IX

Section 1. **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January every year except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. **Books and Accounts.** Books and accounts of the Association shall be kept under the direction of the treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipts and, of the expenditures affecting the Residential Development and its administration and shall specify the maintenance and repair expenses incurred. The amount of any assessment required for payment of any capital expenditures of the Association shall be credited upon the books of the Association to the "paid in-surplus" account as a capital contribution by the Members.

Section 3. **Reports.** The Association shall furnish its Members, and the holder of any mortgages requesting same within ninety (90) days from the date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 4. **Inspection of Books.** The books and accounts of the Association and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any mortgage on any Lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as Member.

Section 5. **Execution of Association Documents.** With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by the President and all checks shall be executed on behalf of the Association by such officers, agents or other persons as are from time to time so authorized by the Board of Directors.

Section 6. **Employment of Management Company.** The Association shall be authorized to employ a management company to aid the Association in carrying out its duties and responsibilities.

ARTICLE X

Section 1. **Amendments.** These Bylaws may be amended by the affirmative vote of

Members representing a majority of all votes entitled to be cast at any meeting of the Members duly called for such purpose; provided, however, that these Bylaws may not be amended during the "Development Period" (as defined in the Declaration) without the consent of the Declarant. Amendments may be proposed by the Board of Directors or by petition signed by Members representing at least seventy-five percent (75%) of the total number of votes entitled to be cast. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, IN ADDITION TO DECLARANT'S OTHER RIGHTS SET FORTH IN THESE BYLAWS AND IN THE DECLARATION, THE DECLARANT SHALL HAVE THE RIGHT FOR A PERIOD OF TEN (10) YEARS TO UNILATERALLY AMEND THESE BYLAWS IN WHOLE OR IN PART, FOR ANY PURPOSE WHICH DECLARANT DEEMS NECESSARY OR DESIRABLE.

ARTICLE XI

Section 1. **Notice to the Association.** Upon request, each Member shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Member's lot.

Section 2. **Definition.** As used in this Article, the term "mortgagee" shall mean any mortgagee, deed of trust, deed to secure debt, or other form of security instrument affecting title to any Lot.

ARTICLE XII

Section 1. **Registered Agent.** The registered agent shall be designated as the person authorized to accept service of process in any action relating to the Association and/or the Residential Development.

Section 2. **Notices.** Unless another type of notice is herein elsewhere specifically provided for, any and all notices called for in the Declaration or these Bylaws shall be given in writing.

Section 3. **Severability.** In the event, any provision or provisions of these Bylaws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 4. **Waiver.** No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 5. **Captions.** The captions contained in these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

Section 6. **Gender Etc.** Whenever in these Bylaws the context so requires, the singular

number shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.

Section 7. **Conflicts.** THESE BYLAWS ARE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREIN EXCEPT WHERE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATION OR THE AFORESAID STATUTES. IN THE EVENT OF ANY CONFLICT BETWEEN THESE BYLAWS AND THE DECLARATION, THE PROVISIONS OF THE DECLARATION SHALL CONTROL, AND IN THE EVENT OF ANY CONFLICT BETWEEN THE DECLARATION AND ANY OF THE LAWS OF THE STATE OF TENNESSEE, THE PROVISIONS OF THE STATE LAW SHALL CONTROL.

Section 8. **Defined Terms.** All capitalized terms not defined herein shall have the meaning set forth in the Declaration.