

This Instrument Prepared By:  
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**AMENDED AND RESTATED DECLARATION OF COVENANTS AND  
RESTRICTIONS FOR GRAINGER'S LANDING**

This Amended and Restated Declaration of Covenants and Restrictions for Grainger's Landing is made this \_\_\_\_ day of June, 2005 by BECS a/k/a BECS General Partnership, a Tennessee general partnership comprised of Bruce Van Horn, Eddie E. Holbrook, Jr., Curtis Cassell and Shannon Wells, its successors and assigns (hereinafter referred to as the "Developer").

**RECITALS:**

**WHEREAS**, Developer is the developer of certain real property situated in Grainger County, Tennessee which is more particularly bounded and described in the attached **Exhibit A**, to which **Exhibit A** specific reference is hereby made for a more particular description (the real property described in **Exhibit A**, together with all the easements and appurtenances thereto, is hereinafter referred to as the "Property"); and

**WHEREAS**, Developer previously declared and established certain covenants, easements, conditions and restrictions on the Property, by virtue of the following instruments of record in the Register's Office for Grainger County, Tennessee:

- (1) Declaration of Covenants and Restrictions of Grainger's Landing dated October 30, 2003, and recorded in Instrument Book 251, page 1342;
- (2) Declaration of Covenants and Restrictions of Grainger's Landing dated March 30, 2004, and recorded in Instrument Book 253, page 155; and
- (3) Amendment to Declaration of Covenants and Restrictions of Grainger's Landing dated June 23, 2004, and recorded in Instrument Book 255, page 972

to each of which instruments specific reference is hereby made (the foregoing instruments referenced in this paragraph are hereinafter collectively referred to as the "Old Restrictions"); and

**WHEREAS**, Developer currently owns forty one of the sixty Lots in the Development, as well as all the roads and common areas located therein; and

**WHEREAS**, Developer and the other undersigned owners now desire to amend and restate the Old Restrictions as set forth herein; and

**WHEREAS**, this Declaration amending the Old Restrictions has been duly adopted and approved by not less than seventy five percent (75%) of the Owners in the Development in accordance with the provisions of the Old Restrictions;

**NOW, THEREFORE**, in consideration of the premises and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the terms and conditions of the Old Restrictions, Developer and the other undersigned owners hereby amend and restate the Old Restrictions as follows:

**ARTICLE I**  
**GENERAL PROVISIONS.**

1.01 Declaration.

Developer and the undersigned Owners hereby declare that all of the Property shall be subject to the provisions of this Declaration and shall be held, transferred, sold, conveyed, encumbered, leased, occupied and used subject to the terms and provisions set forth herein.

1.02 Run with Land.

The restrictions, covenants and conditions set forth in this Declaration shall run with the land of the Property and each Lot therein for a period of twenty years, and shall thereafter be automatically renewed for successive periods of ten years each unless modified or amended as provided herein.

The easements established herein shall perpetually run with the land of the Property and each Lot.

1.03 Name.

The name of the Development shall be “Grainger’s Landing.”

1.04 Amendment.

To the extent that the provisions of the Old Restrictions differ from or conflict with the provisions set forth in this Declaration, this Declaration shall supersede and control.

**ARTICLE II**  
**DEFINITIONS**

When used in this Declaration, unless the context shall prohibit or otherwise require, the following capitalized terms shall have the following meanings; and all definitions shall be applicable to the singular and plural forms of such terms:

2.01 “Architectural Standards Committee” or “Committee” shall mean and refer to the committee which shall be appointed by the Developer or the Association’s Board, as appropriate, to approve exterior and structural improvements, additions and changes to the Development as provided in this Declaration.

2.02 “Assessment” shall mean and refer to an Owner’s share of the Common Expenses or other charges assessed from time to time against an Owner and such Owner’s Lot by the Association in the manner herein provided.

2.03 “Association” shall mean and refer to Grainger’s Landing Property Owners Association, Inc., a Tennessee nonprofit corporation.

2.04 “Board” or “Board of Directors” shall mean and refer to the board of directors of the Association.

2.05 “By-Laws” or “By-Laws of the Association” shall mean and refer to those by-laws of the Association which govern the administration and operation of the Association, as the same may be amended from time to time.

2.06 “Charter” shall mean and refer to the charter or articles of incorporation of the Association, as amended from time to time.

2.07 “Common Areas” shall mean and refer to that certain real property described in **Exhibit B** hereto, to which **Exhibit B** specific reference is hereby made, together with all improvements, now or hereafter located thereon.

2.08 “Common Expenses” shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

2.09 “Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants and Restrictions for Grainger’s Landing and all amendments thereof filed for record in the Register’s Office for Grainger County, Tennessee.

2.10 “Developer” shall mean and refer to BECS a/k/a BECS General Partnership, a Tennessee general partnership composed of Bruce Van Horn, Eddie Holbrook, Jr., Curtis Cassell and Shannon Wells, any successor entity by reason of conversion, any successor-in-title to the entire interest of such entity with respect to the Property at the time of such transfer to said successor-in-title, or any party who acquires said entity’s entire interest with respect to the Property at the time of such acquisition pursuant to foreclosure of a Mortgage encumbering said entity’s interest in the Property, but excluding transfers to the Association and sales of Lots to any Person.

2.11 “Development” shall mean and refer to the Property and all improvements now or hereafter located or constructed thereon.

2.12 “Director” shall mean and refer to a member of the Board of Directors of the Grainger’s Landing Property Owners Association, Inc., a Tennessee nonprofit corporation.

2.13 “Dwelling” shall mean and refer to any residential structure which is intended to be

used as a single-family detached residence or dwelling located within the Development.

2.14 “Foreclosure” shall mean and refer to, without limitation, the judicial or non-judicial foreclosure of a Mortgage, a Secured Charge or the conveyance of secured property by a deed in lieu of foreclosure.

2.15 “Institutional Mortgage” shall be deemed to mean a Mortgage held on any Lot by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

2.16 “JPE Property” shall mean and refer to the real property described on **Exhibit C** attached hereto, as may be amended from time to time.

2.17 “Lease” shall mean and refer to any lease, sublease or rental contract, whether oral or written, affecting any portion of the Property.

2.18 “Living Space” shall mean and refer to the enclosed, finished, heated and covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

2.19 “Lot” shall mean and refer to each of the tracts or parcels of land designated with a number as shown on the Subdivision Plat, together with the improvements now or hereafter located thereon, but excluding the Common Areas and the JPE Property.

2.19 “Mortgage” shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract, or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security title to the Property, a Lot and/or a Dwelling.

2.20 “Mortgagee” shall mean and refer to the holder or beneficiary of a Mortgage or an Institutional Mortgage.

2.21 “Occupant” shall mean and refer to any Person occupying or otherwise using a Lot or Dwelling within the Development, whether temporarily or permanently, including, without limitation, any guest, invitee, lessee, tenant or family member of an Owner.

2.22 “Owner” shall mean and refer to each Person, including Developer, who owns the fee simple title to any Lot and/or Dwelling, excluding, however, those Persons having such an interest only by virtue of a Mortgage. In the event any installment land sales contract covering any Lot is recorded in the Register’s Office for Grainger County, Tennessee, the Owner of such Lot shall be the purchaser under said contract and not the holder of the fee simple title. An installment land sales contract shall mean and refer to an instrument whereby the purchaser is required to make payment for a Lot for a period

extending beyond nine months from the date of the instrument, and where the purchaser does not receive title to such Lot until all such payments are made, although the purchaser is given use of such Lot or any improvements located thereon.

2.23 “Person” shall mean and refer to a natural person, corporation, partnership, limited partnership, limited liability company, association, trust or other legal entity, or any combination thereof.

2.24 “Property” shall mean and refer to that certain real property described in **Exhibit A** attached hereto, together with all easements and appurtenances thereto.

2.25 “Subdivision Plat” shall collectively mean and refer to that certain map of the Property recorded in Plat Book 5, page 71, as corrected by map recorded in Plat Book 5, page 143, both in the Register’s Office for Grainger County, Tennessee, and as the same may be amended and/or supplemented from time to time.

**ARTICLE III**  
**DEVELOPMENT OF SUBDIVISION AND**  
**CONSTRUCTION OF IMPROVEMENTS**

**3.01 Purpose.**

Developer desires to establish a residential community whose beauty, design and harmony will be aesthetically pleasing and whose value will increase and be protected.

**3.02 Architectural Standards Committee.**

A. **Creation.** There is hereby created an Architectural Standards Committee which shall be solely, fully and completely vested with the power to regulate, promulgate and enforce the architectural design and construction of all improvements located or proposed to be located on any portion of the Property. Said Architectural Standards Committee shall be comprised of three members who shall initially be chosen and appointed by Developer. The members so initially appointed by Developer shall serve at the pleasure of Developer until such time as Developer shall either (i) assign such powers to the Board, or (ii) no longer own any portion of the Property primarily for the purpose of sale.

At such time as Developer no longer has the power to appoint and remove members of the Architectural Standards Committee, the power to appoint and remove the members of the Architectural Standards Committee shall be vested in the Board of Directors. Upon the vesting of such powers in the Board, the Board shall appoint three Owners to serve as members of said Committee, which members shall initially be appointed for staggered terms of three years, two years and one year. Thereafter, a new member shall be appointed annually to the Architectural Standards Committee for a term of three years.

Notwithstanding the terms to which those members of the Architectural Standards Committee who are chosen by the Board are appointed, said members (i) may resign at anytime, (ii) may be removed from office at anytime by the affirmative vote of a majority of the Directors, and (iii) shall automatically cease to be members of the Committee in the event they cease to be an Owner of a Lot.

- B. Powers. In addition to the other powers granted to it elsewhere in this Declaration, the Architectural Standards Committee shall be vested with the following powers:
1. The right to approve, disapprove or conditionally approve any proposed improvement to any portion of the Property, including, without limitation, any construction, landscaping, design, excavation, clearing, grading, filling, placement, installation, erection, demolition, removal, alteration, modification, renovation, building or improvement (and the design of each of the foregoing) (hereinafter “Construction Activities”);
  2. Either collectively or individually, to enter upon any Lot at reasonable times to inspect any Lot, Dwelling or other improvements with respect to which Construction Activities are underway to determine whether or not the plans and specifications therefore have been approved and the Construction Activities being performed are in compliance with said approved plans and specifications.
  3. To enjoin any Construction Activities which it determines the plans and specifications for which have not been approved, or which Construction Activities are not being performed in accordance with the plans and specifications so approved.
  4. To, with or without court order or intervention, require the removal or correction of any work in place which does not comply with plans and specifications approved by the Committee.
  5. To promulgate and publish, from time to time, such building standards, architectural standards, policies, regulations, rules and guidelines governing the Construction Activities (hereinafter “Standards”). Any such Standards published by the Committee shall be binding on and enforceable against all Owners with respect to all improvements in the Development requiring the approval of the Committee.
  6. To promulgate and publish the contents of any Construction Submittals (as defined below), Landscape Submittals (as defined below) or any other submissions of plans, specifications, and other information provided to it pursuant to the terms of this Declaration.
  7. To promulgate and publish, from time to time, as part of the Standards, such other additional development-related restrictions, guidelines, policies, and requirements applicable to the Development as it sees fit, including, without limitation, restrictions relating to the height of the improvements above grade and roof pitch for each Dwelling.

8. To hire, consult, contract, retain, employ or engage such consultants, architects, lawyers, engineers, contractors, landscape architects or other professionals which it deems necessary, in its sole discretion, to fulfill its duties, and to charge the same to the Association or any Person making submittals to it.
9. To establish a maximum percentage of a Lot which may be cleared or graded and a maximum percentage of a Lot which may be covered by a Dwelling, buildings, structures or other improvements, which standards shall be promulgated on the basis of topography, soil types and conditions, vegetation cover, aesthetic values and other environmental factors.
10. To perform such functions as are incidental to the powers set forth herein.
11. To perform such other acts and functions as are granted to the Committee by this Declaration, the Association or the Board of Directors from time to time.

### 3.03 Permitted Improvements.

No improvements of any nature whatsoever shall be constructed, installed, placed, erected, altered, added to, renovated or maintained upon any part of the Property, except for (i) Dwellings and other improvements which are constructed by Developer, (ii) such improvements as are approved prior to the initiation of the same by the Architectural Standards Committee in accordance with this Article III, (iii) improvements which do not require the consent of the Architectural Standards Committee pursuant to this Article III; or (iv) the improvements which are located on Lot 58 in the Development on the date this Declaration is executed by Developer which shall, for the purpose of this Declaration, be deemed to be in full compliance with the terms of this Declaration; provided that except where a variance is granted, all improvements shall be in compliance with the terms of this Declaration, the Standards, the By-Laws, the laws, statutes, ordinances and regulations of any governmental entity having jurisdiction over the Property, and any rules or regulations adopted by the Board or the Association.

### 3.04 Architectural Approval.

- A. Approval of Architectural Standards Committee. To preserve the architectural and aesthetic appearance of the Development, no Construction Activities shall be commenced by any Owner, other than Developer, unless and until approved in writing by the Architectural Standards Committee. By way of illustration and not limitation, the following activities shall require the prior written consent of the Committee: (i) any Construction Activities affecting the exterior appearance of a Dwelling (including painting or staining of any exterior surface), and (ii) the construction, placement, alteration or installation of a Dwelling, sidewalks, driveways, parking lots, decks, patios, courtyards, swimming pools, fences, tennis courts, green houses, playhouses, awnings, walls, exterior lights, garages, guest or servant quarters, or other outbuildings.

The Architectural Standards Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

**B. Submittals to Architectural Standards Committee.**

1. **Construction Submittals.** In order to receive the approval of the Architectural Standards Committee, an Owner, other than the Developer, desiring to perform Construction Activities shall submit two copies of each of the following items to the Committee for review:
  - (i) the building and site plans, specifications and any related data for all of the proposed Construction Activities, which plans and specifications shall include, without limitation, the nature, color, type, shape, height and materials of the proposed improvements;
  - (ii) the proposed location of the proposed improvements;
  - (iii) a proposed timeline for the Construction Activities;
  - (iv) if requested by the Committee, a survey of the Lot upon which the proposed Construction Activities are to occur showing the topography, the location of all trees more than six inches in diameter at breast height, and any other information requested by the Committee;
  - (v) any other information required or requested by the Committee or the regulations or directives compiled thereby;
  - (vi) the Landscape Submittals (as defined below); and
  - (vii) a non-refundable fee, to be set by the Committee to cover the anticipated expenses of any consultants, engineers, surveyors, contractors, architects, attorneys or other professionals engaged or consulted by the Committee to review the plans, specifications and other submittals from the Owner, which fee shall initially be One Thousand Dollars (\$1,000.00) U.S.(Subparagraphs (i) through (vii), inclusive, above are hereinafter collectively referred to as the “Construction Submittals”).

2. **Landscape Submittals.** In order to receive the approval of the Committee, an Owner, other than the Developer, desiring to conduct any landscaping, grading, excavating, or filling, of any kind or nature whatsoever on any portion of the Property, or desiring to remove any tree having a diameter at breast height of more than six inches, shall first submit two copies of each of the following items to the Committee for review:
  - (i) a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state;
  - (ii) the general landscaping plan for the Lot; and
  - (iii) such other documents, information and fees as the Committee shall reasonably proscribe or require.(Subparagraphs (i) through (iii), inclusive, are herein collectively referred to as the “Landscape Submittals”).



C. Review and Approval/Disapproval of Submittals. The Architectural Standards Committee shall review the Construction Submittals and/or Landscape Submittals, as the case may be, in due course. One copy of the Construction Submittals and/or Landscape Submittals, as the case may be, shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked “Approved,” “Disapproved” or “Approved as Noted.”

In the event the Committee marks the Construction Submittals and/or Landscape Submittals, as the case may be, “Approved,” no further approval shall be required with respect thereto, unless, with respect to the Construction Submittals, such construction has not substantially commenced within six months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footers, etc.) or unless such plans and specifications, whether in the Construction Submittals or Landscape Submittals, are materially altered or changed.

In the event the Architectural Standards Committee marks the Construction Submittals and/or Landscape Submittals, as the case may be, “Approved as Noted,” no further approval shall be required so long as:

- (i) all work performed is in compliance with the plans, as noted and modified, by the Committee;
- (ii) with respect to the Construction Submittals, such construction has substantially commenced within six months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footers, etc.); and
- (iii) the plans and specifications are not materially changed in any way other than in accordance with the notes and the changes required by the Committee.

In the event the Architectural Standards Committee marks the Construction Submittals and/or Landscape Submittals, as the case may be, “Disapproved,” then the submitting Owner shall not be entitled to perform any work to the subject Lot whatsoever until a new set of submittals are reviewed and approved by the Committee.

Refusal to approve the Landscape Submittals, Construction Submittals, or the plans or specifications included therein, may be based by the Architectural Standards Committee upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary and capricious.

Notwithstanding anything contained in this subparagraph C. to the contrary, in the event the Architectural Standards Committee fails to approve or disapprove the Landscape Submittals or Construction Submittals in writing within thirty days after such submittals have been submitted, the plans and specifications contained therein shall be deemed to have been expressly approved, provided the proposed improvements or activities are generally in harmony with the scheme of the Development as set forth in this Declaration.

D. Additional Fees. In the event the review process results in the expenditure of funds by the Architectural Standards Committee in excess of the initial submittal fee paid to the Committee, then the Owner submitting the same agrees that the Committee shall have the right to charge back said additional costs and expenses to said Owner, and that said Owner shall be liable for all such amounts, and that the Owner shall pay the same within ten days of receiving an invoice for the same, and that any unpaid amounts shall become a Secured Charge (as defined below).

E. Approval Not a Guarantee. No approval of plans and specifications and no publication of Standards shall be construed as representing or implying that such plans, specifications, or Standards will, if followed, result in properly designed improvements. Such approvals and Standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Developer, the Association, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to this Article III, any losses or damages to any Person arising out of the approval or disapproval of any plans or specifications, any losses or damages arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

F. Interior Improvements Excluded. Notwithstanding anything contained in this Article III to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect the exterior appearance of the same without obtaining the approval or review of the Architectural Standards Committee.

### 3.05 Time Constraints for Construction of Improvements.

All Construction Activities, other than those conducted by Developer or pursuant to an emergency, shall take place during daylight hours; provided, that Owners shall be allowed to conduct Construction Activities to the interiors of their Dwellings at anytime so long as said activities do not create a nuisance or otherwise disturb the peace of the Development.

### 3.06 Building Restrictions.

A. During any Construction Activities by an Owner, or its agents, contractors or employees, the Owner shall insure and require that its contractors, agents and employees keep its Lot and Dwelling in a reasonably clean and uncluttered condition and, to the extent possible (i) keep all equipment and materials properly stored, (ii) keep all construction trash and debris within refuse containers, which containers shall be emptied once they become full, but not

less than once every month, and (iii) erect and maintain silt control devices on its Lot during construction.

Upon completion of the Construction Activities, such Owner shall cause its contractors, agents and employees to immediately remove all equipment, refuse containers, tools, construction materials and debris from the Lot.

- B. All Dwellings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and any applicable laws, statutes, orders, regulations and restrictions of all applicable governmental entities. All Construction Activities performed on Lots or Dwellings shall also be performed in accordance with (i) matters noted on the Subdivision Plat, (ii) the provisions of this Declaration, the By-Laws and all rules and regulations of the Association, and (iii) the Standards promulgated by the Architectural Standards Committee. The square footage of impervious surface and cleared land on any Lot or Dwelling shall not exceed the square footage of such impervious surface or cleared land, as the case may be, allocated to such Lot or Dwelling by the Architectural Standards Committee and/or any applicable governmental entity. Any Owner performing or contracting for the performance of Construction Activities upon such Owner's Lot or Dwelling, shall make such filings, including, without limitation, the filing of a site plan with Grainger County, Tennessee, and obtain such authorizations and permits as are required by applicable governmental authorities, and, further, shall receive the prior written approval of the Architectural Standards Committee. Any Owner that performs any Construction Activities in violation of the above, or the rules, regulations, guidelines or restrictions of Grainger County government or other applicable governmental authority shall be liable to Developer for any damages incurred by Developer arising out of such violation; and Developer hereby expressly reserves the right to sue any such Owner for monetary damages and for specific performance of the same.
- C. Number of Dwellings per Lot. Not more than one Dwelling shall be erected on any Lot in the Development; provided that subject to the provisions of Section 4.02.H. and the approval of the Committee, one or more private/detached garages may be erected and maintained on any Lot.
- D. Set back lines.
1. Front - No exterior portion of any Dwelling, structure or other improvement (other than sidewalks, driveways and fences) shall be erected, located or maintained on any Lot closer than thirty feet from the front boundary line of said Lot (the front boundary line being the boundary line of the Lot located along the JPE Property).
  2. Lakeshore Road (a/k/a State Route 375) – No portion of any Dwelling, structure or other improvement (other than sidewalks, driveways and fences) shall be erected, located or maintained on any Lot closer than

one hundred feet from the right of way of Lakeshore Road (a/k/a State Route 375).

3. Side – No exterior portion of any Dwelling, structure or other improvement (other than sidewalks, driveways and fences) shall be erected, located or maintained on any Lot closer than eight feet from the side boundary lines of said Lot.
  4. Variance – Notwithstanding the foregoing set back requirements, the Architectural Standards Committee shall be empowered to grant variances with respect to such set back restrictions, in its sole and absolute discretion.
- E. Garages. All garages shall be oriented for side or rear entry only. No front entry garages shall be allowed.
- F. Maximum Height. No Dwelling in the Development shall exceed two stories in height; provided, that for purposes of this Section 3.06, a Dwelling's basement shall not be considered as one of the Dwelling's stories.
- G. Minimum Square Footage. The following minimum Living Space shall apply to all Dwellings constructed in the Development:
1. One story Dwellings shall have a minimum Living Space of 1,800 square feet.
  2. Multi-story Dwellings shall have a total minimum Living Space of 2,600 square feet; provided that the first floor of a multi-story Dwelling shall have a minimum Living Space of 1,300 square feet, and the second floor of such a Dwelling shall have a minimum Living Space of 1,300 feet; provided further that any multi-story Dwelling having a total minimum Living Space of at least 2,700 square feet shall be deemed to satisfy this requirement.
- H. Grainger County Building Code. All Dwellings shall be constructed in compliance with the rules and regulations of the Grainger County Building Code; provided, that in the event Grainger County does not have a building code, all Dwellings shall be constructed in accordance with the most recent version of the Southern Building Code.
- I. Variances. Notwithstanding anything contained in this Section 3.06 to the contrary, the Committee shall have the right to approve such other variances as it determines are necessary to prevent a hardship and which will not unreasonably affect the appearance and value of Lots in the Development.

### 3.07 Architecture/Building Materials.

Notwithstanding the requirement that the Architectural Standards Committee shall approve all improvements on the Property, the following additional restrictions shall

apply to all Dwellings, garages, outbuildings, or other similar improvements located in the Development:

- A. All improvements contemplated by this Section 3.07 shall be of traditional, conventional, Mediterranean or other modern architectural design.
- B. All improvements contemplated by this Section 3.07 shall have exteriors comprised of brick, wood, stone and/or other materials of like or similar quality or appearance. This shall include, but not be limited to, the veneering of all above-ground foundation walls with brick, stone, or such other materials as are approved by the Committee; provided that no vinyl siding, other than soffits comprised of vinyl, shall be allowed.
- C. Except for aluminum clad doors and windows, gutters, copper eaves and such other metal appurtenances and fixtures as are typically installed or attached to a Dwelling, all of which may be approved by the Committee, no exterior portion of any improvement, located in the Development and contemplated by this Section 3.07, shall be metallic; provided that no metal buildings shall be allowed.

### 3.08 Occupancy of Improvements.

- A. Dwellings. Dwellings may not be temporarily or permanently occupied until:
  - 1. The exterior of the Dwelling is completed;
  - 2. A certificate of occupancy shall have been issued for such Dwelling; and
  - 3. A septic tank or other sewage disposal facility, which has been constructed in accordance with the requirements of the Grainger County Health Department and the laws and regulations of the state of Tennessee has been installed. All sewage from the Lot shall be discharged into such sewage disposal facility, and the same shall be continuously maintained in a proper state of sanitation by the Lot's Owner. The effluent from such septic tank or sewage disposal facility shall not be permitted to discharge into any stream, lake, river, watercourse, storm sewer, open ditch or drain unless it has been passed through an absorption field approved by all appropriate governmental authorities including, but not limited to, the Tennessee Valley Authority.
- B. Other Improvements. Except as expressly provided by this Declaration, under no circumstances shall a temporary house, shack, tent, barn, trailer or other outbuilding be occupied on any Lot at anytime except for temporary structures for social functions as may be permitted by the rules and regulations promulgated by the Board.

## **ARTICLE IV** **USE OF PROPERTY**

#### 4.01 Residential Use Only.

All the Lots in the Development shall be used for residential purposes only. No business, trade or profession may be conducted in or on any portion of the Property, nor shall any Lot be used as a means of ingress or egress to another Lot in the Development or to any property located outside of the Development. Further, each Lot shall be for single-family use only; provided, however that the Owner's servants and other attendants may also reside on said Lot.

Notwithstanding anything contained in this Section 4.01 or this Declaration to the contrary, Developer, for so long as it shall own any Lot in the Development primarily for the purpose of sale, shall have the right to maintain a model home or homes and an office or offices on any portion of the Property, and shall further have the right to conduct such other uses on the Property as are incidental thereto.

#### 4.02 Other Limitations and Prohibitions on Use of Property.

- A. Interior Window Treatments. All interior window treatments shall have a white or neutral appearance when viewed from the exterior of any Dwellings, buildings or structures.
  
- B. Exterior HVAC Units. All heating, venting and air conditioning units which are located on any Lot, but outside of the Dwelling of said Lot, shall be screened from view with lattice, landscape screen or another suitable material which is approved by the Architectural Standards Committee.  
Notwithstanding the foregoing, no window fans or window units which provide air conditioning and/or heat shall be allowed.
  
- C. Clotheslines. No outside lines or clotheslines, whether or not the same are for the purpose of drying clothes, shall be permitted on any portion of the Property. Likewise, no rugs, carpets, towels, clothing or other items shall be hung from any rails, lines, fences, hedges, windows, poles, walls or structures on the Property.
  
- D. Antennas / Satellite Dishes.
  - 1. Satellite Dishes. A satellite dish may be installed and maintained upon a Lot, provided that said satellite dish and the installation of the same meets the following requirements:
    - (a) the satellite dish does not have a diameter of more than 18 inches;
    - (b) the satellite dish cannot be viewed from any street or sidewalk in the Development once installed;
    - (c) the satellite dish does not emit any signal or other form of electromagnetic radiation which unreasonably interferes with the reception of television or radio signals within the Development; and
    - (d) the satellite dish is approved by the Committee.

2. Antennas. No radio, television or other type of antenna may be installed on any portion of the Property; provided, however, that in the event cable television services are or become unavailable and adequate television reception is not otherwise available, then an Owner may install a television antenna so long as it is installed and completely concealed inside the Owner's Dwelling; provided, further that in the event such a television antenna is installed, said antenna shall not emit any signal or any other form of electromagnetic radiation which unreasonably interferes with the reception of television or radio signals within the Development.
  3. Rights of Developer and Association. Notwithstanding anything contained in this Declaration to the contrary, Developer and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Development.
- E. Fountains, Ponds, Streams and Waterfalls. No water fountains (whether or not the same are permanently affixed), ponds, man-made streams or waterfalls of any kind, size or nature shall be placed, constructed, installed or maintained on any Lot without the prior written consent of the Architectural Standards Committee. In the event the Architectural Standards Committee grants permission for a fountain, pond, waterfall or stream on any Lot, said Committee shall also proscribe rules and regulations providing for the regular cleaning and maintenance of said installations, as well as the regular application of such insecticides, fungicides, and/or pesticides as it deems necessary to prevent or substantially limit the prevalence and/or reproduction of mosquitoes and other pests.
- F. Bird Baths, Bird Houses, Statues and "Yard Art." Any bird baths, bird houses, statues and/or other "yard art" shall be reasonable in quantity, size and location so as not to detract from the overall appearance and/or use of the Development. Further, all such bird baths, bird houses, statues and/or other "yard art" shall be maintained in a neat, clean and attractive condition.
- Notwithstanding anything contained in this subsection F to the contrary, the following items shall not be placed, erected or maintained in a location outside any Dwelling or where they can be viewed from the exterior thereof:
1. Pink flamingos;
  2. Garden gnomes or yard gnomes;
  3. Lawn jockeys;
  4. Reflective spheres or gazing balls;
  5. Plaster or concrete animals such as, but not limited to, deer, squirrels and rabbits;
  6. Fairies;

7. Seasonal flags or banners, except that one seasonal flag or banner not exceeding three feet by four feet in size shall be allowed per Dwelling; and
8. Flags, banners, pompoms, plaques and other decorations representing a collegiate or professional sports team, except that each Dwelling shall be allowed to display one flag or banner representing one sports team not exceeding three feet by four feet in size.

G. Vehicles. Except for equipment and vehicles addressed in subsections 4.02.L. and 4.02.O. below, respectively, after a Dwelling is completed on a Lot, all motorized and non-motorized vehicles owned or used by an Owner or Occupant of that Lot shall be parked in the garage of the Owner's Dwelling to the extent room is available (provided that the garage space of each Dwelling shall not be used for storage or other purposes to the extent that it becomes unavailable for the parking of vehicles); provided, however that all vehicles which are owned or used by an Owner or Occupant which cannot fit into the garage of the Owner's Dwelling shall be parked in the driveway serving the Dwelling. Motor vehicles shall not be parked on any street, yard, or Common Area in the Development. Further, no inoperable vehicles shall be maintained in the driveway of any Lot for a period of more than three calendar days.

Notwithstanding anything contained in this Declaration to the contrary, no commercial vehicles or other vehicles used in any business (other than "company cars" which are used by an Owner or Occupant and do not contain signs, logos, insignia or other features identifying it as a vehicle used in a business, trade or profession other than a commercial license plate) may be parked in a location other than the Owner's garage.

H. Carports. No carports shall be erected or maintained on any portion of the Property.

I. Swimming Pools. In addition to any other restrictions or requirements imposed by the Committee, this Declaration, the Association, the Board, or any other state or local statute, ordinance or regulation, all swimming pools located in the Development shall be subject to the following additional restrictions:

1. All swimming pools shall be erected below ground;
2. All swimming pools shall be screened from site with attractive shrubbery;
3. All swimming pools shall be located on the rear portion of the Lot and, where practicable, behind the Dwelling constructed on said Lot so as to minimize its view from the Development's streets, roads and sidewalks; and
4. All swimming pools shall be surrounded by a fence, not less than 5 feet in height, and which has been approved by the Committee.



- J. Tennis Courts. In addition to any other restrictions or requirements imposed by the Committee, this Declaration, the Association, the Board, or any other state or local statute, ordinance or regulation, all tennis courts located in the Development shall be subject to the following additional restrictions:
1. All tennis courts shall be surrounded with attractive shrubbery and screening; and
  2. All tennis courts shall be located on the rear portion of the Lot and behind the Dwelling constructed on said Lot to the extent practicable, so, as to minimize its view from the Development's streets, roads and sidewalks.
- K. Fences. Except for those fences approved as screening for tennis courts by the Committee, no chain-link fences or fences comprised of barbed wire, chicken wire, or other similar types of wire (whether partially or entirely) shall be erected on any portion of the Property. All fences shall be subject to advance approval by the Architectural Standards Committee.
- L. Lawn Equipment. All tractors, mowers, or other similar equipment which is used for yard maintenance shall be stored either in the Dwelling's garage or an outbuilding which is approved by the Committee.
- M. Storage and Outbuildings. No storage buildings, barns, sheds, tents, shacks, trailers, outhouses or other outbuildings of any type or nature shall be erected or maintained on any Lot, except for:
1. those outbuildings which are reasonably necessary to aid in the construction of any improvements on the Property, and then only until the improvements are completed; or
  2. those outbuildings which are approved by the Architectural Standards Committee.
- N. Playground Equipment. All playground equipment must be approved by the Architectural Standards Committee prior to its erection or placement on any portion of the Property. Once approved, all such equipment shall be located behind the Dwelling in such a manner as to minimize its view from the roads and sidewalks located in the Development.
- O. Storage or parking of recreational vehicles. No boats, campers, recreational vehicles, fifth wheels, trailers for hauling personal property (including but not limited to animals, garbage or other materials), camping trailers, ATVs, motor homes, dirt bikes, or similar devices or implements shall be parked or stored on any portion of any Lot or the Property except in the garage of the Dwelling of the Owner thereof, or otherwise out of the view of the Owners of other Lots.
- P. Sports Equipment. No basketball goals, soccer goals, volleyball nets, badminton nets, horseshoe pits, shuffleboard courts, croquet courses or any

other similar sporting equipment, implements, courses or courts may be erected, affixed or maintained on any Lot, other than for temporary use not to exceed twenty four hours in duration.

- Q. Wood and Brush Piles. No piles of wood, timber, sticks, brush or other similar vegetative material shall be kept, stored, buried, dumped or disposed of on, in or under any Lot; provided, however, a reasonable amount of wood may be stored on a Lot which is reasonably necessary for burning in any fireplaces located in the Dwelling thereon; provided further, however, that such stored wood shall not be visible from any roads or sidewalks located in the Development.
- R. Flower Beds and Vegetable Gardens. All flower beds and vegetable gardens which are constructed and/or maintained on any Lot shall be of a reasonable size, shape and location. Subject to the rules of the Architectural Standards Committee, said beds and gardens shall be regularly maintained in order to provide an attractive and well-kept appearance and shall not be allowed to become overgrown with weeds or brush.
- S. Windmills. No windmills shall be erected or maintained on any portion of the Property.
- T. Propane Tanks. One propane storage tank shall be allowed on each Lot. Each propane tank, however, shall be completely buried underground.
- U. Exterior Lights. Exterior lights may be installed and maintained on Lots so long as:
1. they are of reasonable brightness;
  2. they are pointed in a downward direction so as to substantially limit the illumination of other Lots in the Development; and
  3. they do not cause an unreasonable disturbance or nuisance to the Owners or Occupants of any other Lot.
- Notwithstanding the foregoing, other than those lights which installed by Developer of the Association, under no circumstances shall a light, which is similar in character to a street light, be permitted on any Lot.
- V. Killing and Removal of Trees. Once a Dwelling is erected (and prior thereto only as approved by the Committee) each Owner shall refrain, to the extent possible, from cutting, harming, killing, injuring or removing trees from his Lot without first seeking the approval of the Committee.
- W. Utilities. All utilities for the Development shall be located underground at depths sufficient to prevent the risk of injury or damage.
- X. Boat Docks. No boat docks, decks, or other structures or improvements for the storage or mooring of boats or other watercraft (other than garages erected in

connection with a Dwelling) may be erected, installed or maintained on any Lot.

- Y. Trailers; Prefabricated Homes. No trailers, mobile homes, modular homes, manufactured homes or prefabricated homes shall be erected, placed or maintained on any portion of the Property.

Notwithstanding anything contained to the contrary in this paragraph, Developer shall have the right to install and utilize such trailers and other prefabricated structures for a sales office, management office and/or construction office, so long as Developer owns any Lot primarily for the purpose of sale.

- Z. Animals/Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner or Occupant upon any portion of the Development, provided, however, that generally recognized house pets may be kept inside Dwellings, subject to rules and regulations adopted by the Association, and further provided that the number of said house pets does not exceed four per Lot and that no more than two house pets of any one species (e.g. dog, cat, etc.) shall be allowed. The maintenance/use of said pets shall also be subject to the following:
1. House pets shall be maintained solely as domestic pets and not for any commercial purposes.
  2. No house pet shall be allowed to make an unreasonable amount of noise or to become a nuisance.
  3. No structure for the care, housing or confinement of any house pet shall be constructed or maintained outside any Dwelling or on any portion of the Common Areas, except as may be expressly required by law.
  4. All house pets, including cats, shall be under leash at all times when walked or exercised on the Common Areas, Mary's Lane (now known as Governor's Path) or Blount Circle.
  5. No house pet shall be allowed to leave its excrement on any portion of the Common Areas or any roads in the Development, and the owner of such pet shall immediately remove the same.

Upon the written request of any Owner, the Association may conclusively determine, through a vote of its Board, in its sole and absolute discretion, whether, for purposes of this subsection 4.02.Z. a particular animal is a generally recognized house pet or if such animal is a nuisance; and the Board shall have the right to require the owner of a particular animal to remove the same from the Development if such animal is found to be a nuisance or to be in violation of these restrictions.

The Board shall also have the right, in addition to any other rights provided herein or provided in law or equity, and subject to Section 4.07 hereof, to fine any Owner (in an amount not to exceed \$150.00 per violation) for the violation of these pet restrictions by such Owner or an Occupant of

such Owner's Lot or Dwelling; and an Owner shall be liable to the Association for the cost of repair of any damage to the Common Areas or any roads in the Development caused by the animal of such Owner or of an Occupant of such Owner's Lot or Dwelling. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Lot or Dwelling and its Owner are subject.

Notwithstanding anything contained in this subsection Z to the contrary, Mike and Donna Etheridge shall be allowed to have more than two pets of the same species so long as said animals do not otherwise violate any of the provisions of this Declaration.

- AA. Water Wells. No private water wells may be drilled or maintained on any Lot.
- BB. Burning. No burning of trash, debris, brush or other waste shall be conducted on any portion of the Property; provided, that Developer shall have the absolute right, for so long as it owns any Lot in the Development primarily for the purpose of sale, to burn such debris and other brush it removes from the Property in the improvement of the Development.
- CC. Bee Hives. No bee hives shall be placed, kept or maintained on any portion of the Property.
- DD. Discharge of Weapons. No firearms of any kind or nature (including air rifles, pellet guns and BB guns), bows, crossbows or slingshots may be fired or discharged on any portion of the Development, except for the purposes of self-defense or the defense of another person.
- EE. Fireworks. No fireworks or other explosive devices shall be kept, stored, lit, fired or discharged on any portion of the Development without the prior written consent of the Board.
- FF. Hunting. No animals (other than insects) may be hunted, trapped, taken, killed or injured on the Property or any portion thereof, unless (i) the Owner desiring to hunt, trap, take, kill or injure an animal obtains the prior written approval of the Board of Directors, (ii) the subject animal is wild or feral in nature and threatens to cause an imminent and significant injury to the Owner, an Occupant, or an Owner's family, friends, guests, invitees or property, or (iii) the subject animal is generally recognized to be a rodent or nuisance.
- GG. Vehicle Repair or Maintenance. No vehicle repair or maintenance, with the exception of periodic washing or waxing (which may only be conducted in the driveway on a Lot), shall be conducted on any portion of the Property located outside the garage of the Dwelling of the Owner thereof.

- HH. Multiple Ownership. No Lot or Dwelling or any portions thereof may be sold under any time-sharing, time-interval or similar right-to-use programs.
- II. Leasing of Lots. No Dwelling, Lot, or any portion thereof may be leased, demised or rented for a term of less than one year; provided, that leases of propane tanks, satellite dishes, personal property or other utility services shall be allowed.
- JJ. Subdivision of Lots. No Lot may be subdivided or re-subdivided unless approved by the Board; provided, that for so long as the Developer shall own any Lot primarily for the purpose of sale, the Developer shall also have the right to approve or disapprove of said subdivision or resubdivision.
- KK. Signs and Billboards. Except for the following enumerated items, no signs, billboards or other advertising media shall be erected or maintained on any portion of the Development:
1. one political sign per Lot (which sign shall not exceed two square feet in size);
  2. one professionally lettered sign advertising a Lot for sale or rent; provided that said sign shall not exceed five square feet in size or the size of a standard Realtor sign, whichever is smaller; provided, further, that for so long as it owns any Lot primarily for the purpose of sale, Developer shall be allowed to place and maintain such signs in such locations and in such quantities as it shall desire;
  3. one sign per Lot advertising the Person constructing the improvements thereon (which sign shall not exceed two square feet in size); and
  4. such other signs as may be otherwise expressly provided for in this Declaration, or approved by the Architectural Standards Committee.
- LL. Mining Activities. Except in connection with Construction Activities approved by the Architectural Standards Committee, no Mining Activities (as defined below) shall take place on any portion of the Property. For purposes of this subsection LL, the term "Mining Activities" shall mean and refer to the exploration for, development, extraction, dredging or removal of oil, gas, rock, stone, gravel, sand or any other minerals or materials found in, on or under any portion of the Property, whether by surface, strip or subsurface activities.
- MM. Hazardous Materials. No Hazardous Materials (as defined below), other than in amounts which are appropriate for approved Construction Activities or for ordinary household use and which are used in accordance with applicable laws and safety regulations, may be stored, used, dumped or disposed of on, in or under any portion of the Property. For purposes of

this subsection MM, the term “Hazardous Materials” shall mean and refer to any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority, or which is known to pose a hazard to health and/or safety.

NN. Separation of Mineral Estate from Surface. The mineral rights or mineral estate of any portion of the Property may not be severed or otherwise separated from the surface estate thereof, whether by virtue of lease, deed, license, permit or otherwise.

OO. Solicitation. No Person shall sell or offer items, services or products for sale through door-to-door solicitation on any portion of the Property.

PP. Garage/Yard/Estate Sales. No garage sales, yard sales or estate sales may be conducted on any portion of the Property without the prior written consent of the Board. In the event the Board grants permission to allow such a sale, it shall proscribe such rules and regulations as it deems fit to regulate the same, including, but not limited to, the days and hours during which said sale may take place, as well as the types, quantities and locations of tables, racks or displays which the Owner holding such sale may utilize.

Notwithstanding anything contained in this subsection PP to the contrary, in the event the Board grants permission to any Owner or Occupant of a Lot to conduct a sale thereon, such permission shall in all circumstances be conditional and may be revoked by the Board at anytime without the Board or the Association being liable to the grantee of said conditional permission for any loss or damage occasioned by said revocation.

QQ. Display of Vehicles for Sale or Lease. No vehicles may be parked or exhibited on any portion of the Property for the purpose of selling or leasing the same.

RR. Mailboxes. No Person shall erect, install or maintain a private mailbox on any Lot in the Development. Mail facilities are located at the entrance to the Development and shall be the sole facilities located in the Development for such purpose.

SS. Number of Persons residing in Dwelling. Notwithstanding the number of persons who have an interest in a Lot, not more than one nuclear family, servants of the Dwelling, and two other persons related to the nuclear family by blood or marriage, may reside in any one Dwelling. For the purposes of this section SS, the term “nuclear family” shall mean either a single adult and that adult’s children (including natural born, adopted and foster children), or an adult couple who are married and the children (natural-born, adopted, and foster) of both adults and/or either adult.

- TT. Activities of Children. Children shall not be allowed to play or loiter in, on or around any roads or sidewalks in the Development. Said prohibition shall include but shall not be limited to, the riding of bicycles, tricycles, skate boards, motorized vehicles, roller skates or roller-blades therein or thereon. With the exception of playground equipment (which is addressed above) no toys, equipment or other items customarily used by a child or children shall be allowed to remain unattended or be stored in or on any lawn or driveway of any Lot, but rather shall only be stored inside a Dwelling.
- UU. Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Person acquiring any interest in the Development or any part thereof seek any judicial partition unless the Development has been removed from the provisions of this Declaration.
- VV. Striping of Topsoil. Except for those activities reasonably required for construction of a Dwelling or any other approved improvements to a Lot, no Person shall be allowed to unreasonably strip away the top soil from any Lot.
- WW. Clearcutting of Trees. No clear cutting of trees shall be allowed on any Lot. To the contrary, only those trees which are required for the construction of improvements on a Lot and which are approved by the Committee, may be removed.
- XX. Other Acts. No Owner, Occupant, or any family member, tenant, agent, guest, employee or invitee of either shall perform or fail to perform any act which action or failure to act would, in the reasonable opinion of the Architectural Standards Committee or Board of Directors, jeopardize the soundness, beauty or safety of the Development, reduce the value thereof or impair any easement or hereditaments thereto, without in every such case first obtaining the written approval of the Architectural Standards Committee and Board of Directors.
- YY. Limitations on Access. Notwithstanding anything contained in this Declaration to the contrary, each Owner, by accepting an interest in the title to a Lot or Dwelling in the Development, hereby waives all rights of uncontrolled and unlimited access, ingress, egress and regress to and from such Owner's Lot and further acknowledges and agrees that such access, ingress, egress and regress shall be limited to those portions located on the JPE Property which are paved, as the same may exist from time to time; provided that:
1. Pedestrian and vehicular access to and from all Lots and Dwellings in the Development shall be available at all times;

2. All access to and from Lot 1 shall be exclusively limited to crossing over its southeastern boundary line;
3. Access for Lot 40 shall be exclusively limited to Blount Circle; and
4. No Owner shall have a right to use the strip of property located to the east of Lot 5 for access to or from Lakeshore Road (a/k/a State Route 375).

ZZ. Nuisances.

1. With the exception of waste from Construction Activities (which shall be handled as set forth in this Declaration), no rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development. Instead, all trash, rubbish and waste shall be kept in sanitary containers and out of the public view, with said containers being emptied at regular intervals, but in all cases not less than once every two weeks.
2. No nuisance or odors shall be permitted to exist, operate upon, or emanate from the Development, or any portion thereof, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Development.
3. No noxious or offensive activities shall not be conducted on, upon or in any Lot or Dwelling or upon any part of the Common Areas or any roads located within the Development.
4. Each Occupant and each Owner, and the family, tenants, guests, invitees, servants and agents of each shall refrain from any act or use of a Lot, Dwelling, any portion of the Common Areas, or any roads in the Development which (i) could cause disorderly, unsightly or unkempt conditions, (ii) could cause embarrassment, discomfort, annoyance or nuisance to the Occupants of other portions of the Development, (iii) could result in a cancellation of any insurance for any portion of the Development, or (iv) would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Development.

Any Owner, Occupant or family member, tenant, guest, invitee, servant or agent of either, who violates the provisions of this Section 4.03.D. or who otherwise dumps or places any trash or debris upon any portion of the Development shall, subject to the provisions of Section 4.07, be liable to the Association for the actual costs of the removal thereof or the sum of \$150.00, whichever is greater; and such sum shall be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his Lot or Dwelling is subject.



#### 4.03 Covenant to Maintain.

In addition to any other covenants set forth in this Declaration, each Owner, by accepting an interest in the title to any Lot or Dwelling in the Development hereby acknowledges and agrees that all maintenance and repair of his Lot(s), together with all the improvements thereon or therein and all lawns, landscaping and grounds on and within a Lot shall be the sole responsibility of the Owner of such Lot. Each Owner shall maintain his Lot and Dwelling in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of the Dwelling and all other buildings and structures, as well as fences, lawns, trees, shrubs, hedges, grass, flower beds, gardens and other landscaping. These duties shall include, without limitation, the following:

- A. Mowing –The mowing of all grass prior to the same reaching a height of six inches or having gone to seed. Grass clippings shall be raked, as needed, to prevent an unsightly or unattractive appearance.
- B. Pruning – The pruning of all trees, shrubs and hedges when necessary to remove limbs, branches or twigs which may be dead or unsightly, which threaten to interrupt utility service, or which pose a potential danger to persons or property located in the Development. Moreover, any vegetation or part thereof which interferes or threatens to interfere with any utility lines, or which interferes or impairs the visibility of persons operating motor vehicles on any roads or driveways in the Development shall be removed.
- C. Raking of Leaves. The raking and removing of leaves as reasonably necessary and appropriate.
- D. Flower beds and gardens. The regular maintaining of all flower beds and vegetable gardens in order to provide a neat and attractive appearance. Said beds and gardens shall not be allowed to become overgrown with weeds or brush and shall be mulched at least once per year, unless another non-deteriorating ground cover (such as decorative rock or stone) is used.
- E. Fences. The regular maintaining of all fences, which shall include the annual cleaning and painting of the same.
- F. Playground equipment. The regular cleaning and maintenance of all playground or similar equipment in order to keep the same in good order and repair.

In the event Developer or the Board makes a determination that: (i) an Owner, Occupant, or a family member, tenant, guest, invitee, employee, contactor or agent of either has committed a willful or grossly negligent act which has damaged any part of the Development, or (ii) that the maintenance and repair responsibilities for an Owner's Lot or Dwelling required under this Declaration, the By-Laws, any governmental rule, statute, law or ordinance, or any rules or regulations promulgated by the Board have not been met, then, except in the event of any emergency, Developer or the Board shall give such Owner written notice of Developer's or Board's intent to perform such necessary maintenance or repair at the sole cost and expense of the Owner. Except in the event of an emergency, the Owner shall have fifteen days after receiving said notice within which to complete such maintenance or repair in a

good and workmanlike manner, or in the event the same is not capable of completion within said fifteen day period, to commence said maintenance or repair and diligently proceed to completion in a good and workmanlike manner.

In the event of an emergency situation or the failure of any Owner to comply with the provisions hereof after such notice, Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance or repair at the sole cost and expense of such Owner; and said cost shall be added to and become a part of the Assessment to which such Owner and his Lot or Dwelling are subject. In the event the Developer undertakes such maintenance or repair, the Association shall promptly reimburse Developer for Developer's costs and expenses.

#### 4.04 Traffic Regulation.

All vehicular traffic on the roads and streets in the Development shall be subject to the provisions of the laws of the State of Tennessee and Grainger County, Tennessee concerning the operation of motor vehicles on public streets of similar character; provided that golf carts may be used on the Development's roads. Under no circumstances may non-licensed vehicles, other than golf carts, utilize any roads or streets in the Development.

Until such time as the roads and streets located on the JPE Property become public, the Association is hereby authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. Only persons licensed by the State of Tennessee or some other political subdivision of the United States shall have the privilege of operating vehicles on the roads in the Development.

#### 4.05 Combining of Lots or Adjoining Property.

With the exception of the Developer, for so long as it owns any Lot primarily for the purpose of sale, no Lot within the Development may be combined with any other Lot or with other property outside the Development by means of a plat, deed, judicial decree or otherwise.

#### 4.06 Imposition of Additional Restrictions.

Except for Developer and as is otherwise provided in this Declaration, no Owner may impose additional covenants, conditions or restrictions on his Lot or any Lot within the Development.

#### 4.07 Enforcement.

- A. By any Owner. Notwithstanding the powers granted to the Board, the Architectural Standards Committee and the Developer by this Declaration, each Owner shall have the right to enforce the provisions of this Declaration, the Charter, the By-Laws and the rules and regulations of the Association against any Person. Each Owner shall have the lawful right to prosecute such

violation or attempted violation at law or in equity against the Person violating or attempting to violate the same. In the event such prosecuting party is successful, it shall be entitled to recover from the defending party the costs of the action, as well as any reasonable attorneys' fees expended by it.

- B. By Developer. Developer shall have the right to enforce the terms and provisions of this Declaration in the same manner as any Owner.
- C. By the Association. The Association, acting through its Board of Directors, shall have the right to enforce the terms and provisions of this Declaration, the Charter, the By-Laws, and any other rules and regulations of the Association, as provided below:

- 1. Notices.

- Except with respect to the failure of an Owner to pay any Assessments levied by the Association, the Board shall not impose a fine, suspend voting rights or infringe upon, limit or suspend any other rights of an Owner or other Occupant of any Lot or Dwelling for violations of this Declaration, the By-Laws or any other rules and regulations of the Association, unless and until the following procedure is followed:

- (i) A written demand to cease and desist from an alleged violation shall be served (by U.S. Mail or hand delivery) upon the Owner responsible for such violation specifying:
        - (a) The alleged violation;
        - (b) The action required to abate the violation; and
        - (c) A time period of not less than ten calendar days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Charter, the By-Laws, or the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.
    - (ii) Within twelve months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve (by U.S. Mail or hand delivery) such Owner with written notice of a hearing to be held by the Board in executive session, which notice shall be sent to said Owner at least fifteen days prior to said hearing. The notice shall contain:
      - (a) The nature of the alleged violation;
      - (b) The time and place of the hearing;
      - (c) An invitation to attend the hearing and produce any statement, evidence and witnesses as the Owner desires on the Owner's behalf; and

- (d) The proposed sanction and/or potential sanction to be imposed.
  - (iii) The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford such Owner a reasonable opportunity to be heard.
2. Disciplinary Hearing. At any disciplinary hearing called in accordance with this Section 4.07.C., the Board of Directors shall serve as judge. Said hearing shall be conducted according to the following schedule with, in each event, the Association presenting its proof first and each party having a right to examine the other's witnesses:
- (i) Call to order;
  - (ii) Reading of allegations;
  - (iii) Opening statements of each party;
  - (iv) Presentation of evidence;
  - (v) Closing statements.
  - (vi) Rendering of decision, which decision shall appear in the minutes of the meeting.
- Any portion of the foregoing procedure may be waived by agreement as reflected in the minutes of the meeting.
3. Punishment. In addition to any other rights granted to the Board or any other Person, in the event the Board of Directors determines that a violation of the provisions of the Declaration, the Charter, the By-Laws, or any rules or regulations promulgated thereunder has taken place, the Board shall have the right to impose or seek any or all of the following remedies:
- (i) To suspend an Owner's right to vote in the Association;
  - (ii) To suspend an Owner's right (and the right of said Owner's family, guests, tenants and agents) to use the Common Areas and any facilities located therein;
  - (iii) To impose reasonable monetary fines up to One Hundred Fifty Dollars (\$150.00) U.S. which shall constitute an equitable charge and a continuing lien upon the Lot of the Owner who, or whose Occupant, guest, agent, tenant, invitee or licensee is guilty of such violations or attempted violations; and
  - (iv) To bring suit at law or in equity, in the name of the Association, to seek monetary damages and/or injunctive relief for any violation of this Declaration, Charter, By-Laws or any rules, regulations of the Association; provided that in the event the Association shall prevail in said lawsuit, it shall be allowed to collect the costs of enforcement, including its reasonable attorneys' fees from the defendant.

The above-listed remedies are cumulative, and the exercise of one shall not prevent the exercise of another.

4. Requisites to Effectiveness of Sanctions. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Director, Officer or other individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if such Owner appears at the meeting.

Notwithstanding anything contained in this subsection C. to the contrary, in the event a sanction, fine, charge, penalty or suspension is imposed after a hearing, said sanction, fine, charge, penalty or suspension shall not take effect, or be due and payable, as the case may be, sooner than fifteen days after written notice (i) of the sanction, fine, charge, penalty and/or suspension imposed, and (ii) of the reasons for the action, is provided to the Owner; provided, further that in the event any rights of the Owner are suspended, said suspension shall not alleviate or reduce the Owner's obligation to pay any or all Assessments.

## **ARTICLE V** **MEMBERSHIP, VOTING RIGHTS** **AND NOTICE OF MEETINGS**

### 5.01 Membership.

By accepting an interest in the title to any Lot in the Development, each Owner of a fee or undivided fee interest in any Lot shall be and become a member of the Association; provided that any such Person who holds such interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to the Lot and may not be separated therefrom. Membership in the Association shall expire upon the transfer of said ownership interest (excluding conveyance of such interest by Mortgage). As a member of the Association, each Owner shall be subject to the terms and provisions of this Declaration, the Charter, the By-Laws, and the rules and regulations of the Association.

### 5.02 Classes of Voting Membership.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners identified in Section 5.01 with the exception of Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership in Section 5.01. When more than one Person holds the interest in any Lot, all such Persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine; provided that

in no event shall (i) more than one vote be cast with respect to any Lot, or (ii) the vote of any Lot be split into fractional shares.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to ten votes for each Lot which it owns. The Class B membership, however, shall be converted to Class A membership (therefore entitling Developer to only one vote for each Lot owned by Developer) upon the first occurrence of either of the following events:

- (i) The date ten years from the date of the Declaration; or
- (ii) The date upon which the Developer no longer owns any Lot or Dwelling primarily for the purpose of sale.

Class B Membership shall not be transferable except in the event the Developer's interest in the Development is transferred by means of foreclosure or deed in lieu of foreclosure.

#### 5.03 Quorums, Meetings, Notices, etc. of Association.

The provisions pertaining to quorums, meetings, notices and action of the Association shall be as set forth in the By-Laws.

#### 5.04 Powers and duties of Association.

- A. General. The Association shall have all the powers set forth in the provisions of the Tennessee Code Annotated relating to nonprofit corporations, this Declaration, the Charter, and the By-Laws, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Tennessee Code Annotated, this Declaration, the Charter, or the By-Laws, the provisions of the Tennessee Code Annotated, this Declaration, the Charter, and the By-Laws, in that order, shall prevail; and each Owner of a Lot, by acceptance of an interest in the title to the same, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Subject to the provisions of this Declaration, such powers of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and/or Dwellings and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots and Dwellings, or their respective Owners, to furnish trash collection, water, sewer, and/or security service for the Common Areas, any roads or streets in the Development, and/or the Lots and Dwellings. Notwithstanding the foregoing provisions of this Section 5.04 or any other provision of this Declaration to the contrary, for so long as Developer shall own any Lot primarily for the purpose of sale, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, deed,

convey, lease or hypothecate all or any portion of the Common Areas or any roads or streets in the Development.

- B. Duties and Responsibilities of Association for Common Areas, roads and streets. Except as may herein otherwise be specifically provided, the Association shall maintain and keep in good repair all portions of all roads and streets in the Development, which responsibility shall include the maintenance, repair, and replacement of (i) all roads, walks, trails, parking lots, landscaped areas, recreational areas, and other improvements and facilities made by Developer or the Association situated within the JPE Property or within easements encumbering any Lot, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of any roads or streets in the JPE Property and which are not maintained by a public authority, public service district, public or private utility, or other Person, (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all lakes and ponds situated within or upon the JPE Property and the Common Areas, and (iv) all retention areas and facilities, if any, constructed by Developer for the benefit of the Development wherever located.

#### 5.05 Personal Property and Real Property for Common Use.

The Association, through the action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of (which shall not include the conveyance thereof for the purposes of establishing a lien, mortgage or other encumbrance thereon) the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is appurtenant to such Lot.

#### 5.06 Mortgaging of Common Areas, Streets, etc.

Except for any loan obtained by the Developer and the provisions of Section 5.04.A., no loan, whether secured or unsecured, or security given in any of the Common Areas, the JPE Property or any road or street, shall be valid and effective unless and until approved by the majority vote of the Board of Directors and the affirmative vote of a majority of all the votes of the Association

No fee simple conveyance of the Common Areas, the JPE Property, or any portion thereof (other than by Mortgage, which shall be governed by the preceding paragraph), other than the conveyance of an easement by the Board, or a conveyance of any nature by the Developer, shall be valid and effective unless and until approved by the majority vote of the Board of Directors and the affirmative vote of a majority of all the votes of the Association.

#### 5.07 Agreements; Employment of Manager.

Subject to the prior approval of Developer for so long as Developer owns a Lot primarily for the purpose of sale, and thereafter without limitation, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, all Occupants, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to Persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any Person to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the Directors, Officers, or members of the Association by this Declaration, the Charter, or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors, either directly or through its Officers, may hire and contract for, such legal, architectural, accounting, engineering or other services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

#### 5.08 Rulemaking.

Subject to the provisions hereof and the By-Laws, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, all streets and roads in the Development, the JPE Property, and the Common Areas and the improvements and facilities located thereon. In particular, but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as the application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations, and any amendments thereto, shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners and Occupants until and unless any such rule or regulation is specifically overruled, cancelled or modified by the Board of Directors, or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association.

#### 5.09 Insurance.



- A. The Board of Directors shall have the authority to and shall obtain and continue in effect the following types of insurance:
  - 1. Property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all roads in the Development and all insurable improvements in and to the JPE Property and the Common Areas against loss or damage by fire or other hazards, including but not limited to, extended coverage, flood, vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement costs (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.
  - 2. Public liability insurance covering all roads in the Development and all the JPE Property and the Common Areas and all damage or injury caused by the negligence of the Association, its members, directors, employees, officers or agents. Such public liability insurance shall provide such coverage as is determined to be necessary by the Board.
- B. The Board shall also have the authority to obtain such other policies of insurance as it shall deem necessary or which shall be required in order to comply with any applicable law such as worker's compensation.
- C. All insurance coverage obtained by the Board shall be written in the name of the Association, and the costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board; provided, however, that no Mortgagee or holder of any other security interest in the JPE Property or the Common Areas and having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:
  - 1. All policies shall be written with a company licensed to do business in the State of Tennessee and holding a rating of BV or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.
  - 2. All policies shall contain a waiver of the insurer's right to cancel without first giving thirty days prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.

3. All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's Directors and Officers, the Owners, the Occupants and the Association's manager.
4. All policies shall contain a provision that no policy may be cancelled, invalidated or suspended on account of the conduct of one or more of the individual Owners, or Occupants, or on account of the acts of any Director, Officer, employee or agent of the Association or its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
5. For so long as the Developer owns any Lot primarily for sale, all liability insurance shall name the Developer as an additional insured.

D. It shall be the individual responsibility of each Owner at his own expense to provide public liability, property damage, title and other insurance with respect to his own Lot and Dwelling.

#### 5.10 Liability of Association and Developer.

Neither the Association nor the Developer shall be liable for injury or damage to any Person or property (i) caused by the elements or by any Owner or any other Person, (ii) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas or the JPE Property, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association or the Developer, becoming out of repair. Nor shall the Association or Developer be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or the JPE Property. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

#### 5.11 Indemnification.

The Association shall indemnify every Director and Officer against any and all expenses, including court costs and reasonable attorney fees, reasonably incurred by or imposed upon any Director or Officer 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 may be made a party by reason of being or having been a Director or Officer at the time such expenses are incurred. The Directors and Officers shall not be liable for any mistake of judgment, negligence, or otherwise, except for their own willful

misconduct or nonfeasance. The Directors and Officers 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 Directors and Officers may also be members of the Association), and the Association shall indemnify and forever hold each such Director and Officer 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 Director or Officer, or former Director or Officer, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and directors' and officers' liability insurance to fund this obligation.

**ARTICLE VI**  
**PROPERTY RIGHTS IN COMMON AREAS**  
**AND EASEMENTS**

6.01 Easements of Enjoyment in Common Areas.

Subject to the provisions of this Declaration and the rules, regulations, fees, liens and charges from time to time established by the Board in accordance with the Charter, By-Laws and the terms hereof, every Owner and Occupant shall have a non-exclusive right, privilege and easement for the use and enjoyment in and to the Common Areas; and such easement shall be appurtenant to and shall pass and run with the title to every Lot, subject to the following provisions:

- A. The right of the Association to borrow money for the purposes of (i) improving, maintaining and repairing the Common Areas, the roads and streets on the JPE Property, or any portion thereof, (ii) acquiring additional Common Areas, (iii) constructing, repairing, maintaining or improving any facilities or improvements located or to be located within the JPE Property or Common Areas, or (iv) providing the services authorized herein, and subject to the provisions of this Declaration, to give as security for the payment of any such loan a deed of trust, fixture filing or such other security instruments conveying all or any portion of the roads and improvements on the JPE Property or the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, easements and privileges herein reserved or established for the benefit of Developer, any Owner, the Association, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.
- B. The rights and easements reserved to the Developer.
- C. The rights of the Association to grant and accept easements as provided in this Declaration and to dedicate or transfer fee simple title to all or any portion of the Common Areas, or the JPE Property to Grainger County, Tennessee, or to any other governmental agency or authority, public agency or authority,

public service district, public or private utility, or other Person, provided that any such transfer of the fee simple title must be approved by a majority of all the votes of the Association.

- D. The rights and easements reserved in this Declaration for the benefit of the Association, its Directors, Officers, agents and employees.
- E. The rights of any Mortgagee which are superior to the rights, interests, options, licenses, easements and privileges herein reserved or established.
- F. The right of the Developer, for so long as it owns any portion of the Property primarily for the purpose of sale, to limit access to or proscribe such rules or regulations pertaining to the use of the Common Areas as it shall determine, in its sole and absolute discretion.
- G. The right of the Association to charge reasonable admission and other fees for the use of the Common Areas.
- H. The right of the Association, as provided in this Declaration, the Charter or By-Laws, to suspend the rights of enjoyment of any Owner and Occupant for any period during which any Assessment remains unpaid, for any violation or infraction of the By-Laws or published rules and/or regulations, or for any violation or infraction of this Declaration.

#### 6.02 Recreational Facilities.

- A. Common Areas. Subject to the terms and provisions of this Declaration, the By-Laws and the rules, regulations, fees, liens and charges from time to time established by the Board, each Owner and his family and guests shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of any recreational facilities and amenities which are now or hereafter located on the Common Areas. Said Owner shall have the right to assign his rights to utilize the Common Areas, provided that both an Owner and his family, and the Owner's tenant and the tenant's family, may not utilize any recreational facilities and amenities on the Common Areas simultaneously.
- B. Condominium Property. Subject to the terms and provisions of this Declaration, the By-Laws, the rules, regulations, fees, liens and charges from time to time established by the Board, and the provisions of any easement granting the Association an easement for any recreational facilities or amenities on the Condominium Property, each Owner and his family and guests shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of any recreational facilities and amenities which are now or hereafter located on the Condominium Property and to which an easement for the use and enjoyment thereof is subsequently granted by the owner thereof to the Association. An Owner may assign his rights of access

and use to his tenant so that such tenant, his family and guests shall be entitled to access, use and enjoy the same; provided, that, unless otherwise provided in the easement to the Association, an Owner and his tenant may not access, use and enjoy said rights simultaneously.

6.03 Permanent Non-exclusive Easement for Access.

Developer hereby declares and establishes a permanent non-exclusive easement for perpetual vehicular and pedestrian access on, over and across the JPE Property. Said easement shall run with the land as an easement appurtenant to and for the benefit of each of the Lots, the Common Areas and the Owners and as a burden to the JPE Property.

Notwithstanding the foregoing, the easement declared in this Section 6.03 shall further be subject to the other terms of this Declaration, the By-Laws and the rules and regulations promulgated by the Association; provided that at no time shall all means of pedestrian and vehicular access to any Lot be denied.

6.04 Permanent Non-Exclusive Easement for Installation and Maintenance of Underground Utilities to Lots.

Developer hereby declares and establishes a permanent non-exclusive easement for the installation and maintenance of underground utilities on, over and across the JPE Property, to the extent practicable, for the benefit of each Lot, the Common Areas and the Owners. Said easement shall run with the land as an easement appurtenant to and for the benefit of each of the Lots, the Common Areas and the Owners and as a burden to the JPE Property.

Notwithstanding the provisions of this Section 6.04 to the contrary, any Owner who proposes to perform any work on any utilities located in the JPE Property shall first notify the Board and Committee at least ten days prior to commencing any work (when practicable), shall comply with all reasonable requirements imposed by the Board and/or Committee which are aimed at ensuring the completion of any work and the repair of any damage to the JPE Property (e.g., obtaining a bond, etc.), and shall also be solely responsible for all damage or repairs necessitated by any damage to any improvements located on the JPE Property which are caused by said utility work.

6.05 Permanent Non-Exclusive Easement for Access to Condominium Property.

Developer hereby declares and establishes a permanent non-exclusive easement over and across the JPE Property for the purpose of providing perpetual access to and from that certain tract of land described in **Exhibit D** hereto, to which **Exhibit D** specific reference is hereby made (said real property is hereinafter referred to as the "Condominium Property"); provided, that said easement may be utilized at any time and from time to time, by pedestrian and vehicular traffic, including trucks and heavy machinery, for the purpose of accessing the Condominium Property and all improvements (including approximately 70 condominium units and a marina with approximately 130 slips) now or hereafter erected thereon. Said easement shall run with the land for the benefit to the Condominium Property and the owners thereof and as a burden to the JPE Property.

6.06 Permanent Non-Exclusive Easement for Installation and Maintenance of Utilities for Benefit of Condominium Property.

Developer hereby declares and establishes a permanent non-exclusive easement on, over, under and across the JPE Property for the purpose of installing and maintaining utilities to and for the benefit of the Condominium Property, as now or hereafter developed. Said easement shall run with the land for the benefit to the Condominium Property and the owners thereof and as a burden to the JPE Property.

Notwithstanding the provisions of this Section 6.06 to the contrary, except for the Developer, any Person who proposes to perform any work on any utilities located in the JPE Property shall first notify the Board and the Committee at least ten days prior to commencing any work (when practicable), shall comply with all reasonable requirements of the Board and/or Committee which are aimed at ensuring the completion of any work and the repair of any damage to the JPE Property (e.g., obtaining a bond, etc.), and shall also be solely responsible for all damage or repairs necessitated by any damage to any improvements located on the JPE Property which are caused by said utility work.

6.07 Title to Development's Roads, Streets and Common Areas.

Developer may retain the legal title to the JPE Property and the Common Areas, or any portions thereof, for so long as Developer either owns any Lot primarily for the purpose of sale, or ten years from the date of this Declaration, whichever occurs earlier. At such time, Developer shall convey and transfer the JPE Property and the Common Areas to the Association by quit claim deed, or such other instrument as Developer desires; provided that nothing contained in this Section 6.07 shall prevent the Developer from exercising any of its rights in Section 6.08; provided further, that the Developer shall also have the absolute right to transfer and convey all or any portion of the JPE Property and the Common Areas to the Association at anytime.

6.08 Other Easements, Licenses and Interests.

- A. General. There is hereby reserved for the benefit of the Developer and the Association, the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from Grainger County, Tennessee, any other governmental authority, public authority, public service district, public or private utility, or Person upon, over, under and across (i) all of the Common Areas, (ii) the JPE Property, and (iii) all portions of all Lots as are reasonably necessary for the purpose of installing, replacing, repairing and maintaining a master television antenna and/or cable system, security and burglar systems, and all utilities including, but not limited to storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water and sewer lines, provided such easements shall not unreasonably affect the transferability, marketability or value of any such Lot. Such easements may be granted or accepted by the Developer, its successors or assigns, or by the Board of Directors; provided, however, that for so long as Developer owns one or more Lots primarily for the purpose of sale, the Board of Directors must obtain the

written consent of the Developer prior to granting and accepting any such easements.

- B. Service Companies. There is also hereby reserved for the benefit of the Developer and the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and easement, as well as the power to grant easements to entities whose purpose is to provide services to the Development or any of the Lots therein, upon, over, under and across (i) all the Common Areas and (ii) the JPE Property.

6.09 Easement to Committee and Association for performance of duties.

There is hereby reserved a general right and easement for the benefit of the Committee, the Association, their Directors, Officers, employees, contractors and agents, including but not limited to, any consultant of the Committee and such consultant's employees, or any manager employed by the Association and any employees of such manager, to enter upon any unimproved portion of each Lot, in the performance of their respective duties. Except in the event of emergencies, this easement shall be exercised only during normal business or daylight hours, whichever is later, and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the Lot; provided, that in event the Owner and/or Occupant of said Lot refuses to permit the exercise of said easement, the Association shall have the right but not the obligation to obtain an injunction against the objecting Owner and/or Occupant and assess the Lot of said objecting Owner/Occupant with all the costs incurred in the same, including, but not limited to, the Association's reasonable attorneys' fees.

6.10 Maintenance Easement.

There is hereby reserved for the benefit of Developer, the Association, and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, planting grass, placing sod, and performing such other similar services or duties so as to maintain reasonable standards of health, fire safety, and appearance within the Development; provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions. Said easement may also be exercised to correct any noncompliant actions by an Owner or Occupant of a Lot and then be charged back to the Owner of said Lot as a part of the Lot's Assessment.

6.11 Environmental Easement.

There is hereby reserved for the benefit of Developer, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable and perpetual right and easement on, over, under and across all Lots for the purpose of taking any action necessary to effect compliance with any environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity. Such easement shall include, without limitation, the right to (i) implement erosion control procedures and practices, (ii) drain standing water, and (ii) dispense pesticides, fungicides, insecticides and herbicides.

#### 6.12 Easement to Agricultural Rights.

There is hereby reserved for the benefit of Developer, its agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over, under and across the JPE Property, the Common Areas and all the Lots for the purpose of accessing Developer's agricultural rights in and to that certain land lying between the Development and the waters of Cherokee Lake. Said easement shall include the right to access said agricultural rights at anytime and from time to time by pedestrian and vehicular traffic, including trucks and heavy equipment; provided, that Developer agrees that it shall not exercise its rights in an unreasonable manner and that Developer will further make any repairs to any part of the Property which is damaged as a result of its exercise of its rights pursuant to this easement. Said easement shall run with the land as a perpetual benefit to Developer and as a burden to the Property.

#### 6.13 Easement for Mail Box.

- A. Lots. Subject to the assignment of a mailbox by the Association and such rules, fees and regulations as may be promulgated or assessed by the Association from time to time, Developer hereby declares and establishes in favor of each Owner and Lot a permanent, non-exclusive easement for the right to access, utilize and maintain a mailbox in the mailbox facility located near the main entrance of the Development and on the JPE Property. Said easement shall run with the land of each Lot and shall be a benefit to the Owner of said Lot and his personal representatives, heirs, successors and assigns.
  
- B. Condominium Property. Developer hereby reserves the right to declare and establish a permanent non-exclusive easement for the right to access, utilize and maintain a mailbox in the mailbox facility located near the main entrance of the Development on the JPE Property in favor of the Condominium Property, and each person who may subsequently own and/or occupy a unit in the same; provided, that in the event such an easement is declared and established by Developer, said easement shall be subject to the assignment of a mailbox and such rules, fees and regulations as may be promulgated or assessed from time to time. Once declared, said easement shall run with the land for the benefit to the Condominium Property and the owners thereof and as a burden to the JPE Property.

#### 6.14 Other Easements for Developer.

- A. During Developer's Ownership of a Lot primarily for sale.

In addition to any other rights and easements reserved to Developer in this Declaration, Developer, for so long as it owns any portion of the Property primarily for the purpose of sale, shall have the following additional easements and rights:

1. An alienable and transferable right and easement on, over, through, under and across the JPE Property and the Common Areas for the purpose of



constructing Dwellings and other improvements in and to the Lots and the Condominium Property.

2. An alienable and transferable right and easement for the installation, maintenance, repair and replacement of such other improvements to the Property and the Condominium Property as are contemplated by this Declaration or desired by Developer, and for the purpose of doing all things reasonably necessary and proper in connection therewith as Developer desires, in its sole discretion, including without limitation, any improvements or changes permitted and described by Article III hereof.
3. The alienable and transferable right and easement to declare and establish an easement or easements over, on and across any Lots which Developer shall own for the purpose of providing perpetual parking for the benefit of the Development and/or the Condominium Property.
4. The alienable and transferable right and easement to declare and establish an easement or easements over, on, across and under any Lot which Developer shall own in the Development for the purpose of erecting, installing and maintaining signage, gates or other improvements for the benefit of the Development and/or the Condominium Property.

Notwithstanding the provisions of subsections 1, 2, 3 and 4 above, Developer shall not have the obligation to declare, establish or perform any of the matters set forth therein.

- B. Perpetual Easements and Rights of Developer. In addition to the other rights and easements set forth in this Declaration and regardless of whether Developer shall own any interest in the Property, Developer shall have an alienable, transferable and perpetual right and easement to have access to the Common Areas, the JPE Property and improvements thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of Owners to use the JPE Property and/or the Common Areas.

## **ARTICLE VII** **COVENANT FOR MAINTENANCE ASSESSMENTS**

### 7.01 Creation of Lien and Personal Obligation for Assessments.

Each Owner, other than (i) Developer on any Lot owned by it primarily for the purpose of sale, or (ii) a party whose interest in a Lot is for the purpose of securing a debt, by accepting an interest in the title to any portion of a Lot, promises, covenants and agrees (whether or not it shall be so expressed in any such deed, devise or other conveyance) to pay the Association both annual and special Assessments for the purposes set forth in this Declaration. Such Assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and special Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot of the Owner and shall be a continuing lien upon the Lot against

which each Assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the Person who is the Owner of such Lot at the time the Assessment becomes payable. In the event any Lot which is subject to an Assessment is owned by more than one Person, each Person holding an ownership interest (which shall not include any Person which holds only a security interest) shall be jointly and severally liable for such Assessment together with any interest thereon and costs of collection thereof.

Annual assessments shall be based on the calendar year.

#### 7.02 Purpose of Assessments.

The Assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

#### 7.03 Computation of Annual Assessments.

- A. Developer has established the annual Assessment for the first year of the Association at Three Hundred Dollars (\$300.00). From and after the expiration of the first year, the annual Assessment may be adjusted upward or downward as provided herein.

Notwithstanding anything contained in this Declaration to the contrary, as Developer will incur substantial costs and expenses with the construction and development of the Property, Developer shall not be required to pay any annual Assessments on any Lots or other portions of the Property which it owns primarily for the purpose of sale.

- B. It shall be the duty of the Board, at least thirty days prior to the Association's annual meeting, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account, if necessary, for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual Assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen days prior to such meeting. The total annual Assessment shall be divided among the Lots equally and without regard to whether a Lot is improved with a Dwelling. The budget and the annual Assessment shall become effective unless disapproved at the annual meeting by a majority of all the votes of the Association. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual Assessment in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967-69=100), or its successor index; and such increased budget shall be implemented for the succeeding year, until a new budget shall

have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special Assessment as provided in Section 7.04 hereof. The Common Expenses to be funded by the annual Assessment may include, but shall not necessarily be limited to, the following:

1. management fees and expenses of administration, including legal and accounting fees;
2. charges for utilities serving the Common Areas and/or the JPE Property, and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;
3. the cost of any policies of insurance purchased for the benefit of the Association and/or Owners as required or permitted by this Declaration, including fire, flood and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
4. the expenses of maintenance, operation and repair of those portions of the JPE Property and the Common Areas which are the responsibility of the Association under the provisions of this Declaration;
5. the expenses of maintenance, operation and repair of other amenities and facilities serving the Development, the maintenance, operation and repair of which the Board from time to time determines to be in the best interest of the Association;
6. the expenses of the Architectural Standards Committee which are not defrayed by plan review charges;
7. ad valorem real and personal property taxes assessed and levied against the JPE Property and Common Areas;
8. the expenses for conducting recreational, cultural or other related programs for the benefit of the Owners and Occupants;
9. such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and
10. the establishment and maintenance of a reasonable reserve fund or funds (i) for inspections, maintenance, repair and replacement of those

portions of the Common Areas and the JPE Property which are the responsibility of the Association and which must be inspected, maintained, repaired or replaced on a periodic basis, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

#### 7.04 Special Assessments.

In addition to the annual Assessments authorized above, the Association, acting through its Board of Directors, may levy, in any Assessment year, special Assessments for Common Expenses applicable to that year only; provided that, except as otherwise permitted in this Article VII, any such Assessment shall be approved by (i) Developer, for so long as Developer owns any Lot primarily for the purpose of sale, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the By-Laws of the Association. The Board of Directors may make such special Assessments payable in installments over a period which may, in the Board's discretion, extend beyond the fiscal year in which adopted. Such special Assessments are to be prorated among the Lots equally as provided with respect to annual Assessments.

#### 7.05 Individual Assessments.

Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specially assessed against such Owners and their respective Lots. The individual Assessments provided for in this Section 7.05 shall be levied by the Board of Directors, and the amount and due date of such Assessment so levied by the Board shall be as specified by the Board.

#### 7.06 Assessments Non-refundable.

All Assessments, whether special, annual or otherwise shall be non-refundable; provided, that nothing contained in this Section 7.06 shall be construed to prevent an Owner who sells his Lot from prorating the same with the purchaser thereof.

#### 7.07 Effect of Nonpayment; Remedies of the Association.

Any Assessment assessed to a Lot, or any portions thereof, which is not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten calendar days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum, or the highest rate of interest then permitted by law, whichever is lower. A lien and equitable charge as herein provided for each Assessment shall attach simultaneously as the same shall become due and payable, and if an Assessment or any portion or installment thereof has not been paid within thirty calendar days after its due date, the entire unpaid balance of the Assessment may be accelerated at the option of the Board and be declared due and payable in full.

The continuing lien and equitable charge of such Assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the rate of eighteen percent (18%) per annum or the highest rate of interest then permitted by law, whichever is lower, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law (hereinafter collectively the "Secured Charges"). In the event the unpaid Assessment remains unpaid for sixty calendar days from the original due date, the Association may, as the Board shall determine: (1) institute suit to collect such amounts and execute on the judgment it receives; (2) proceed according to the provisions of Section 7.08; (3) suspend the voting rights of the Owners of said Lot; (4) exercise any other right provided for in this Declaration; or (5) exercise any other rights which the Association may have in law or equity; provided, that the exercise of any one of these rights shall not hinder or prevent the exercise of any other, the intent being that the remedies provided herein shall be cumulative.

The equitable charge and lien provided for in this Article VII shall be in favor of the Association, and each Owner by his accepting of an interest in the title of a Lot (whether by deed, devise, or otherwise) shall vest in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessment as a debt, as well as to pursue any other means authorized by law or provided in this Declaration. No Owner may waive or otherwise escape liability for the Assessments provided for herein by, including by way of illustration but not limitation, non-use of the Common Areas or the JPE Property, or abandonment of his Lot or Dwelling; and an Owner shall remain personally liable for Assessments, interest, late charges and costs of collection which accrue prior to a sale, transfer or other conveyance of his Lot.

#### 7.08 Power of Sale to Enforce Liens.

For the purpose of more effectively securing the lien of the Secured Charges, and in consideration of the matters set forth herein, the acceptance by each Owner of an interest in the title to a Lot, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, each Owner, for himself, his personal representatives, heirs, successors and assigns hereby grants, bargains, sells and conveys unto Eddie E. Holbrook, Jr., a resident of Grainger County, Tennessee, his successors and assigns (hereinafter "Trustee"), such Owner's interest in his respective Lot or Lots together with all the estate, title and interest therein, in trust, for the purpose of securing the lien of the Secured Charges.

By accepting an interest in title in any Lot in the Development, each Owner hereby promises, covenants and agrees (i) to pay the Secured Charges when they shall become due, as provided herein; (ii) to pay, discharge, and remove any and all liens which may be hereafter be placed against such Owner's Lot as the same becomes due and payable, and which liens shall adversely affect the lien of the Secured Charges or enforcement of the terms and provisions hereof; (iii) to keep such Owner's Lot or Lots in good repair and condition, and (iv) to abide by all the terms and provisions of this Declaration, the Charter, the By-Laws and the rules and regulations lawfully adopted by the Association, as the same may be amended from time to time; provided that in the event any Owner fails to do any of these things, then Trustee or the Association may do

any or all of these things, and the amounts so paid shall bear interest at eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less, and said amounts shall become part of the Secured Charges.

If an Owner shall pay the Secured Charges when due, then this trust conveyance shall be of no further force or effect with respect to such Owner's Lot. If the Secured Charges with respect to any Lot are not paid promptly when due, then this trust conveyance shall remain in full force and effect, and the Trustee is hereby authorized and empowered, upon giving twenty days notice by three publications in any newspaper, daily or weekly, published in Grainger County, Tennessee, or any county which borders Grainger County, Tennessee and is circulated in Grainger County, to sell said Lot at the front door of the courthouse for Grainger County, Tennessee to the highest bidder for cash, at public outcry, free from the equity of redemption, the statutory right of redemption, homestead, dower, and all exemptions of every kind and nature, each of which are hereby expressly waived by each Owner; and the said Trustee is authorized and empowered to execute and deliver a deed to the purchaser; provided, that the Association shall also be allowed to bid on the sale of any Lot in such a proceeding.

Notwithstanding the foregoing, the Association may, at any time, after default in the payment of any of the Secured Charges, enter and take possession of the Lot, the Dwelling and any other improvements located thereon or therein, and shall only be required to account for the net rents actually received by it. It is further agreed that, in the event the Association fails, before instructing Trustee to sell said Lot, as provided herein, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by Trustee of a deed for said Lot, and said purchaser shall be allowed to recover all costs and expenses, including its attorneys' fees, which it incurs in removing any Person from possession of said Lot.

In case of a sale under this Section 7.08, the proceeds will be applied by Trustee as follows:

A. First, to the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien;

B. Second, to the payment of all taxes which may be unpaid with respect to the Lot;

C. Third, to the payment of all unpaid Assessments with respect to the Lot; and

D. Fourth, the residue, if any, will be paid to the Owner of the Lot, his order, representatives or assigns;

In the case of the death, absence, inability or refusal to act of said Trustee at any time when action under the foregoing power and trusts may be required or for any other reason, the Association is hereby authorized and empowered to name and appoint a successor Trustee by an instrument in writing which is recorded in the Register's Office for Grainger County, Tennessee, and the title herein conveyed to the above-named Trustee shall be vested in said successor.

#### 7.09 Liens; Subordination to Deeds of Trust and Mortgages.

All liens in favor of the Association under this Declaration shall be superior to all other liens and encumbrances on any Lot or Dwelling except only for (i) liens of ad valorem taxes, (ii) liens for all sums unpaid on a first priority Institutional Mortgage and all amounts advanced pursuant to said Institutional Mortgage and secured thereby in accordance with the terms of such instrument, and (iii) liens of for all sums unpaid on any Mortgage held by or for the benefit of Developer, or its affiliates, successors or assigns, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument. All other Persons acquiring liens or encumbrances on any Lot or Dwelling after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for Assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

Notwithstanding the foregoing to the contrary, the subordination of Assessments to the lien of ad valorem taxes, unpaid sums on Institutional Mortgages and unpaid sums on Mortgages for the benefit of Developer, shall only apply to such Assessments which have become due and payable prior to a foreclosure.

#### 7.10 Property exempt from Assessments.

Notwithstanding anything contained in this Declaration to the contrary, the following Property, which is subject to this Declaration, shall be exempt from the Assessments, charges and liens created herein:

- A. All Property to the extent of any easement or other interest therein which is granted or dedicated to and accepted by any governmental or local authority;
- B. All Common Areas located in the Development;
- C. The JPE Property;
- D. All Property exempted from taxation by the laws of the State of Tennessee or United States of America upon the terms and to the extent of such legal exemption; and
- E. All Lots in the Development, during the time period they are owned by Developer primarily for the purpose of sale.

#### 7.11 Certificate.

Any Director, Officer or manager of the Association shall, within ten calendar days of a written request and upon payment of such fee as is determined from time to time by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by said Officer, Director or manager setting forth whether the Assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. Such certificate shall be conclusive evidence against all (but the Owner) of payment of any Assessments stated therein to have been paid.

#### 7.12 No Duty to File Release of Lien.

Except for judgment liens filed by Developer or the Association against an Owner's Lot, by accepting any interest in the title to a Lot, each Owner hereby releases Developer, the Association and the Board from any obligation to file a release of lien for

an Owner's Lot pursuant to Tenn. Code Ann. §66-25-101 et seq. each time an Assessment is paid for said Owner's Lot.

**ARTICLE VIII**  
**AMENDMENTS**

8.01 Amendments by Developer.

A. Declaration. During any period in which Developer owns any Lot in the Development primarily for the purpose of sale, Developer may amend this Declaration by executing and recording an instrument in the Register's Office for Grainger County, Tennessee, without obtaining the approval of any Owner, Mortgagee or any other Person; provided, however, that (i) in the event such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling, the JPE Property or the Common Areas, or adversely affects the title to only a specific Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by the Owner of the affected Lot, or (ii) in the event such amendment would materially and adversely affect the security interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 8.01 shall be certified by Developer as having been duly approved by Developer, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of an interest in the title to any Lot, agrees to be bound by such amendments as are permitted by this Section 8.01 and further agrees that, if requested to do so by the Developer, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development if:

1. Such amendment is necessary to bring any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith;
2. Such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot subject to this Declaration;
3. Such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase



mortgage loans on any Lot or other improvements subject to this Declaration; or

4. Such amendment is necessary to enable any governmental agency or reputable private insurance company to insure any Mortgage on any Lot, Dwelling or other improvements subject to this Declaration.

B. Subdivision Plat. In addition to any other rights affecting the subdivision or resubdivision of any Lot by Developer as provided in this Declaration, Developer also hereby reserves the right, so long as it owns any Lot primarily for the purpose of sale, to amend, modify, revise and add to the Subdivision Plat, at any time and from time to time, by recording one or more subdivision plats in the Register's Office for Grainger County, Tennessee; and each Owner, by accepting an interest in title to any Lot in the Development hereby grants to Developer the right to do and perform the same. Said new subdivision plat or plats may do any of the following without the necessity of any Owner, Mortgagee or the Association approving the same or joining therein:

1. Change or alter the locations, dimensions or sizes of any or all of the Common Areas, the JPE Property, roads, streets, utility systems, drainage systems, landscape easements, set back line restrictions, drainage easements, utility easements, and access easements shown on the Subdivision Plat, or any amendments or revisions thereof;
2. Provide additional Common Areas, access easements, landscape easements, set back line restrictions, drainage easements or such other easements as the Developer may determine are necessary or appropriate;
3. Add additional real property to the Development; and
4. Add such additional information to the Subdivision Plat as the Developer determines is necessary, appropriate or desirable.

Notwithstanding anything contained in this Section 8.01.B. to the contrary, Developer shall not have the power to amend, modify, revise or add to the Subdivision Plat to the extent that such amendment, modification, revision or addition would (a) materially alter or change the dimensions of an Owner's Lot, (b) materially impair the Owner's right to the use and enjoyment of his Lot or Dwelling, or (c) result in a substantial encumbrance to the title of any Lot or Dwelling. In these situations (items (a) through (c), inclusive) Developer shall obtain the prior written consent of said Owner and any Mortgagee of the Owner before recording such a plat or plats.

#### 8.02. Other Amendment of Declaration.

Except as provided in this Declaration, all amendments to this Declaration shall require the agreement of the Owners of at least two-thirds (2/3) of the total votes of the Association.

## **ARTICLE IX** **RESERVATIONS BY DEVELOPER**

### **9.01 Access; Tolls & Fees.**

In addition to the other rights and easements reserved and/or granted to Developer in this Declaration, there is hereby reserved unto Developer, for so long as Developer owns a Lot primarily for the purpose of sale, and thereafter to the Association, the right and privilege, but not the obligation (i) to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Development; and (ii) to require payment for any devices given to an Owner for accessing the Development; and (iii) to collect toll charges for use of roads and streets within the Development by permitted commercial traffic or by members of the general public, provided that in no event shall any such tolls charges be applicable to any Owners or Occupants, or to Developer or those Persons designated by Developer.

### **9.02 Parking Rights.**

In addition to the other rights reserved and/or granted to Developer in this Declaration, Developer, for so long as it shall own any Lot primarily for the purpose of sale, shall have the absolute right and authority, but not the obligation, to determine the type, location and number of parking spaces in the JPE Property or Common Areas, if any, and to regulate and develop said parking. At such time as Developer no longer owns any portion of the Property primarily for the purpose of sale, or such earlier time as Developer may choose, the right to regulate, govern and develop the same shall pass to the Association.

### **9.03 Changes in Boundaries.**

In addition to the other rights reserved and/or granted to Developer in this Declaration, Developer, for so long as it owns any Lot primarily for the purpose of sale, hereby expressly reserves for itself the right to change and realign the boundaries of the Common Areas, the JPE Property, and any Lots, or Dwellings owned by Developer. In addition, Developer reserves the right, but shall not have the obligation, to convey to the Association, at any time and from time to time, by quit claim deed, such other portion of the Development owned by Developer as it, in its sole discretion, shall choose, as an addition to the Common Areas.

### **9.04 Sales and Construction Offices.**

In addition to the other rights reserved and/or granted to Developer in this Declaration and notwithstanding any provisions contained in this Declaration to the

contrary, there is hereby reserved for the benefit of Developer the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices and model Dwellings, together with such other facilities as, in the sole opinion of Developer, may be reasonably required, convenient or incidental to the completion, improvement and/or sale of Lots, Dwellings or the Common Areas. Said right and easement shall exist for so long as the Developer owns any Lot primarily for the purpose of sale.

9.05 Amendment of Lien Provisions.

In addition to the other rights reserved and/or granted to Developer in this Declaration and notwithstanding anything contained in this Declaration to the contrary, Developer, for so long as it shall own any Lot primarily for the purpose of sale, shall have the absolute right and privilege to amend any provisions relating to the priority of the lien of the Assessments in order to allow and/or ensure compliance with the requirements of any bank, trust company, governmental entity, or any purchaser of Mortgages on the secondary market.

**ARTICLE X**  
**CASUALTY AND CONDEMNATION**

10.01 Casualty to JPE Property or Common Areas.

Immediately after the damage or destruction by fire or other casualty to all or any part of the JPE Property or Common Areas covered by insurance written in the name of the Association, either the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance; and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Unless within sixty days following any damage or destruction to all or a part of the JPE Property or Common Areas, Developer, for so long as Developer owns a Lot or Dwelling primarily for the purpose of sale, together with at least seventy five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special Assessment against all Owners, without the necessity of a vote, such special Assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special Assessment shall be levied against the Owners equally in the same manner as annual Assessments are levied, and additional Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and Assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it

is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the JPE Property and Common Areas damaged or destroyed by fire or other casualty shall be cleared and such JPE Property and Common Areas left in a clean, orderly, safe and sightly condition.

#### 10.02 Damage or Destruction to Lots or Dwellings.

In the event of damage or destruction by fire or other casualty to any Lot or Dwelling, and in the further event that the Owner of such Lot or Dwelling responsible for the repair or replacement thereof elects not to repair or rebuild the damaged or destroyed Lot or Dwelling, such Owner making such election shall clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Dwelling in a clean, orderly, safe and sightly condition. Should such Owner elect to repair or rebuild such Lot, Dwelling or other improvements, such Owner shall repair or rebuild same to substantially the condition as existed prior to such fire or other casualty and in accordance with all applicable Standards, restrictions and provisions of this Declaration (including, without limitation, Article III hereof) and all applicable zoning, subdivision, building and other governmental regulations. All such work of repair or reconstruction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

#### 10.03 Definition.

As used in this Article X, the phrase "repair or reconstruction" shall mean the repairing or restoring of the damaged property to substantially the same condition in which it existed prior to the fire or other casualty.

#### 10.04 Condemnation of JPE Property or Common Areas.

Whenever all or any part of the JPE Property or Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy five percent (75%) of the total vote of the Association (which conveyance may only occur with the approval of Developer, for so long as Developer owns a Lot primarily for the purpose of sale), the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

- A. If the taking or sale in lieu thereof involves a portion of the JPE Property or Common Areas on which improvements have been constructed, then, unless within sixty days after such taking Developer, for so long as Developer owns a Lot or Dwelling primarily for the purpose of sale, together with at least seventy five percent (75%) of the total membership of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the JPE Property or Common Areas which are available therefore, in accordance with

the plans approved by the Board of Directors, the Architectural Standards Committee, and Developer, for so long as Developer owns a Lot or Dwelling primarily for the purpose of sale. If the awards or proceeds are not sufficient to defray the cost of such restoration and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all Owners, without the necessity of a vote, in an amount sufficient to provide funds to pay such excess cost of restoration or reconstruction. Such a special Assessment shall be levied against the Owners equally in the same manner as annual Assessments are levied, and additional special Assessments may be made at any time during or following the completion of any restoration or reconstruction. If such improvements are not to be restored or replaced, the award or proceeds shall be retained by and for the benefit of the Association.

- B. If the taking or sale in lieu thereof does not involve any improvements to the JPE Property or Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds or net funds shall be retained by and for the benefit of the Association.
- C. If the taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the JPE Property or Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and Owners so affected so as to give just compensation to the Owners of any Lot or Dwelling taken for their interest in such Lot or Dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the Owners of all Lots or Dwellings wholly or partially taken or sold, together with the Mortgagees for each such Lot or Dwelling, and (iii) Developer, for so long as Developer owns a Lot or Dwelling primarily for the purpose of sale.

#### 10.05 Condemnation of Lot or Dwelling.

- A. In the event that all or any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot or Dwelling responsible for the maintenance and repair of same elects not to restore the remainder of the Lot or Dwelling, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot or Dwelling and any remaining undamaged improvements thereon in a clean, orderly, safe and sightly condition. In addition, if the size or configuration of such Lot or Dwelling remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable Standards, restrictions and provisions of this Declaration and all applicable

zoning, subdivision, building and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and slightly condition referred to above, of deeding the remaining portion of the Lot or Dwelling to the Association (at no cost to the Association) as a part of the Common Areas; and thereafter any such Owner, with regard to such Lot, shall not have any further voting rights or membership rights or privileges in the Association and shall not be subject to any further Assessments imposed by the Association and payable after the date of such deeding.

- B. In the event that any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot or Dwelling responsible for the maintenance and repair of same elects to restore the remainder of the Lot or Dwelling, such Owner making such election shall restore such remainder of such Lot or Dwelling as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable Standards, restrictions and provisions of this Declaration and all applicable zoning, subdivision, building and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

## **ARTICLE XI** **RELEASE OF CONDOMINIUM PROPERTY**

To the extent that the Condominium Property, or any portion thereof, is or may be burdened or encumbered by the Old Restrictions, it is hereby released from the same; it being the express intent of this Declaration, and each of the persons signing the same, to do so.

## **ARTICLE XII** **MISCELLANEOUS PROVISIONS**

### **12.01 Severability.**

In the event any portion of this Declaration is determined to be unenforceable by a court of competent jurisdiction, all other provisions hereof shall remain in full force and effect.

### **12.02 Use of Captions.**

The captions used in this Declaration are for the purpose of convenience only and shall not be construed to limit the contents or meaning of the paragraphs contained therein.

### **12.03 Use of Pronouns.**

Whenever used in this Declaration, as necessary to effectuate the purposes herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

12.04 No Presumption from Draftsmanship.

In the event of a dispute involving the interpretation or construction of this Declaration involving Developer and/or any other party or parties, it shall be deemed that this Declaration was jointly drafted by all parties to the dispute, and no rule of construction or presumption shall be asserted in favor or to the detriment of either Developer, or any other party based upon the identity of the party actually drafting this Declaration.

12.05. Governing Law.

This Declaration and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Tennessee.

12.06 Waivers.

No failure of Developer, the Board, the Association or any Owner to enforce any provision contained in this Declaration, the Charter, the By-Laws or any rules or regulations promulgated by the Board of Directors shall be construed as a waiver of said violation, unless expressly set forth in a written instrument and then only against the parties executing the same.

**(See “Attached Signature Page” of Developer, Developer’s lender and Owners of Lots in the Development, each of which is attached hereto and made a part hereof)**