

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR MILL RUN COMMUNITY AND BY-LAWS FOR  
MILL RUN HOMEOWNERS' ASSOCIATION, INC.

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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR MILL RUN COMMUNITY AND BY-LAWS FOR  
MILL RUN HOMEOWNERS' ASSOCIATION INC.

This DECLARATION made this \_\_\_\_ day of May, 1978  
by MONARCH DEVELOPMENT CORPORATION, a Tennessee corporation  
(hereinafter sometimes referred to as the "Developer"),

RECITALS

Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community known as MILL RUN COMMUNITY, with permanent parks, picnic area, open spaces and other Common Properties for the benefit of the community; and

Developer desires to provide for preservation of the values and amenities in the community and for the maintenance of said parks, picnic area, open spaces and other Common Properties; and to this end, desires to subject the real property described in Article II, together with such Additional Land as may be added hereto as provided in Article II, to the covenants, restrictions, easements, affirmative obligations, charges, and liens, herein- after set forth, each and all of which is and are hereby declared to be for the benefit of the Property and each and every owner of any and all parts thereof; and

Developer has deemed it desirable, for the efficient Preservation of the values and amenities in the community, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties and administering and en- forcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary

for such maintenance, administration and enforcement, as herein- after created; and

Developer has caused or will cause to be incorporated under the laws of the State of Tennessee, MILL RUN HOMEOWNERS' ASSOCIATION, INC., a Corporation Not for Profit, for the purpose of exercising the above functions and those which are more fully set out hereinafter;

DECLARATION

NOW, THEREFORE, the Developer subjects the real pro- perty described in Article II, and such Additional Land as may be added and subjected hereto pursuant to Article II hereof to the terms of this Declaration and declare that the same is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (some- times referred to as "the Covenants") hereinafter set forth,

ARTICLE I

DEFINITIONS

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01. Additional Land. "Additional Land" shall mean real property that may become subject to this Declaration in accordance with the terms and conditions of Article II hereof,

1.02. Association. "Association" shall mean MILL RUN HOMEOWNERS' ASSOCIATION, INC., a Tennessee corporation Not For Profit.

1.03. Board of Directors or Board. "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration,

1.04. Common Expense. "Common Expense" shall mean and include (1) expenses of administration, maintenance, repair or replacement of the Common Properties; (2) expenses agreed upon as Common Expenses by the Association; (3) expenses declared Common Expenses by the provisions of this Declaration; and (4) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

1.05. Common Properties. "Common Properties" shall mean those areas of land with or without any improvements thereon which are conveyed to the Association or to any governmental entity and required to be maintained by the Association, and are intended for the common use and benefit of all Owners, including without limitation, parks, picnic areas, open spaces, walks and private streets and roads,

1.06 Covenants. "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.07, Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for MILL RUN COMMUNITY and By-Laws for MILL RUN HOMEOWNERS' ASSOCIATION, INC, and any Supplemental Declaration filed pursuant to the terms hereof,

1.08. Developer. "Developer" shall mean MONARCH DEVELOPMENT CORPORATION, a Tennessee corporation, and its successors and assigns.



1.09. Dwelling Unit. "Dwelling Unit" shall mean any building situated upon the Properties designated and intended for **use** and occupancy by a single family.

1.10. Existing Land. "Existing Land" shall mean the real property described in Article II hereof,

1.11. First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other Mortgages.

1.12. First Mortgagee. "First Mortgagee" shall mean a beneficiary, creditor or holder of a First Mortgage,

1.13. Lot or Lots. "Lot" or "Lots" shall mean any improved or unimproved plat of land shown as a Lot upon any recorded final subdivision map of any part of the Properties, with the exception of Common Properties.

1.14. Manager. "Manager" shall mean a person or firm appointed or employed by the Board to manage the daily affairs of the Association in accordance with instructions and directions of the Board.

1.15. Member or Members. "Member" or "Members<sup>II</sup>" shall mean any or all Owner or Owners who are Members of the Association.

1.16. Mortgage. "Mortgage" shall mean a deed of trust, as well as a Mortgage.

1.17. Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of a deed of trust, as well as a holder of a Mortgage,

1.18. Owner or Owners. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee

simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. The Developer may be an "Owner".

1.19. Property or Properties. "Property" or "Properties" shall mean the Existing Land and any Additional Land which is subject to this Declaration or any Supplemental Declaration under the provisions hereof.

1.20. Record or To Record. "Record" or "To Record" shall mean to record pursuant to the laws of the State of Tennessee relating to the recordation of deeds and other instruments conveying or affecting title to real property.

ARTICLE II PROPERTIES ADDITIONAL  
LAND AND COMMON PROPERTIES AND  
IMPROVEMENTS THEREON

2.01. Existing Land. The real property which is, and shall be held, transferred, sold, conveyed, leased and occupied, subject to these Covenants, is located in Hamilton County, Tennessee and is more particularly described as follows:

IN THE SECOND CIVIL DISTRICT OF HAMILTON COUNTY,  
TENNESSEE:  
TRACT ONE (1): Being located partly in the  
Northeast Quarter of the Southeast Quarter of  
Section Seven (7) and the Southwest Quarter of  
Section Eight (8) and in the South half (1/2) of  
the Northwest Quarter of Section Eight (8), all in  
Township Four (4), Range Two (2), West of the Basis  
Line, Ocoee District, described as follows:  
BEGINNING at a point in the line dividing Sections  
7 and 8 at the Southeast corner of what is known as  
the 40-acre tract in a corner of the now or formerly  
Stark lands, said point of beginning being

located 1,320 feet Northwardly of the Southeast corner of said Section 7; thence North 67 degrees 11 minutes West 1,285 feet, more or less, to a corner marked by a fence post; thence North 23 degrees 10 minutes East along the East line of the now or formerly Clark property, 1,302.4 feet to an old iron pin corner, being a corner in the now or formerly Poe lands; thence South 66 degrees 46 minutes East along the Southern line of the R. E. Biggers, Sr. property, and in part, running along the center line of the Mitchell Mill Road, 2,185 feet to a corner; thence North 14 degrees 42 minutes East 178 feet, more or less, to the center of Ooltewah Creek; thence following the center of Ooltewah creek, Eastwardly, Southeastwardly and Southwardly, 1,545 feet, more or less, to the line dividing the North and South halves of said Section 8; thence South

66 degrees 46 minutes East 24 feet to an iron pin on the bank of said creek; thence South 31 degrees 32 minutes West 428 feet to an iron pipe; thence South 21 degrees 43 minutes West 257 feet to an iron pipe in the West line of Snow Hill Road; thence South 86 degrees 58 minutes West (passing an iron pipe at 480 feet) a total distance of 540 feet, more or less, to the center line of said Ooltewah Creek; thence with the meanders of the center line of said creek, Southeastwardly, South- westwardly, Westwardly and Southwestwardly, 1,520 feet, more or less, to a corner in the now or

formerly Hardley and w.L. Tyree line, marked by a fence; thence North 36 degrees 49 minutes West 990 feet, more or less, to a corner; thence North 67 degrees 11 minutes West 250.8 feet, more or less, to the point of beginning.

TRACT TWO (2): Being a part of the Northeast Quarter of Section seven (7) and a part of the Northwest Quarter of Section Eight (8), Township Four (4), Range Two (2), West of the Basis Line, Ocoee District and described as: BEGINNING at a point in the center line of Mitchell Mill Road in the line dividing said Sections 7 and 8 and being also the center line of said Sections 7 and 8; thence along the center line of Section 1, being also the center line of Mitchell Mill Road, North 66 degrees 46 minutes West 1,285 feet, more or less, to the Eastern line of the John H. Clark property; thence along the Eastern line of the John H. Clark property, North 23 degrees 04 minutes East 875 feet, more or less, to a point in the center line of the Ooltewah (Wolftever) Creek; thence with the meanders of said creek in a generally Southeastwardly, Eastwardly, Southwardly and south-

eastwardly direction, a total distance of 4,005 feet, more or less, to a Northwest corner of the property conveyed from Robert E. Biggers, Jr. and wife, Virginia K. Biggers, to Wilmart Associates, Inc., by Deed dated July 24, 1967, and of record in said Register's Office; thence along a western line of the tract conveyed by said Deed, South 14 degrees 42 minutes West 178 feet, more or less, to a point in the center line of Section 8 and being in the center line of said Mitchell Mill Road; thence along the center line of said Section 8, North 66 degrees 46 minutes West 900 feet, more or less, to the point of beginning.

TRACT THREE (3): BEGINNING at a point in the West line of the above described tracts and in the North line of Mitchell Mill Road; thence North 23 degrees 30 minutes East 475.98 feet to an iron pipe; thence South 69 degrees 23 minutes East, 1,824.55 feet to an iron pipe on the Western bank of Wolftever Creek; thence continuing South 69 degrees 23 minutes East to the center of said creek; thence with the meanderings of said creek in a generally Southeasterly direction to a point in the center of said creek, North 06 degrees 22 minutes East from an iron pipe in the South bank of said creek; thence South 06 degrees 22 minutes East to said iron pipe in the South bank of said creek (the distance between iron pipes on said creek bank being 673 feet, more or less, as measured along said bank and the straight line distance bearing between said iron pipes being South 45 degrees 52 minutes East 636,1 feet); thence leaving said iron pipe in the South bank of said creek, South 06 degrees 22 minutes West 118 feet to the North line of Mitchell Mill Road; thence continuing South 06 degrees 22 minutes west to the center of said road; thence along the center line of said road the following bearings and distances: North 83 degrees 38 minutes West 234,72 feet; North 57 degrees 26 minutes West 194.55 feet; North 77 degrees 10 minutes West 265,55 feet; North 68 degrees 30 minutes West 692.89 feet; North 67 degrees 00 minutes West 229,96 feet; North 67 degrees 55 minutes West 698,05 feet; South 66 degrees 55 minutes West 113.8 feet and North 84 degrees 26 minutes West 84.29 feet to a point on said center line opposite the beginning point; thence North 23 degrees 30 minutes East 21.02 feet to the point of beginning.

REFERENCE is made for prior title to Book \_\_\_\_\_, Page \_\_\_\_\_, and Book \_\_\_\_\_, Page \_\_\_\_\_, for deeds to Monarch Development Corporation.

Subject to the Restrictive Covenants of Bawcross Farms recorded in Book 2243, Page 625 and Book 2243, Page 631, Register's Office of Hamilton County, Tennessee, until termination thereof is set out in Section 2.02 hereof;

Less and excluding the following parcels until such time as the following parcels are, or any parcel is, added, submitted, and declared to be subject to this Declaration:

A. John Wesley Smith and wife, Pamela B. Smith, owners of the following described parcel:

Beginning South 69 degrees 23 minutes East 598.32 feet from the Northwest corner of the property conveyed to Raymond Eugene Stakely, Trustee, by Deed of record in Book 2172, page 803, Register's Office of Hamilton County, Tennessee; thence South 69 degrees 23 minutes East 200.19 feet; thence South 23 degrees 30 minutes West 392.74 feet to the North line of Mitchell Mill Road; thence Westwardly along the North line of said road, 200 feet; thence North 23 degrees 30 minutes East 387.2 feet to the point of beginning. REFERENCE is made for their title to Book 2185, Page 661, Register's Office of Hamilton County, Tennessee,

B. Thomas H. White, Jr, and wife, Amanda Whitman White, owners of the following described parcel:

Beginning South 69 degrees 23 minutes East 798,51 feet from the Northwest corner of the property conveyed to Raymond Eugene Stakely, Trustee, by Deed of record in Book 2172, page 803, Register's Office of Hamilton County, Tennessee; thence South 69 degrees 23 minutes East along said Stakely's North line 199.78 feet; thence South 23 degrees 30 minutes West 400,10 feet to the North line of Mitchell Mill Road; thence Westwardly along the North line of Mitchell Mill Road 200 feet; thence North 23 degrees 30 minutes East 392,74 feet to the point of beginning. REFERENCE is made for their title to Book 2191, Page 688, Register's Office of Hamilton County, Tennessee.

c. John Lynde Anderson and wife, Norma B. Anderson, owners of the following described parcel:

Beginning at a point in the North line of the tract conveyed to Raymond Eugene Stakely, Trustee by Deed of record in Book 2172, page 803, Register's Office of Hamilton County, Tennessee, South 69 degrees 23 minutes East 1,198,49 feet from the Northwest corner of said tract; thence South 69 degrees 23 minutes East 200,13 feet; thence South 23 degrees 30 minutes West 408.61 feet to the North line of Mitchell Mill Road; thence North 68 degrees 30 minutes West along the North line of Mitchell Mill Road 200 feet; thence North 23 degrees 30 minutes East 405,52 feet to the point of beginning, REFERENCE is made for their title to Book 2460, Page 52, Register's Office of Hamilton County, Tennessee,

D. Robert C. Stakely and wife, Margaret E. Stakely, owners of the following described parcel:

To find the point of beginning, being in the Northern line of Mitchell Mill Road at the point of intersection of said Northern line with the Eastern line of that property conveyed to Raymond E. Stakely, Trustee, by Deed recorded in Book 2172, page 803, of the Register's Office of Hamilton County, Tennessee; go thence Westwardly, and along the Northern line of said road, a distance of 50 feet to a point; thence at right angles across Mitchell Mill Road (as now widened), a distance of 60 feet to a point; thence go Westwardly, and along the Southern line of said Mitchell Mill Road, a distance of 25,3 feet to the true point of beginning; thence South 34 degrees 00 minutes West, a distance of 266 feet to a point; thence South 47 degrees 04 minutes East, a distance of 300 feet to a point; thence North 32 degrees 46 minutes West, a distance of 321,92 feet to a point located in the Southern line of Mitchell Mill Road; thence Northwestwardly, Westwardly and Southwestwardly along the curved Southern line of Mitchell Mill Road, a distance of 300 feet to the point of beginning. REFERENCE is made for their title to Book 2342, Page 283, Register's Office of Hamilton County, Tennessee,

E, Arthur F. Whetstone and wife, Mary Sue Whetstone,  
owners of the following described parcel:

To find the point of beginning, begin at the Southwest corner of that tract conveyed to Thomas H. White, Jr. and wife, by Deed recorded in Book 2191, page 688, of the Register's Office of Hamilton County, Tennessee, go thence Eastwardly along the Northern line of Mitchell Mill Road (as now widened) a distance of 8,72 feet to a point; go thence at a right angle across Mitchell Mill Road a distance of 60 feet to a point located in the Southern line of said road; go thence North 67 degrees 55 minutes West, and along the Southern line of said road a distance of 207,48 feet to a point, said point being the true point of beginning; thence South 23 degrees 26 minutes West, and along the Western line of a 75-foot right of way, a distance of 405,07 feet to a point; thence North 69 degrees 23 minutes west a distance of 200 feet to a point; thence North 23 degrees 25 minutes East a distance of 410.18 feet to a point in the South line of Mitchell Mill Road (as now widened); thence Eastwardly along the South line of said road, a distance of 200 feet to the point of beginning. REFERENCE is made for their title to Book 2248, Page 520, Register's Office of Hamilton County, Tennessee.

2.02. Termination of Restrictive Covenants,

Developer by execution hereof, forever releases and discharges the Property described in Section 2,01 from the Restrictive covenants of Bawcress Farms recorded in Book 2243, Page 625, and in Book 2243, Page 631, Register's Office of Hamilton County, Tennessee; provided that said release and discharge shall only be effective at such time as all the record owners of the excluded lots in Section 2.01 record a similar release and submit their property to this Declaration and all Mortgagees of said excluded lots consent to such release and sub- mission. Thereafter, the Covenants of this Declaration shall be controlling,

2.03. Additional Land. Additional lands may become subject to this Declaration in the following manner:

A. Additions. Developer, its successors and assigns, shall have the right from time to time, without further consent of the Association, to bring within the plan and operation of this Declaration, contiguous additional real properties in future stages,

The additions authorized under this and the succeeding subsection shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the Additional Land which shall extend the operation and effect of the Covenants of this Declaration to such. Additional Land,

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of Developer to reflect the different character, if any, of Additional Land and as are not inconsistent with the plan of this Declaration, and any such additions and modifications shall meet the requirements of the Hamilton County Planning Commission.

In the event additional properties are brought within the plan and operation of this Declaration, adequate, just and equitable provisions must first be made so as to equalize the costs and burdens between the Members who own Lots in the Existing Land and those who own or will own Lots in the

Additional Land with relation to the Common Properties including the initial costs by Developer, the cost of facilities, improvements and the operation and maintenance of the same.



Furthermore, the record owners of the Lots excluded under Section 2.01 hereof may submit their Lots, or **some** of the Lots, to this Declaration,

B. Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights and obligations may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger, The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the Existing Land, as herein provided.

2.04. Common Properties and Improvements Thereon.

A. The Developer intends to develop the Existing Land in accordance with a master plan dated \_\_\_\_\_, 1978; provided, however, the Developer reserves the right to review and modify the master plan from time to time, with the approval of Hamilton County Planning Commission,

B. The Developer shall convey to the Association, from time to time, such property, as it, in its sole discretion, deems appropriate, Thereafter, such property shall be included within the term "Common Properties".

C. The Developer contemplates improving the Common Properties with two (2) tennis courts, a swimming pool, and a bridge if applicable governmental permits can be obtained. It is presently contemplated that all such improvements will be completed on or before June 1, 1979; however, the Developer reserves the right to extend that period of time to June 1, 1980.

In the event that said improvements are not completed by the latter date, the Developer shall have the option of:

1. Requesting a further extension of time from the Board; or
2. Paying to the Association the amount necessary to complete the improvements.

D. Developer, at its sole option and expense, may build and improve the Common Properties with such other improvements as it deems desirable.

E. If the Developer submits Additional Land to this Declaration, it will provide such improvements and amenities on the Common Properties within the Additional Land as it shall deem necessary or desirable to adequately service the needs of the owners.

### ARTICLE III

#### ASSOCIATION

3.01. Membership. The Developer and every person or entity who is a record Owner of a fee simple interest or an undivided fee simple interest of at least fifty percent (50%) in any Lot which is subject to this Declaration shall be a Member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be automatically transferred to the new Owner upon the conveyance of any Lot and recording of the Deed of conveyance in the Register's Office of Hamilton County, Tennessee. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to

assessment.

3.02. Voting Rights. The Association shall have one class of voting membership. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 3.01. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot, A Member casting a vote representing a Lot owned by such Member shall not be entitled to cast an additional vote for the Dwelling Unit upon said Lot.

When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a written instrument delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, each co-owner will be entitled to a fractional vote equal to his fraction of ownership, The Developer shall be entitled to one (1) vote for each Lot owned by it.

#### ARTICLE IV

##### THE BOARD OF DIRECTORS

4.01. Board of Directors. Subject to Section 4.12 of this Article hereinbelow, the administration of the Property on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of five natural persons of legal age, each of whom shall be an owner, a member of the household of an Owner, or the nominee of an entity which is an

Owner at all times during membership on the Board,

4.02. Election. At each annual meeting, subject to the provisions of Section 4.12 hereof, the Association shall elect those members of the Board as required under Sections 4.02 and 4.03 who shall serve the terms set out in Section 4.02; provided, however, the members of the Board elected to succeed those appointed by the Developer as provide herein may be elected at a special meeting duly called for that purpose by Developer, the Board elected at that special meeting to serve until the first annual meeting of the Association held thereafter. At least thirty (30) days prior to the annual meeting of the Association, nominations for a position on the Board may be made by any Owner, which nomination shall be made by written notice filed with the Secretary of the Association as provided herein to the annual meeting of the Association, which petition shall be signed by ten (10) or more owners and by the nominee named therein indicating his willingness to serve as a member of the Board, if elected.

4.03. Term. Members of the Board shall serve for a term of two (2) years; provided, however, that three (3) members of the first Board elected by the Association at the annual meeting thereof shall be elected and shall serve for a term of one (1) year and the other two (2) members shall be elected and serve for a term of two (2) years. Thereafter, all Board members elected each year shall serve for a term of two (2) years. The members of the Board shall serve until their respective successors are duly elected and qualified, or until their death, resignation or removal.

4.04. Resignation and Removal. Any member of the Board may resign at any time by giving written notice to the President, the remaining Board members or the Manager, Any member of the Board may be removed from membership on the Board by a two-thirds (2/3) majority affirmative vote of the Association except that a vacancy on the Board shall be deemed to exist in the event of the death of a member, the disability of a member which, in the opinion of a majority of the Board, renders such member incapable of performing Board duties, or in the event a member shall cease to be an Owner. Whenever there shall occur a vacancy on the Board for any reason, the remaining members shall elect a successor member to serve until the next annual meeting of the Association or until a special meeting is called for filling vacancies, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

4.05. Compensation. The members of the Board shall receive no compensation for their services unless expressly provided for by the Association but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties,

4.06. Powers and Authority of the Board. The Board, for the benefit of the Property and the Association, shall enforce the provisions of this Declaration, these By Laws, and the Rules and Regulations governing the Property, Subject to any provision herein, the Board shall have the power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

A. Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility services for the Common Properties.

B. The services of a person or firm to manage its affairs (herein called "Manager"), to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine to be necessary or proper for the operation of the Property, whether such personnel are employed directly by the Board or are furnished by the Manager. All persons employed to manage or assist in the management or maintenance of the Property shall be employed at the will of the Board; provided that a manager may be employed for successive periods not exceeding three (3) years in each case. The Board may delegate any of its duties, powers or functions relating to the daily administrative affairs of the Association to any person or firm designated by the Board to act as Manager.

c. Legal and accounting services necessary or advisable in the operation of the Property and the enforcement of this Declaration, these By-Laws, and any Rules and Regulations made pursuant thereto.

D. A fidelity bond naming the Manager, and such other persons as may be designated by the Board as principals and the Board, Association and Owners as obligees, in an amount to be determined from time to time by the Board.

E. Painting, maintenance, repair, replacement and landscaping of the Common Properties, including resurfacing of existing roads.

The Board shall also have the exclusive right from time to time to acquire and dispose of by sale or otherwise, and without the necessity of approval by any Owner, furnishings and equipment and other personal property for the Common Properties and to provide maintenance, repair and replacement thereof.

F. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments that the Board is required to secure or pay for pursuant to the terms of this Declaration, these By-Laws or any Rules or Regulations promulgated hereunder or which, in its opinion, shall be necessary or advisable for the operation of the Property or for the enforcement of this Declaration, these By-Laws, or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security personnel, and insurance, payment for which is to be made from Common Expenses, the provision shall not be construed to prohibit the Board from delegating such authority to the Manager as it deems proper.

4.07. Additional Powers of the Board. The Board shall have the right to acquire, operate, lease, manage, mortgage, and otherwise trade and deal with the Common Properties as may be necessary or convenient in the operation and management of the Common Properties, and in accomplishing the purposes set forth herein, The Board or any managing agent or entity designated by the Board shall be deemed the agent of the Owners and as such shall manage, maintain and improve the

Common Properties and also collect, conserve, allocate and expend money received from the Owners in a manner consistent with such agent's relationship and in conformity with this Declaration, these By-Laws and the Rules and Regulations.

4.08. Meetings of the Board. Meetings of the Board shall be held at such places within or without the State of Tennessee as the Board shall determine, three (3) members of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. Meetings of the Board shall be chaired by the President of the Association and the minutes shall be recorded by the Secretary of the Association, whether said Secretary is a member of the Board or not. The Board shall annually elect all of the officers set forth in Section 5.05 hereof. The meeting for the election of officers shall be held at a meeting of the Board to be held immediately following the annual meeting of the Association. Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a written consent, setting forth the action so taken, signed by all members of the Board.

4.09. Special Meetings. Special meetings of the Board may be called by the President of the Association or by any two Board members.

4.10. Notice of Meetings. Regular meetings of the Board may be held without call or notice, the person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof by any usual means



of communication. Such notice need not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

4.11. Waiver of Notice. Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice.

Attendance by a member of the Board at any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

4.12. Developer Performs Functions. Until (a) April 1, 1981, or (b) the sale of thirty percent (30%) of the Lots, whichever of (a) or (b) first occurs, the rights, duties and functions of the Board shall be exercised by individuals (who need not be owners) appointed by Developer; provided, however, that at any time prior thereto at its option, Developer may call a special meeting of the Association to elect a Board to succeed the above individuals pursuant to Section 4.02 hereof. If (a) above should be the first to occur, then from April 1, 1981, until (b) occurs, but in no event after April 1, 1984, Developer shall retain the right to appoint two members to the Board, which members may or may not be Owners; provided Developer may by written notice to the Board at any time waive the right of appointment of one or both of such Directors under this Section 4.12. If any vacancies exist on the Board prior to (a)

or (b) occurring, said vacancies shall be filled by the Developer, The Developer may appoint an advisory Board composed of owners to serve with the Board appointed by the Developer as provided for in this Section. The advisory Board members shall have no voting rights until (a) or (b) occurs at which time the advisory Board shall serve as the official Board until a subsequent Board is elected as provided for in Section 4.02.

4.13. Notice of Election. After the election of the Board to succeed the first Board, the Secretary of the Association shall execute and, where desirable, acknowledge and record a certificate stating the names of all of the members of the then Board, provided, that, in the event of the disability or other incapacity of the Secretary, the President of the Association shall be empowered to execute the aforesaid certificate. The certificate shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

4.14. Fiscal Year. The fiscal year shall be determined by the Board.

4.15. Special Committees. The Board by resolution duly adopted may designate one or more special committees, each committee to consist of two (2) or more Owners appointed by the Board, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. The Board may also rescind any such resolution by a further resolution duly adopted. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Board. Such Special Committees shall keep regular

minutes of their proceedings and report the same to the Board When required, The Board may appoint Owners to fill vacancies on Special Committees.

4.16. Rules and Regulations. The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing the details of the operation and use of the Common Properties and setting forth restrictions on, and requirements respecting the use and maintenance of, the Common Properties. Copies of the Rules and Regulations shall be furnished to each Owner prior to the time the same shall become effective,

4.17. Limitation on Capital Additions, Etc. Except as permitted in Article 4.06(E) and Article XI, the Board shall authorize no structural alterations, capital additions to, or capital improvements of, the Common Properties, any of which or with others on an annual cumulative basis would require an expenditure in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) without approval of a majority vote of the Association; or any of which or with others on an annual cumulative basis would require an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without approval of two-thirds of the vote of the Association; except that the removal of any part of the community entrance gate(s) shall require the approval of three fourths (3/4) of the vote of the Association regardless of the cost of such removal; provided however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Common Properties as are necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists which should be corrected before a meeting of the Association could be reasonably<sup>22</sup> called and held.

4.18. Failure to Insist on strict Performance

Not waiver. The failure of the Board or its agent to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in this Declaration or these By-Laws, or the Rules and Regulations or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction, right, option or notice; but such term, covenant, condition or restriction, right, option or notice shall remain in full force and effect.

ARTICLE V

THE ASSOCIATION: MEETINGS, OFFICERS, ETC,

5.01. Quorum. The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the Owners of Lots subject to assessment under Section 8,0SA or Owners entitled to cast at least fifty (50) votes, whichever is less, in response to notice to all Owners properly given in accordance with Sections 5.02 or 5.03 of the By-Laws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Association upon the affirmative vote of persons entitled to cast a majority of the votes which are represented at such meeting.

5.02. Annual Meeting. There shall be an annual meeting of the Association on the third Thursday of May at 7:00 P.M. at such reasonable place or other time (but not more than thirty (30) days before or after such date) as may be designated by written notice by the Board delivered to the Owners not less than fifteen (15) days prior to the date fixed for said meeting.

At or prior to the annual meeting, the Board shall furnish to the Owners:

(1) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year with the estimated allocation thereof to each Owner; and (2) a statement of the Common Expenses itemizing receipts and disbursements for the previous year and, if then available, for the current fiscal year, together with the allocation thereof to each Owner. Within ten (10) days after the annual meeting, the budget statement shall be delivered to the Owners who were not present at the annual meeting if not previously provided.

5.03. Special Meeting. Special meetings of the Association may be held at any time and at any reasonable place to consider matters which, by the terms hereof, require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall be called by a majority of the Board, or by at least one-third (1/3) of the Owners by written notice, delivered to all Owners not less than seven (7) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered.

5.04. Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with this Declaration or other such rules adopted by the Board.

5.05. Officers. The officers of the Association and of the Board shall be the same and shall be a Chairman, President, Vice-President, Secretary, and Treasurer, Except as provided in 4,12, each officer shall be required to be an Owner, and a member of the Board. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Board and may be removed and replaced **by** the Board. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

A. Chairman. The Chairman shall preside at all meetings of the Board and may exercise the powers ordinarily allocable to the Chairman of a board, including the appointment of committees.

B. President. The President shall preside at all meetings of the Association and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees.

C. Vice-President. In the absence or inability of the President, the Vice-President shall perform the functions of the President.

D. Secretary. The Secretary shall keep the minutes of all proceedings of the Board and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded,

E. Treasurer. The Treasurers shall be responsible for the fiscal affairs of the Board and the Association, but may delegate the daily handling of funds to the Manager and accounting to accountants selected by the Board.

ARTICLE VI

LIABILITY AND INDEMNIFICATION

6.01. Liability of Members of the Board and Officers. The members of the Board, the officers and any agents and employees of the Association: (i) shall not be liable to the Owners or Association as a result of their activities as such for any mistake of judgment, or otherwise, except for their own Willful misconduct, bad faith, or failure to exercise that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions; (ii) shall have no personal liability to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the owners in their capacity as such; (iii) shall have no personal liability in tort to an Owner or any other person or entity direct or imputed by virtue of acts performed by them as Board members and/or officers except for their own willful misconduct, bad faith, or failure to exercise that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Common Properties, or which might in any other way be assessed against or imputed to them as a result of or by virtue of their capacity as such Board members and/or officers.

6.02. Indemnification by Association. To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal

liability, and all expenses, including without limitation, counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Owners or any other persons or entities, to which he shall be, or shall be threatened to be, made a party by reason of the fact that he is or was a member of the Board or an officer or agent or employee of the Association; provided, in the case of any settlement, that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association or of the Board, or otherwise. The indemnification by the Association set forth in this Article VI shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

6.03. Costs of Suit in Actions Brought by One or More Owners on Behalf of All Owners. No suit shall be brought by one or more but less than all Owners on behalf of all Owners without approval of a majority of Owners and, if approval is obtained, the plaintiff's expenses, including reasonable counsel's fees and court costs, shall be a Common Expense unless such suit is brought by one or more Owners against other owners, the Association or against the Board, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Owners as defendants, in which event



the plaintiff's expenses, including counsel's fees and court costs, shall not be charged as a Common Expense.

6.04. Notice of Suit and Opportunity to Defend.

Suits brought against the Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Property as a whole, shall be directed to the President of the Association, who shall promptly give written notice thereof to the other members of the Board and any Mortgagees, and shall be defended by the Board and the Association, and all Owners shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Board and to the Mortgagees of the Lots affected, and shall be defended by such Owners at their expense.

ARTICLE VII

PURPOSES, USES AND RESTRICTIONS

7.01. Common Properties. The Common Properties shall be used only for one or more of the following purposes:

- A. Recreational facilities, the primary purpose of which is to serve the residents of Mill Run Community.
- B. Historic Sites.
- C. Parks and Parkway Areas.
- D. Natural Sites worthy of scenic preservation.
- E. Walking, jogging, nature orbicycle.
- F. Utility easement areas.

The Common Properties shall remain permanently as open space except as improved and there shall be no subdivision of same.

No building, structure or facility shall be placed, installed, erected, or constructed in or on said Common Properties, unless it is purely incidental to one or more of the uses above specified, No

amendment shall be made affecting the Common Properties without then satisfying the requirements, if any, of the Hamilton County Planning Commission, and no amendment shall be made which in any manner impairs or diminishes the rights of the members of the Association in the Common Properties. This shall not prohibit the Developer from submitting Additional Land hereto as provided for herein.

Any sewage disposal plant, and easements appurtenant thereto, although deeded to the Association, shall be exempted from the uses above specified.

7.02. Dwelling Unit. A Dwelling Unit shall be occupied and used only as a single-family private residence.

7.03 Business Use. No panel or commercial trucks shall be habitually parked in driveways or on streets in front of property. Except as provided in Article XV hereof, no commercial or home business shall be permitted within the Properties except that any internet based business shall be acceptable so long as there are no visible signs of any business operation on the exterior of the Owner's property, no signage related to any such business on the exterior of the Owner's property and no physical incoming traffic related to any such business at or on the Owner's property. Nothing contained herein shall prohibit the Association from permitting, maintaining or operating concessions, or vending machines, on the Common Properties.

7.04. Obstructions. No obstruction of the Common Properties shall be permitted.

7.05. Signs. No sign of any kind shall be displayed to the public view from any Lot or from the Common Properties, without the prior written consent of the Association, except that one (1) sign related to the offering of the Owner's home for sale shall be allowed on the Owner's property, which such signage is to be no larger than six square feet in size.

7.06. Animals. No animals, livestock or poultry shall be raised, bred or kept on any Lot or in or upon the Common Properties, except that dogs, cats, and other household pets may be kept in any Dwelling Unit, but shall not be bred for commercial purposes, subject to the Rules and Regulations adopted by the Board. Household pets shall not be allowed to roam freely, and if being walked outside the Owner's property, must be on a leash or under direct control of the Owner. Pet owners shall clean up all pet droppings which occur outside of the Owner's property. All stray or otherwise freely roaming animals shall be subject to impoundment by Animal Control authorities.

7.07. Unsightly Conditions. All of the Lots and the development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees and other debris being removed when needed). Tree limbs, rocks and other debris must be kept out of the streets. In the event that an Owner of a Lot in the development fails, of his own volition, to maintain his Lot in a neat and orderly condition, the Association, the Board, its successors or assigns, or Owners of any one or more Lots to which the Provisions apply, may bring a complaint against the defaulting Owner as set forth in Article 12 of this Declaration.

In addition, subject to the provisions of Article 12, the Board, or its duly appointed Agent, may enter upon the defaulting Owners Lot without liability and proceed to put said Lot into an orderly condition, billing the Owner 150% of the costs of such work. All Owners in the development are requested to keep cars, trucks, and delivery trucks off the curbs of the streets. Existing homes must be maintained in good repair, including being painted when necessary. Plant beds must be weed free.

7.08. Noxious Activity. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, and unpleasant or of a nature as may diminish or destroy the enjoyment of the other property in the neighborhood by the owners thereof. Specifically, the use of dirt bikes, three-wheeled ATV's and four-wheeled ATV's, licensed or unlicensed, and off-road vehicles of any kind, is prohibited at any time or any place in Mill Run. This includes all the common properties, roads and individual lots developed or undeveloped. Furthermore, no liquor, beer, wine or other intoxicating substances shall be sold on or from the property or common properties.

7.09. Permitted Entrances. In order to implement and effect insect, reptile and woods fire control, the Developer reserves for itself and for the Association and its agent the right to enter upon any Lot on which a Dwelling Unit has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the Association for such plan), such entry to be made by personnel with tractors or

other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Developer or the Association detracts from the overall beauty, setting and safety of the Property or Common Properties. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. The Developer and Association and its agent may likewise enter upon such land to remove any trash or debris which has collected on said Lot without such entrance and removal being deemed a trespass, The provisions of this Section 7.09 shall not be construed as an obligation on the part of the Developer or the Association or its agent to mow, clear, cut or prune any Lot or to provide garbage or trash removal services.

7.10. Garages. Each Dwelling Unit shall have a double-car garage or carport constructed at the same time as the Dwelling Unit. A garage may be located in the basement of a Dwelling Unit. There shall be no detached garages or carports. Any garage having an opening visible from a street shall have the inside walls finished and garage doors installed and maintained closed when not in use.

7.11. Parking. In addition to the provisions of Section 7.10, each Owner shall provide space for parking automobiles off the street prior to the occupancy of any Dwelling Unit constructed on a Lot or subdivision of Lots in accordance with reasonable standards established by the Board. Cars owned by Owners shall not be parked on the street, but shall be parked only in the Owner's garage or driveway.

7.12. Streetside Light. Each Owner shall erect and maintain at least one outside light, gas or electric, either on a lamppost or supporting column of some similar type, within fifteen (15) feet of the street curb. All such street lights shall be on no later than at dusk and off no earlier than at dawn.

7.13. Driveways. All driveways on Lots shall be constructed of plant mix asphalt or of concrete.

7.14. Mobile Homes and Towed Vehicles. No mobile type of home or house trailer shall be placed or permitted to remain on any Lot. Any boat trailers, recreational vehicles and/or motor home type vehicles, campers or other towed vehicles kept on any Lot shall be parked at the rear of the front line or elevation of the Dwelling Unit thereon.

7.15. Sewage Disposal. There shall not be erected, permitted, maintained or operated on any Lot any privy, cesspool, vault or any form of privy, except such sewage system as meets the requirements of the Hamilton County Health Department Regulations.

7.16. Temporary Structures. No outbuilding, garage, shed, tent, trailer, or temporary building of any kind shall be erected, constructed, permitted, or maintained prior to commencement of the erection of a Dwelling Unit; provided, however, that this Section shall not be deemed or construed to prevent the use of a temporary construction shed during the period of actual construction of any Dwelling Unit nor the use of adequate sanitary toilet facilities for workmen which shall be provided during such construction.

7.17. Occupancy Before Completion. No Dwelling Unit shall be used either permanently or temporarily as residence until the exterior of said Dwelling Unit and all yard work is completed.

7.18. Outbuildings. Except as provided in Article XV hereof, no trailer, tent, barn, servants quarters, prefabricated storage buildings, or other similar outbuilding or structures shall be placed upon any Lot at any time, either temporarily or permanently, other than temporary construction equipment vans or sheds during the course of construction. Tree houses and exterior storage structures shall be permitted provided prior approval is obtained in accordance with Article X.

7.19. Tanks and Garbage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and such tanks or receptacles may be installed only within a Dwelling Unit, within any accessory building, within a screened area or buried underground.

7.20 Wells. No private water wells may be drilled. or maintained on any residential Lot without the written consent of the Board.

7.21. Subdivision of Lots. No Lot shall be subdivided or its boundary lines changed, except with the written consent of the Board. However, the Developer reserves unto itself, its successors and assigns, and unto the Association, its successors or assigns, the right to use any Lot or Lots not previously sold, or portion thereof, as a right-of-way, and the right to replat any two (2) or more Lots shown on the plat of any portion of the Property in order to create a Lot or Lots; and to take such other steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site to include but not be limited to the relocation of easements, walkways, rights of way,

to conform to the new boundaries of replatted Lots or parts thereof to make one (1) Lot, In such event, the combined Lots shall be considered as one (1) Lot for the purpose of the applications of the provisions of this Declaration. Any changes in the boundary lines of any Lot and any replatting of any Lot must first receive the approval of the Hamilton County Planning Commission and must be in compliance with applicable zoning and subdivision regulations.

7.22. Easements Reserved. The Developer reserves unto itself, its successors and assigns, and to the Association, its successors and assigns, perpetual, alienable and releaseable easements and rights on, over and under the ground to erect, maintain and use (a) a fence for security purposes within five (5) feet of the perimeter of the Property and (b) electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, or other public conveniences or utilities on, in or over those portions of each Lot, parcel or tract of land within ten (10) feet of each side lot line and fifteen (15) feet of each rear lot line for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Lot, parcel, or tract as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to the provisions of Article X by the Association or (b) have been designated as the site for construction of a building on a plot plan which has been filed with the Association and which has been approved in writing by the Association. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take



any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Developer and the Association further reserve the right to locate wells, pumping stations, and tanks within residential areas and on the Common Properties, or to locate same upon any . Lot with the permission of the Owner of such Lot, Such rights may be exercised by any successor licensee of the Developer or the Association but this reservation shall not be considered an obligation of the Developer or the Association to provide or maintain any such utility or service.

7.23. Square Footage Requirements. No Dwelling Unit shall be constructed and maintained on any Lot unless it shall conform to the minimum square foot enclosed dwelling area requirements set forth in this Section computed by external measurement. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a Dwelling Unit; provided, however, that such term does not include garages, terraces, decks, open porches, and the like areas, or shed-type porches, even though attached to the Dwelling Unit. The term does include, however, screened porches, if the roof of such porches forms an integral part of the roof line of the main Dwelling Unit or if they are all on the ground floor of a two-story structure;

A. One-Story Dwelling Units. One-story dwelling units whether with or without a basement shall have a minimum of two thousand four hundred (2,400) square feet of heated enclosed dwelling area on the ground floor. It is expressly stipulated that neither area below the ground floor level nor any area above the ground floor level shall be included in such minimum square foot areas. No screened porch area,

however, will count toward the first 2,400 square feet required heated area of such dwelling.

B. One and One-Half or Two-Story Dwelling Units. The ground floor or any dwelling of more than one level, shall not be less than one thousand three hundred (1,300) square feet of heated area, exclusive of screened porch. One and one-half or two-story dwellings shall have a minimum of three thousand (3,000) square feet of heated enclosed dwelling area, including areas above and below ground level, and the square feet required in addition to the 1,300 square feet on the ground floor may be placed above or below ground level.

7.24. Set Backs and Fences. A Dwelling Unit or any part thereof, exclusive of terraces, stoops, steps, and other such areas not covered by a roof, shall not be erected or maintained nearer than forty (40) feet to the front or street line of any Lot; provided, however, that where the topography of the land makes this impractical, the Developer or the Board, in its sole discretion, may reduce the front set-back line of twenty-five (25) feet or the set-back shown on any plat. No Dwelling Unit, with the exclusions set forth above, shall be located nearer than ten (10) feet to any side or interior Lot or property line, nor nearer than twenty (20) feet to any side street line. All fences must be at least one (1) foot inside the property line on all sides. A rear yard of not less than twenty-five (25) feet shall be provided. On corner Lots, Dwelling Units may be erected to front either street or angled to front the intersection of such streets. With the exception of the original record owners of the excluded Lots listed in paragraphs A, B, C, D and E of Section 2.01 hereof, no fences shall be erected or maintained in front of the rear line or elevation of a Dwelling Unit. All set-backs can be varied by the Board and applicable governmental authorities, if required. No chain link fences shall be allowed, except that any chain link fences existing as of the effective date of the Third Amendment to the Declaration of Covenants shall be allowed to remain, provided that any existing chain link fence removed after the effective date of the Third Amendment shall not be replaced with any chain link fence. All wood fences shall be either stained or painted and maintained pursuant to Section 7.07.

7.25. Combining Lots. Nothing herein shall prevent an Owner of two (2) or more adjoining Lots from building a single Dwelling Unit upon said Lots provided the minimum square footage

requirements of Section 7.23 are complied with and the set-back requirements of Section 7.24 as to the outside property lines of said Lots are complied with. Effective May 1, 2016, the Owner of multiple Lots shall pay an assessment on each Lot subject to the terms and provisions in Article VIII (Assessments) of this Declaration, and no assessment pursuant to this section, as amended, shall apply retroactively to assessments made prior to May 1, 2016.

7.26. Building Materials. No exposed concrete blocks shall be used in any part of the building, foundation, or elevation of a Dwelling Unit, nor shall any permastone or stucco be used on the exterior of any part of the foundation, elevation, or retaining wall that is visible from the street; provided, however, that the Developer or the Board, in its sole discretion, may permit some stucco to be used on the exterior of the elevation, but not in the foundation. The approval of the Developer or the Board of such use of stucco must be in writing and recorded in the Register's Office of Hamilton County, Tennessee.

7.27. Swimming Pools. Swimming Pools and Hot Tubs or Spas. Swimming pools, hot tubs or spas may be constructed and installed on the Lots provided: (a) approval is obtained in accordance with Article X; and (b) no part thereof shall be constructed or maintained in front of the rear line or elevation of a Dwelling Unit unless approved by the Board and applicable governmental authorities, if required. In no event shall any above-ground pool of any kind be erected, constructed, or installed on the Lots.

7.28. Industrial and commercial Access. All-industrial or commercial vehicles including, but not limited to, construction vehicles, material supply vehicles, and moving vans, shall enter and exit the Property only through the west entrance to Mitchell Mill Road.

7.29. Substantially Damaged Improvements. Any substantially damaged improvement or Dwelling Unit shall be restored, repaired or removed within one hundred twenty (120) days from the date of the damage. If the owner has not commenced restoration, repairs or removal within said period of time and the damage is in excess of eighty percent (80%) of the value, the Association, in addition to other remedies set forth herein, is and shall be permitted to have the damaged remains removed and shall have a lien on the Lot as set out in Section 8.08 for the amount of all costs, expenses, including' reasonable attorney's fees incurred in connection with said removal of the damage remains.

7.30. Violations and Enforcement. Except for those violations referred to the Benevolence Committee pursuant to Section 12.04, in the event of the violation, or attempted violation, of any one or more of the provisions of this Article or of this Declaration, the Developer, its successors or assigns, or the Association, its successors or assigns, including all parties hereafter becoming Owners of any one or more of the Lots to which the provisions of this Declaration apply, may bring an action or actions against the Owner seeking to enjoin such violation, or attempted violation, and the Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorney's fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. In the event of a violation of set-back lines, either side or front, which may be minor in character, a waiver thereof may be made by the Developer, its successor or assigns, or the Board. Further, the Developer or the

Board may grant variances as to the enclosed dwelling area requirement of a Dwelling Unit, or other restrictions set forth in this Article, if such variances do not, in the sole

discretion of the Developer or the Board, adversely affect the purposes sought to be attained hereby.

As a result of any action brought against an Owner under the preceding paragraph of this Article 7.30, in connection with an Owner failing on his own volition to maintain his or her Lot in accordance with the provisions of this or any section in Article 7 of this Declaration, the Association, the Board, its successors or assigns, or Owners of any one or more Lots to which the provisions apply, may bring a complaint against the defaulting Owner as set forth in Article 12 of this Declaration.

By reason of the rights of enforcement of the provisions of this Article being given unto Owners of Lots (subject to rights of variance reserved by the Developer and the Board), it shall not be incumbent upon the Developer or upon the Association to enforce the provisions of this Article or to prosecute any violation thereof.

7.31. Antennae. No television antenna, dish, or radio receiver or sender or other similar device shall be attached to or installed upon the exterior portion of any house or unit or other structure on the property within the development without the prior written consent of the Board; nor shall any radio, television or any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot. Without limiting the applicability of the foregoing, the Board may permit the installation of unobtrusive television reception devices if such devices are attached to the exterior of a house and are attached to any location approved by the Board if the location is not in the public view and is not unsightly, regardless of its location. Notwithstanding the

foregoing, the provision of this Section shall not prohibit the Board from installing equipment necessary for a Master Antenna System, Security System, cable television, mobile radio system or other similar systems within the development. Additionally, no provisions in this article shall be construed so as to place restrictions on the placement of direct broadcast, satellite, broadband radio service or television broadcast antennas that are prohibited restrictions under the Federal Communications Commission's Over-the-Air Reception Devices Rule of 2007.

7.32. Sound Devices. No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon Lots within the development. The playing of loud music from any balconies or porches shall be offensive, obnoxious activity constituting a nuisance.



ARTICLE VIII

ASSESSMENTS

8.01. Creation of the Lien and Personal Obligation of Assessments. The Developer, by recordation of this Declaration, for each Lot owned by it within the Properties, each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed or other conveyance, and the record owners of the excluded lots in Sections 2.01 by submission of such lots to this Declaration under the provisions of Section 2.02 hereof, shall be deemed to covenant and agree to all of the terms and provisions of these covenants and pay to the Association annual assessments and special assessments for the purposes set forth in Section 8,04 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided, The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more co-owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Lot, The annual and special assessments, together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Lot and all of the improvements thereon against which each such assessment is made, Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation.

8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties.

The special assessments shall be used for the purposes set forth in Section 8.04 of this Article.

8.03. Basis and Maximum Amount of Annual Assessments.

From and after January 1, 1988, the annual assessment levied by the Association against each lot owner shall be one (1) assessment per lot for the first owned lot and one-half (1/2) assessment for the second and any additional lot owned by a member of the association. The assessment shall be established at a special or annual meeting of the Association and shall be carried by a three-fourths (3/4) vote.

8.03 (a). Assessments for Combined Adjoining Lots. If an Owner of two (2) or more adjoining Lots causes such adjoining Lots to be combined by county plat resurvey and duly recorded in the Register's Office of Hamilton County, Tennessee, said combined Lots shall be assessed at the rate for assessment of a single Lot, so long as said Lots remain combined as duly recorded in the Register's Office of Hamilton County, Tennessee. Any assessments made pursuant to this Article, as amended, shall be effective as of May 1, 2016. This section, as amended, shall not apply retroactively to any assessments made prior to May 1, 2016

8.04. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 8,03 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement

of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the assent of three-fourths (3/4) of the vote of the Lot Owners, excluding the Lots owned by Developer, at a duly called meeting of

the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting.

8.04(a) Special assessments levied by the Association pursuant to Section 8.04 hereof shall be made in accordance with the terms and provisions of Section 7.25 and Section 8.03(a) regarding assessments for combined lots. Any special assessments to combined lots made pursuant to Section 8.04 shall be effective as of May 1, 2016. This section, as amended, shall not apply retroactively to any assessments made prior to May 1, 2016.

8.05 Property Subject to Assessment.

A. Only land within the Property which has been subdivided into Lots, and the plats thereof recorded, shall constitute a Lot for purposes of these assessments. Projected locations for future platted lots shown on the Master Plat will not be subject to assessment, unless and until such locations are subdivided into Lots, and the plat thereof recorded.

B. Lots subject to assessment under the preceding paragraph and owned by the Developer are assessable at one-half (1/2) the assessment of Lots owned by others.

8.06. Exempt Property. No Owner may exempt himself from liability for any assessment levied against his Lot by waiver of

the use or enjoyment of any of the Common Properties or by abandonment of his Lot or in any other way,

The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee of a utility easement.
- (b) All properties dedicated and accepted by a local public authority and devoted to public use.
- (c) All Common Properties as defined in Article I hereof.
- (d) All Properties exempted from taxation by the laws of the State of Tennessee, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the owners.

8.07. Date of Commencement of Annual Assessments.

A. The annual assessments provided for her in shall commence on the date (which shall be the first day of a month) fixed by the Board to be the date of commencement, but not earlier than January 1, 1979, nor later

than December 1, 1979. The Developer shall maintain the Common Properties until the date of commencement of such assessments.

B. The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the

first year, shall become due and payable the first day of May of said year; however, the Board may authorize payment in four (4) equal quarterly payments.

C. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in

Section 8.03 hereof as the remaining number of months in that year bears to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any Lots in Additional Land if the assessment commences at a time other than the beginning of any assessment period.

D. The due date of any special assessment under Section 8.04 hereof shall be fixed in the resolution authorizing such assessment.

8.08.

Liens. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Lot and the improvements thereon as security for the payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, interest on past due amounts, and reasonable attorney's fees, incurred by the Association in enforcing the lien upon said Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee, Failure by the Owner or Owners to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

8.09. Lease, Sale or Mortgage of Lot. Whenever any Lot may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Owner of such Lot, the proposed lessee, purchaser or mortgagee, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Lot; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Lot and the Association under this Declaration. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement,

In the event that a Lot is to be leased, sold or mortgaged at the time when payment of any assessment against said Lot shall be in default, then the rent, or the proceeds of such purchase or mortgage shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before payment of any rent, proceeds of purchase or mortgage to the Owner of any Lot who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Lot, the grantee(s) shall be jointly and severally liable with the grantor(s) for all unpaid assessments against the grantor(s) and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee(s) to recover from the grantor(s) the amounts paid by the grantee(s) therefor.

ARTICLE IX

MORTGAGES, MORTGAGEES AND PROCEDURES AND  
RIGHTS RELATING THERETO

9.01. Register of Owners and Mortgages. The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Lot to a third party, the purchaser or transferee shall notify the Association Board in writing of his interest in such Lot, and furnish such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Lot. Further, the Owner shall at all times notify the Association of any Mortgage and the name of the Mortgagee on any Lot, and the recording information which shall be pertinent to identify the Mortgage and Mortgagee. The Mortgagee may, if it so desires, notify the Association of the existence of any Mortgage held by it, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

9.02. Subordination of Lien to First Mortgages. The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Lot if, and only if, all assessments, whether annual or special, with respect to such Lot having a due date on or prior to the date such Mortgage is recorded have been paid. In the event a First Mortgagee shall acquire title to any Lot by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments, whether annual or special, as shall accrue and become due and payable for said Lot subsequent to date of acquisition of such title.



In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as a part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

9.03 Amendments. No Amendment to this Article IX shall adversely affect the rights of any First Mortgagee whose Mortgage was recorded prior to the Amendment unless such Mortgagee consents to such Amendment.

9.04. Extension of Benefits to Other Mortgagees. By subordination agreement executed by a majority of the Board, the benefits of sections 9.02 and 9.03 of this Article may be extended to Mortgagees not otherwise entitled thereto.

9.05. Mortgagees' Approval of Certain Actions. Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each First Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitled to:

A. By act or omission seek to abandon, partition, sub-divide, encumber, sell or transfer the Common Properties owned, directly or indirectly, by the Association;

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

C. By act or omission change, waive or abandon the plan of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the units,

the maintenance of the Common Properties or the upkeep thereof;  
or

D. Use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such Common Properties.

9.06. Notice of Default to First Mortgagees. If requested by a First Mortgagee, the Association shall notify each First Mortgagee of any default by the Mortgagor of a Lot in the performance of said Mortgagor's obligations under this Declaration which is not cured within sixty (60) days.

9.07. Examination of Books. Each owner and each Mortgagee of a Lot shall be permitted to examine the books and records of the Board and Association during regular business hours.

ARTICLE X ARCHITECTURAL

CONTROL

10.01. Review and Approval of Plans and Specifications for Construction, Color, Additions, Alterations or Changes to Structures. No Dwelling Unit, building, fence or other structure, drives or parking areas, shall be erected, placed or altered on any Lot until the proposed building plans, specifications, exterior color (which shall be an earthtone color) or finish, site plan (showing the proposed location of such Dwelling Unit, building, fence, or structure, drives and parking areas) and construction schedules have been approved in writing by the Board or an architectural committee appointed by said Board. Refusal or approval of plans, specifications, location, or color may be based upon any ground, including purely aesthetic considerations, which, in the sole discretion of the Board or committee, shall be deemed sufficient; provided however, the committee or the Board in its decisions shall allow for individual preferences of architecture and landscape but not at the expense of loss of harmony of appearance and design within Mill Run. To this end traditional, and conservative contemporary architecture, in scale and balance with the Lot shall be observed. Landscaping shall be consistent with architecture by way of example, but not limitation, round or underground homes or unusual colors or intensities thereof shall not be permitted. No alterations in the exterior appearance of any Dwelling Unit, building, fence or other structure shall be made without like approval. One (1) copy of all plans and related data shall be furnished to the Board or committee for its records. In the event said plans, location, specifications, or construction schedule shall have been properly submitted to the Board, and the Board should, within thirty (30) days of such submission, fail to give notice of approval or disapproval, such plans, locations, specifications or construction schedule shall be deemed to be approved in full.

In the event of the completion of a Dwelling Unit without any proceedings being brought to enjoin the same, it shall be conclusively presumed that the plans, location, specification, or construction schedule of such Dwelling Unit have been approved.

10.02. Approval Standards. Approval of any proposed building plan, location, specifications or construction schedule submitted under Section 10.01 will be withheld unless such plans, location, and specifications comply with the provisions of Article VII of this Declaration, the general guidelines of Section 10.01, and unless such construction schedule complies with the provisions of Section 10.03. Approval of the plans and specifications by the Board or an architectural committee is for the mutual benefit of all Owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each Owner shall be individually responsible for the technical aspect of the plans and specifications.

10.03. Exterior Completion. The exterior of all Dwelling Units and other construction must be completed within six (6) months after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities.

ARTICLE XI

EMINENT DOMAIN

11.01. Board's Authority. If all or any part of the Common Properties (excluding personalty) is taken or threatened to be taken by Eminent Domain, the Board is authorized and directed to proceed as follows:

A. To obtain and pay for such assistance from such attorneys, appraisers, architects, engineers, expert witnesses and other persons, as the Board in its discretion deems necessary or advisable, to aid and advise it in all matters relating to such taking and its effect, including, but not limited to (i) determining whether or not to resist such proceedings or convey in lieu thereof, (ii) defending or instituting any necessary proceedings and appeals, (iii) making any settlements with respect to such taking or attempted taking, and (iv) deciding if, how and when to restore the Common Properties,

B. To negotiate with respect to any such taking, to grant any permits, licenses and releases and to convey all or any portion of the Common Properties and to defend or institute, and appeal from, all proceedings as it may deem necessary or advisable in connection with the same.

c. To have and exercise all such powers with respect to such taking or proposed taking and such restoration as those

vested in Boards of Directors of corporations with respect to corporate property, including but not limited to, purchasing, improving, demolishing and selling real estate.

11.02. Notice to Owners and Mortgagees. Each Owner and each First Mortgagee on the records of the Association shall be given reasonable written advance notice of all final offers before acceptance, proposed conveyances, settlements and releases, contemplated by the Board, legal proceedings and final plans for restoration, and shall be given reasonable opportunity to be heard with respect to each of the same and to participate in and be represented by counsel in any litigation and all hearings, at such Owner's or Mortgagee's own expense.

11.03. Reimbursement of Expenses. The Board and the Association shall be reimbursed for all attorneys', engineers', architects' and appraisers' fees, and other costs and expenses paid or incurred by it in preparation for, and in connection with, or as a result of, any such taking out of the compensation, if any. To the extent that the expenses exceed the compensation received, such expenses shall be deemed a Common Expense.

## ARTICLE XII OWNER

### COMPLAINTS

12.01. Scope. The procedures set forth in this Article for owner Complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof, the upkeep of the Property and Common Areas, or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the

Association or of the Board of Directors of the Association.

12.02. Grievance Committee. There shall be established a Grievance Committee (referred to in this Article as "the Committee") to receive and consider all Owner complaints. The Committee shall be composed of the President of the Association and two other Owners appointed by and serving at the pleasure of the Board of Directors, in addition to the Chairman of the Benevolence Committee as described in Section 12.04.

12.03. Form of Complaint. All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the President of the Association and sent in the manner provided in Section 14.03 for sending notices, except that for this Section 12.03 only, electronic mail (email) shall be an acceptable manner of sending notice.

12.04. Consideration by the Committee and Referral to Benevolence Committee. Within twenty (20) days of receipt of a complaint, the Committee shall consider the merits of the same and notify the complainant in writing of its decision and the reason therefor. Within ten (10) days after the notice of the decision, the complainant may proceed under Section 12.05; but if complainant does not, the decision shall be final and binding upon the complainant.

In addition to those procedures set out in this Article XII regarding the receipt and consideration of Owner Complaints, there shall also be established a Benevolence Committee which shall have a Chairman appointed by the Board of Directors with ad hoc members of the Benevolence Committee serving on a case-by-case bases at the discretion of the Benevolence Committee Chairman.

At the discretion of the Grievance Committee, complaints involving and directed toward a resident who is physically or financially unable to remedy a complaint which is the subject of a properly submitted complaint under this Article XII, may be reviewed by the Benevolence Committee pursuant to rules and procedures established by the Board of Directors. For any complaint pursuant to this Article XII if referred to the Benevolence Committee, the plan of resolution shall be proposed by the Benevolence Committee to the Grievance Committee for approval.

12.05. Hearing Before the Committee. Within ten (10) days after notice of the decision of the Committee, the complainant may, in a writing addressed to the President of the Association, request a hearing before the Committee. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The complainant, at his expense, and the Committee at the expense of the Association, shall be entitled to legal representation at such hearing. The hearing shall be conducted before at least two (2) members of the Committee and may be adjourned from time to time as the committee in its discretion deems necessary or advisable. The Committee shall render its decision and notify the complainant in writing of its decision and the reasons therefore within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Section 12.07, the decision shall be final and binding upon the complainant. In event that the Committee hears a properly submitted complaint and finds said complaint to be valid and requiring remedial action, the Committee shall notify the respondent Owner in writing of the



complaint, the Committee's decision and the reasons therefore, within ten (10) days of the Committee's decision. Within ten (10) days after notice of the decision of the Committee, the respondent may, in a writing addressed to the President of the Association, request a hearing before the Committee. Such hearing shall be held within twenty (20) days of receipt of respondent's request. The respondent, at his or her expense, and the Committee at the expense of the Association, shall be entitled to legal representation at such hearing. The hearing shall be conducted before at least two (2) members of the Committee and may be adjourned from time to time as the committee in its discretion deems necessary or advisable. The Committee shall render its decision and notify the respondent in writing of its decision and the reasons therefore within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Section 12.07, the decision shall be final and binding upon the respondent.

12.06. Questions of Law. Legal counsel for the Association shall decide all issues of law arising out of the complaint, and such decisions shall be binding on the complainant.

12.07. Questions of Fact; Arbitration. If there shall be any dispute as to any material fact, either the Committee or the complainant may, at its option, within ten (10) days after notice of the decision as provided for in Section 12.05, submit the same to arbitration in accordance with the provisions for arbitration adopted by the American Arbitration Association by filing with the other party a notice of its intention to do so, The decision of the arbitrator shall be final and binding upon the complainant and the Committee. In the event of arbitration, each party shall bear one-half (1/2) of the expense thereof.

12.08. Exclusive Remedy. The remedy for Owner complaints provided herein shall be exclusive of any other remedy, and no Owner shall bring suit against the Committee, the Association, the Board of Directors or any member of same in his capacity as such member without first complying with the procedures for complaints herein established.

12.09. Expenses. All expenses incurred by complainant, including, without limitation, attorneys' fees and arbitration expenses and the like shall be the sole responsibility of complainant, should said litigation, arbitration or mediation be unsuccessful in resolving the complaint. In any proceeding arising because of an alleged default by an Owner, the Association or Board, if successful, shall, in addition to the relief provided in Section 13.02, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the Owner be entitled to attorneys' fees or expenses from the Association or the Board in the defense of such proceeding. All expenses of the Committee incident to such complaint shall be deemed a Common Expense of the Association.

## ARTICLE XIII

### REMEDIES ON DEFAULT

13.01. Scope. Each Owner shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, servants, guests, occupants, invitees or agents.

13.02. Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the By-Laws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Association to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together with interest as provided for in Section 8.01. any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or, if appropriate and not in conflict with the provisions of this Declaration and By-Laws, by an aggrieved Owner.

13.03. Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall, in addition to the relief provided for in Section 13.02, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

...

13.04. Waiver. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future,

13.05. Election of Remedies, All rights, remedies and privileges granted to the Association or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration and By-Laws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

#### ARTICLE XIV

##### GENERAL PROVISIONS

14.01. Duration. The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developer, or Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

14.02. Amendments. This Declaration may be amended in accordance with the following procedure:

A. An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the

annual meeting provided for in Section 5.02. and, if a special meeting, similar notice shall be included in the notice of the special meeting provided for in Section 5.03. Notice of any meeting to consider an amendment shall also be sent to each Mortgagee listed upon the register of the Association.

B. At any such meeting, the amendment must be approved by an affirmative three-fourths (3/4) vote of those Owners present and voting.

c. If an amendment is approved as set forth in Paragraph B of this Section, the Secretary shall mail a true copy of the amendment to each Owner, informing each Owner that he shall have twenty (20) days from such notice within which to reply, in writing, to the Secretary and to indicate his approval or

disapproval of such amendment, if seventy-five (75%) percent of those Owners responding within said twenty (20) day period shall indicate their approval of the amendment, it shall be deemed adopted.

D. An amendment adopted under Paragraph c of this Section shall become effective upon its recording in the Register's Office of Hamilton County, Tennessee, and the President and Secretary shall execute, acknowledge and record the amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided, that in the event of the disability or other incapacity of either, the Vice President shall be empowered to execute, acknowledge and record the amendment.

The certificate shall be conclusive evidence to any person who relies thereon in good faith; including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company. that the amendment

was adopted in accordance with the provisions of this Section,

E. The certificate referred to in paragraph D of this Section shall be in substantially the following form:

CERTIFICATE

I, \_\_\_\_\_, do  
Hereby certify that I am the Secretary of Mill Run Homeowners' Association, Inc. and that the within amendment to the Declaration of Covenants and Restrictions of Mill Run Community and By-Laws for Mill Run Homeowners' Association, Inc. was duly adopted by the Owners of said Association in accordance with the provisions of Section 14.02 of said Declaration.

Witness my hand this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Secretary  
Mill Run Homeowners' Association, Inc.

No amendment shall be made affecting the Common Properties which is in any manner inconsistent with the permitted uses and purposes for such properties set out in Section 7.01, Until seventy-five percent (75%) of the Lots have been sold, no amendment to this Declaration shall be made without the prior approval of the Hamilton County Planning Commission. No amendment to this Declaration shall be made which shall adversely affect the rights of Mortgagees under Section 9.03.

14.03. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Owner on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every owner to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, or the Developer under the provisions of this Declaration shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

Monarch Development Corporation c/o  
Arthur F, Whetstone  
Route 3, Box 21B, Mitchell Mill Road  
Ooltewah, Tennessee 37363

The address for the Board, the Association, or any officer thereof may be changed by the Secretary or President of the Association by executing, acknowledging, and recording an amendment to this Declaration stating the new address or addresses. Likewise, the Developer may change its address by executing, acknowledging, and recording an amendment to this Declaration stating its new address.

14.04. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

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

14.06. Use of Terms. Any use herein of the masculine shall include the feminine, and the singular the plural, when such meaning is appropriate.

14.07. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose, Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

14.08. Law Governing. This Declaration is made in the State of Tennessee, and any question pertaining to its validity, enforceability, construction or administration shall be determined in accordance with the laws of that state.

14.09. Effective Date. This Declaration shall become effective upon its recording.

14.10. Rights Releasable by Developer. Any right given to the Developer herein may be released by it upon filing an amendment hereto in the Register's Office of Hamilton County.



ARTICLE XV

PERSONAL COVENANTS AND WAIVERS

15.01. Personal Waivers. For the benefit of John: Lynde Anderson and wife, Norma B, Anderson, or either of them, and to induce each of them to submit their property, which is described in paragraph (C,) of Section 2,01 hereof (herein "Anderson Property"), to the Covenants of this Declaration, the Developer agrees for itself, and its successors and assigns, that:

(a) Notwithstanding the prohibition of Section 7.24 regarding fences, John Lynde Anderson and/or Norma B, Anderson shall be permitted to erect and maintain a fence in either or both their front or side yards of the Anderson Property; and,

(b) Notwithstanding the prohibition of Sections 7.03 and 7.18 regarding commercial use and outbuildings, John Lynde Anderson and/or Norma B. Anderson shall be permitted to construct an outbuilding of a style architecturally compatible with the Dwelling Unit of not in excess of 1,000 square feet on the ground

level, said outbuilding to be located to the east of the north-south center line of the Anderson Property and to be fully surrounded by wooded area with a curving entrance so that said outbuilding will be largely obscured from view from the street and/or from adjacent Lots. Said outbuilding may be used in the furtherance of professional interests and activities, which may be for commercial, charitable and/or scientific purposes.

15.02. Personal Waivers. The waivers contained in Section 15.01 shall be deemed to be personal to John Lynde Anderson and/or Norma B. Anderson and under no circumstances shall they,

or any of them, be deemed to run with the land.

15.03. Successors in Interest. Should John Lynde Anderson and wife, Norma B. Anderson, submit the Anderson Property to this Declaration and erect and maintain:

(a) An outbuilding, as permitted above, any and all successors and assigns shall use said outbuilding only as an exterior storage building unless another use is permitted by the Board;  
or

(b) A fence in the side and/or front yard, any and all successors and assigns shall be permitted to maintain said fence(s) but shall not be permitted to replace or install a fence thereafter,

IN WITNESS WHEREOF, the Developer has executed, or caused to have executed by its duly authorized officers this Declaration on the date first above written.

MONARCH DEVELOPMENT CORPORATION

By \_\_\_\_\_

Title

ATTEST: \_\_\_\_\_

Title

STATE OF TENNESSEE )  
 )  
COUNTY OF HAMILTON )

Before me, \_\_\_\_\_, of the state and county aforesaid, personally appeared \_\_\_\_\_ and \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged themselves to be \_\_\_\_\_ and \_\_\_\_\_ of the MONARCH DEVELOPMENT CORPORATION and that they as such \_\_\_\_\_ and \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by themselves as \_\_\_\_\_ and \_\_\_\_\_.

WITNESS my hand and seal, at office in Chattanooga, this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires: \_\_\_\_\_