

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This declaration, made on the date hereinafter set forth by James C. Garren and Warren Dodson hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in Polk County, Tennessee, which is more particularly described as follows:

Being that land shown and designated by a plat of the subdivision of Towee Mt. Section II and recorded in Book 4, Page 26, of the Register's Office of Polk County, Tennessee.

WHEREAS, Declarant intends to create certain additional easements for the benefit of the owners of lots which may be conveyed by Declarant, hereafter.

NOW, THEREFORE, Declarant hereby declares that all of the properties owned by it described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, charges, and liens, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and

Declarant further hereby declares that all of the Towee Mountain Section II properties sold by it shall be subject to the easements, conditions, and restrictive covenants applicable to the Plat of Towee Mountains Subdivision, Section II as described herein and shall also be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, charges and liens, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof, the assent of each such property owner to such easements, restrictions, covenants, conditions, charges and liens to be evidenced: by the use by such owners of the additional easements, including road easements, created herein and hereafter by Declarant for the benefit of such owners and the owners of property presently owned by Declarant, or by the written assent to such easements, restrictions, covenants and conditions by such owners.

ARTICLE I.

DEFINITIONS

Section 1: "Association" shall mean and refer to Towee Mountains Association, Inc., its successors and assigns.

Section 2: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Properties" shall mean and refer to that certain real property hereinbefore described as being owned by Declarant.

Section 4: "Common Areas" shall mean all real property owned from time to time by the Association for the common use and enjoyment of the owners. The Common area to be owned by the Association at the time of the effective date of this Declaration is described as follows:

All that property designated as road access easements on the plat of the subdivision, the common water system and the real property upon which the common water system is situated.

Section 5: "Lot" shall mean and refer to any numbered plot of land shown upon the Subdivision Plat of Towee Mountains, Section II and any numbered plot of land shown on any re-subdivision thereof and any properties hereafter expressly subjected to this Declaration with the exception of the common area.

Section 6: "Declarant" shall mean and refer to James C. Garren and Warren Dodson, their successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 7: "Owned Properties" refers to the properties owned by the Declarant at the date of this instrument, as set forth above.

ARTICLE II.

PROPERTY RIGHTS

Section I: Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions, each of which constitutes an express condition to such right and easement:

(a) The right of the Association to charge reasonable use, admission and other fees for the use of any recreational facility situated upon or forming a part of the common area.

(b) The right of the Association to make reasonable assessments or charges, including special assessments for capital improvements, all as provided herein, for the maintenance, operation and improvement of the common area.

(c) The right of the Association to suspend indefinitely the voting rights and right to use of the common areas and recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed one hundred eighty (180) days for any infraction of its rules and regulations.

(d) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(e) The duty of each lot owner to comply with all rules and regulations concerning the common areas promulgated and amended from time to time by Declarant and/or the Association and to pay all applicable fees or assessments.

Section 2: Delegation of Use. Any owner may delegate, in accordance with the by-laws, his right of enjoyment to the common area and facilities to the members of his family, or his tenants, who reside on the property; provided that if a lot is owned by a corporation or other legal entity, such entity shall designate at any one time no more than two persons to exercise the easement. However, no more than two family units shall be considered as owners of a lot under this paragraph, and a family unit shall be considered to be a person, his or her spouse and all their unmarried children living with their parents.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2: The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all owners with the exception of the Declarant and shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with the respect to any lot.

Class B: The Class B member shall be the Declarant and shall be entitled to one (1) vote for each lot owned. Declarant shall continue to be a member entitled to at least one (1) vote until such time as Declarant owns no lots in Section II of Towee Mountains Subdivision and ceases to own any part of the acreage described in Deed Book 113, page 115, adjoining Section I and II.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each lot owned within the properties hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed by assenting to such covenants, is deemed to covenant and agree to pay to the Association.

(a) Annual assessments or charges, and

(b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs and reasonable fees, shall also be the personal obligation of

the person who was the owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly ~~assumed by them.~~

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the common area.

Section 3: Maximum Annual Assessment. Until January 1, 1989 the maximum annual assessment shall be \$100.00 per lot.

(a) From and after January 1, 1988, the maximum annual assessment may be increased by the Association each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1989, the maximum annual assessment may be increased more than ten (10%) percent only by a vote of at least two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

(d) The annual assessment may be fixed at any time prior to or during a calendar year and shall be effective thereupon for such calendar year. The board of directors of the Association may also change this to a fiscal year at any time upon such reasonable proration as it may determine.

Section 4: Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying in whole or part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment must have the assent of at least two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5: Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting of the membership called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than six (6) days not more than thirty (30) days in advance of the meeting.

Section 6: Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform amount for all lots subject to assessment and may be collected on a monthly or other basis as may be determined by the board of the Association.

Section 7: Date of Commencement of Annual Assessment and Due Dates. The annual assessments provided for herein shall commence effective January 1, 1988. The board of directors shall fix the amount of the annual assessment at such time as they may choose, shall give written notice of the annual assessment to every owner subject thereto, and shall establish the due date for the assessment.

Section 8: Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of interest which constitutes the prime rate charged by banks in Chattanooga, Tennessee on the due date. The Association may bring action at law against the owner personally obligated to pay the same or foreclose the lien against the property, or pursue any legal remedy or combination of remedies. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of a common area or abandonment of his lot.

All such assessments chargeable to any lot shall constitute a lien against said lot in favor of the Association, which lien shall become effective as a lien against each such lot thirty (30) days after the due date. Additional or added assessments, charges, and expenses, if any, chargeable to lots shall become effective as a lien against each such lot as of the date when the expense or charge giving rise to such additional or added assessment charge or other expense giving rise to said lien remains unpaid by the owner for more than thirty (30) days after the same shall have become due and payable.

The lien may be foreclosed by the Association in the manner provided by law for the foreclosure and sale of real estate mortgages and in accordance with the provision of T.C.A. S35-5-101, et seq. In the event of foreclosure, the Association shall, in addition to the amount due, be entitled to recover reasonable expenses of the action including all reasonable costs and attorney's fees. The right of the Association to foreclose the lien aforesaid shall be in addition to any other remedy which may be available to it at law or equity, including the right to proceed personally against any delinquent owner for the recovery of a personal judgment against him. The title acquired by any purchase following any such foreclosure sale shall be subject to all of the provisions of this instrument and the Bylaws, Rules and Regulations of the Association, and, by so acquiring title, said purchaser covenants and agrees to abide by and be bound thereby.

Section 9: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V.

RESTRICTIVE COVENANTS

Section 1: The lots in Towee Mountains Subdivision Section II will be subject to the following restrictions:

(a) No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling and one such structure as permitted by sub-paragraph (b) next below.

(b) Each lot shall be entitled to have one detached garage or storage building which must be constructed of comparable materials and have an exterior appearance similar to the residence on the same lot, so as not to detract from the aesthetic quality of the main residence.



(c) No residence shall be constructed with less than 620 square feet of living space, exclusive of any unenclosed porch, basement or garage.

(d) No lot shall be used or maintained as a dump ground for rubble or garbage, automobile junk yard, either temporarily or permanently. Garbage or other waste shall be kept in a sanitary container for such material and shall be kept in a clean and sanitary condition.

(e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

(f) No individual sewage-disposal system shall be permitted on any lot unless such system is designed, located, and constructed in accordance with the requirements, standards, and recommendations of both State and Local Public Health Authorities. Approval of such system as installed shall be obtained from such authority.

(g) No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn, or other outbuildings, shall be used on any lot at any time as a residence either temporarily or permanently, except that a camping trailer or recreational vehicle may be used for camping purposes not to exceed a two-week period at any one time and a total of four weeks during any calendar year. Any owner using a lot for camping purposes shall construct, and install thereon a sewage disposal system in accordance with the requirements and standards of both State and Local Public Health Authorities.

(h) Easements to each individual lot for installation and maintenance of utilities and drainage facilities are reserved on the lot as shown on the recorded plat, a ten-foot strip on each side lot line where overhead guys are necessary. The granting of this easement or right of access shall not prevent the use of the area by the owner for any permitted purpose except for buildings. A right of pedestrian access by way of a driveway or upon lawn area shall also be granted on each lot, from the front lot line to the rear lot line, to any utility company having an installation in the easement.



(i) No noxious or offensive activity shall be permitted on any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent lot owners, the subdivision, or the neighborhood.

(j) No plotted lot shall be resubdivided or partitioned unless the purpose of such severance is to increase the size of the adjacent lot.

(k) All members of the association shall be responsible for keeping the gate on main entrance secured and closed at all times.

ARTICLE VI.

GENERAL PROVISIONS

Section 1: Enforcement. The Association or Declarant or any lot owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or the Declarant or by any owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. Invalidation of any one or more of these covenants, conditions, or restrictions shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3: Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by an instrument signed by not less than sixty (60) percent of the lot owners in the entire Towee Mountains Section II Development including sixty (60) percent of those lot owners other than Declarant.

Section 4: Annexation. Additional residential recreational property and common area may be annexed to the properties by the sole election and action of the Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 29<sup>th</sup> day of June, 1987.

James C. Garren  
JAMES C. GARREN

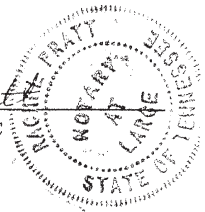
Warren Dodson  
WARREN DODSON

STATE OF TENNESSEE )  
                                  )  
COUNTY OF POLK        )

BEFORE ME, a Notary Public in and for the State and County aforesaid personally appeared James C. Garren and Warren Dodson, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

WITNESS my hand, at office this 29<sup>th</sup> day of June, 1987.

Rachel Pratt  
NOTARY PUBLIC



My Commission Expires: Dec. 29, 1990

STATE OF TENNESSEE POLK COUNTY

THE FOREGOING INSTRUMENT AND CERTIFICATE WERE NOTED IN NOTE BOOK  
10 PAGE 186 AT 11:30 O'CLOCK A.M. 6:30  
IN 87 AND RECORDED IN usc BOOK 56 PAGE 289-48  
STATE TAX PAID \$            FEE            RECORDING  
FEE 40.00 TOTAL 40.00 WITNESS MY HAND.  
RECEIPT NO. 19450 B.W. Wilson

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