

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR
CUMMINGS COVE

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CUMMINGS COVE is made February 24, 1999 by, CUMMINGS COVE, L.L.C., a Tennessee liability company (hereinafter referred to as "Declarant"), and joined by CUMMINGS COVE COMMUNITY ASSOCIATION, INC., a Tennessee nonprofit corporation (hereinafter referred to as the "Association").

A. Declarant holds title to that certain real property located in Hamilton County, Tennessee, as defined in this Declaration as the "Property."

B. Declarant intends to develop the Property (including any Additional Property added hereto) in accordance with this Declaration as a residential community to be known as Cummings Cove.

Declarant has caused the Association to be formed for the purposes set forth in this Declaration and the Charter for the Association.

STATEMENT OF DECLARATION

The Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, reservations, assessments and other provisions set forth in this Declaration, which shall run with the Property, shall bind all parties having any right, title, or interest in any part of the Property, their successors and assigns, and shall inure to the benefit of each Owner (as hereinafter defined) thereof and which shall read as follows:

ARTICLE I. - DEFINITIONS

1. ADDITIONAL PROPERTY

"Additional Property" shall mean the real property described on Exhibit "B" attached hereto, which may be subjected to this Declaration by Declarant from time to time in accordance with the terms of this Declaration. Prior to the Turnover Date (as hereinafter defined), Declarant may unilaterally modify Exhibit "B" as Declarant, in its sole and absolute discretion may determine appropriate.

2. ARCHITECTURAL REVIEW COMMITTEE OR ARC

"Architectural Review Committee" or "ARC" shall mean the committee formed to promulgate design and development guidelines and application, to review procedures for new construction upon the Property and any modifications to improvements, and to review and approve the plans for same.

3. AREA OF COMMON RESPONSIBILITY

"Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration, a resolution of the Board of Directors of the Association, or an agreement with the Club, a Neighborhood Association or a governmental agency, shall become the responsibility of the Association, including without limitation, public areas located within or adjacent to the Property designated by Declarant as part of the Area of Common Responsibility.

4. ASSESSMENT

"Assessment" shall mean and refer to charges levied against Lots to fund Common Expenses, Neighborhood Expenses and any other expenses of the Association and shall include Common Assessments, Special Assessments and Neighborhood Assessments.

5. ASSOCIATION

"Association" shall mean and refer to Cummings Cove Community Association, Inc. and its successors or assigns. The Association is the property owners' association for the entire Community.

6. BOARD OF DIRECTORS OR BOARD

"Board of Directors" or "Board" shall mean and refer to the governing body of the Association.

7. BUILDER

"Builder" shall mean a Person who acquires a Lot for the purpose of constructing and reselling a Unit on it.

BY-LAWS

"By-Laws" shall mean and refer to the By-Laws of the Association, as the same may be adopted or amended from time to time. A copy of the By-Laws as of the date of this Declaration is attached as Exhibit "C".

9. CHARTER

"Charter" shall mean and refer to the Charter of the Association, as the same may be amended from time to time. A copy of the Charter as of the date of this Declaration is attached as Exhibit "D".

CLUB

"Club" shall mean SCC Golf Properties, LLC or one of its successors, assigns or affiliates doing business as The Black Creek Club shall own and operate the Club Property.

11. CLUB PROPERTY

"Club Property" shall mean all of the real property owned by the Club or its successors or assigns plus all of the recreational and social facilities constructed thereon, which will be operated by the Club or its successors or assigns and commonly known as The Black Creek Club including without limitation, the golf course, golf practice facilities, swim and tennis facilities and the golf clubhouse. THE CLUB PROPERTY IS NOT COMMON AREA.

12. COMMON AREA

"Common Area" or "Common Areas" shall mean all of the real property owned by the Association, plus all property designated as Common Areas in any future Supplemental Declaration or any portion of a plat or replat of the Property dedicated to or for the Association together with any improvements thereon and any personal property owned by the Association, and which are intended for the common use and enjoyment of all Members of the Association. Common Area shall also include the Exclusive Common Area unless the context otherwise requires.

13. COMMON ASSESSMENTS

"Common Assessments" shall mean those Assessments for which all Members of the Association are responsible to pay for Common Expenses.

14. COMMON EXPENSES

"Common Expenses" shall mean the actual and estimated costs and expenses incurred or to be incurred by the Association for the general benefit of all Owners, including any reasonable reserves for deferred maintenance, repairs or replacements, which the Board of Directors may find necessary and appropriate.

15. COMMUNITY

"Community" shall mean the master planned community to be known as Cummings Cove.

16. COMMUNITY-WIDE STANDARDS

"Community-Wide Standards" shall mean the standards of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

17. DECLARANT

"Declarant" shall mean and refer to Cummings Cove, LLC or one of its successors or assigns provided such successor or assign is designated as the Declarant by the immediately preceding Declarant in a recorded instrument executed in accordance with the terms of this Declaration. The Declarant may assign all or part of its rights hereunder by a Supplemental Declaration.

18. DECLARATION

"Declaration" shall mean this document, as the same may be amended or supplemented from time to time.

19. DOCUMENTS

"Documents" shall mean this Declaration, and the Charter, By-Laws, and Rules and Regulations of the Association.

20. EXCLUSIVE COMMON AREA

"Exclusive Common Area" shall mean and refer to certain portions of the Common Area, including any improvements and fixtures thereon, the use of which has been granted exclusively or primarily to one or more, but less than all, Units for the common use and enjoyment of Owners of such Units. Such Exclusive Common Area shall be designated by Supplemental Declaration.

21. INSTITUTIONAL MORTGAGEE

"Institutional Mortgagee" shall mean: (a) any generally recognized lending institution having a first deed of trust or mortgage lien upon a Lot or (b) such other lenders as the Board of Directors shall hereafter approve in writing which have acquired a deed of trust or first mortgage lien upon a Lot.

22. LOT

"Lot" shall be an inclusive term referring to a portion of the Property, whether developed or undeveloped, intended for development, use, and occupancy as a residence and shall, unless otherwise specified, include within its meaning by way of illustration, but not limitation, courtyard homes, patio garden homes, single-family homes, and estate homes, as well as vacant land intended for development as such, all as may be developed, used and defined as herein provided or as provided in a Supplemental Declaration covering all or a part of the Property. The term shall include all portions of the Lot owned as well as any structure thereon.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for residential use for such parcel on the master plan approved by Declarant until such time as a subdivision plat has been recorded in the public records of Hamilton County, Tennessee, on all or a portion thereof. After a subdivision plat has been recorded on all or a portion thereof, the portion designated in that plat shall constitute a separate Lot or Lots as determined above and the number of Lots on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

23. MASTER PLAN

"Master Plan" shall mean and refer to the plan for the development of the Property, as the same may be amended or supplemented from time to time.

24. MEMBER

"Member" shall mean and refer to a Person entitled to membership in the Association. All Owners shall be Members of the Association, provided, however, that there shall be no more than one Member for each Lot. In addition, Declarant and the Club shall also be Members of the Association as described more fully in Article VIII, Section 1, hereof and the By-Laws of Association.

25. NEIGHBORHOOD

"Neighborhood" shall mean and refer to any Lots which are designated as a Neighborhood by Declarant in a Supplemental Declaration, in which Owners may have common interests other than those common to all Owners, such as a common theme, entrance feature, development name and/or common area and facilities which are not available for use by all Owners.

26. NEIGHBORHOOD ASSESSMENTS

"Neighborhood Assessments" shall mean assessments levied by either the Association or a Neighborhood Association against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article IX, Section 5 of this Declaration.

27. NEIGHBORHOOD ASSOCIATION

"Neighborhood Association" shall mean any property owners' association, or such other entity, its successors and assigns, which shall be responsible for administering any Neighborhood. A Neighborhood shall not be required to have a Neighborhood Association.

28. NEIGHBORHOOD DECLARATION

"Neighborhood Declaration" shall mean the protective covenants, conditions, restrictions and other provisions (if any) imposed by a recorded instrument upon one or more Neighborhoods. A Neighborhood may, but shall not be required, to have a Neighborhood Declaration.

2. NEIGHBORHOOD DOCUMENTS

"Neighborhood Documents" shall mean a Neighborhood Declaration together with the charter, by-laws and rules and regulations of a Neighborhood.

30. NEIGHBORHOOD EXPENSES

"Neighborhood Expenses" shall mean and include those actual and estimated expenses incurred or to be incurred by the Association primarily for the benefit of the Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for deferred maintenance, repairs, and replacements, all as may be specifically authorized from time to time by the Board of Directors of the Association or the applicable Neighborhood Association and as more particularly authorized herein.

OWNER

"Owner" shall mean and refer to the record owner of fee simple title to a Lot (including Declarant, Builders and the Club, but specifically excluding any party holding an interest merely as security for the performance of an obligation). The term Owner may also include any other Person who owns any portion of the Property other than the Association.

32. PERSON

"Person" means any individual, corporation or other legal entity.

33. PROPERTY

"Property" shall mean and refer to the real property legally described on Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by a Supplemental Declaration.

34. SPECIAL ASSESSMENT

"Special Assessment" shall mean and refer to assessments levied in accordance with Article IX, Section 6 hereof.

35. SUPPLEMENTAL DECLARATION

"Supplemental Declaration" shall mean a supplement to this Declaration executed by or consented to by Declarant in accordance with Article 11, Section 2 hereof.

36. TURNOVER DATE

"Turnover Date" shall mean the date on which the Class "B" Membership ceases to exist and is converted to a Class "A" Membership, as further described in Article VIII, Section 3 hereof.

37. UNIT

"Unit" shall mean and refer to any structure constructed on a Lot, including without limitation, courtyard homes, patio garden homes, single-family homes, and estate homes.

ARTICLE II - GENERAL PLAN FOR DEVELOPMENT

I. PLAN FOR DEVELOPMENT

(a) In General. Declarant presently plans to develop the Property as a multi-phased residential community with various common areas, in accordance with the Master Plan and subject to any required governmental approvals. Declarant also reserves the right to develop any portion of the Property for commercial uses in accordance with this Declaration, the Master Plan and any applicable governmental approvals. Declarant reserves the right to modify the Master Plan in its sole discretion from time to time, and the consent of the Association, any Owner and any mortgagee of any Owner shall not be required in connection therewith.

(b) Declaration; Association. This Declaration is not a declaration of condominium. No portion of the Property is submitted by this Declaration to the condominium form of ownership. Declarant has caused the Association to be formed to perform certain administrative and operational functions regarding the Property as set forth more fully in the Documents.

(c) Neighborhoods. Declarant intends that Lots may, but need not be, grouped together in residential Neighborhoods. Neighborhoods may, but are not required, to be administered by Neighborhood Associations.

(d) **Minimum Square Footage Restrictions.** No Unit may be erected or be allowed to occupy any lot or lots unless the main structure, exclusive of garages, open porches and basements be not less than the following minimum square foot restrictions:

(1) **Townhomes:** The minimum square foot restrictions for Courtyard Homes shall not be less than 1,300 square feet exclusive of open porches, garages and basements.

(2) **Patio Garden Homes:** The minimum square foot restrictions for a single-story Patio Garden Home shall not be less than 1,600 square feet exclusive of open porches, garages and basements. The minimum square foot restrictions for the ground floor of a two-story Patio Garden Home shall not be less than 1,450 square feet exclusive of garages, open porches, and basements.

(3) **Single Family Homes:** The minimum square foot restrictions for a single-story Single Family Home shall not be less than 1,800 square feet exclusive of open porches, garages, and basements. The minimum square foot restrictions for the ground floor of a two-story Single Family Home shall not be less than 1,600 square feet exclusive of open porches, garages, and basements.

(e) **Estate Homes:** The minimum square foot restrictions for a single story Estate Home shall not be less than 2,200 feet exclusive of open porches, garages, and basements. The minimum square foot restrictions for the ground floor of a two-story Estate Home shall not be less than 2,000 square feet exclusive of open porches, garages, and basements.

2. SUPPLEMENTAL DECLARATIONS

Declarant shall have the right, alone and in its sole discretion, to execute and record in the public records of Hamilton County, Tennessee, Supplemental Declarations from time to time containing provisions which (a) assign a specific use to a portion of the Property; (b) designate a Neighborhood and any specific uses or provisions with respect to the Neighborhood; (c) impose additional restrictions or delete restrictions on a portion of the Property; (d) assign some or all of Declarant's rights and obligations hereunder; (e) subject some or all of the Additional Property to the effect of this Declaration; or (f) do anything else permitted by this Declaration.

3. NEIGHBORHOOD DECLARATION

Declarant, or another Person with Declarant's prior written consent, may record instruments subjecting a Neighborhood to a Neighborhood Declaration, upon which event the Property shall then be subject to both this Declaration and such Neighborhood Declaration. Such Neighborhood Declaration may also create a Neighborhood Association, and such Neighborhood Association may have the same, additional, or different rights, powers, duties or privileges with respect to such Neighborhood as the Association, in which event such Neighborhood may be

subject to the jurisdiction of both the Neighborhood Association and the Association, and may cause the Owners of Lots within the Neighborhood to be members of the Neighborhood Association under such terms and conditions as may be provided therein, which may be the same as or substantially different from the terms and conditions of membership in the Association as provided herein. When in conflict, the Documents shall prevail over Neighborhood Documents.

4. ANNEXATION OF ADDITIONAL PROPERTY

(a) Prior to the Turnover Date, Prior to the Turnover Date, Declarant shall have the right, privilege, and option, in its sole discretion, to subject any additional property to the provisions of this Declaration and to the administration of the Association by filing a Supplemental Declaration in the public records of Hamilton County, Tennessee. Such Supplemental Declaration shall not require the consent of any of the Owners, any mortgagees of any Owner or the Association, but shall require the consent of the owner of such additional property, if the owner of such additional property is other than Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the right, in its sole discretion, to transfer to any other Person the right, privilege, and option to annex additional property which is reserved herein to Declarant, provided that such transfer is memorialized in a Supplemental Declaration.

(b) After the Turnover Date, Following the Turnover Date, Declarant shall have the unilateral right, privilege and option, until all of the Additional Property has been subjected to this Declaration, to subject to the provisions of this Declaration and the jurisdiction of the Association from time to time and at any time all or any portion of the Additional Property. Such annexation shall be accomplished by filing in the public records of Hamilton County, Tennessee, a Supplemental Declaration annexing such Additional Property. Such Supplemental Declaration shall not require the consent of any of the Owners, any mortgagee of the Owners or the Association, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Following the Turnover Date, the Association may not subject any property to the provisions of this Declaration and the jurisdiction of the Association without: (a) the affirmative votes of a majority of the Class "A" Members of the Association either in writing or present, in person or by proxy, at a meeting duly called for such purpose, (b) the consent of the owner of such property, (c) the consent of the Club, and (d) the consent of Declarant so long as Declarant owns any portion of the Property or Additional Property.

5. AMENDMENT OF ARTICLE

This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any portion of the Property or the Additional Property, and the consent of the Club.

ARTICLE III - LAND DESIGNATION AND ADMINISTRATION

I. IN GENERAL

The Property may be subjected to designated uses in accordance with the terms of this Declaration, by any Supplemental Declaration or by any other reasonable means by Declarant. Declarant may, in its sole and absolute discretion, establish any use for the Property consistent with the terms of the Master Plan, this Declaration and applicable law. Without limiting the foregoing, the Property may be used in the following manner:

(a) Residential Areas. Residential areas shall be those areas used for residential uses, which shall include Lots and improvements associated with residential purposes and uses including, but not limited to streets, driveways, sidewalks, entrances, street lighting, open spaces, parking spaces, landscaping, swimming pools, other recreational facilities and other areas or amenities appurtenant to the Lots. Unless otherwise provided in a Supplemental Declaration or Neighborhood Documents, each Owner shall be responsible for the maintenance of his or her Lot.

(b) Common Area, Exclusive Common Area

(1) In General: Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time, and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of use and enjoyment in the Common Area to the members of his or her family, lessees and invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

Declarant shall determine the manner of making improvements to all Common Area and the use thereof so long as Declarant owns any portion of the Property or the Additional Property, and, thereafter, the Association shall have the same right provided the general quality of the Master Plan is not materially and detrimentally changed.

(2) Administration and Operation: The administration and operation of the Common Area shall be the responsibility of the Association, except that the Association with the prior consent of the accepting party may assign or delegate such responsibility, in whole or in part, exclusively or non-exclusively, and permanently or temporarily, for any portion of the Common Area to a Neighborhood Association, the Club, governmental entity or other Person determined to be appropriate by Declarant so long as Declarant owns any portion of the Property or the Additional Property.

(3) Certain Declarant Rights: Declarant shall have the right, so long as Declarant owns any portion of the Property or the Additional Property, and in its sole and absolute discretion, to alter the boundaries of the Common Area and construct, develop or

modify the Common Area and any improvements, easements and use rights thereon or appurtenant thereto in a manner determined appropriate by Declarant, in its sole discretion, without the joinder or consent of any Person, including, without limitation, the Association, any Neighborhood Association, any Owners or any mortgagee of any Owner.

(4) Declarant Approval. The Association shall not abandon, partition, alienate, release, transfer, hypothecate, or otherwise encumber the Common Area so long as Declarant owns any portion of the Property or the Additional Property without the prior written approval of Declarant and, thereafter, without the prior approval of a majority of the votes eligible to be cast by the Class "A" Members and the consent of the Class "C" Member. The preceding sentence shall not prohibit the Association from granting such easements over, under and above Common Area as are reasonably necessary or appropriate for the development and operation of the Property in a manner consistent with the provisions of this Declaration, nor shall the foregoing prohibit the Association from encumbering Common Area provided such encumbrances are solely to secure loans obtained for improving Common Area, and the lien of such encumbrance is not superior to the provisions of this Declaration.

(5) Exclusive Common Area. Certain provisions of the Common Area may be designated as Exclusive Common Areas and reserved for the exclusive use of Owners and occupants of Lots within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include recreational facilities intended for the exclusive use of Owners within a particular Neighborhood or Neighborhoods, and supported exclusively by Neighborhood Assessments.

(c) Other Uses. Declarant may use any portion of the Property for commercial purposes. Any such use shall be designated by Declarant in a Supplemental Declaration, and Declarant may, in any such Supplemental Declaration, set forth any restrictions, conditions and covenants that run with such portion of the Property. Declarant may also set forth any rights and obligations of the Owner of such portion of the Property, and the manner in which such portion of the Property shall be administered and assessed under this Declaration. Notwithstanding the foregoing, a portion of the Property may be used as a sales center for the sale and resale of Lots and Units within the Community or other communities designated by Declarant and/or memberships in the Club. Declarant may assign, in whole or in part, its rights under this Article III, Section 1 (c).

2. DISPUTES AS TO USE

If there is any dispute as to whether the designation of any portion of the Property complies with this Declaration, any Supplemental Declaration, or any other documents, then, so long as Declarant owns any portion of the Property or the Additional Property, the dispute shall be referred to Declarant. After Declarant no longer owns any portion of the Property or the Additional Property, the dispute shall be referred to the Association. The determination rendered by Declarant or the Association, as the case may be, shall be final and binding on all Persons involved in the dispute.

ARTICLE IV. - DEVELOPMENT OF COMMON AREAS

1. CONSTRUCTION AND INSPECTION OF COMMON AREA

Declarant (or Builders) will construct, furnish and equip, at its sole cost and expense, Common Area. Upon completion of construction of Common Area, Declarant (or the Builder, as the case may be) will engage independent licensed inspectors to inspect any Common Area improvements to determine if they were built in substantial accordance with the applicable plans and specifications as modified by any change orders. Any repairs indicated by the inspection reports shall be completed by Declarant (or by the Builder if the improvements were constructed by a Builder), at its sole cost and expense.

2. TRANSFER OF COMMON AREA

On or before the Turnover Date, Declarant agrees to convey, transfer, assign and deliver to the Association, and the Association shall accept same from Declarant, Declarant's interest in the Common Area as the same exists on the date of conveyance.

3. DISCLAIMER OF WARRANTIES

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

ARTICLE V. - USE RESTRICTIONS

1. IN GENERAL

The Property shall be used only for residential, recreational, and related business and commercial purposes, which purposes may include, without limitation, offices for any

property manager retained by the Association or business, sales, or real estate offices for Declarant or the Association and other businesses which serve and are a part of the Community, as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have authority and the power to enforce such standards. The Association, acting through its Board of Directors, shall have the authority to make, and the Association acting through its Board of Directors shall have the authority to enforce, standards and restrictions governing the use of the Property in addition to those contained herein and in the Community-Wide Standards. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees. Notwithstanding anything to the contrary herein, Declarant shall be exempt from application of the provisions of this Article.

(a) Accessory Structures: Doghouses, tool sheds or structures of a similar kind or nature are not permitted on any part of the Property within view of the sidewalk or street.

(b) Air Conditioning Units: Except as may be permitted by the ARC, no window air conditioning units may be installed in any Unit.

(c) Animals and Pets: No animals, reptiles, livestock, wildlife or poultry or any kind shall be raised, bred or kept on any portion of the Property, except that dogs, cats or other usual and common household pets may be permitted on a Lot. However, those pets which are permitted to roam free, or which, in the sole discretion of the Board of Directors, endanger the health and safety of the Members of the Association, make objectionable noise, or constitute a nuisance or inconvenience to the other Members of the Association shall be removed upon request of the Board of Directors. If the Owner fails to honor such request, the pet may be removed by the Board of Directors. No pets shall be kept, bred or maintained for any commercial purpose. Household pets shall at all times whenever they are outside the Owner's Unit be confined on a leash held by a responsible person.

(d) Antennas, Satellite Dishes: No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any Unit or Lot, except as permitted by the ARC.

(e) Artificial Vegetation, Exterior Decorations, and Similar Items: No artificial vegetation shall be permitted on any Lot. Exterior decorations, including without limitation, sculptures, fountains, flags, and similar items, must be approved in writing by the ARC.

(f) Garbage Cans, Tanks, Etc.: Garbage cans, storage tanks, mechanical equipment, including, without limitation, electrical meters, gas meters and air conditioning compressors, or other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets and the Club Property. Clotheslines shall not be permitted. All rubbish, trash, and garbage shall be stored in appropriate containers with lids and regularly removed from the Property and shall not be allowed to accumulate thereon. All basketball

hoops, backboards, storage tents, mechanical equipment, garbage can storage structures and other such items shall be subject to the written approval of the ARC.

(b) Business Use. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have the ordinary, generally accepted meanings, and shall include, without limitation, any occupational work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Units which it owns within the Property.

(h) Decks. All decks must be approved in writing by the ARC prior to construction. The configuration, detail and railing design of a deck should be harmonious with the architectural style of the Unit.

(i) Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person, other than Declarant, the Club or the Association, may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself, the Club and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow.

(j) Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot or Unit unless it is an integral and harmonious part of the architectural design of the Lot or Unit, as determined in the sole discretion of the ARC. Under no circumstances shall solar panels be installed so as to be visible from any street in the Community or from any portion of the Club Property.

(k) Firearms. The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless

of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

- (l) Golf Carts. No private golf carts will be permitted within the Community.
- (m) Irrigation. No sprinkler or irrigation systems of any type which draw from any body of water within the Property shall be installed, constructed or operated by any Person, other than the Association, Declarant or the Club, without the prior written approval of the ARC. All parcels which are developed may be required to have an underground irrigation system. In the event effluent irrigation water is available, each Builder may, at its sole cost and expense, be required to connect the irrigation system for its parcel to the effluent source.
- (n) Lighting. Each Builder may be required to install on any Units constructed by such Builder exterior lighting as determined by the ARC. Lots or Owners of the Lots or Units served by such lighting will be responsible for maintaining the lighting and the Association shall have the right, at Owner's cost and expense, to maintain such lighting in the event Owner fails to do so. All exterior lighting must be approved by the ARC prior to installation.

(o) Mailboxes and Exterior Hardware. The style and design of all mailboxes, lettering and numbering, and exterior hardware must be in accordance with the Design Guidelines, and the ARC will designate the style of mailboxes.

(p) Maintenance of Lots

(i) Landscaping. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot. All landscaping, sprinkler systems and any property, structure, improvement and appearance shall be kept in good, safe, clean, neat and attractive condition.

(ii) Painting. The exterior of all Units shall have a fresh coat of paint applied evenly and no excessive cracks, peelings, or strippings shall be allowed to remain unretected.

(iii) Roofing. The roofs of all Units shall be maintained in a clean, neat and attractive condition with a full complement of roof tiles or shingles. Upon the failure to maintain the premises as aforesaid to the satisfaction of the Association, the Association may, but shall not be required, to enter upon such premises and make such improvements or corrections as may be necessary, the costs of which along with an administrative surcharge of ten percent (10%) of such amount shall be assessed against the affected Owners in accordance with Article X hereof.

(q) Nuisance. No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing, or material be kept

upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding Units. No noxious, illegal or offensive activity shall be carried on upon any portion of the Property.

(r) Occupants Bound. All provisions of this Declaration, the By-Laws, the Articles and the Rules and Regulations or any use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with this Declaration, the By-Laws, the Articles and the Rules and Regulations and shall be responsible for all violations and losses to the Common Area caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of this Declaration, By-Laws, Articles and Rules and Regulations.

(s) On-Site Fuel Storage. No on-site storage of gasoline or other fuels shall be permitted on any part of the Property except that the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or in appropriate spaces or designated areas in which parking may or may not be assigned. Notwithstanding the above, no more than two (2) vehicles shall be parked in the driveway serving any Unit on a regular basis. For purposes of this paragraph, a car shall be deemed parked on a "regular basis" if parked in such driveway more than seventy-two (72) hours in any seven-day period without prior written approval of the Board of Directors. Garage doors shall remain closed at all times except during ingress and egress. Any vehicle which is parked in violation of this paragraph or parking rules promulgated by the Board may be towed in accordance with the By-Laws. Notwithstanding the foregoing, service and delivery vehicles may be parked in the driveway of a Unit during daylight hours for such period of time as is reasonably necessary to provide service or make a delivery to the Unit.

(t) Playground, Play Equipment, Strollers. All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from streets or property adjacent to the Unit. No such items shall be allowed to remain in the open so as to be visible from adjacent property when not in use. Notwithstanding the above, the Board of Directors may, but shall not be obligated to, permit swing sets and similar permanent playground equipment to be erected within the Community provided they are approved in writing by the ARC. Any playground or other play areas or equipment furnished by the Association or erected within the Community shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

(v) Pools. No above-ground pools shall be erected, constructed or installed on any Lots, except that above ground spas and Jacuzzis may be permitted as approved in writing by the ARC.

(w) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or in the common parking area, if any, designated by the Association. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted within the Community, except within enclosed garages. For purposes hereof, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior written approval of the Board of Directors. Notwithstanding the foregoing, service and delivery vehicles may be parked in the driveway of a Lot during daylight hours for such period of time as is reasonably necessary to provide service or make a delivery to a Lot. Any vehicle which is parked in violation of this paragraph may be towed by the Board of Directors at the Owner's expense. This paragraph shall not apply to any commercial vehicles providing service or making deliveries to or on behalf of the Association, Declarant or their designees.

(x) Roadways, Sidewalks, Driveways. All utilities within the Property shall be installed underground, unless otherwise specifically permitted by Declarant or the ARC. Utility lines, including without limitation cable television and gas, may only be installed, repaired or replaced under existing roadways, sidewalks and driveways by a method which will not disturb the paved surface of such roadway, driveway or sidewalk. This restriction is intended to preserve the aesthetic nature of the paved surfaces.

(v) Setback Requirements. The Unit on any lot must face the street or face the major street in a case of a lot fronting more than one street, as indicated by the building line shown on the plat. No part of any Unit shall be nearer to the street on which it faces or the street on the side than the building line shown on the plat, nor nearer than twelve (12) feet to any side line. All building locations must be in compliance with the applicable Zoning Ordinances.

For Townhomes and Patio Garden Homes falling under T-1 zoning, the "zero lot line" side shall establish that the house be constructed one inch (1") off the side property line as established in the applicable Zoning Ordinance. The other side shall be a minimum of twelve (12) feet to the side lot line. The land surface area between the buildings (not less than twelve (12) feet) shall be subject to an easement for the abutting owners, their agents, employees and invitees for the purpose of maintenance and decoration of their respective improvements at reasonable time during daylight hours, and for drainage of water from the lots and the roofs of the buildings. Also, the abutting owners shall have an easement over the adjoining property not to exceed three (3) feet from the outside wall of such principal building roof and the discharge of water therefrom. Except as specified herein, the abutting owner shall not have the rights of ingress and egress and lot owners may fence, landscape and improve such area so long as drainage of water from said premises is not unreasonably impeded. For the purpose of this covenant, eaves, steps, stoops or entrance platforms, and ornamental planting boxes shall be considered as part of a building, provided; however, that this shall not be construed to permit any portion of a building on any lot to encroach on any other lot.

(z) Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

(aa) Signs and Easements. No sign, billboard or advertisement shall be erected except as otherwise specifically permitted by the ARC. The Board of Directors shall have the right to erect signs as it deems appropriate, in its discretion.

(bb) Subdivision of Unit. No Lot shall be subdivided or its boundary lines changed except by Declarant or with the prior written approval of the Board of Directors of the Association. No Unit shall be made subject to any type of timeshare program, interval ownership, similar program whereby the right to exclusive use of the Unit rotates among multiple owners or members of the program on a fixed or floating time schedule over a period of years, except that Declarant hereby reserves the right for itself and its assigns to operate such a program with respect to Units which it owns. This paragraph shall not prohibit ownership of a Unit by two (2) to four (4) joint tenants or tenants-in-common.

(cc) Tents, Trailers and Temporary Structures. Except as may be permitted by the ARC during initial construction within the Community, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed within the Community.

(dd) Tree Removal. No trees greater than 6 inches in diameter, other than diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, shall be removed unless approved in writing by the ARC. Any stumps resulting from trees being damaged by acts of God must be removed. This Section shall not apply to Declarant or the Club.

(ee) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except as otherwise specifically permitted by Declarant or the ARC.

(ff) Walls and Fencing. Except as otherwise specifically permitted by the ARC, walls and fencing on a Lot shall not be permitted.

(gg) Wells. No private wells are permitted on any Lot without the prior written approval of Declarant or the ARC.

(hh) Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Property, if any, shall be storm water retention facilities or aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted unless otherwise permitted by Declarant or the Board of Directors and provided further without the prior written approval of the Club if such areas are located on the golf course. Neither the Declarant, the Association nor the Club shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or shoreline within the Property.

No docks, piers, or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by Declarant, the Association, or as approved pursuant to Article VI of this Declaration. The elevation of the land shall not be altered and fill shall not be used to extend the boundaries of a Lot or to change the bulkhead line on any Lot bounded by a wetland, lake, or other body of water unless approved in accordance with Article VI of this Declaration. This paragraph shall not restrict the use of water for the Club Property.

(ii) Window Coverings. All windows on any structure which are visible from the street or dwellings on other Units shall have window coverings which have a white or off-white backing or blend with the exterior color of the dwelling, as determined in the sole discretion of the ARC after application pursuant to Article VI hereof. Reflective window coverings are prohibited.

2. LEASING OF UNITS

(a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) Leasing Provisions.

(i) In General. Units may be rented only in their entirety, not fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Association. All leases shall be in writing in a form approved by the Association and shall be for a minimum term of six (6) months. Leasing of a Unit may not occur more than two (2) times per year. The Association may charge each Owner an administrative fee for reviewing and approving proposed leases. The Owner must make available to the lessee copies of this Declaration, the By-Laws, the Articles and the Rules and Regulations. This paragraph shall not apply to leasing by Declarant or its successors, assigns or affiliates.

(ii) Compliance with Declaration, By-Laws, Articles and Rules and Regulations. Every Owner shall cause all occupants of his or her Unit to comply with this declaration, the By-Laws, the Articles and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations and losses to Common Area caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws, the Articles and Rules and Regulations adopted pursuant thereto.

3. EXCULPATIONS AND APPROVALS

Declarant, the Association, the ARC, the Club and any of their agents may grant, withhold or deny their consent, permission or approval in any instance when their consent,

permission or approval is permitted or required at their sole discretion and without any liability of any nature or kind to any Owner or any other Person for any reason whatsoever and shall be indemnified and held harmless by such Owner or other Person from any and all damages resulting therefrom, including, but not limited to, court costs and reasonable attorneys' fees. Every consent, permission or approval by Declarant, the Association, the ARC, the Club or any of their agents under this Declaration shall be in writing and binding upon all Persons.

4. COMMUNITY-WIDE STANDARDS, RULES AND REGULATIONS

The Association, through the Board, shall have the right to promulgate and impose further Community-Wide Standards or any rules and regulations of the Association and thereafter to modify, alter, amend, rescind and augment any of the same with respect to the use, operation and enjoyment of all or a portion of the Property, the Common Area, the Exclusive Common Area and any improvements located thereon including, but not limited to, establishing reasonable standards for the use of facilities and establishing hours and manner of operation.

ARTICLE VI - ARCHITECTURAL STANDARDS AND REVIEW

1. IN GENERAL

All construction improvements and modifications shall comply with the Master Plan, the applicable building regulations and standards established by the applicable governmental authority from time to time, as well as the terms and conditions set forth in this Declaration. **EACH OWNER AND BUILDER ACKNOWLEDGES THAT PRIOR TO SUBMITTING AN APPLICATION FOR A BUILDING PERMIT FOR ANY CONSTRUCTION OR IMPROVEMENT, THE PLANS FOR SUCH CONSTRUCTION OR IMPROVEMENT SHALL BE SUBJECT TO THE REVIEW AND WRITTEN APPROVAL OF THE DECLARANT AND THE ARC.**

2. ARCHITECTURAL STANDARDS

No construction (which term shall include, without limitation, staking, clearing, excavating, grading, and other site work), no exterior alteration, improvement or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Declarant and the ARC has been obtained pursuant to this Section. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of an application for approval hereunder, which fees, if established, shall be paid in full prior to review of any application hereunder. All structures constructed on any portion of the Property shall be designed by and built in accordance with the approved plans and specifications.

This Article shall not apply to any construction or improvements or modifications to the Common Area made by or on behalf of the Association or to the activities of the Declarant. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee established in this Article VI. This Article may not be amended without the Declarant's prior written consent so long as the Declarant owns any portion of the Property or the Additional Property.

The Declarant and ARC shall have exclusive jurisdiction to review and approve all original construction on any portion of the Property. Declarant retains the right, so long as Declarant owns any portion of the Property or the Additional Property, to appoint all members of the ARC, which shall consist of not less than three, nor more than five, persons. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC.

The ARC shall prepare and promulgate on behalf of the Board of Directors design and development guidelines and application and review procedures ("Design Guidelines"). Copies of the Design Guidelines shall be available from the ARC for review. The ARC shall have sole and full authority to prepare and to amend the Design Guidelines. The Design Guidelines shall be available to Owners and Builders who seek to engage in development or construction upon all or any portion of the Property, and such Owners and Builders shall conduct their operations strictly in accordance therewith. In the event that the Declarant and ARC fail to approve or disapprove plans submitted to it, or to request additional information reasonably required within forty-five days after submission thereof, the plans shall be deemed approved.

3. NO WAIVER OF FUTURE APPROVALS

The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter, requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters whatever subsequently or additionally submitted for approval or consent.

4. VARIANCE

The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall be effective unless it is reduced to writing. No variance shall stop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5. LIABILITY

No review or approval by the ARC shall imply or be deemed to constitute an opinion by the ARC, nor impose upon the ARC, the Association, Declarant or any other party, any liability for the design or construction of building elements, including, but not limited to, structural integrity or life and safety requirements. The scope of any such review and approval by the ARC is limited solely to whether the respective plans or work meet certain requirements, standards, and guidelines relating to aesthetics and the harmony and compatibility of proposed improvements in the Community. No review or approval will be for any other Person or purpose, and no Person other than the ARC shall have any right to rely thereon, and any review or approval by the ARC will create no liability whatsoever of the ARC, Declarant or the Association to any other Person or party whatsoever.

6. COMPLIANCE

Any Owner, Builder, or contractor, subcontractor, agent or employee of an Owner or Builder who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ARC may be fined and/or excluded by the Board of Directors from the Property without liability to any Person, subject to the notice and hearing procedures contained in the By-Laws, and any improvements constructed in violation of this Section may be razed by the Association without payment or liability to any Person.

7. RIGHTS OF THE CLUB

The Club shall be given notice of all meetings of the ARC wherein the construction or improvement under consideration (or any portion thereof is contiguous to the Club Property. If in the reasonable opinion of the Club the construction or modification being reviewed has a material adverse impact on the golf course whether by restriction of view, hazards to person or otherwise, then, in that event, the Club may disapprove the proposed construction irrespective of the approval of same by the ARC and the Owner shall resubmit to the ARC the proposed construction or modification so as to take into account the objection of the Club which shall be given in writing to the Owner by the ARC.

ARTICLE VII. - NEIGHBORHOODS, NEIGHBORHOOD ASSOCIATIONS

1. NEIGHBORHOODS

A parcel of land intended for development as residential area may constitute a Neighborhood, subject to further division into more than one Neighborhood upon further development. Declarant may designate Neighborhoods by Supplemental Declarations. The Lots

within a particular Neighborhood may be subject to additional covenants and/or the Owners may be members of a Neighborhood Association in addition to the Association, but no such Neighborhood Association shall be required. Each Neighborhood, upon the affirmative vote, or written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may request that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood, the cost of which shall be assessed against the benefited Lots as a Neighborhood Assessment. The Association may, but is not required to, provide such higher level of services. The Board of Directors of the Association may consult on an advisory basis with the Board of Directors of a Neighborhood Association on maintenance of Exclusive Common Area and other issues affecting the Neighborhood.

2. EXCLUSIVE COMMON AREA

(a) Neighborhood Expense. The cost and expense of the Exclusive Common Area shall be borne by the Owners of Lots located in the Neighborhood benefited by such Exclusive Common Area, as set forth in a Supplemental Declaration, a Neighborhood Declaration, or otherwise.

(b) Operation of Neighborhood Association. A Neighborhood Association shall have the right, subject to Declarant's prior consent, to contract with the Association to provide for the operation and maintenance of its Exclusive Common Area.

3. CERTAIN RIGHTS OF DECLARANT REGARDING NEIGHBORHOOD ASSOCIATIONS

Declarant hereby reserves the right, and the power, but neither the duty nor the obligation, without the consent of any other Person:

(a) to determine consistency of any Neighborhood Documents with this Declaration, and approve and consent to any Neighborhood Documents and any amendments thereto prior to their recording in the public records of Hamilton County, Tennessee, Neighborhood Documents shall not be effective until Declarant approves and consents to them in writing;

(b) to require that specific provisions be included in Neighborhood Documents as Declarant reasonably deems appropriate... including, without limitation, any provisions required to render such Neighborhood Documents consistent with this Declaration;

(c) to require that the fiscal year of any Neighborhood Association be the same as that of the Association;

(d) to require that the Association approve the budget of any Neighborhood Association prior to the approval by the Neighborhood Association;

(e) to create additional Neighborhood Associations for the operation, administration and maintenance of any Neighborhood, or groups of Neighborhoods; and to approve the merger of any two or more Neighborhood Associations.

4. CERTAIN RIGHTS OF ASSOCIATION REGARDING NEIGHBORHOOD ASSOCIATIONS

(a) Enforcement. If any Neighborhood Association fails to comply with this Declaration or any of the other Documents or any Neighborhood Documents, the Association shall have the right and power, but neither the duty nor the obligation, to enforce the provisions of this Declaration or the Neighborhood Documents, or to perform the Neighborhood Association's duties and responsibilities, or to seek judicial relief or remedy to require compliance with same, and to obtain payment of the cost of such performance or enforcement, plus a reasonable administrative charge equal to ten percent (10%) of such amount.

(b) Special Assessments. The Association shall have the right, in addition to any other rights of the Association, to assess specially the members of a Neighborhood Association and such Neighborhood Association for expenses incurred by the Association for such Neighborhood Association.

(c) Collection of Assessments. Upon request by the Association, each separate Neighborhood Association shall collect from each Owner (other than the Declarant) the Common Assessments for the Association for each Lot within the Neighborhood and shall promptly remit such amounts to the Association. In the event that any Owner shall fail to pay to the Neighborhood Association his or her Common Assessments as levied by the Association, the Association shall have the right to collect such Assessments directly from such Owner.

(d) Entry Rights. The Association shall have the right, for itself, its designee, or any agent or employee, to enter upon any property administered by a Neighborhood Association to carry out the provisions of the Documents or the applicable Neighborhood Documents, and the same shall not constitute a trespass.

(e) Delegation. The Association shall have the right and power, but neither the duty nor the obligation, to delegate in whole or in part, exclusively or non-exclusively, and on a permanent or temporary basis, to any Neighborhood Association any obligation of maintenance or repair created under this Declaration or by delegation from Declarant. If a Neighborhood Association does not accept such rights and obligations in a manner consistent with the standards established by the Association, then the Association shall have the right, but not the obligation, by its sole act, to terminate such assignment, and again fulfill such rights and obligations.

(f) Right to Maintain Exclusive Common Area. The Association shall have the right to maintain the Exclusive Common Area of a Neighborhood, including in particular, all landscaping within the Neighborhood, and may assess the cost of such maintenance as a Neighborhood Expense.

(g) Priority. When Neighborhood Documents are in conflict with this declaration, the Charter or any of the other Documents, the latter shall prevail.

ARTICLE VIII - MEMBERSHIP AND VOTING RIGHTS

I. CLASSES OF MEMBERSHIP AND VOTING RIGHTS

There shall be three classes of membership in the Association as follows:

- (a) Class "A" Membership. Each Owner of a Lot, other than Declarant, shall be a Class "A" Member. Each Class "A" Member shall be entitled to one (1) vote for each Lot owned by the Member.
- (b) Class "B" Membership. Declarant shall be a Class "B" Member until the Turnover Date, after which time Declarant shall be a Class "A" Member. The Class "B" Member shall be entitled to five (5) votes for each Lot owned by the Class "B" Member. After Declarant is converted to a Class "A" Member, it shall be entitled to one (1) vote for each Lot it owns. The Class "B" Member shall be entitled to appoint all of the members of the Board of Directors until the Turnover Date as specified in the By-Laws.
- (c) Class "C" Membership. The owner of the Club Property shall be a Class "C" Member. The Class "C" Member shall be entitled to ten (10) votes and, for purposes of assessments, the Club Property shall be treated as two (2) Lots. After the Turnover Date, the Class "C" Member shall be entitled to appoint one of the members of the Board of Directors as specified in the By-Laws.

2. JOINT OWNERSHIP

Voting rights may be exercised by a Member or the Member's spouse. In any situation where more than one Person holds an interest in a Lot, the vote for that Lot shall be exercised by any such Person, provided, however, the Persons holding the interest in the Lot can notify the Secretary of the Association, in writing, prior to or during any meeting of the manner in which the vote for the Lot is to be exercised. In the absence of such notice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. The voting rights of a Member that is a company or other form of entity ownership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary.

3. **TURNOVER DATE**

The Turnover Date shall occur within sixty (60) days of the occurrence of the earliest of the following conditions:

- (a) the sale to Persons other than Declarant or Builders of all of the Lots intended to be developed within the Property and the Additional Property; or
- (b) such earlier date, as determined by the Class "B" Member, in its sole and absolute discretion.

4. **THE CLASS "C" MEMBER'S APPROVAL RIGHTS**

The Class "C" Member shall have the right to disapprove actions of the Board and any committees which in its reasonable judgment materially and adversely affect the use of the Class "C" Member's property or its rights or obligations under this Declaration. This right may be exercised by the Class "C" Member at any time within ten (10) days after the Class "C" Member's receipt of the notice of such proposed action. This Article VIII, Section 4, may not be amended without the written consent of the Class "C" Member.

ARTICLE IX. - ASSESSMENTS

1. **AFFIRMATIVE COVENANT TO PAY ASSESSMENTS**

There is hereby imposed upon each Owner and each Lot, the affirmative covenant and obligation to pay to the Association all Assessments in respect of the Lot. Each Owner, by acceptance of a deed or other instrument of conveying title to a Lot, whether or not it is so expressed in such deed or instrument, shall be obligated and agree to pay all Assessments, regardless of their nature, including, but not limited to, any then past due Assessments in accordance with the provisions of this Declaration and consents and agrees to the lien rights hereunder against the Lot. The liability for Assessments is personal to the Owner and may not be avoided by waiver of the use or enjoyment of Common Area or Exclusive Common Area, or by abandonment of the Lot for which the Assessments are made. Neither the liability for Assessments, nor the amount of Assessments, shall be reduced or avoided due to the fact that all or any portions of the Common Area, Exclusive Common Area or other portions of the Property are not completed. No diminution or abatement of assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association or the Board of Directors to take some action or perform some function required to be taken or performed by the Association or the Board of Directors under this Declaration, the By-Laws or the Articles, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any action taken to

comply with any law or with any order or directive of any municipal or other governmental authority.

2. CREATION OF ASSESSMENTS

There are hereby created Assessments for expenses of the Association as the board of Directors may authorize from time to time to be commenced at the time and in the manner set forth in Article IX, Section 3, hereof. There shall be three (3) types of Assessments:

- (a) Common Assessments: Common Assessments shall be levied equally on all Lots. Common Assessments shall be assessed against the Club Property on the basis of two (2) Lots for the Club Property.
- (b) Neighborhood Assessments: Neighborhood Assessments shall be levied equally on all Lots within the Neighborhood for whose benefit Neighborhood Expenses are incurred as provided in Article IX, Section 5, below; and
- (c) Special Assessments: Special Assessments shall be levied as provided in Article IX, Section 6, below.

3. PAYMENT OF ASSESSMENTS

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, an acceleration of the annual Common Assessment and any Neighborhood Assessment for delinquents. Unless the Board of Directors provides otherwise, the Common Assessment and any Neighborhood Assessment shall be paid in advance on a quarterly basis. The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate, in writing, signed by an officer of the Association, setting forth whether such Assessment has been paid in respect of any particular Lot. Such certificate shall be conclusive evidence that the Assessment stated therein has been paid to the Association. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

4. COMPUTATION OF COMMON ASSESSMENT

It shall be the duty of the Board of Directors to prepare a budget annually covering the estimated Common Expenses of the Association for the ensuing fiscal year (including the capital replacement reserve provided for in Article IX, Section 9 hereof). The Common Assessment levied against each Lot which is subject to the Common Assessment shall be computed by dividing the budgeted Common Expenses by the total number of Lots which are subject to Common Assessments plus the total number of Lots reasonably anticipated to become subject to Common Assessments during the fiscal year. The budget and the amount of the Common Assessment shall be determined by the Board of Directors in their sole and absolute

discretion. The Board of Directors shall cause a copy of the Common Expense budget and notice of the amount of the Common Assessment to be levied for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Notwithstanding the foregoing, in the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue, provided, however, that upon the adoption of a new budget, the same shall be deemed retroactive to the beginning of the then current budget year and each Owner shall pay the increase, if any, in the Common Assessment for the beginning of such year at the time the next installment is due.

5. COMPUTATION OF NEIGHBORHOOD ASSESSMENTS

It shall be the duty of the Board of Directors annually to prepare a separate budget showing the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred for the ensuing fiscal year. The Board of Directors shall be entitled to set such budget only to the extent that this Declaration or a Supplemental Declaration specifically authorizes the Board of Directors to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to the Neighborhood's budget. This budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. The Neighborhood Assessment levied against each Lot in that Neighborhood which is subject to the Neighborhood Assessment shall be computed by dividing the budgeted Neighborhood Expenses for that Neighborhood by the total number of Lots within such Neighborhood which are subject to the Neighborhood Assessments plus the total number of Lots in that Neighborhood reasonably anticipated to become subject to the Neighborhood Assessments during the fiscal year. The Board of Directors shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Lot for the coming year to be delivered to each Owner of a Lot in the benefited Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. In the event the Board of Directors fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue.

6. SPECIAL ASSESSMENTS

(a) **As To All Members.** The Board of Directors, upon the affirmative vote of a majority of votes cast by the Members of the Association and the consent of the Class "B" Member so long as the Class "B" Membership exists, may levy Special Assessments for capital improvements and repairs from time to time. No membership vote shall be required for Special Assessments due to budget shortfalls in any year, as a result of an emergency to protect, preserve or repair the Common Area from any casualty or threat thereof or as otherwise provided in subsection (b) hereof. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board of Directors, and may, if the Board of

Directors so determines, be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

(b) **Less Than All Members.** Without a membership vote, the Association may levy a Special Assessment against any Member individually and against such Member's Lot to reimburse the Association for costs incurred in bringing a Member and the Lot or Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, the Community-Wide Standards or the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board of Directors after notice to the Member and an opportunity for a hearing. The Association may also levy, without a membership vote, a Special Assessment against the Lots in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of this Declaration, any amendments thereto, any Supplemental Declaration, if applicable, and the Articles, the By-Laws, the Community-Wide Standards or the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board of Directors after notice to the Members from such Neighborhood and an opportunity for a hearing. For any Special Assessment levied for failure to comply with the Documents, the Association may add an administration charge equal to ten percent of such amount.

7. DECLARANT'S OBLIGATION FOR ASSESSMENTS

Beginning on the date of the recording hereof, and continuing so long as Declarant owns one or more Lots, Declarant shall pay the difference, if any, between the amount of Assessments payable by Owners other than Declarant and the actual Common Expenses incurred by the Association for each Assessment period unless Declarant otherwise elects to pay Assessments on its unsold Lots as described more fully below. If Declarant determines not to pay the difference between the amount of Assessments payable by Owners other than Declarant and the actual Common Expenses, then Declarant shall pay Assessments for the Lots which Declarant owns. Unless Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days prior to the end of the fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as the preceding fiscal year. Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of the same.

8. ESTABLISHMENT OF LIEN

Any and all Assessments, together with interest at a rate not to exceed the highest rate allowed by applicable usury law as computed from the date the delinquency first occurs, and such late charges and fines as may be established by the Board of Directors and costs and reasonable attorneys' fees may, upon compliance with applicable law, become a lien upon the Lot against which each Assessment is made and any other assets of the Owner. Each Assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the

Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance.

The Association, acting on behalf of its Members, shall have the power to bid for the Lot or the other portions of the property so affected at a foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which the Lot or the other property so affected is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association. Suit to recover a money judgment for unpaid Common Expenses and attorneys' fees shall be maintainable without foreclosure without waiving the lien securing the same.

RESERVE BUDGET AND CAPITAL CONTRIBUTION

The Board of Directors shall include in the budget each year a capital replacement reserve, which reserve shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

10. CAPITAL CONTRIBUTION

Upon the initial conveyance of each Lot after the date of the recording of this Declaration, a capital contribution shall be made by the purchaser of such Lot to the working capital of the Association in an amount to be determined by the Board of Directors from time to time, but in no event less than an amount equal to three (3) months of the Common Assessments for that year. This contribution shall be payable at the time the sale of the Lot is closed. The contribution required by this paragraph shall constitute an assessment against the Lot and shall be subject to the same lien rights as any other Assessment under this Declaration.

11. EXEMPT PROPERTY

Notwithstanding anything to the contrary herein, all Common Area, Exclusive Common Area, all property owned by Declarant (other than the Club Property), and all property dedicated by Declarant to utility companies or governmental authorities shall be exempt from payment of Common Assessments, Neighborhood Assessments, and Special Assessments.

ARTICLE X - MAINTENANCE

1. ASSOCIATION'S RESPONSIBILITY

The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded as herein provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement of roadways, waterways, preserves, landscaping, flora, fauna, structures and improvements which form the Common Area, and such portions of any additional property included within the Area of Common Responsibility as may be dedicated by this Declaration, a resolution of the Board, or by an agreement for maintenance by the Association. Notwithstanding anything to the contrary contained herein, to the extent that the Community's entrance feature, including landscaping improvements, signage or other improvements is located in whole or in part on any Lot on the Property, this area shall be deemed to be part of the Area of Common Responsibility for all purposes hereunder and the Association and its agents and designees shall have an easement over and across the Lot for ingress and egress to perform maintenance on this portion of the Area of Common Responsibility.

All costs associated with maintenance, repair and replacement of Areas of Common Responsibility shall be a Common Expense to be allocated among Lots as part of the Common Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Area of a particular group of Lots shall be an expense of and shall be assessed against the Lots which are benefited by Exclusive Common Area.

The Association shall also be responsible for exterior grounds maintenance within any Neighborhood and maintenance, repair and replacement of other property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. As provided in this Declaration, or any other written agreement, the Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those designated by Supplemental Declaration.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The costs of such maintenance shall be allocated among the benefited Lots as a Common Assessment, Neighborhood Assessment, or Special Assessment against a particular Lot, as the Board of Directors determines appropriate.

2. NEIGHBORHOOD ASSOCIATION'S RESPONSIBILITY

Any Neighborhood Association having responsibility for maintenance of all or a portion of the Property within a particular Neighborhood pursuant to Neighborhood Documents shall perform such maintenance responsibility in a manner consistent with the Community-Wide

Standard. If any such Neighborhood fails to perform its maintenance responsibility as required herein and in any Neighborhood Documents, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Article IX of this Declaration.

3. OWNER'S RESPONSIBILITY

Each Owner shall maintain his or her Lot, Unit and all parking areas and other improvements in connection therewith in accordance with Article V hereof and the Community-Wide Standards.

4. LANDSCAPE MAINTENANCE

In accordance with Article V, Section 4, the Board of Directors of the Association may adopt Community-Wide Standards regarding landscape maintenance and irrigation, including but not limited to frequency and quantity of maintenance and frequency, quantity and time of day of irrigation. All such Community-Wide Standards shall be adopted in accordance with good aeronautical practices. The Association may, but shall not be required to, provide landscape maintenance services to Lots on a voluntary contract basis. If an Owner fails to maintain the Owner's Lot in accordance with the Community-Wide Standards the Association, at its option, may maintain such Lot. The cost of landscape services shall be allocated among the Lots being maintained as a Special Assessment.

5. ASSESSMENTS

All maintenance required by Article X, Sections 3 and 4 shall be performed in a manner consistent with the Community-Wide Standards. If any Neighborhood Association or Owner fails to perform its or his or her maintenance responsibility in accordance with the Community-Wide Standards, the Association may perform it and assess all costs incurred by the Association plus an administrative surcharge equal to ten percent (10%) of the amount assessed against the Lot and the Owner thereof as a Special Assessment. Prior to entry, the Association shall afford the Owner ten (10) days' written notice to remedy a condition inconsistent with the Community-Wide Standards, except when entry is required due to an emergency.

6. SANCTIONS

Sanctions under the Documents may include reasonable monetary fines (as determined by the Board of Directors) and exclusion from the Property of any Builder, contractor, subcontractor, agent or other invitee who fails to comply with the provisions of the Documents. The Board of Directors shall, in addition, have the power to seek relief in any court for violations of the Documents or to abate nuisances.

ARTICLE XI - INSURANCE AND CASUALTY LOSSES

I. INSURANCE

The Board of Directors, or its duly authorized agent, shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to casualty insurance on the Common Area, the Association may, in its discretion or upon request of a Neighborhood obtain and continue in effect adequate blanket all-risk casualty insurance, if reasonably available, on all insurable improvements on the Exclusive Common Area within the Neighborhood. If all-risk insurance is not reasonably available, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate for one hundred percent (100%) of the replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Lots within the benefited Neighborhood as a Neighborhood Assessment.

Insurance obtained on the improvements within any Neighborhood, whether obtained by the Neighborhood Association or the Association, shall at a minimum comply with the applicable provisions of this Article XI, Section 1, including the provisions of this Article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to the Association and to the Neighborhood Association.

The Board of Directors shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have the liability limits established by the Board of Directors from time to time.

Premiums for all insurance on the Common Area shall be Common Expenses of the Association and shall be included in the Common Assessment. The policies may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement costs. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(b) All policies shall be written with a company authorized to do business in the State of Tennessee.

(b) All policies on the Common Area shall be for the benefit of the Association, its Members and Institutional Mortgagee, if any, as their interests may appear; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Institutional Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Board of Directors, provided, however, no Institutional Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Board of Directors be underwritten by a company not licensed to do business in the State of Tennessee. All policies shall be written with a company authorized to do business in the State of Tennessee.

(d) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified Persons.

(f) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, the Association's manager, Members, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of any one or more individual Members;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand, in writing, delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Member, or Institutional Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Members' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or nonrenewal.

In addition to the other insurance required by this Section, the Board of Directors shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three months' Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or nonrenewal.

2. DAMAGE AND DESTRUCTION

(a) Filing Claims. Immediately after damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to the Common Area or Exclusive Common Area shall be repaired or reconstructed unless the Class "B" Member and at least seventy-five percent (75 %) of the total votes eligible to be cast by the Class "A" Members of the Association if Common Area is damaged (or at least seventy-five percent (75%) of the total votes eligible to be cast by the Class "A" Members of the Neighborhood whose Exclusive Common Area is damaged) shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available, provided, however, such extension shall not exceed sixty (60) additional days. No Institutional Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area, Exclusive Common Area or Lots shall be repaired or reconstructed. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area or Exclusive Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Property shall be restored to their natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

DISBURSEMENT OF PROCEEDS

if the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area or the Exclusive Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Members and their Institutional Mortgagees as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Institutional Mortgagee of a Lot and may be enforced by such Institutional Mortgagee.

REPAIR AND RECONSTRUCTION

If the damage or destruction to the Common Area or to Exclusive Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Members on the same basis as provided for Common Assessments, provided, if the damage or destruction involves the Exclusive Common Area, only the Members of Lots in the affected Neighborhood shall be subject to Assessment therefor. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XII. - NO PARTITION

Except as is permitted in this Declaration or any amendments hereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property, nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE XIII. - CONDEMNATION

Whenever all or any part of the Common Area shall be taken, or conveyed under threat of condemnation by the Board of Directors by any authority having the power of condemnation or eminent domain, each Member shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Members to be distributed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant (as long as Declarant owns any portion of the Property) and Voting Members representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions of Article XI, Sections 3 and 4 regarding the disbursement of funds, and any required Assessments, in respect to casualty damage or destruction which is to be repaired shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, then such award or net funds shall be disbursed to the Association and used for such capital improvements as the Board of Directors of the Association shall determine.

ARTICLE XIV. EASEMENTS AND OTHER RIGHTS

It is the intent of Declarant that Declarant, the Association, any Neighborhood Association, the Club and the Owners shall be provided ingress and egress to the Property or portions thereof, in connection with exercising the rights and in carrying out the obligations set forth in the Documents, and any Supplemental Declaration. Declarant may, by separate instruments to be recorded in the public records of Hamilton County, Tennessee, grant exclusive and non-exclusive easements on, upon, over, across, through and under the Property for, among other things, the following purposes: (a) use of Common Area for all proper and normal purposes set forth herein; (b) ingress, egress and access to and from, through and between the Property; (c) inspecting any construction, proposed construction or improvements; (d) repairing or maintaining the Property, and any facilities or improvements thereon; (e) installing and maintaining the Community's utilities and drainage facilities; (f) encroachments for minor inaccuracies in survey, construction or reconstruction or due to settlement or movement; (g) grant golf balls; (h) maintenance, installation, construction and repair of utilities and facilities; and (i) a right of access to each Lot in favor of the Association or a Neighborhood Association for maintaining, repairing, replacing and preserving the Common Area. Notwithstanding the absence of a separate recorded document, the rights set forth in this Section shall still exist for the purposes intended in the Documents or as provided in any Supplemental Declaration.

Declarant, as owner of the Property, hereby grants to their successors or assigns, or other appropriate public or quasi-public utilities, the easements along and over all lots and property reflected on named plats, together with the right to construct, install operate and maintain, along said easements all conduits, cables, trans closures and other appliances and said facilities useful or necessary in connection therewith, for the underground transmissions and distribution of electric power, underground communication services, and natural gas service, upon, under and across said easements. Also granted hereby is the right to install and maintain underground service laterals from said easements to serve the homes and buildings on each lot.

ARTICLE XV - TELECOMMUNICATIONS AND SURVEILLANCE SYSTEMS;

LIMITED ACCESS

Declarant reserves unto itself and its designees, successors, assigns and licensees the right to enter into one or more contracts for the provision of one or more master telecommunications receiving and distribution systems and electronic surveillance systems (all or any part of which shall be referred to herein as the "System") for all or any part of the Community. The exact description, location and nature of the System has not yet been fixed or determined. Declarant will reserve for itself and its designees, successors, assigns and licensees a perpetual and exclusive right, privilege, easement and right-of-way across, over and upon the Property for the installation, construction and maintenance of the System together with a perpetual and exclusive right, privilege and easement of unlimited ingress and egress, access, over and upon the Property for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting the System. If and to the extent services provided by the System are to serve all of the Lots, then the cost of the System may be a Common Expense of the Association and shall be included in the Common Assessment. If any services provided by the System are provided only to some but not all of the Lots, then the cost of any such services may be an expense for the benefit of the Lots so served and shall be assessed as a Special Assessment against such Lots.

The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to limit access to the Property and make the Property safer than it otherwise might be. Neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security within the Property, and neither the Association, Declarant, nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and occupants of any Unit, and the tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association and its Board of Directors, Declarant, any successor of Declarant and the ARC do not represent or warrant that any fire protection system, burglar alarm system or other security system designated by or installed according to guidelines established by Declarant or the ARC may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, and occupant of any Unit, and each tenant, guest and invitee of any Owner, as applicable, acknowledges and understands that the Association, the Board of Directors, Declarant, or any successor of Declarant are not insurers and that each Owner and occupant of any Unit and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons, to Units and to the contents of Units and further acknowledges that the Association, the Board of Directors, Declarant, or any successor of Declarant have made no representations or warranties, nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems or other security systems recommended or installed or any security measures undertaken within the Community.

ARTICLE XVI - DECLARANT'S RIGHTS

1. PURPOSE

The purpose of this Article XVI is to set forth certain Declarant rights, and to refer, for ease of reference to, certain other Declarant rights set forth in this Declaration. The purpose of this Article XVI shall in no way be a limitation of any rights of Declarant otherwise set forth in this Declaration.

2. DURATION OF RIGHTS

The rights of Declarant set forth in this Declaration that refer to this Article XVI shall extend for a period of time ending when Declarant no longer owns any portion of the Property or the Additional Property or such earlier date as determined by Declarant, in its sole discretion.

3. DECLARANT'S RIGHTS IN THE ASSOCIATION

Prior to and after the turnover of the Association to the Owners and until Declarant no longer owns any portion of the Property or the Additional Property, whether Declarant exercises the right to appoint a majority of the Board of Directors or not, the Board shall have no authority to, and shall not, without the written consent of Declarant, which may be withheld for any or no reason whatsoever, undertake any action which shall:

- (a) prohibit or restrict in any manner the sales and marketing program of Declarant, or the leasing activities of Declarant;
- (b) decrease the level of maintenance services of the Association performed by the Board of Directors;
- (c) change the membership of the ARC or diminish its powers as stated herein;
- (d) alter or amend this Declaration, the Charter or the By-Laws;
- (e) terminate or waive any rights of the Association under this Declaration;
- (f) convey, lease, mortgage, alienate or pledge any easements, Common Area or Exclusive Common Area;
- (g) accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;
- (h) terminate or cancel any easements granted hereunder or by the Association;

- (i) terminate or impair in any fashion any easements, powers or rights of Declarant hereunder;
- (j) restrict Declarant's rights of use, access and enjoyment of any of the Property; or
- (k) cause the Association to default on any obligation of it under any contract or this Declaration.

In any such matter, Declarant's consent shall be exercised by its representative on the Board or other Person designated to so act by Declarant.

4. RIGHT OF DECLARANT TO DISAPPROVE ACTIONS

From the date of turnover of the Association by Declarant to the Owners and until the Declarant no longer owns any portion of the Property or the Additional Property, Declarant shall have a right to disapprove actions of the Board and any committees, as is more fully provided in this Section. Declarant's right shall be exercisable only by Declarant, its successors, and assigns who specifically take this power in a recorded instrument, or who become a successor Declarant pursuant to a recorded assignment or court order. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until ten (10) days following Declarant's receipt of notice of the action taken at the meeting held pursuant to the terms and provisions hereof. At any time prior to the expiration of such ten (10) day period, Declarant may exercise its right to disapprove actions of the Board and any committees and the Association shall not take any action or implement any policy, program or rule or regulation previously approved by the Association.

This right to disapprove shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

5. RECOGNITION BY OWNERS OF DECLARANT'S RIGHTS TO DEVELOP AND CONSTRUCT IMPROVEMENTS ON THE PROPERTY

Each Owner on his, her or its own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the completion of the development of the Community may occur over an extended period of time and that incident to such development and the construction associated therewith the quiet use and enjoyment of the Property and each portion thereof may be temporarily interfered with by the development and construction work occurring on those portions of the Property and the Additional Property owned by Declarant or its successors and assigns. Each Owner, on behalf of such Owner's heirs, personal representatives, successors, mortgagees, and lienors does hereby waive all claims for interference with such quiet enjoyment and use as a result of the

development and construction of any portion of the Property or the Additional Property. Each Owner on behalf of such Owner's heirs, personal representatives, successors, mortgagees, licensors and assigns agrees that the development, construction and completion of the Property and the Additional Property may interfere with such Owner's original and existing views, light and air and diminish the same and each such Owner or such Owner's behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, and licensors does hereby release Declarant and its successors in interest and others involved from all claims that they may have in connection therewith.

6. DECLARANT'S RIGHTS IN CONNECTION WITH DEVELOPMENT

The completion of that work and the sale, resale, rental and other disposal of Lots are essential to the establishment and welfare of the Community. In order that said work may be completed and the Community established as a fully occupied Community as rapidly as possible, neither the Association nor any Owner shall do anything to interfere with Declarant's or any Builder's activities. Without limiting the generality of the foregoing, nothing in this Declaration or the Articles or the By-Laws or any amendment thereto shall be understood or construed to prevent Declarant, its successors or assigns, or its or their contractors or subcontractors and their representatives from:

- (a) doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation, the alteration of its construction plans and designs as Declarant or any Builder deems advisable in the course of development (all models or sketches showing plans for future development may be modified by Declarant at any time and from time to time, without notice); or
- (b) erecting, constructing and maintaining on any property owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing Cummings Cove as a community and disposing of the same by sale, lease or otherwise; or
- (c) conducting on any property owned or controlled by Declarant or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements on such property and of disposing of Lots therein by sale, resale, lease, or otherwise.

Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas so long as Declarant, via any portion of the Property or the Additional Property primarily for development and/or resale, provided no such easement shall materially interfere with the use of Common Area by the Members.

FUTURE EASEMENTS AND MODIFICATIONS

Declarant reserves the right to grant, modify or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way, to modify the boundary lines and to plat or replat portions of the Property and the Additional Property, for development of the Community. The Association and each Owner and mortgagee of a portion of the Property agree to execute and deliver any and all agreements, documents, plats and instruments which are necessary or desirable to accomplish the same.

5. CONSTRUCTION, MARKETING

It is the intention of the fact that Declarant will have a continuing and substantial interest in the development and administration of the Property and the Additional Property. Declarant hereby reserves for itself, its successors, designees and assigns, the right to grant easements over, under and through and use the Common Area and use all other portions of the Property owned by Declarant or the Association in conjunction with and as part of its program of selling, leasing, constructing, marketing, and developing any property owned or controlled by Declarant or its successors, designees or assigns including, but not limited to, the right to carry on construction and to enter and transact business, maintain models and sales, resales and rental offices, place signs, employ sales rental personnel, show Lots and Units owned by Declarant, and use portions of the Property, Lots, Units and other improvements owned by Declarant or the Association for purposes set forth above and for storage of construction materials and for construction and assembling construction components without any cost to Declarant and its successors, nominees and assigns for such rights and privileges.

In addition Declarant, its successors, designees and assigns, shall have the right to construct, maintain and use a sales, resales, rental, and construction offices within the Community. Any models, sales areas, sales, resales or rental center, parking areas, construction office, signs and any other designated areas or other property pertaining to the sale, construction and marketing efforts of Declarant shall not be part of the Common Area or Exclusive Common Area and shall remain the property of Declarant or its nominees, as the case may be.

Declarant shall have the right to construct, maintain and repair structures and landscaping and other improvements to be located on any portion of the Property owned by Declarant or the Association as Declarant deems necessary or appropriate for the development of any portion of the Property or the Additional Property. Declarant's use of any portion of the Property or the Additional Property as provided in this Section shall not be a violation of the Documents. Notwithstanding anything to the contrary herein, the right of Declarant to maintain a resale office on any portion of the Property or the Additional Property owned by Declarant or the Association and to use the Common Area in connection therewith shall be for a term coterminous with the term of the Declaration and shall not terminate at the expiration of the time described in Article XVI, Section 2 above.

9. SCOPE

The rights and privileges of Declarant, its successors, designees and assigns, as herein set forth or referred to above are in addition to and in no way limit any other rights or privileges of Declarant, its successors, designees and assigns, under any of the Documents. The provisions above, like other provisions of this Declaration, grant or reserve rights to and for Declarant that may not be suspended, superseded or modified in any manner unless same is consented to by Declarant, and such rights may be assigned in writing by Declarant in whole or in part as Declarant deems appropriate. As used in this Declaration, the words "its successors or assigns" specifically do not include purchasers of Lots unless specifically designated as such in a Supplemental Declaration.

ARTICLE XVII. - GENERAL PROVISIONS

1. TERM

The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or the Owner of any portion of the Property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date of the recording of this document; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants, in whole or in part or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

2. AMENDMENT

Until the Turnover Date, Declarant may amend this Declaration in its sole and absolute discretion. After the Turnover Date, Declarant may amend this Declaration in its sole and absolute discretion at any time and from time to time if such amendment is (i) necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on a Lot; (iii) required by an institutional lender or a government mortgage agency or purchaser of mortgage loans, to enable the same to make, insure or purchase mortgage loans on a Lot; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on a Lot subject to this Declaration; or (v) correct any stenographic, scrivener's or surveyor's error or any error of a like nature, provided, however, any such amendment shall not adversely affect the title to a Lot unless the Owner thereof shall consent thereto in writing.

After the Turnover Date and so long as it still owns any part of the Property or the Additional Property for development, Declarant may amend this Declaration in its sole and absolute discretion for any other purpose, provided the amendment has no materially adverse effect upon the rights of any Owner of a Lot.

After the Turnover Date, (i) any non-Declarant initiated amendment, or (ii) any Declarant initiated amendment which has a materially adverse effect upon the rights of an Owner of a Lot, shall require the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Voting Members representing sixty-seven percent (67%) of the total votes in the Association (other than Declarant), and the consent of Declarant so long as Declarant owns any portion of the Property or the Additional Property. However, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of the Club without the written consent of the Club or the assignee of such right or privilege.

3. SEVERABILITY

In the event of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

4. LITIGATION

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast in the Association. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration, (ii) the imposition and collection of Assessments as provided in Article IX hereof, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Association in proceedings instituted against it. In the event any claim is made against Declarant or the Club by the Association or any litigation is instituted against Declarant or any of its affiliates by the Association, then the Association shall assess all Members (other than the Declarant) for the costs of claim or litigation, including without limitation attorneys' fees incurred, and funds from Common Assessments shall not be used for any such claim or litigation. In any judicial or administrative proceeding, the prevailing party shall be entitled to receive reasonable attorneys' fees costs.

5. NOTICE OF TRANSFER OF LOT

In the event that any Owner desires to sell or otherwise transfer title to a Lot, such Owner shall give the Board of Directors at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board of Directors may reasonably require. The transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner or the Lot, including payment of all Assessments, accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for Assessments accruing subsequent to the date of transfer. In the event that upon the

conveyance of a Lot, an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Lot, the transferring Owner shall remain liable for Assessments accruing on the Lot after the date of conveyance.

6. USE OF WORDS "CUMMINGS COVE"

No person shall use the words "Cummings Cove" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the term "Cummings Cove" in printed or promotional materials where such term is used solely to specify that a particular property is located within the Community.

7. ASSIGNMENT OF RIGHTS

Declarant shall have the right, in its sole and absolute discretion, to assign all or part of its rights under this Declaration.

8. NOTICE OF MORTGAGEE ACTION

In the event any Owner desires to mortgage his or her Lot, such Owner shall require that the deed of trust or mortgage specifically provide that in the event of foreclosure or the exercise of any remedy set forth in the instrument, the beneficiary or mortgagee shall acquire the Lot subject to this Declaration.

9. INDEPENDENT BUILDERS

The Property is a master planned community being developed by the Declarant. The individual buildings constructed within the Property may be constructed by Declarant, Builders or others who are independent contractors who purchase unimproved Lots from Declarant. If a building is constructed by a person or entity other than Declarant, Declarant shall have no liability whatsoever for such Builder's activities, whether direct or indirect, including, without limitation, marketing or construction of the building or actions of any principal, officer, trustee, partner, agent or subcontractor.

10. OCCUPANT'S BOUND

All provisions of the Documents including the Community-Wide Standards and use restrictions promulgated pursuant thereto, which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to occupants of his or her Unit. Every Owner shall cause all occupants of his or her Unit to comply with this Declaration, the Articles, the By-Laws, the Rules and Regulations and the Community-Wide Standards adopted pursuant thereto, and shall be responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Documents and the Community-Wide Standards adopted pursuant thereto.

11. EASEMENT FOR VIEW

Each Owner further acknowledges that neither Declarant, nor any builder, nor any Person acting on behalf of Declarant or any Builder, has made or is authorized to make, any representation or commitment that any view of the Club Property or any other vistas shall be preserved, protected or remain unobstructed, and there are no express or implied easements for view purposes appurtenant to any Lot.

12. POWER OF ATTORNEY

Each Owner hereby unconditionally and irrevocably appoints the Association and the Declarant as its true and lawful attorney-in-fact, coupled with an interest, to execute any and all documents and take any and all actions necessary or desirable to fulfill the purposes and intentions of this Declaration.

ARTICLE XVIII. - MORTGAGEE PROVISIONS

The following provisions are for the benefit of Institutional Mortgagees. The provisions of this Article apply to both this Declaration and to the Charter, notwithstanding any other provisions contained therein.

1. NOTICES OF ACTION

An Institutional Mortgagee who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the number of the Lot or Unit as the case may be, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which a first mortgage is held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by any Owner of a Lot subject to the mortgage of such eligible holder; or
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

2. NOTICE TO ASSOCIATION

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

ARTICLE XIX. - CABLE TELEVISION

1. SERVICE

Tier, remotes, pay channels and other services may be offered by the cable provider on an individual subscriber basis.

2. EASEMENTS

Declarant and the Association shall have the right to grant easements to the cable provider for installation, maintenance and repair of the cable television system, including without limitation head-ends, wiring, switches and amplifiers. The cable provider shall also have the right to use easement area dedicated for utilities. Notwithstanding anything to the contrary, the cable provider shall retain ownership of all cable television equipment installed within the Community.

3. PREWIRE

The cable provider shall be permitted to pre-wire each Unit constructed within the Community for cable television service at its sole cost and expense. Each Owner acknowledges that the prewire installed within the Unit shall be and remain personal property of the cable provider. Owners shall have no ownership interest in the prewire and the right of use thereof shall remain solely with the cable provider. Each Owner by acceptance of title to a Unit hereby acknowledges that Declarant shall reserve an irrevocable right which may be assigned to any cable provider to install and maintain the prewire in the Unit and agrees not to permit any other provider of cable television to utilize the prewire without the prior written consent of the cable provider, which consent may be withheld by the cable provider in its discretion.

ARTICLE XX. - CLUB PROPERTY

1. CLUB PROPERTY

The Club Property is privately owned and operated by the Club and is not a part of the Common Area hereunder. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots or Units within the Community, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Property, to transfer any or all of its rights to the Club Property or the operation thereof to anyone and on any terms which it deems appropriate, to limit the availability of use privileges, and to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for use privileges. OWNERSHIP OF A LOT OR UNIT OR

ANY PORTION OF THE PROPERTY OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot acknowledges:

(a) That privileges to use the Club Property shall be subject to the terms and conditions of the membership documents for the Club, as the same may be amended from time to time (the "Membership Plan Documents"). Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership contribution or membership deposit, and membership dues, fees and charges. These amounts shall be determined by the Club as set forth in the Membership Plan Documents for the Club. Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot releases and discharges forever the Declarant, the Club and their owners, members, partners, officers, directors, employees, agents and affiliates, from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Owners; and/or (2) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Lot without acquiring a membership in the Club, paying the applicable membership contribution or membership deposit, and dues, fees and charges established by the Club from time to time, and complying with the terms and conditions of the Membership Plan Documents for the Club.

Each Owner and the Association shall jointly and severally indemnify, defend, and hold harmless the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates and their successors and assigns, against and in respect of, and to reimburse the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that the Declarant, its owners, members, partners, employees, agents, directors, shareholders, officers and affiliates shall incur or suffer, which arise out of, result from, or relate to any claim that because the Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, the Club Property must be owned and/or operated by the Association or the Owners and/or that Owners may use the Club Property without acquiring a membership in the Club pursuant to the Club's Membership Plan Documents and paying the membership contribution or membership deposit, and dues, fees and charges established by the Club from time to time.

(b) That any entry upon the Club Property without permission of the Club may be deemed a trespass, and each Owner shall refrain from, and shall cause all occupants of such Owner's Lot, their guests and invitees to refrain from, any unauthorized entry upon the Club Property;

(c) That the proximity of Lots and Common Area to the Club Property results in certain foreseeable risks, including the risk of damage or injury from errant golf balls, and that

each Owner's use and enjoyment of his or her Lot and the Common Area may be limited as a result and that neither the Association, Declarant nor the Club shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to any Owner or occupant of any Lot, their guests or invitees, for damage or injury resulting from errant golf balls being hit upon any Lots or Common Area.

(d) That the Club and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of the Club Property, including changing the location, configuration, size and elevation of bunkers, fairways and greens and constructing fences, and that neither the Club, Declarant, nor the Association, shall have any liability to Owner as a result of such modifications to the Club Property;

(e) That there are no express or implied easements over the Club Property for view purposes, and no guaranty or representation is made by Declarant or any other Person that any view over and across the Club Property will be preserved without impairment, and that neither the Club, Declarant nor the Association shall have any obligation to prune or thin trees or other landscaping to preserve views over the Club Property;

(f) That no representations or warranties which are inconsistent with this Section, either verbal or written, have been made or are made by Declarant or the Association or by any person acting on behalf of any of the foregoing; and

(g) That Club may own one or more lakes on the Property. Notwithstanding the ownership of such lakes, the Club may use any and all lakes on the Property for the purpose of irrigating and maintaining the Club Property with the result that the water level in such lakes may from time to time vary. Each Owner of a Lot in the Community acknowledges such right on the part of the Club and agrees not to commence any cause of action or other proceeding involving the Club based on the exercise of such right or otherwise interfere therewith.

In the event there are insufficient water levels to provide the necessary irrigation needs of the Club Property and all other areas of the Property, subject to applicable governmental permits and requirements, the Club Property shall have first priority of irrigation, followed by the Common Area, any other Area of Common Responsibility, and any Exclusive Common Area within a Neighborhood.

2. RIGHTS OF ACCESS AND PARKING

Declarant shall grant the Club and members of the Club (regardless of whether such Persons are Members hereunder), their guests and invitees and the employees, agents, contractors, and designees of the Club a non-exclusive easement of access and use over all roadways located within the Property reasonably necessary to travel to and from the entrance to the Community from and to the Club Property, respectively, and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Club Property. Without limiting the generality of the foregoing, members of the Club and permitted members of the public shall have the right to

park their vehicles on the roadways located within the Property at reasonable times before, during, and after tournaments and other similar functions held at the Club Property.

3. ASSUMPTION OF RISK AND INDEMNIFICATION

Each Owner by its purchase of a Lot expressly assumes the risk associated with the Club Property (regardless of whether the Owner is using the Club Property) and agrees that neither Declarant, the Club, the Association, nor any of their affiliates or agents nor any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Owner's Lot or Unit shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution, or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Common Area to the Club Property including, without limitation, any claim arising, in whole or in part, from the negligence of declarant, or any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Owner's Lot or Unit. Owner hereby agrees to indemnify and hold harmless Declarant and any other entity owning or managing the Club Property against any and all claims by Owner's guests and invitees.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 24th day of February, 1999.


CUMMINGS COVE, LLC
a Tennessee limited liability company

By: 
Its: CLAUDE WALKER

STATE OF TENNESSEE :
 :
COUNTY OF HAMILTON :

Before me, a Notary Public of the state and county aforesaid, personally appeared (name) James I. Chapin, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be (title) Chief Manager of Cummings Cove, LLC, the within named bargainor, a limited liability company, and that he as such (title) Chief Manager executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as (title) Chief Manager

WITNESS my hand and seal, at office in (county, state) Hamilton County, Tennessee this 24th day of February, 1999.


Wanda V. Hay
Notary Public

My Commission Expires 05-01-03

Book and Page: 61 5295 696

JOINDER

The undersigned hereby joins in this Declaration this 25th day of Feb, 1999.

CUMMINGS COVE COMMUNITY
ASSOCIATION, INC.,
a Tennessee nonprofit corporation

By: James I. Chapin
Jr. CHIEF Executive Officer

STATE OF TENNESSEE :
: COUNTY OF HAMILTON :

Before me, a Notary Public of the state and county aforesaid, personally appeared (name) James I. Chapin, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be (title) President of Cummings Cove Community Association, Inc., the within named bargainer, a corporation, and that he as such (title) President executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as (title) President.

24th WITNESS my hand and seal, at office in (county, state) Hamilton County, Tennessee this day of February, 1999.

Vendra V. Sharp
Notary Public

My Commission Expires: 05-01-02

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EXHIBIT A - LEGAL DESCRIPTION OF THE PROPERTY

The Property which is subject to this Declaration shall refer to the real property legally described as follows, as the same may be supplemented from time to time by a Supplemental Declaration filed in accordance with the Declaration:

SEE ATTACHED LEGAL DESCRIPTION

that tract of parcel of land lying and being in Hamilton County, Tennessee, being a part of Sections Ten (10), Eleven (11), Fourteen (14), and Fifteen (15), Township Two (2) South, Range Five (5), West of the Basis Line, Cooper District, and being more particularly described as follows:

BEGINNING at a 5/8" rebar with a cap where the section line between Sections 10 and 11 intersects the southerly right of way line of Wm Cummings Highway, which is also U.S. Highways 41 and 72 and has an 90-foot right of way, thence South 20 degrees 43 minutes 24 seconds West, 27 80 feet to a 5/8" rebar with a cap on the western right of way line of Cummings Road; thence along the western right of way line of Cummings Road the following courses and distances: with a curve to the right having a delta angle of 34 degrees 45 minutes 06 seconds, a radius of 100 00 feet and an arc length of 60.65 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 37 degrees 24 minutes 57 seconds, a radius of 400 00 feet, and an arc length of 313.45 feet to a 5/8" rebar with a cap, with a curve to the right having a delta angle of 55 degrees 24 minutes 43 seconds, a radius of 543.70 feet, and an arc length of 525 82 feet to a 5/8" rebar with a cap, South 15 degrees 12 minutes 38 seconds West, 110.85 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 16 degrees 33 minutes 27 seconds, a radius of 600 00 feet, and an arc length of 213.77 feet to a 5/8" rebar with a cap, South 87 degrees 39 minutes 11 seconds West, 5 00 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 08 degrees 01 minutes 51 seconds, a radius of 100 00 feet, and an arc length of 93 21 feet to a 5/8" rebar with a cap, South 10 degrees 37 minutes 40 seconds West, 111.77 feet to a 5/8" rebar with a cap, South 10 degrees 22 minutes 40 seconds West, 5 00 feet to a 5/8" rebar with a cap, South 79 degrees 37 minutes 20 seconds East, 77.63 feet to a 5/8" rebar with a cap, South 10 degrees 22 minutes 40 seconds East, 18 degrees 29 minutes 22 seconds East, 5 00 feet to the right having a delta angle of 111.35 feet to a 5/8" rebar with a cap, with a cap, with a curve to the right having a delta angle of 11 degrees 11 minutes 30 seconds, a radius of 345 00 feet, and an arc length of 111.35 feet to a 5/8" rebar with a cap, South 81 degrees 55 minutes 10 seconds East, 15 00 feet to a 5/8" rebar with a cap, with a curve to the right having a delta angle of 21 degrees 35 minutes 47 seconds, a radius of 350 00 feet, and an arc length of 135 69 feet to a 5/8" rebar with a cap, South 60 degrees 17 minutes 22 seconds East, 5 00 feet to a 5/8" rebar with a cap, with a curve to the right having a delta angle of 05 degrees 29 minutes 11 seconds, a radius of 365 00 feet, and an arc length of 34.95 feet to a 5/8" rebar with a cap, South 35 degrees 11 minutes 49 seconds West, 83.07 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 13 degrees 06 minutes 41 seconds, a radius of 328 50 feet, and an arc length of 75.17 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 11 degrees 48 minutes 19 seconds, a radius of 338.50 feet, and an arc length of 69 84 feet to a 5/8" rebar with a cap, South 78 degrees 44 minutes 12 seconds East, 10 00 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 31 degrees 41 minutes 47 seconds, a radius of 328 50 feet, and an arc length of 181.73 feet to a 5/8" rebar with a cap, South 21 degrees 25 minutes 59 seconds West, 161.70 feet to a 5/8" rebar with a cap, South 21 degrees 47 seconds, a radius of 328 50 feet, and an arc length of 328 50 feet, being the western boundary of the property conveyed to SunTrust Bank as trustee by deed recorded in Book 4725, Page 418, Register's Office, Hamilton County, Tennessee, thence along the approximate center line of Etha Mountain Road the following courses and distances: North 61 degrees 36 minutes 00 seconds West, 69 18 feet, South 67 degrees 03 minutes 01 seconds West, 101.41 feet, South 77 degrees 28 minutes 10 seconds West, 208.01 feet, North 56 degrees 31 minutes 34 seconds West, 300 29 feet, South 75 degrees 31 minutes 54 seconds West, 31.28 feet, South 33 degrees 42 minutes 43 seconds West, 121 85 feet, South 46 degrees 27 minutes 30 seconds West, 200 03 feet, South 43 degrees 22 minutes 27 seconds West, 778 39 feet, South 05 degrees 33 minutes 39 seconds West, 73 94 feet, South 14 degrees 40 minutes 31 seconds West, 62 30 feet, South 78 degrees 01 minutes 14 seconds West, 68 60 feet, South 27 degrees 05 minutes 05 seconds West, 68 58 feet, South 03 degrees 02 minutes 14 seconds East,

146.41 feet South 05 degrees 06 minutes 23 seconds West, 262.87 feet South 18 degrees 59 minutes 15 seconds West, 52.63 feet South 34 degrees 17 minutes 09 seconds West, 74.08 feet South 09 degrees 00 minutes 13 seconds West, 99.96 feet South 25 degrees 52 minutes 34 seconds West, 153.67 feet South 27 degrees 53 minutes 33 seconds West, 43.68 feet South 41 degrees 37 minutes 07 seconds West, 91.40 feet South 57 degrees 27 minutes 23 seconds West, 69.51 feet South 67 degrees 25 minutes 56 seconds West, 22.84 feet South 80 degrees 53 minutes 58 seconds West, 39.77 feet North 09 degrees 44 minutes 11 seconds West, 88.08 feet South 79 degrees 31 minutes 57 seconds West, 50.12 feet South 65 degrees 21 minutes 02 seconds West, 36.36 feet South 54 degrees 10 minutes 53 seconds West, 56.84 feet South 44 degrees 44 minutes 25 seconds West, 57.00 feet South 35 degrees 15 minutes 08 seconds West, 167.10 feet to a 5/8" rebar with a cap on the common line of Sections 14 and 23; thence along the common line of Sections 14 and 23, North 66 degrees 56 minutes 47 seconds West, 1320.00 feet to an iron pipe in a pile of stones, being the common corner of Sections 14, 15, 22, and 23, said iron pipe being the southeastern corner of the property conveyed to Cummings Cove, LLC, by deed recorded in Book 5268, Page 966, R.O.H.C.; thence along the dividing line of Sections 15 and 22, North 67 degrees 19 minutes 20 seconds West, 2623.85 feet (prior deed states North 66 degrees 10 minutes 53 seconds East 2640 feet) to a pile of stones, thence North 26 degrees 35 minutes 37 seconds East, 836.82 feet (prior deed states North 21 degrees 30 minutes East, 810.0 feet) to a 5/8" rebar with a cap; thence North 67 degrees 25 minutes 23 seconds West, 1077.67 feet (prior deed states North 67 degrees 38 minutes 56 seconds West, 1077.67 feet) to a concrete monument, being the southeastern corner of the property conveyed to Raccoon Mountain Campground, Inc., as recorded in Deed Book 4505, Page 717, R.O.H.C.; thence along the eastern line of Raccoon Mountain Campground, Inc., North 22 degrees 32 minutes 55 seconds East, 376.22 feet (prior deed states North 21 degrees 30 minutes East, 375.85 feet) to a cut cross, being the southwestern corner of the property conveyed to Chattanooga Sides, LLC, as recorded in Deed Book 2479, Page 936, R.O.H.C.; thence along the line of Chattanooga Sides, LLC, the following courses and distances: South 88 degrees 43 minutes 05 seconds East, 3058.47 feet (prior deed states South 86 degrees 43 minutes 52 seconds East, 3075.0 feet) to an iron pipe, North 32 degrees 47 minutes 13 seconds East, 828.43 feet (prior deed states North 33 degrees 24 minutes East, 828.43 feet) to a concrete monument, North 46 degrees 07 minutes West, 670.0 feet to an iron pipe on the western right of way line of Lillian Cummings Drive, said pipe being on the southern line of the property conveyed to Raccoon Mountain Campground, Inc., as recorded in Deed Book 4505, Page 717, R.O.H.C.; thence crossing the right of way line of Lillian Cummings Drive, North 02 degrees 30 minutes 20 seconds East, 517.4 feet (prior deed states North 29 degrees 02 minutes East, 517.0 feet) to an iron pipe; thence along the southern line of Raccoon Mountain Campground, Inc., North 26 degrees 26 minutes 55 seconds East, 431.15 feet, being the southwestern corner of the property conveyed to John McNease as recorded in Deed Book 4409, Page 563, R.O.H.C.; thence along the line of McNease the following courses and distances: North 42 degrees 19 minutes 49 seconds East, 149.43 feet (prior deed states North 42 degrees 19 minutes 58 seconds East, 149.42 feet) to an iron pipe, North 44 degrees 19 minutes 58 seconds East, 55.14 feet (prior deed states North 23 degrees 56 minutes 29 seconds East, 55.18 feet) to an iron pipe, North 04 degrees 58 minutes 50 seconds West, 42.77 feet (prior deed states North 04 degrees 29 minutes 32 seconds West, 42.77 feet) to an iron pipe, North 29 degrees 05 minutes 53 seconds West, 81.79 feet (prior deed states North 31 degrees 14 minutes 10 seconds West, 88.22 feet) to an iron pipe, North 05 degrees 56 minutes 13 seconds West, 146.37 feet (prior deed states North 05 degrees 24 minutes 14 seconds West, 151.39 feet) to an iron pipe, South 09 degrees 02 minutes 57 seconds West, 223.27 feet (prior deed states South 09 degrees 33 minutes 26 seconds West, 223.27 feet) to a 5/8" rebar with a cap, North 71 degrees 33 minutes 34 seconds West, 51.04 feet (prior deed states North 73 degrees 28 minutes 51 seconds West, 51.13 feet) to an iron pipe, North 60 degrees 37 minutes 36 seconds West, 180.30 feet (prior deed states North 61 degrees 25 minutes 07 seconds West, 179.74

feet) to an iron pipe, South 26 degrees 26 minutes 00 seconds West, 42.06 feet (prior deed states South 27 degrees 23 minutes 10 seconds West, 41.63 feet) to a cut cross. South 31 degrees 55 minutes 15 seconds West, 104.18 feet (prior deed states South 32 degrees 31 minutes West, 104.16 feet) to a 5/8" rebar with a cap. South 71 degrees 19 minutes 09 seconds West, 59.38 feet (prior deed states South 72 degrees 05 minutes West, 154.54 feet) to a 5/8" rebar with a cap, being a corner of Raccoon Mountain Campground, Inc.; thence leaving the McWade property, North 16 degrees 37 minutes 33 seconds West, 87.04 feet (prior deed states North 15 degrees 32 minutes West, 115.14 feet) to an iron pipe; thence North 75 degrees 45 minutes 20 seconds West, 238.62 feet (prior deed states North 75 degrees 12 minutes West, 476.77 feet) to a 5/8" rebar with a cap; thence North 42 degrees 45 minutes 23 seconds West, 476.77 feet (prior deed states North 42 degrees 07 minutes West, 476.77 feet) to a 5/8" rebar with a cap on the southern right of way line of Lillian Cummings Drive, a 50-foot right of way; thence along the southern right of way line of Lillian Cummings Drive the following courses and distances: with a curve to the right having a delta angle of 17 degrees 29 minutes 48 seconds, a radius of 219.54 feet, and an arc length of 67.02 feet) to a 5/8" rebar with a cap, North 51 degrees 11 minutes, and an arc length of 130.54 feet (prior deed states North 52 degrees 05 degrees 33 minutes 15 seconds East, 130.54 feet (prior deed states North 52 degrees 05 minutes, and an arc length of 67.02 feet) to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 23 degrees 09 minutes 08 minutes 52 seconds) to a 5/8" rebar with a cap, with 28 degrees 21 minutes 41 seconds East, 54.63 feet) to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 37 degrees 47 minutes 21 seconds, a radius of 231.23 feet, and an arc length of 354.65 feet; (prior deed states a delta angle of 187 degrees 45 minutes 52 seconds, and an arc length of 354.72 feet) to an iron pipe; South 53 degrees 48 minutes 58 seconds East, 233.21 feet (prior deed states South 53 degrees 15 minutes East, 233.30 feet) to an iron pipe on the southeastern right of way line of West Hills Drive (a 125-foot right of way), said iron pipe being at the terminus of Lillian Cummings Drive as it intersects West Hills Drive; thence along the southeastern right of way line of West Hills Drive, North 36 degrees 31 minutes 28 seconds East, 542.50 feet (prior deed states North 37 degrees 05 minutes 26 seconds East, 551.50 feet) to a 5/8" rebar on the southern right of way line of Will Cummings Highway (U.S. Highways 41 and 72), thence along the southern right of way line of Will Cummings Highway the following courses and distances: with a curve to the left having a delta angle of 17 degrees 53 minutes 46 seconds, a radius of 1169.55 feet, and an arc length of 364.99 feet (prior deed states an arc length of 365.07 feet) to a 5/8" rebar with a cap. South 67 degrees 52 minutes 29 seconds East, 245.95 feet (prior deed states South 67 degrees 19 minutes 46 seconds East, 245.05 feet) to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 14 degrees 59 minutes 07 seconds, a radius of 1225.34 feet, and an arc length of 320.48 feet to a 5/8" rebar with a cap, with a curve to the left having a delta angle of 01 degrees 32 minutes 14 seconds, a radius of 18,735.25 feet, and an arc length of 502.81 feet to a 5/8" rebar with a cap. South 84 degrees 23 minutes 51 seconds East, 435.85 feet (prior deed states South 83 degrees 51 minutes 08 seconds East, 435.85 feet) to a 5/8" rebar with a cap, with a curve to the right having a radius of 31.44 feet, an arc length of 18.98 feet, and a chord of South 57 degrees 51 minutes 34 seconds East, 18.69 feet (prior deed states South 66 degrees 33 minutes 51 seconds East, 18.69 feet) to the point of beginning. All as shown on a survey by Betts Engineering Associates, Inc., Drawing Number G411.9-203 Sheets 1, 2, and 3, dated January 29, 1992.

Grantor's source of equitable title in the above described property can be found in a deed of record in Book 5295, Page 700, in the Register's office of Hamilton County, Tennessee.

EXHIBIT B - LEGAL DESCRIPTION OF THE ADDITIONAL PROPERTY

NONE

Book and Page: 61 5295 702

EXHIBIT C - BY-LAWS

SEE ATTACHED

Book and Page: G1 5295 703

CUMMINGS COVE
COMMUNITY ASSOCIATION, INC.

BY-LAWS

(132774US990340317890.DOC)

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ARTICLE I. - IDENTITY

1. NAME

The name of the corporation is Cummings Cove Community Association, Inc. (the "Association").

2. REGISTERED OFFICE

The initial registered office of the Association is at 1000 Tallan Building, Two Union Square, Chattanooga, Tennessee 37402.

3. ADOPTION

These By-Laws have been adopted by the Board of Directors as the By-Laws of the Association.

4. DEFINITIONS

Terms used in these By-Laws which are defined in the Declaration of Covenants, Conditions and Restrictions for Cummings Cove (the "Declaration") shall have the same meaning in these By-Laws as in the Declaration.

ARTICLE II. - POWERS AND DUTIES OF THE ASSOCIATION AND THE EXERCISE THEREOF

The Association shall have all powers granted to it by Tennessee law, the Declaration, the Charter, and these By-Laws. All granted powers shall be exercised by the Board of Directors unless the exercise thereof is otherwise restricted in the Declaration, the Charter, these By-Laws, the Tennessee Nonprofit Corporation Act (the "Act") or by applicable law.

ARTICLE III. - MEMBERSHIP

I. MEMBERSHIP, VOTING

The Association shall have three (3) classes of membership, Class "A" Membership, Class "B" Membership, and Class "C" Membership, as follows:

- (a) Class "A" Membership. Class "A" Members shall be all Owners of fee title to Lots other than Declarant. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold fee title.
- (b) Class "B" Membership. The Class "B" Member shall be Declarant until Turnover Date, after which time Declarant shall be a Class "A" Member. The Class "B" Member shall be entitled to five (5) votes for each Lot owned by Declarant. The Class "B" Member shall be entitled to appoint all of the members of the Board of Directors prior to the Turnover Date (as hereinafter defined). On the Turnover Date, the Class "B" Membership shall terminate and Declarant shall become a Class "A" Member and shall be entitled to one (1) vote for each Lot owned by Declarant.
- (c) Class "C" Membership. The Class "C" Member shall be the owner of the Club Property. The Class "C" Member shall be entitled to ten (10) votes. On and after the Turnover Date, the Class "C" Member shall be entitled to appoint one of the members of the Board of Directors as herein provided.

Voting rights may be exercised by a Member or the Member's spouse. In any situation where more than one Person holds an interest in a Lot, the vote for the respective Lot shall be exercised by any such Person, provided, however, the Persons holding the interest in the Lot shall notify the Secretary of the Association, in writing, prior to or during any meeting of the manner in which the vote for the Lot is to be exercised and, in the absence of such notice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. The voting rights of a Member that is a company or other form of entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary.

2. TURNOVER DATE

The Turnover Date shall occur within sixty (60) days after the occurrence of the earlier of the following conditions:

- (i) the sale to Persons other than Declarant or Builders of all of the Lots intended to be developed within the Property and the Additional Property; or
- (ii) such earlier date as determined by the Class "B" Member, in its sole and absolute discretion.

ARTICLE IV. - MEMBERS' MEETINGS

1. DATE AND PLACE OF MEETINGS

Meetings of the Members shall be held on the date and at such place in Hamilton County, Tennessee or such other place as may be designated by the Board of Directors from time to time.

2. ANNUAL MEETINGS

Each year after the Turnover Date, an annual meeting shall be held for the purpose of receiving reports of officers, committees, and others, to elect members of the Board of Directors and to transact such other business as may be properly brought before the meeting.

3. SPECIAL MEETINGS

The President of the Association or the Board of Directors may call special meetings of the Members. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or, if after the Turnover Date, upon a petition signed by ten percent (10%) of the total votes of the Members of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

4. NOTICE OF MEETINGS

Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally, by mail or any other manner permitted by applicable law, to each Member, not more than two (2) months, nor less than ten (10), days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association.

Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in a signed writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting by a Member, either in person or by proxy, shall be deemed a waiver by such Member of notice of the time, date, place, and purpose thereof, unless such Member or his or her proxy, as the case may be, specifically objects to lack of proper notice at the time the meeting is called to order.

5. QUORUM

Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of ten percent (10%) of the votes eligible to be cast by Members shall constitute a quorum at any meeting of the Association.

6. ADJOURNMENT OF MEETINGS

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members entitled to vote who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed in Article IV, Section 4, hereof.

7. VOTE REQUIRED

When a quorum is present at any meeting, a majority of the votes present, whether in person or by proxy, shall decide any question brought before the meeting, unless the Declaration, the Charter, these By-Laws or any applicable law provides otherwise.

8. PROXIES

Members may vote by proxy. Proxies must be in writing, dated, signed and filed with the Secretary at the time of or before the appointed time of a meeting of the Owners. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his Lot, upon receipt by the Secretary of notice of the death or judicially declared incompetence of an Owner, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy. The Board of Directors may from time to time, establish such other or additional requirements for proxies as it shall determine.

9. CONDUCT OF MEETINGS

The President shall preside over all meetings of the Association. The Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted and all transactions and proceedings occurring at the meeting.

ACTION WITHOUT A MEETING OR BY WRITTEN BALLOT

Any action required to be taken at a meeting of the Members or any action which may be taken at a meeting of the Members may be taken without a meeting by written consent or by written ballot in accordance with the Act.

ARTICLE V. - BOARD OF DIRECTORS

1. NUMBER OF DIRECTORS

The governance and administration of the affairs of the Association shall be vested in a Board of Directors. The number of Directors of the Association shall not be less than one (1) nor more than nine (9). The initial Board shall consist of the person or persons named in the Charter.

ELECTION OR APPOINTMENT OF DIRECTORS

Prior to the Turnover Date, the Class "B" Member shall appoint all of the members of the Board of Directors. Subsequent to the Turnover Date, each Class "A" Member shall be entitled to cast one (1) vote for each director to be elected. Immediately prior to the Turnover Date, Declarant shall call a special meeting of the Members at which the following shall occur: (a) the existing directors shall resign; (b) the Members shall set the number of directors at issue (E) as described in Article V, Section 3, hereof; and (c) the Class "B" Membership shall terminate and be converted to a Class "A" Membership. On and after the Turnover Date, Declarant shall be considered a Member entitled to one (1) vote for each Lot owned by Declarant as a Class "A" Member. In addition, on and after the Turnover Date, the Class "C" Member shall be entitled to appoint one (1) director. Declarant may, in its sole and absolute discretion, permit the Members to elect directors earlier than the conditions set forth above.

3. DESIGNATION OF TERM

Immediately prior to the Turnover Date, the Class "A" Members shall elect eight (8) directors, and the Class "C" Member shall appoint one (1) director to take office on the Turnover Date. Of the eight (8) directors elected by the Class "A" Members, three (3) directors shall be designated to serve on the Board of Directors commencing on the Turnover Date for a term of three (3) years, three (3) directors shall be designated to serve on the Board of Directors commencing on the Turnover Date for a term of two (2) years and two (2) directors shall be designated to serve on the Board of Directors commencing on the Turnover Date for a term of one (1) year. In addition, the initial Class "C" Member shall be appointed for a term of one (1) year. Each year after the Turnover Date, the Class "A" Members will elect the number of directors, and the Class "C" Member shall appoint one (1) director, necessary to replace those directors whose terms have expired. These newly elected directors will serve for a term of three (3) years. Directors shall be elected by a plurality of the votes cast, such that those candidates

receiving the largest number of votes shall be elected. In the case of a tie vote, the winner shall be determined by a run-off election between those candidates which are tied. Cumulative voting is not permitted.

4. QUALIFICATIONS FOR ELECTION

Except with respect to directors appointed by Declarant and the Class "C" Member, all directors shall be Members.

5. NOMINATION OF DIRECTORS

Immediately prior to any election by the Members, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and at least three (3) Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than ninety (90) days prior to each annual meeting of the Members. The members of the Nominating Committee serve for a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it, in its sole discretion, determines appropriate, but in no event less than the number of positions to be filled. At least sixty (60) days prior to the annual meeting, the Nominating Committee shall recommend the names of Members selected by a majority vote of the Nominating Committee to be submitted to the Members for election to the Board of Directors.

Ten percent (10%) or more of the total votes eligible to be cast by Members who are not members of the Nominating Committee may also nominate candidates for election to the Board of Directors by petition signed by them and filed with the Secretary at least thirty (30) days prior to the annual meeting. The names of any nominees, after having been certified by the Secretary or any other officer, that they are qualified for election and have been nominated in accordance with the provisions of these By-Laws shall be included in any proxy mailing to the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Nominations may also be made from the floor at the annual meeting of Members.

6. REMOVAL OF DIRECTORS AND VACANCIES

Any director appointed by Declarant or the Class "C" Member may be removed, with or without cause, only by Declarant or the Class "C" Member, as the case may be. Any director elected by the Class "A" Members at large may be removed, with or without cause, by the vote of the Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be appointed by Declarant, or elected by the Class "A" Members, as the case may be, to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, as determined by the Board, or who is delinquent in the payment of any Assessment or other charges due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the remaining directors. In the event of the death, disability, removal, or resignation of a director, the members of the Board may elect a successor to fill the vacancy for the remainder of the term of such director.

7. COMPENSATION

No director shall receive a salary or any other compensation whatsoever from the Association for acting as such, but shall be entitled to be reimbursed for expenses reasonably incurred on behalf of the Association.

8. FIDUCIARY DUTY

The directors shall act in good faith in a manner they reasonably believe to be in the best interests of the development of the Cummings Cove residential community (the "Community") and the goals of the Association.

9. POWERS AND DUTIES

The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs, and as provided by law, may do all acts other than those acts which may be done and exercised exclusively by the Members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, by way of explanation and not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making assessments to defray the Common Expenses and other assessments authorized by the Declaration, establishing the means and methods of collecting such assessments, and establishing the period of payment for assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association as determined by the Board, including maintenance or provision of services which are generally provided by a municipality, such as maintenance of grassed or landscaped areas along dedicated rights-of-way, maintenance of street lights and community signage, garbage pick-up and maintenance of roadways within the Community;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and

for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties, and setting the compensation of directors,

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions, rules and regulations, and design guidelines;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, any Neighborhood Declaration, these By-Laws, and the use restrictions, rules and regulations, and design guidelines adopted pursuant to any of the foregoing, and bringing any proceedings which may be instituted on behalf of or against the Owners, their respective invitees or licensees concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) providing services to all areas for which the Association is obligated to provide services;

(k) paying the cost of all services, if any, rendered to the Association or its Members which are not directly chargeable to Owners of particular Lots;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;

(m) depositing Association funds into interest bearing accounts; and

(n) contracting with any Person for the performance of various duties and functions.

The Board shall have the power to enter into common management agreements and other agreements with associations, Neighborhood Associations, Declarant and such other persons as it determines appropriate from time to time. Any and all actions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity. To the extent permitted by law, the Board shall have the power to delegate its functions to designers of the Board, such as, without limitation, a management agent, committees established by the Board, and employees and independent contractors of the Association.

ARTICLE VI. - MEETINGS OF BOARD OF DIRECTORS

1. ORGANIZATIONAL MEETING

The organizational meeting of the first elected Board of Directors shall be held within ten (10) days after the annual meeting of the Members at which the Directors were elected at such time and place as shall be fixed by the Board of Directors.

2. REGULAR MEETINGS

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but commencing with the Turnover Lease. At least four (4) regular meetings shall be held during each fiscal year with at least one (1) meeting per quarter, provided, however, that the annual meeting shall constitute a regular meeting. Notice of the time and place of any meeting, other than an annual meeting, shall be communicated to the directors not less than ten (10) days prior to the meeting.

SPECIAL MEETINGS

Special meetings of the Board of Directors or any committee designated thereby shall be held when called by written notice signed by the President or by a majority of the directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by personal delivery, first class mail or telephone at least five (5) days prior to the date of the meeting, unless the special business is of a nature which, in the President's discretion, requires more immediate action, and then a minimum of twenty-four (24) hours' notice shall be deemed sufficient.

4. WAIVER OF NOTICE

Any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as when taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

5. QUORUM OF BOARD OF DIRECTORS AND REQUIRED VOTE

At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors except as otherwise provided in the Declaration, the Charter or these By-Laws. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened

meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

6. CONDUCT OF MEETINGS

The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

7. OPEN MEETINGS

All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested by a director and granted by the President. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, when such action is necessary in the reasonable judgment of the President.

8. EXECUTIVE SESSION

The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

9. TELEPHONE MEETINGS

Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating director can hear and be heard by all other participating directors.

10. ACTION WITHOUT A MEETING

Any action required to be taken at a meeting of the Board of Directors or any action which may be taken at a meeting of the Board of Directors or of a committee of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors or all of the members of the committee of directors, as the case may be in accordance with the Act.

ARTICLE VII. - OFFICERS

1. OFFICERS

The officers of the Association shall be a President, Vice President, Secretary, and Treasurer to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary may not be held by the same person.

2. APPOINTMENT, TERM OF OFFICE AND VACANCIES

The officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors during a fiscal year. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

3. REMOVAL

Any officer may be removed by a majority vote of the Board of Directors in the sole discretion of the Board and the removal of a director who is also an officer shall automatically act as a removal from such director's position as an officer.

4. RESIGNATION

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified in the notice and unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective.

ARTICLE VIII. - DUTIES OF OFFICERS

The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as are from time to time specifically conferred or imposed by the Board of Directors.

1. PRESIDENT

The President shall be the chief executive officer of the Association and shall:

- (a) act as presiding officer at all meetings of the Members and the Board of Directors;

- (b) call special meetings of the Members and the Board of Directors;
- (c) sign, with the Secretary or Treasurer if the Board of Directors so requires, all checks, contracts, promissory notes, leases, subleases and other instruments on behalf of the Association, except those which the Board of Directors specifies may be signed by other persons;
- (d) perform all acts and duties usually required of a chief executive to ensure that all orders and resolutions of the Board of Directors are carried out; and
- (e) act as an ex-officio member of all committees and render an annual report at the annual meeting of Members.

2. VICE PRESIDENT

The Vice President, in the absence or disability of the President, shall exercise the powers and perform the duties of the President. The Vice President also shall assist the President generally, and exercise other powers and perform other duties as shall be prescribed by the directors.

3. SECRETARY

The Secretary shall have the following duties and responsibilities:

- (a) attend all regular and special meetings of the Members and the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done;
- (b) have custody of the corporate seal, if any, and affix the same when necessary or required;
- (c) attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings and keep membership books; and
- (d) have custody of the minute book of the meetings of the Board of Directors and the meetings of the Members and act as agent for the transfer of the corporate books.

4. TREASURER

The Treasurer shall:

- (e) receive monies as shall be paid into his hands for the account of the Association and disburse funds as may be ordered by the Board of Directors, taking proper vouchers for disbursements and be custodian of all contracts, leases and other important documents of the Association which he shall keep safely deposited;

- b) supervise the keeping of accounts of all financial transactions of the Association in books belonging to the Association and deliver the books to his successor;
- c) prepare and distribute to all of the members of the Board of Directors prior to each annual meeting and whenever else required a summary of the financial transactions and condition of the Association from the preceding year;
- d) make a full and accurate report on matters and business pertaining to his office to the Members at the annual meeting and make all reports required by law; and
- e) act as the chairman of the Finance Committee.

The Treasurer may have the assistance of an accountant or auditor, who shall be employed by the Association. In the event the Association enters into a management agreement, it shall be proper to delegate any or all of the Treasurer's functions to the management agent as is deemed appropriate by the Board of Directors.

ARTICLE IX. - COMMITTEES

I. STANDING COMMITTEES

Each year after the Turnover Date, the Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint members of each of the following committees, each of which shall consist of two (2) or more directors.

- (a) **Grounds Committee.** The Grounds Committee shall advise the Board of Directors on matters concerning maintenance of Common Areas. No live trees shall be moved from Common Areas nor shall any alteration or improvement be made to Common Areas except with the approval of the Board of Directors and in accordance with the Declaration.
- (b) **Finance Committee.** The Finance Committee shall in general supervise, direct and control all matters pertaining to Association finances including, but not limited to, the placing of insurance, the filing of tax returns, the payment of taxes, the preparation of the annual operating budget for approval by the Board of Directors, preparation of current reports for the Board of Directors and the Association's financial condition and the issuance to Members of a condensed quarterly operating statement. The Finance Committee shall have the power, with the approval of the Board of Directors, to direct the Association, to employ at the expense of the Association, such clerical aid and assistance as may be necessary to handle the accounts.
- (c) **Newsletter Committee.** The Newsletter Committee shall supervise and control the preparation of a newsletter for distribution to all Members.

(d) Legal and By-Laws Committee. The Legal and By-Laws Committee shall be charged with the publication and interpretation of the rules and regulations, these By-Laws, and the Declaration and, in general, with all matters of a legal nature pertaining to the Association.

2. AD HOC COMMITTEES

From time to time, the Board of Directors may appoint such ad hoc committees by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present, with such powers and composition as the Board of Directors shall determine.

3. POWERS OF COMMITTEES

The several committees shall act only as committees and the individual members thereof shall have no power or authority to act on behalf of the Board or the Association.

ARTICLE X. - DISCIPLINE

1. ENFORCEMENT

The Board of Directors shall have the power to impose reasonable fines which shall constitute an automatic and continuing lien upon a Lot of the violating Owner, to suspend an Owner's right to use the Common Areas, and to preclude contractors, subcontractors, agents and other invitees of an Owner or occupant from the Community for violation of any duty imposed under the Declaration or these By-Laws, provided, however, that nothing herein shall authorize the Association or the Board of Directors to limit an Owner's or occupant's ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration or these By-Laws, and a fine is imposed, the fine shall first be assessed against the occupant residing therein, provided, however, that if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association. The failure of the Board of Directors to enforce any provision of the Declaration or By-Laws shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

2. NOTICE

Prior to imposition of any sanction hereunder for any reason other than nonpayment of assessments or other charges, the Board of Directors or its delegate shall serve the accused with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board of Directors for a hearing, and (d) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge has been requested within ten (10) days of the notice.

HEARING

If a hearing is requested within the allotted ten (10) day period, the hearing shall be held in executive session of the Board of Directors at the next regularly scheduled meeting or at a Special Meeting affording the accused a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the accused appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any. The Board of Directors may, but shall not be obligated, to suspend any proposed sanction if the violation is cured within the ten (10) day period. Any suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any Person.

4. ADDITIONAL ENFORCEMENT RIGHTS

Notwithstanding anything to the contrary herein contained, the Association may elect to enforce any provisions of the Declaration or these By-Laws by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

ARTICLE XI - FISCAL MANAGEMENT

1. FISCAL YEAR

The fiscal year of the Association shall commence upon the first (1st) day of January and conclude on the thirty-first (31st) day of December.

2. DEPOSITORIES

The funds of the Association shall be deposited in such accounts as may be selected by the Board of Directors, including checking and savings accounts in one (1) or more banks and/or savings and loan associations, Certificates of Deposit, U.S. Treasury Bills and money market accounts with an investment firm or firms, all in accordance with resolutions approved by the Board of Directors. The funds shall be used only for lawful purposes of the Association.

3. EXPENSES

The receipts and expenditures of the Association may be credited and charged to accounts as the Board of Directors may determine, in accordance with good accounting practices as set forth in Article XI, Section 7, below.

4. RESERVE ACCOUNTS

The Association shall establish and maintain an adequate reserve account for the periodic maintenance, repair and replacement of Common Areas.

5. BUDGET

The Board of Directors shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the expenses of the Association for the fiscal year and to provide and maintain funds for the accounts established by the Board of Directors (including a capital replacement reserve), in accordance with good accounting practices as set forth in Article XI, Section 7, below.

6. FIDELITY BONDS

If determined by the Board, and if such bonds are reasonably available, the Association shall purchase blanket fidelity bonds for all directors, officers and employees of the Association and for any management agent who controls or disburses funds of the Association and any contractor handling or responsible for Association funds. The following provisions shall govern the Association's purchase of the bonds:

- (a) Each fidelity bond purchased by the Association shall name the Association as an obligee of the bond.
- (b) The premiums for bonds shall be paid by the Association.
- (c) The fidelity bonds shall be in the amount determined from time-to-time by the Board of Directors.

(d) Each bond shall include a provision requiring ten (10) days' written notice to the Association before the bond can be canceled or substantially modified for any reason.

7. ACCOUNTS AND REPORTS

The following standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting (exclusive of depreciation and amortization), as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by any officer, director or employee of the Association from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise, nothing of value received shall benefit the Association;
- (e) any financial or other interest which any officer, director or employee of the Association may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and
- (f) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. If determined by the Board of Directors, the annual report referred to above shall be prepared on an audited basis by a Certified Public Accountant selected by the Board of Directors. If unaudited financial statements are used, the unaudited financial statements will be certified by an officer of the Association.

8. AGREEMENTS, CONTRACTS, DEEDS, LEASES, CHECKS, ETC.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by the President and Secretary or by such other members of the Board or officers of the Association as may be designated by resolution of the Board of Directors.

9. BOOKS AND RECORDS

The Declaration, Charter, By-Laws, membership register, books of account and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any mortgagee, Owner, Member, director, and officer or such person's agent, at any reasonable time and for any proper purpose, at the office of the Association. Such records shall include a record of receipts and expenditures and accounts for each Owner, which accounts shall designate the names and addresses of the Owners, the due dates and amount of each Assessment, the amounts paid upon the account and the balance due. Accounts of Owners shall only be available for inspection by the Board, the officers and the Owner or such Owner's mortgagee. Books and records of the Association may be kept at the Association office at the Property, or off-site at the office designated by Declarant.

The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the week when an inspection may be made; and (3) payment of the cost of reproducing copies of documents requested.

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

10. INSURANCE

The Association shall procure, maintain and keep in full force and effect insurance as may be required by the Declaration to protect the interests of the Association and the Owners.

ARTICLE XII. - MISCELLANEOUS

1. PARLIAMENTARY RULES

Robert's Rules of Order (then current edition) shall govern the conduct of Association proceedings when not in conflict with applicable law, the Charter, the Declaration, or these By-Laws.

2. CONSTRUCTION

If there are conflicts between the provisions of Tennessee law, the Charter, the Declaration and/or these By-Laws, the provisions of Tennessee law, the Declaration, the Charter, and these By-Laws (in that order) shall prevail.

3. VALIDITY

If any By-Law or rule or regulation is adjudicated to be invalid, such fact shall not affect the validity of any other By-Law or rule or regulation.

4. NOTICES

Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first-class, postage prepaid: (a) if to an Owner or Member, at the address which the Owner or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of the Owner or Member; or (b) if to the Association or the Board of Directors, then at the registered office of the Association or at such other address as shall be designated by the

Association or the Board of Directors in writing and given to the Owners or Members in accordance with this Section.

5. AMENDMENTS

Until the Turnover Date, Declarant may amend these By-Laws in its sole and absolute discretion. After the Turnover Date, Declarant may amend these By-Laws at any time and from time to time, in its sole and absolute discretion, if such amendment is: (a) necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on a Lot; (c) required by an institutional lender or a government mortgage agency or purchaser of mortgage loans to enable the same to make, insure or purchase mortgages on a Lot; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on a Lot subject to the Declaration; or (e) necessary to correct any stenographic, scrivener's or surveyor's error or any error of a like nature, provided, however, any such amendment shall not adversely affect the title to a Lot, unless the Owner thereon shall consent thereto in writing.

After the Turnover Date and so long as it still owns any part of the Property or the Additional Property (as described in the Declaration) for development, Declarant may amend these By-Laws in its sole and absolute discretion for any other purpose, provided, however, that such amendment shall not materially and adversely affect the rights of any Owner of a Lot without the approval of such Owner.

After the Turnover Date, (a) any non-Declarant initiated amendment, or (b) any Declarant initiated amendment which has a materially adverse effect upon the rights of an Owner of a Lot, shall require the affirmative vote (in person or by proxy) or the written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes in the Association (other than Declarant), and the consent of Declarant, so long as Declarant owns any portion of the Property or the Additional Property. However, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "C" Member without the written consent of Declarant or the Class "C" Member, as the case may be.

Any amendment made prior to or after the Turnover Date shall conform to the Declaration.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am duly elected and acting Secretary of Cummings Cove Community Association, Inc., a Tennessee nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ___ day of _____, 1995.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the corporate seal this _____ day of _____, 1999.

Secretary

Book and Page: GI 5895 726

EXHIBIT D - CHARTER

SEE ATTACHED

CHARTER
OF
CUMMINGS COVE
COMMUNITY ASSOCIATION, INC.

The undersigned, having the capacity to contract and acting as the incorporator of the corporation under the Tennessee Nonprofit Corporation Act, adopts the following charter for such corporation.

ARTICLE I
NAME

The name of the corporation is Cummings Cove Community Association, Inc. (the "Association").

ARTICLE II
BENEFIT CORPORATION

The Association is a mutual benefit corporation.

ARTICLE III
INITIAL REGISTERED OFFICE AND REGISTERED AGENT

The initial registered office of the Association shall be at the following street address: 1000 Tallan Building, Two Union Square, Chattanooga, Hamilton County, Tennessee 37402. The initial registered agent at such address shall be Michael N. St. Charles.

ARTICLE IV
INCORPORATOR

The name and address of the Incorporator in the State of Tennessee is: James I. Chapin, 4025 Cummings Cove Road, Chattanooga, Tennessee 37419.

ARTICLE V
PRINCIPAL OFFICE

The street address and zip code of the initial principal office of the Association is: 4025 Cummings Cove Road, Chattanooga, Hamilton County, Tennessee 37419.

ARTICLE VI
CORPORATION NOT FOR PROFIT

The Association is not for profit.

ARTICLE VII
MEMBERSHIP AND VOTING RIGHTS

The Association shall have three (3) classes of membership, Class "A" Membership, Class "B" Membership, and Class "C" Membership, as follows:

- (a) Class "A" Membership. Class "A" Members shall be all Owners of fee title to Lots other than Declarant. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold fee title.
- (b) Class "B" Membership. The Class "B" Member shall be Declarant until the Turnover Date after which time Declarant shall be a Class "A" Member. The Class "B" Member shall be entitled to five (5) votes for each Lot owned by Declarant. The Class "B" Member shall be entitled to appoint all of the members of the Board of Directors prior to the Turnover Date (as defined in the Declaration). On the Turnover Date, the Class "B" Membership shall terminate and, notwithstanding anything else contained herein, Declarant shall become a Class "A" Member and shall be entitled to one (1) vote for each Lot owned by Declarant.
- (c) Class "C" Membership. The Class "C" Member shall be the owner of the Club Property. The Class "C" Member shall be entitled to ten (10) votes. On and after the Turnover Date, the Class "C" Member shall be entitled to appoint one of the members of the Board of Directors as provided in the By-laws.

ARTICLE VIII
PERIOD OF DURATION

The Association shall have perpetual duration.

ARTICLE IX
PURPOSES AND POWERS

The Association is being organized as a nonprofit corporation under the laws of the State of Tennessee, for the purpose of performing certain functions for the common good and general welfare of the residents and property owners within the Cummings Cove real estate development as contemplated by the Declaration of Covenants, Conditions and Restrictions for Cummings Cove (the "Declaration") to be executed by Cummings Cove, LLC, a Tennessee limited liability company as "Declarant", and recorded in the public records of Hamilton County, Tennessee.

Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Declaration.

The Association shall have and may exercise all powers necessary or convenient to effect this purpose as set forth above, including, to the extent and only to the extent necessary to carry out such purpose, the following powers and duties:

- (d) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- (e) fix, levy, collect and enforce payment of any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association (including Common Areas);
- (f) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (g) borrow money, and with the assent of two-thirds (2/3) of the votes of the Members present and entitled to vote, in person or by proxy, and voting at a duly held meeting, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (h) dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that such dedication or transfer shall have the assent of two-thirds (2/3) of the votes of the Members present and entitled to vote, in person or by proxy, and voting at a duly held meeting;
- (i) participate in mergers and consolidations with other nonprofit associations organized for the same purposes provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of the Members present and entitled to vote, in person or by proxy, and voting at a duly held meeting; and
- (j) have and exercise any and all powers, rights and privileges which an association organized under the laws of the State of Tennessee may now or hereafter have or exercise.

ARTICLE X
BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors. The number of directors may be changed by amendment of the By-laws of the Association. The initial Board of Directors shall consist of one (1) member, who shall be James I. Chapin.

The initial member of the Board of Directors shall serve until his successor is appointed or elected in accordance with the By-laws of the Association.

ARTICLE XI REMOVAL OF DIRECTORS AND VACANCIES

Any director appointed by Declarant or the Class "C" Member may be removed, with or without cause, only by Declarant or the Class "C" Member, as the case may be. Any director elected by the Class "A" Members at large may be removed, with or without cause, by the vote of the Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be appointed by Declarant, or elected by the Class "A" Members, as the case may be, to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, as determined by the Board, or who is delinquent in the payment of any Assessment or other charges due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the remaining directors. In the event of the death, disability, removal, or resignation of a director, the members of the Board may elect a successor to fill the vacancy for the remainder of the term of such director.

ARTICLE XII OFFICERS

The initial officers of the Association shall be as selected by the Board of Directors in accordance with the By-laws of the Association.

ARTICLE XIII INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify its directors and officers and may indemnify its employees and agents, to the fullest extent permitted by law, from and against any and all of the expenses or liabilities incurred in defending a civil or criminal proceeding, or other matters, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, article, agreement, vote of Members or disinterested directors or otherwise,

both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person and an adjudication of liability shall not affect the right to indemnification for those indemnified. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer of the Association may be entitled.

ARTICLE XIV
CHARTER AMENDMENT

Amendment of this Charter shall require the assent of seventy-five percent (75%) of the votes of the entire Membership. Prior to the Turnover Date, any amendment of this Charter shall require the written consent of the Declarant.

ARTICLE XV
DISSOLUTION AND DISPOSITION OF ASSETS UPON DISSOLUTION

The Association may be dissolved only if such dissolution is approved by a vote of seventy-five percent (75%) of the votes of the entire Membership. Prior to the Turnover Date, the dissolution of the Association shall require the written consent of Declarant. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated and conveyed to one or more appropriate public agencies on the express condition that such assets shall be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be conveyed to a nonprofit corporation, nonprofit association, nonprofit trust or other nonprofit organization on the express condition that such assets shall be devoted to purposes as nearly as practical as the same as those to which they were required to be devoted by the Association.

IN WITNESS WHEREOF, the undersigned executes this Charter.

James I. Chapin, Incorporator

CONSENT TO APPOINTMENT AS REGISTERED AGENT
FOR
AT
COMMUNITY ASSOCIATION, INC.

The undersigned, _____, hereby consents to his appointment as a registered agent for the above named association for the purpose of complying with the provisions of the laws of the State of _____ regarding the appointment of a registered agent. The undersigned hereby further acknowledges that the address supplied below is the correct address for the registered office of the _____ at _____ Community Association, Inc.

This consent is made this ____ day of _____, 199__.

as Registered Agent

Registered Office:

Instrument: 199904E000259
Book and Page: 81 5341 164 \$2.00
Data Processing Fee \$28.00
Misc Recording Fee \$14.00
Total Fees: \$44.00
User: BPORTER
Date: 28-APR-1999
Time: 03:03:28 p.
Contact: Pam Hurst, Register
Hamilton County Tennessee

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CUMMINGS COVE

(At Book and Page: GI 5295 639
In the Register's Office of Hamilton County, Tennessee (the "Declaration"))

This First Amendment is made as of April 26, 1999, by CUMMINGS COVE, LLC, the Declarant under the Declaration, pursuant to the provisions of ARTICLE XVI, Paragraph 3(d), of the Declaration which grant the Declarant the right to amend the Declaration.

- A. Except as specifically provided in this Agreement, the Declaration is unchanged and remains in full force and effect.
- B. The capitalized terms used but not defined in this First Amendment shall have the meanings given to them in the Declaration.
- C. The Declaration is hereby amended as follows:
1. Section 1 of ARTICLE II of the Declaration is amended as follows:
- (a) Item (d)(2) is amended by deleting the last sentence and substituting therefor the following:
- The minimum square foot restrictions for the ground floor of a two-story Patio Garden Home shall be not less than 1,200 square feet exclusive of garages, open porches, and basements.
- (b) Item (d)(3) is amended by deleting the last sentence and substituting therefor the following:
- The minimum square foot restrictions for the ground floor of a two-story Single Family Home shall not be less than 1,200 square feet exclusive of garages, open porches, and basements.
- (c) Item (e), Estate Homes, was incorrectly designated as Item (e) and it hereby is redesignated as Item (d)(4).
- (d) A new item (e) is hereby added as follows:

(c) Amendments to Minimum Square Foot Restrictions. The Declarant, prior to the Turnover Date, and the Association, following the Turnover Date, may increase but not reduce the minimum square foot restrictions by amending the Architectural Design Guidelines as contemplated in ARTICLE VI, Section 2, of this Declaration and without the necessity of amending this Declaration. The Declarant, prior to the Turnover Date, and the Association, on or after the Turnover Date, may reduce the minimum square foot restrictions set forth in this Declaration at any time and from time to time by amending or supplementing this Declaration.

2. Section 1, item (y), Set Back Requirements, of ARTICLE V of the Declaration is amended by adding the following:

No building, house or other structure shall be constructed on any Lot which adjoins the Club Property within the following setbacks:
(i) 100 feet from the center line of any teeing area on the golf course located on the Club Property; (ii) 180 feet from the center line of each fairway on the golf course located on the Club Property; (iii) for any lot located to the rear of a green located on the golf course on the Club Property, 150 feet from the center point of the green; and (iv) for any lot located to the side of a green on the golf course located on the Club Property, 180 feet from the center point of the green.

3. Section 2 of ARTICLE VI of the Declaration is amended by deleting the last sentence of the last paragraph in that Section and substituting therefor the following:

In the event that the Declarant and Architectural Review Committee fail to approve or disapprove plans submitted to it, or request additional information reasonably required within fifteen (15) days after submission thereof, the plans shall be deemed approved.

4. Section 9 of ARTICLE XVII of the Declaration is amended by adding the following sentences to that Section:

All Builders and any other contractor, person or entity constructing any improvement to any Lot must be approved in writing by the Declarant or, after Turnover, by the Association or the Architectural Review Committee.

THIS INSTRUMENT PREPARED BY
AND RETURN TO: *ph*

CHAMBLISS, BAHNER & STOPHEL, P.C.
1000 Tallian Building
Two Union Square
Chattanooga, Tennessee 37402-2500
Attention: Phillip E. Hoover

Instrument: 2000060200226
Book and Page: GI 5610 72
Data Processing F
Misc Recording Fe
Total Fees:
User: BPORTER
Date: 02-JUN-2000
Time: 03:28:53 P
Contact: Pam Hurst
Hamilton County Tennessee

\$2.00
\$12.00
\$14.00

SECOND AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS FOR CUMMINGS COVE

(at Book and Page: GI 5295 639 In the Register's Office of
Hamilton County, Tennessee (the "Declaration"))

This Second Amendment is made as of June 1, 2000, by Cummings Cove, LLC, the Declarant under the Declaration, pursuant to the provision of Article XVI, Paragraph 3(d), of the Declaration which grants the Declarant the right to amend the Declaration.

- 200457+71
- A. Except as specifically provided in this Second Amendment, and the First Amendment to Declaration of Covenants, Conditions and Restrictions for Cummings Cove dated April 26, 1999, the Declaration is unchanged and remains in full force and effect.
- B. The capitalized terms used but not defined in this Second Amendment shall have the meanings given to them in the Declaration.
- C. The Declaration is hereby amended as follows:
1. The first paragraph of Article V, Section 1, paragraph (y), Setback Requirements, is stricken in its entirety and replaced with the following language:
(y) Setback Requirements. The Unit on any Lot must face the street or face the major street in the case of a Lot fronting more than one street, as indicated by the building line shown on the recorded plat of the Property. No part of any Unit shall be nearer to the street on which it faces or the street on the side than the building line shown on the recorded plat of the Property, nor nearer than ten (10) feet to any sideline. All building locations must be in compliance with applicable zoning ordinances.

2. Article IX, Section 2, CREATION OF ASSESSMENTS, is stricken in its entirety and replaced it with the following:

2. CREATION OF ASSESSMENTS

There are hereby created Assessments for expenses of the Association as the Board of Directors may authorize from time to time to be commenced at the time and in the manner set forth in Article IX, Section 3, hereof. There shall be four (4) types of assessments:

(a) Common Assessments. Common Assessments shall be levied equally on all Lots. Common Assessments shall be assessments against the Club Property on the basis of two (2) Lots for the Club Property;

(b) Neighborhood Assessments. Neighborhood Assessments shall be levied equally on all Lots within the Neighborhood for whose benefit Neighborhood expenses are incurred as provided in Article IX, Section 5, below;

(c) Special Assessments. Special Assessments shall be levied as provided in Article IX, Section 6, below; and

(d) Marketing Assessment. Marketing Assessments may be levied upon each Owner by the Developer, the Association or the Board of Directors, and such Assessments shall be limited to amounts reimbursing the Developer, Association or Board of Directors, as the case may be, for expenses incurred in connection with the marketing of the Community, Lots or both, including, but not limited to, real estate commissions paid on the sale of individual Lots.

3. Article IX, Section 8 ESTABLISHMENT OF LIEN, shall have the following paragraph added at the end of the second paragraph:


The liens for Assessments provided for in this Declaration shall be subordinate to the lien of any mortgage or other security interest placed upon a Lot as a construction loan security interest or as a purchase money security interest. The Association will, upon demand, execute a written subordination document to confirm the particular superior security interest. The sale or transfer of any Lot or any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for

herein. In the case of a transfer of a Lot for purposes of realizing a security interest, liens shall arise against the Lot for any Assessments coming due after the date of completion of foreclosure (including the expiration date of any period of redemption).

- 4. Article XVIII, Section 1, NOTICES OF ACTION, is amended by deleting the word "condensation" in item (a) and substituting therefor the word "condemnation."

IN WITNESS WHEREOF, the undersigned, being the Declarant, hereby amends the Declaration as set forth in this First Amendment.

CUMMINGS COVE, LLC

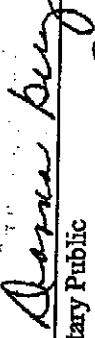
By: 
James I. Chapin, Chief Manager

STATE OF TENNESSEE :

COUNTY OF HAMILTON :

Before me, a Notary Public, of the state and county aforesaid, personally appeared James I. Chapin with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of Cummings Cove, LLC, a Tennessee limited liability company, and that he as such Chief Manager executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as such Chief Manager as of the 1st day of June, 2000.

WITNESS my hand and seal in the City of Chattanooga, County of Hamilton, Tennessee this 1st day of June, 2000.


Notary Public
My Commission Expires: April 4, 2001

THIS INSTRUMENT PREPARED BY: And after recording return to:
Robert L. Brown, Attorney
737 Market Street
Chattanooga, Tennessee 37402

Instrument: 2006041100243
Book and Page: 61 7903 36 \$2.00
Data Processing Fe \$15.00
Misc Recording Fe \$17.00
Total Fees:
User: KLYNN
Date: 11-08-2006
Time: 03:57:31 p
Contact: Pam Hurst, Register
Hamilton County Tennessee

file legal

**THIRD AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS FOR CUMMINGS COVE**

RE: Declaration of Covenants, Conditions and Restrictions for Cummings Cove dated February 24, 1999, recorded in Book 5295, Page 639, in the Register's Office of Hamilton County, Tennessee, as previously amended in Book 5341, Page 164, and in Book 5610, Page 72, said Register's Office.

Statement of Background

The Declarant under the referenced Declaration has caused to be created an additional section of residential lots known as The Woodlands at Cummings Cove, Phase I, as shown on plat recorded in Plat Book 81, Page 145, said Register's Office. This additional section contains sixteen (16) lots, eight of which border the Black Creek Golf Course and are now subject to the referenced Declaration. Lots Three Hundred Thirteen (313) through Three Hundred Twenty (320) are new lots and are not subject to the Declaration.

All sixteen (16) lots (herein called "the Woodland Lots") have been conveyed to Kay Ben Kelly and Karen R. Kelly (herein called "Kelly") by Deed dated March 3, 2006, recorded in Book 7866, Page 93, said Register's Office.

Kelly and the Declarant desire to subject the unrestricted lots to the Declaration and to amend the Declaration as set forth herein as to all sixteen (16) lots.

Statement of Amendment

Now Therefore, Kelly and Declarant covenant and agree as follows:

1. All of the Woodlands Lots are hereby subjected to all of the terms and provisions of the referenced Declaration and any deed conveying title to all or any portion of the Woodlands Lots shall be subject to said Declaration as hereby amended, whether or not specifically stated in the deed.

[Handwritten signature]

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