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Map 124; Parcel 00803

Record Book
1170 Pg 2633

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
APPLYING TO RIVER DOWNS ANNEX SECTION II SUBDIVISION**

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WHEREAS, RIVER DOWNS MBORO, LLC, hereinafter referred to as "Developer," or "Declarant" being the owner in fee simple of the real estate described on "Exhibit A" which is attached hereto and incorporated herein by reference and which is named RIVERS DOWNS ANNEX SECTION II, does therefore hereby agree and bind itself, its successors and assigns, to the following restrictions, limitations and covenants which shall be binding on all parties having any right, title, or interest in any portion of the Property, their successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Property.

Additional real property may be annexed by Developer and made subject to these restrictions at the Declarant's sole discretion.

The Developer of the proposed River Downs Annex Section II shall provide an architectural review committee which shall review and approve all proposed improvements to insure the adherence to covenants and restrictions, to enhance the aesthetics of the Development, and to insure that the design review guidelines for the River Downs Annex Section II are followed.

This Declaration, and every Article, Section, paragraph and provision contained herein is subject to and subordinate to the laws and regulations of the City of Murfreesboro, the provisions governing zoning for the property subject to this Declaration, and all other applicable county, state or federal laws or regulations.

Project Area. Declarant is the owner of (or has under contract to purchase) the property described in the attached Exhibit "A".

Purpose of Declaration. The land which becomes subject to this Declaration in the manner hereinafter provided shall be referred to as the "Association Area". This Declaration is executed (a) in furtherance of a common and general plan for the property described in the attached Exhibit "A" and for those other parcels of the land which may hereafter become part of the Association Area; (b) to protect and enhance the quality, value, desirability and attractiveness of all land which becomes part of the Association Area; (c) to provide for a Association as a property owner's association and vehicle to hold, maintain, care for and manage Association Properties and to perform functions for the benefit of Owners of Sites within the Association Area; (d) to define the duties, powers and rights of the Association; and (e) to define certain duties, powers and rights of Owners of Sites within the Association Area.

General Statement. Declarant, for itself and its heirs, legal and personal representatives, successors and assigns, hereby declares that the property described in the attached Exhibit "A" and any parcels of property which may become subject to this Declaration in the manner hereinafter provided, and each part hereof, from the date any such property becomes subject hereto shall be owned, held, transferred, leased, used, occupied, maintained, altered and improved shall be subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, for the duration thereof. The

provisions of this Declaration are intended to and shall run with the land comprising the Association Area and, until their expiration in accordance with the terms of this Declaration, shall bind, be a charge upon and inure to the mutual benefit of: (a) all of the property which becomes part of the Association Area and each part or parcel thereof; (b) Declarant and its heirs, legal and personal representatives, successors and assigns; (c) the Association and its successors and assigns; and (d) all persons having or acquiring any right, title or interest in any property which becomes part of the Association, or any part or parcel thereof, or any improvement thereon, and their respective heirs, personal and legal representatives, successors and assigns. Unless otherwise expressly provided in this Declaration, words and phrases used herein shall have the meanings as defined in Article I hereof.

ARTICLE I

DEFINITIONS

1. "Administrative Functions" shall mean all functions of, for an on behalf of the Association that are necessary or proper under this Declaration, and shall include, without limitation: (a) providing management and administration of the Association; (b) providing development review, control and approval services hereunder or any other portion hereof; (c) incurring reasonable attorney's fees and accountants fees; (d) obtaining insurance and bonds; (e) paying real estate, personal property or other taxes levied against the Association Properties; (f) incurring filing fees, recording costs and bookkeeping fees; (g) obtaining and maintaining offices and office furniture and equipment, and (h) performing other reasonable and ordinary administrative tasks associated with the operation of the Association.

2. "Annexable Area" shall mean such real property as the Declarant in its sole discretion may add to this Declaration.

3. "Annexed Property" shall mean any portion of the Annexable Area which becomes subject to this Declaration.

4. "Appointment Period" shall mean the period of time commencing as of the date of the recordation of this Declaration and continuing until the earlier of (a) the date which is the thirty fifth (35th) anniversary of the date of recordation of this Declaration (b) when the Declarant no longer owns any Lot, site or any of the real property described on Exhibit A, or any property within the Development, or (c) the date of the recording of Declarant's relinquishment of its right to appoint members to the Architectural Committee.

5. "Area" shall mean the total area of a Site, measured to the nearest one-hundredth of an acre, exclusive of any public road right-of-way, as reasonably determined by the Association.

6. "Architectural Review Committee, Architectural Control Committee or Architectural Committee" shall mean the body as established herein which reviews and approves all structures, walls, gates, improvements or modifications within the River Downs Annex Section II. This definition shall not limit the scope of this body and the items of review are purely examples.

7. "Articles of Incorporation" shall mean the Charter of the Association which have been or will be filed in the office of the Secretary of State of the State of Tennessee, as the same may be amended from time to time.

8. "Assessment" shall mean a Common Assessment, a Special Assessment, a Reimbursement Assessment, a Supplemental Common Assessment, a Working Capital Fund Fee, or a Lot Transfer Fee, assessed by the Association.

9. "Assessment Year" shall mean the calendar year or such other period of twelve consecutive calendar months selected by the Board for the levying, determining or assessing of the annual Assessments under this Declaration.

10. "Association" shall mean and refer to River Downs Annex Section II Homeowners Association, Inc., its successors and assigns. Association, Homeowner's Association, Owners' Association may all be used herein and shall mean the River Downs Annex Section II Homeowners Association, Inc.

11. "Association Area" shall mean the real property described on Exhibit A, together with all other real property, if any, which hereafter becomes subject to this Declaration.

12. "Association Properties" shall mean (a) all real and personal property, including improvements, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care or maintenance thereof, held for the common use and enjoyment of all or certain of the Owners as provided herein and/or for other purposes as may be permitted by this Declaration, including without limitation parks and/or open space, walking trails, and lakes or other bodies of water; (b) any median or strip of land within or adjoining the right-of-way of any portion of any public street, which portion is within the Association Area or upon which any Site fronts, or any area requiring landscaping or other type easement area, (c) any entrance including without limitation, all roads, private roads, footpaths, bicycle paths, jogging trails, recreational facilities, swimming pools, gates, boundary walls and fences, median areas and any areas lying within or adjacent to roads which are desirable for the Association to maintain any other area within or in the vicinity of the Association Area which the Declarant or the Board may from time to time determine should be maintained as a part of the Association Properties, including without limitation entryways, and common areas.

13. "Board" shall mean and refer to the Board of Directors of the Association.

14. "Budget" shall mean a written, reasonably itemized estimate of the expenses to be incurred by the Association in the performing of its functions under this Declaration.

15. "Builder" shall mean and refer to any Person who constructs or is in the process of constructing residences and who acquires any Lot(s) in the Subdivision for the purpose of constructing a residence for sale to a 3rd party. Builder shall not include person's building residences they intend to occupy.

16. "Bylaws" shall mean the Bylaws of the Association which have been or will be adopted by the Board, as such Bylaws may be amended from time to time, but in all events in conformity with the Declaration.

17. "Common Area or Common Areas" shall mean and refer to any and all real property owned by the Association, and such other property to which the Association may hold legal title, whether in fee or for a term of years, for the non-exclusive use, benefit and enjoyment of the members of the Association, subject to the provisions hereof, and such other property as shall become the responsibility of the Association, through easements or otherwise, including any recreational areas, which may be constructed initially by the Developer. Common Areas with respect to any portion of the Association Area made subject to any Supplemental Declaration, whether at the time of filing of same or subsequently amended by additional Supplemental Declarations shall be shown on the plat(s) for such section, and designated thereon as "Common Areas" or "Open Space." Recordation of a Plat which contains Open Space or Common Areas shall serve to vest title in such Open Space and Common Areas in the Association, if applicable, except as may otherwise be provided in a Supplemental Declaration, including but not limited to all facilities within the Development used in common by the Owners, including without limitations, all footpaths, bicycle paths, jogging trails, recreational facilities, swimming pools, gates, boundary walls and fences, median areas, and any areas lying within or adjacent to the roads which are desirable for the Association to maintain and landscape. The Common Areas may be owned by the Association in fee or for a term of years, but for the non-exclusive use, benefit and enjoyment of the owners subject to the provisions of this Declaration, and will be shown as Common Areas on the plats of the Development placed of record now or in the future.

18. "Common Assessment", "Association Assessment" or as used herein "Assessment" shall mean any assessment made to fund the annual or other periodic costs of operating the Association, including expenses incurred in connection with any Administrative Function and other expenses duly incurred by or on behalf of the Association which are to be paid by each Owner to the Association either directly or through any Sub-association of which an Owner is a member. Expenses which may be duly incurred on behalf of the Association in connection with the performance of Administrative Functions include, without limitation, the following; (a) utility charges for utilities serving the Association Properties and for the lighting of streets throughout the Association Area, as well as charges for other common services for the Association Properties; (b) the expenses of maintenance, operation, repair and replacement of the Association Properties, including, without limitation, costs of labor, equipment and materials incurred in connection therewith; (c) principal, interest and other charges payable with respect to (i) loans to the Association to provide funds perform any Administrative Function or to pay any other obligation of the Association Properties and (ii) loans from Declarant made to the Association to fund Association expenses prior to the time when Common Assessments payable by Owners other than Declarant are sufficient to fund the normal operating expenses of the Association; (d) such other expenses as may be determined from time to time by the Board to be incurred necessarily

or appropriately for the performance of Administrative Functions, including, without limitation, taxes, utility charges, and government charges not

separately assessed against Sites; and (e) the establishment and maintenance of a reasonable reserve fund or funds (i) for maintenance, repair and thereon that are the responsibility of the Association and that must be maintained, repaired or replaced on a periodic basis; (ii) cost of landscaping of all Common Areas; (iii) cost of maintaining all walkways, sidewalks, trails, paths, entrances; and (iv) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

19. "Declarant or Developer" shall mean River Downs Mboro, LLC, and it's successors and assigns. A Person shall be deemed a "successor and assign" of the Declarant only if specifically so designated in a duly recorded written instrument as a successor or assign of Declarant under this Declaration and/or under a Supplemental Declaration which are specifically designated in such recorded written instrument. Notwithstanding the foregoing, a successor to River Downs Mboro, LLC, by reason of consolidation or merger shall be deemed a successor or assign of Declarant, as Declarant under this Declaration.

20. "Declaration" shall mean this document.

21. "Development" shall mean the River Downs Annex Section II and shall be interchangeable with Association Area, which shall include all real property subject to this Declaration.

22. "First Mortgage" shall mean the unreleased Mortgage of record encumbering a Site which has the first and superior lien priority over all other unreleased Mortgages of record encumbering such Site.

23. "First Mortgagee" shall mean the Mortgagee under a First Mortgage.

24. "First Section" shall mean all of the real property described in the attached Exhibit A.

25. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Properties with the exception of any Common Area.

26. "Material Amendrent" shall mean any amendment to this Declaration which changes (i) minimum or maximum square footages, (ii) types of permitted construction materials, or (iii) responsibility or requirements regarding the maintenance of Lots or Common Areas.

27. "Minimum Floor Areas" shall mean those areas under roof including finished basement areas, sun porches, so called indoor/outdoor living spaces and garages, but not open porches or open decks.

28. "Mortgage" shall mean any unreleased deed of trust to secure debt or other similar instrument of record, given voluntarily by the Owner of a Site, encumbering all or any portion of the Site to secure the performance of an obligation or the payment of a debt and which is required to be canceled upon performance of the obligation or payment of the debt. Mortgagee shall not include a judgment lien, mechanic's lien, tax lien, or other similar lien or

involuntary encumbrance upon a Site.

29. "Mortgagee" shall mean the Person who is the holder of indebtedness secured by a Mortgage.

30. "Occupant" shall mean or refer to any person or persons in possession of a lot or home other than a Lot Owner.

31. "Owner" "Lot Owner" or "Homeowner" shall mean the Person, or if more than one, all Persons collectively, who hold fee simple title of record to a Site. A Person having an interest in any site or any improvements located thereon merely as a security for the performance of obligations shall not be deemed an "Owner" unless such Person is a Mortgagee in possession following a default under such security obligations or has acquired the fee simple title to the Site by foreclosure. "Owner" shall also include Declarant as long as, Declarant retains ownership of all or any portion of the Association Area, or any land which may become a part of the Association Area.

32. "Plat" shall mean and refer to the plat(s) to be recorded in the Rutherford County Register of Deeds Office subdividing the Association Area into Lots and reflecting thereon the public streets, common areas.

33. "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

34. "Properties" shall mean and refer to that certain real property constituting River Downs Annex Section II and any such additions thereto as may hereafter be brought within the jurisdiction of the Association as hereinabove provided. The Properties may also be referred to herein as the "Development" or the "Property," the words Property and the Development shall have the same meaning as Properties.

35. "Related User" shall mean a Person who obtains all or certain rights of an Owner by reason of such Person validly claiming or being entitled to such rights by, through or under such Owner. Without limiting the generality of the foregoing, "Related User" shall include any occupant, tenant, family member or contract purchaser of an Owner who occupies all or part of or resides on any Site of such Owner and any natural person who is a guest or invitee of such Owner or of such Person.

36. "Rules and Regulations" shall mean rules, regulations, and guidelines, concerning the use of any property or item within the Association Area, Common Area, Lot, Association Properties, Single Residential Site, and pursuant to the provisions hereof, as adopted from time to time by the Declarant or the Board.

37. "Single Family Site" shall mean any Lot designated on any plat or plan for the Development which is for a single family residence.

38. "Single Family Site Owners" shall be the fee simple title holder to any "Single Family Site". Single Family Site Owners must also be an "Owner" as defined herein.

39. "Site" shall have the same meaning as "Lot"

40. "Supplemental Declaration" shall mean a written instrument (including any amendments thereto) containing covenants, conditions, restrictions, reservations, easements, equitable servitudes or other provisions, or any combination thereof and which is recorded either respect to any portion of the First Section, or in order to submit any portion of the Annexable Area to the provisions of this Declaration, thereby causing such portion to become part of the Association Area. A Supplemental Declaration may impose on property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions other than those set forth in this Declaration, taking into account the unique and particular aspects of the proposed development of such property covered thereby. A Supplemental Declaration may provide for a Sub-association of Owners within the property covered thereby and for the right of the Sub-association to assess such Owners and to place liens upon the Sites of such Owners.

41. "Transfer of Control" shall mean and refer to the end of the Appointment Period as set forth herein.

ARTICLE II

ARCHITECTURAL CONTROL

1. Approval of Construction and Landscape Plans.

(a) No structure may be erected, placed or altered on any Lot, and no building permit may be obtained, until the construction plans and building specifications showing (i) the location of improvements on the Lot; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof); (v) the location and size of the driveway (which shall be concrete, unless otherwise approved by Declarant), shall have been approved in writing by the Declarant, or the Architectural Review Committee. All plans must be in compliance with the requirements and specifications set forth in the ordinances of Murfreesboro, Tennessee.

If, after 30 days of a submission for approval under this section, the Declarant or the Architectural Control Committee has failed to respond to such submission, the submission shall be deemed approved.

(b) In addition to the plans referred to in the previous paragraph, a landscape plan shall be submitted to the Architectural Review Committee for its approval in writing, which plan shall show the trees, shrubs and other plantings and the species thereof. The landscaping plan and landscaping as completed shall provide for landscaping across the entire front any home on any Single Family Site and all landscaping shall be in accordance with the landscape requirements of the City of Murfreesboro.

(c) The owner of each Single Family Site shall be responsible for

installing a water pressure reduction valve for such residence, in the event water pressure from the applicable utility district is greater than recommended levels for residential water service.

2. Approval of Contractor.

(a). All general contractors, construction managers, and other parties constructing any residential structure must be approved as a builder in the development by Declarant, or after the Appointment Period is over, by the Architectural Review Committee. Any such party desiring to obtain Declarant's approval to construct a structure must complete and submit to Declarant an American Institute of Architects Qualification of Builder form together with all required supportive data. As minimum threshold requirements, the general contractor constructing the residential structure on any Lot shall have been in the construction business for a period of one (1) year and must have supervised the construction of or built a minimum of six (6) homes, condo units or any combination thereof. Declarant imposes this requirement to maintain a high quality of construction within the subdivision, and reserves the right to waive these standards in its sole discretion.

ARTICLE III

ARCHITECTURAL GUIDELINES

1. **General.** The following provisions shall govern use of all portions of the Association Area which are zoned for individual ownership residential use and include all portions of the Homeowner Association's Area. The use restrictions contained herein may be supplemented with additional Supplemental Declarations governing particular sections of the Property providing more specific provisions regarding use of said sections and modifying the provisions contained herein as may be required for the particular section in question.

2. Approval of Plans, Architectural Guidelines and Appointment of the Architectural Review Committee.

(a) No construction, reconstruction, remodeling, alteration, or addition of or to any structure, building, fence, wall, drive, or improvement of any nature shall be constructed on any Lot without obtaining prior written approval of an Architectural Review Committee. The Architectural Review Committee shall be composed of three (3) members serving one (1) year terms. Prior to the Transfer of Control of the Association, the Developer shall appoint the members of the Architectural Committee, and subsequent to the Transfer of Control the members of such Committee shall be appointed by the Board of Directors of the Association. As a prerequisite to consideration for approval, and prior to the commencement of the contemplated work, an Owner shall submit to the Developer, or the Association's managing agent, as the case may be, such plans, specification, and other information concerning the proposed improvements as the Architectural Review Committee may require from time to time as a condition for its review and approval thereof accompanied with such fee as the Association may require, and the Developer or such managing agent shall submit the same to the Architectural Review Committee for approval. All plans of proposed improvements to be constructed in the

Subdivision shall conform to the standards set forth in subparagraph (b) below and the restrictions and provisions contained in this Declaration, and the Architectural Review Committee shall be the sole arbiter of such plans and may withhold its approval for any reason, including purely aesthetic reasons. Upon approval being given, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans, otherwise the approval shall be void.

(b) A reasonable fee may be charged by the Association to defray its costs incurred in considering and acting upon such proposed plans and specifications. This fee shall be for the review of plans and may be required to be paid prior to the review of any plans. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals.

(c) Residences to be constructed within the Development shall be sufficiently compatible with existing architectural styles that predominate in the Development to assure a pleasing overall appearance and maintain its image as a high quality neighborhood. Existing structures will be considered but do not, as such, constitute precedent nor assure approval.

(d) Developer, the Architectural Review Committee, the Association and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder; this provision shall not apply to governmental entities. The Architectural Review Committee shall use its best efforts to indicate approval or disapproval of any plans submitted within thirty (30) days after the receipt of the required documents, failure to respond within 30 days constitutes approval. Approval or disapproval by the Developer or the Architectural Review Committee shall not be deemed to constitute any warranty or representation by it including, without limitation, any warranty or representation as to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations.

(e) The Developer may adopt a set of architectural guidelines (the "Architectural Guidelines") which shall set forth certain additional architectural standards and guidelines to govern the design and construction of residences and any other improvements on any Lot. All plans and construction on any Lot shall be in compliance with the Architectural Guidelines. During the Appointment Period, Declarant shall have the power to amend the Architectural Guidelines, and thereafter the Association shall have such power to amend.

(f) Members of the Architectural Review Committee and the Developer shall not be liable for decisions related to the action of the Architectural Review Committee or for any other actions related to the implementation, enforcement of these provisions or the failure to implement or enforce the provisions of this Declaration.

(g) The Developer or the Association, its successor and assigns, shall have the right to enforce by any proceeding at law or in equity, all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot in the

subdivision. Failure by the Developer or the Association, to enforce any of such shall condition, restriction, covenant, reservation or easements in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one or more of the covenants and restrictions or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants and restrictions herein contained which shall remain in full force and effect. Any owner of any Lot in the subdivision which shall include any additional sections annexed by the Developer and made subject to these restrictions shall have the right to notify the Developer or the Association of any violation of these restrictive covenants and the Developer or the Association may, by majority vote of its board, elect to take action or not to take action.

(h). As hereinabove provided, the Architectural Review Committee shall be appointed by the Developer prior to Transfer of Control. Thereafter, all future appointments to this three (3) person board shall be made by the Board of Directors of the Association. Each member of the Architectural Review Committee will serve at the pleasure of the Board of Directors of the Association or at the pleasure of the Developer as the case may be and any member of the Architectural Review Committee may be removed at any time without cause. A Simple majority vote of the Board of Directors of the Association may remove any member of the Architectural Review Committee. At any time during the Appointment Period the Developer may remove a member of the Architectural Review Committee at any time without cause.

(i). No clearing of trees, building, driveway, fence, wall, hedge or structure of any type may be erected, placed or altered on any lot until and unless the Architectural Review Board has given its prior approval in writing.

(j). The Architectural Review Committee may, in its discretion, adopt, alter, delete or amend Design Review Guidelines for the convenience of builders and Lot Owners, but the inclusion of any recommendation in those guidelines shall not preclude the absolute right of the Architectural Review Board to disapprove any plans. The Architectural Review Board may from time to time amend or change the Design Review Guidelines but the amendment or change of the restrictions herein can only be made by amendment as hereinafter specified.

(k). Neither the Architectural Review Committee nor any member thereof shall be liable to the Association or to any member or former member, or any Lot Owner in the Development, or any subsequent sections added hereto, for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, specifications or drawings, or (iii) the development of any property within the Development.

(l). Prior to construction of any improvement, the Owner of each Lot shall maintain and keep the Lot in a clean and neat manner which is satisfactory to the Architectural Review Committee. This includes but is not limited to the keeping of the grass cut and undergrowth under control and keeping the Lot free of debris or obstructions which might prohibit right-of-way maintenance.

ARTICLE IV

ARCHITECTURAL AND USE COVENANTS CONDITIONS AND RESTRICTIONS

The following set out restrictions shall apply:

1. **Mail and Paper Boxes.** Mailboxes and paper holders shall be of the type and make approved by the Declarant or the Architectural Review Committee. All mail boxes and paper holders shall be installed by the Lot Owner prior to occupancy of the residence. All modifications shall be approved by the Architectural Review Committee.

2. **Minimum Floor Areas.** The following shall be the Minimum Floor Areas:

(a). **General Minimum Floor Area Requirement.** The Minimum Floor Area shall be 2,000 square feet under roof including the garage.

(b). **Floor Area Requirement For Lots Adjoining the Existing River Downs Subdivision.** The Minimum Floor Area for houses constructed on lots adjoining the existing River Downs Subdivisions shall be 1,800 square feet of heated living space.

3. **Setback Lines:** No building may be located on any lot nearer to the front Lot line than the minimum building setback line shown on the recorded plat unless a variance is approved by the Architectural Review Committee and the appropriate governmental authorities. The actual setbacks shall be determined by the Architectural Review Committee.

4. **Debris:** The location and dimensions for all clearing and removal of debris for and the actual location of the building on each Lot shall be subject to the prior written approval of the Architectural Review Committee.

5. **Trees:** No healthy trees larger than 2" in diameter may be cut or destroyed on any Lot which tree is outside of 10 feet from the building without the prior written consent of the Architectural Review Committee.

6. **Sidewalks:** Sidewalks will be required for all streets. All building Lots as shown, depicted, and specified on the referenced plat and/or construction drawings shall be subject to an affirmative obligation and covenant for the construction of a public sidewalk. The owner of each building Lot shall be responsible for the completion of construction of such sidewalk as and where shown on said plat and/or drawings, prior to application for any certificate of occupancy. The sidewalk shall be at the Lot Owner's sole expense, shall be four (4) feet in width with one-fourth (1/4), five (5') feet behind the curb, shall tie in appropriately and be compatible with any existing sidewalks and any driveway constructed on said Lot, and shall be in conformity with all specifications, regulations and requirements established by the City of Murfreesboro, Tennessee, and shall be subject to such inspections and approvals as said City may require. Should the owner fail to construct said sidewalk(s) as set forth herein, then the Developer or the Homeowner's

Association shall have the authority to construct or repair said sidewalk(s) at the expense of the Owner.

All Sidewalk(s) shall be concrete. The Concrete finish is to be determined by the Architectural Review Committee.

7. Business; Home Occupations. No trade or business of any kind (and no practice of medicine, dentistry, chiropractic, osteopathy and other like endeavors) shall be conducted on any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, provided that an office may be maintained by business and professional persons if no signs are posted on the premises and no consultation or treatment is performed for visitors to the premises. In addition, notwithstanding the provisions hereof, a new house or houses may be used by a Builder thereof as a model home for display or for the Builder's own office provided said use terminates within eighteen (18) months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by Declarant.

8. Signs. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, unless they receive the prior approval of the Declarant or the Architectural Review Committee, with the exception of one (1) sign by the builder and one sign by the realtor or Owner advertising the sale thereof, and one (1) sign for the election of a political candidate which shall not be greater than 4 feet X 3 feet each; provided, however, Declarant, or his designee or designees, shall have the right to (i) erect larger signs when advertising the subdivision, (ii) place signs on Lots designating the Lot Numbers, and (iii) following the sale of a Lot, place signs on such Lot indicating the name of the purchaser. This restriction shall not prohibit placement of occupant name signs and Lot numbers as allowed by applicable zoning regulations. However, all signs must be approved by the Declarant or the Architectural Control Committee. No signs shall be placed on the Association or Properties by persons other than the Declarant, the Declarants assigns, the Association.

9. Landscaping. Any Site, proposed to be altered from its natural state, shall be landscaped according to plans approved by the Architectural Review Committee. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Prior to the application for a certificate of occupancy, but no later than nine (9) months after construction begins, the front yard must be sodded, a minimum of twenty-four (24) two-gallon size or better plantings, and a minimum of one (1) native 1-1/2" - 2" caliber tree shall be planted in all front yards. Each Lot Owner shall be responsible for maintaining shrubbery or other plantings on their Lot and keeping same property trimmed and shall be responsible for replacing any such shrubbery or plantings if any such plantings die. After one written notice to a Lot Owner who fails to maintain or replace landscaping the Association may levy a fine or violation on the Lot Owner.

10. Maximum Height of Antennae and Satellite Dishes. Unless approved by Developer or Architectural Review Committee, no electronic antenna or device of any type other than antennae for receiving normal television signals or other form of electromagnetic radiation shall be erected, constructed, placed or permitted to remain on any Lot, house or building, Town

home, condo or otherwise. Antennas or other devices must be located to the rear of the roof ridge line, cable or center line of the principal dwelling and they can not be visible from any adjoining lot. Freestanding antennas must be attached to and located behind the rear wall of the main residential structure and screened from view. No antennae, either freestanding or attached, shall be permitted to extend more than ten (10) feet above the ridge line of the roof of the tallest structure on the Lot, nor shall it be erected on a pole. No Satellite dishes greater than one (1) meter in diameter shall be installed on any home or Lot and all dishes shall be placed at the rear of the home so as to not be visible from the street.

11. Outside Lighting and Displays. Outside lights on Lots exclusively shall be permitted at eaves and door entrances, but no exterior flashing or high-intensity lights, floodlights, or spotlights on the exterior of any building shall be permitted, except with the prior written approval of the Developer or the Architectural Review Committee. Tasteful accent lighting is encouraged and security lighting which does not create a nuisance to other Lot Owners or which does not shine directly into another Lot is permitted. The Architectural Review Committee, at its sole discretion, reserves the right to require any Lot Owner to deactivate or remove any light which the Association deems to be unattractive or a nuisance to other Lot Owners. Reasonable and Tasteful holiday decorative lighting is permitted from Thanksgiving until January 7 exclusively. All lighting is subject to any rules established by the Association regarding the types and extent of such lighting. Large obtrusive holiday displays, LED lights, digital lights, and flashing lights are prohibited. Auditory or musical a features are prohibited

12. Outdoor Music, Outdoor Festive Events and Outdoor Musical Displays. Live or other music at festive events, parties, weddings, or wedding receptions shall be permitted. The music shall not start before 10:00 AM and must end before 10:00 PM on week nights. On the weekends music is permitted between 10:00 AM and 11:00 PM. Any outdoor music shall not be unreasonably loud or offensive to any neighbor and must comply with any applicable governmental ordinance, zoning regulation or law. No recorded holiday music or auditory feature shall accompany any holiday display. Any festive event, party, wedding, or wedding reception must be confined to the Lot and may not take place or spill over into any street or otherwise.

13. Drainage Ditches & Ponds. No drainage ditches, cuts, swales, streams, impoundments, ponds, or lakes; no mounds, knolls, dams or hills, and no other physical improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be created, destroyed, altered or modified without the prior consent of the Architectural Review Committee, whether on private property or in common areas.

14. Lawn Decorations & Dog Houses. No dog houses, frog ponds, flag poles, lawn sculptures, artificial plants, birdhouses, rock gardens, statues or similar types of accessories and lawn furnishings are permitted on any Lot without prior written approval of the Architectural Review Committee.

15. Recreational Equipment. All playground and recreational equipment must be used, erected, placed or maintained to the rear of all Lots.

Wood construction for such equipment is required, except as otherwise may be approved by the Architectural Review Committee. The Association shall have the authority to govern the location, any required screening, materials, and types or various recreational equipment by Rules and Regulations. No trampolines unless approved by the Architectural Review Committee and the Committee may place whatever conditions, rules or regulations it sees fit on any such approval.

16. Basketball, Other Sport Goals, and Tree Houses. All basketball backboards, soccer goals, and other fixed and play structures are subject to approval by the Architectural Review Committee and shall be located at the side or rear of the building. Tree houses or platforms of a like kind or nature shall not be constructed unless approved by the Architectural Review Committee.

a. Permanent Basketball goals shall be permanent mount located at the rear or side houses constructed on a Lot. All basketball goals shall consist of a black pole and clear Plexiglass backboard and require Architectural Review Committee approval. Any portable basketball goals shall be moved inside the residence when they are not being used and shall not remain outside overnight. Basketball goals shall be set back a minimum of five (5) feet from the side property line. Goals within ten (10) feet of a property line or located on the side yard of a corner lot shall be screened with landscaping as shall be approved by the Architectural Review Committee.

b. No permanent fixed goals and play structures such as, but not limited to: lacrosse goals, skateboard ramps, pitching nets, volleyball goals shall be allowed. All such temporary play structures shall be moved inside or to a screened area when they are not being used. The Association shall have the authority to place rules and regulations on the use and types of such items.

17. Fences. All fences and walls must be approved by the Architectural Review Committee and any requests for fencing or walls must include written plans showing the intended location of the fence and a sample of all materials. The Architectural Review Committee may establish additional requirements such as artistic renderings showing that the fence or wall is aesthetically suitable and harmonious with surrounding structures. Chain link wire fences will not be allowed. Vinyl clad steel fences are generally not allowed but may be approved by the Architectural Review Committee in its sole discretion.

18. Re-subdivision of Lots. No Lot shall be re-subdivided, nor shall any building be erected or placed on any such re-subdivided Lot, unless such re-subdivision is first approved by the City of Murfreesboro (or any other applicable governing authority) and then by the Association. Subject to obtaining the approval of the City of Murfreesboro (or other applicable governing authority). The Developer, however, shall have the right, but not the obligation, to re-subdivide Lots, by recorded Plat or in any other lawful manner, all or any part of the Property, and such Lots, as re-platted, shall be subject to this Declaration as if such Lots were originally included herein. Any such re-plat must comply with pertinent re-platting ordinances, statutes, regulations and requirements.

19. Temporary Structures. No structure of a temporary nature,

trailer, tent, shack, barn, storage sheds or other outbuilding shall be constructed or used at any time on any Lot either temporarily or permanently unless approved by the Architectural Review Committee.

20. Offensive Activity. No noxious or offensive activity may be carried on upon any Lot, nor may anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Any loose debris, subject to being scattered by wind or animals, shall be bagged or otherwise contained before placing same on the street or curb.

If noxious or offensive activity occurs and same is not corrected after one (1) 30-day notice to the Owner, then the Developer or in the case of the Homeowners' Association, in the discretion of the Board of Directors, may expend the cost to correct the condition and charge it to the Lot Owner and the Lot Owner shall immediately reimburse said amount to the Association, the cost of same shall become a lien on the lot. The Developer or the Association shall also have any remedy available at law or in equity such as but not limited to injunctive relief.

Additionally, and during construction, there shall be no violation of any requirement set forth by the Architectural Review Committee for such matters including, but not limited to, erosion control including erection of silt screens, and protection of neighboring Lots and drainage areas, curb and asphalt street damage, dirt in streets or failure to contain construction materials including, but not limited to, spilling of construction materials such as concrete onto streets, common areas or adjoining Lots.

21. Animals & Pets. No animals, livestock, or poultry of any kind shall be raised, bred, pastured, or maintained on any Lot, except household pets such as dogs, cats, (small pot belly pigs shall be considered household pets), which may be kept thereon in reasonable numbers as pets for the sole pleasure of the Owner or Occupant, but not for any commercial use or purpose. Animals such as, but not limited to: tigers, or other predatory cats, wolves, pigs, (other than small pot belly pigs), boa constrictors, falcons, alligators and other exotic pets shall be strictly prohibited. The Board of Directors may prohibit certain breeds of dogs it considers dangerous in its sole discretion. The Board of Directors may ban a dog, pot belly pig, or cat that has acted aggressively in its sole discretion.

22. Trash and Garbage. No Lot may be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste may not be kept except in sanitary containers. All trash bins or other equipment for disposal of such materials must be kept in a clean and sanitary condition. If garbage, trash or other waste are on the Lot and such problem is not corrected after one (1) notice to Lot owners, then the Homeowners' Association, Inc., in the discretion of the Board of Directors, may expend the cost to correct the condition and charge it to the Lot owner and the Lot owner shall immediately reimburse said amount to the Association, the cost of same shall become a lien on the Lot.

23. Commercial Vehicles & Equipment. No commercial vehicle or equipment shall be stored at any place on any Lot unless the specific nature and location of such storage is pre-approved by the Architectural Review

Committee.

24. Right to Use Common Areas. Each Lot Owner shall have the non-exclusive right to use all common areas and rights of ingress and egress, as may be established by the Developer or the Owners' Association, upon such terms and conditions as set forth in any rules or regulations established pursuant to the powers granted herein. No Lot Owner shall cause or allow to be caused any damage or waste to such common areas.

25. Duty to Maintain Improvements Exterior. The exterior of any improvements on any Lot shall and must be properly maintained and this includes but is not limited to painting, replacing rotten or defective items and maintaining the exterior materials to prevent chipped or peeling paint and mildew. The addition or replacement of any landscaping on any Single Family Site shall be the Lot Owners sole responsibility and cost. Single Family Site Owners duty to maintain includes anything that would generally detract from the visual appeal of the neighborhood. If such deterioration occurs and is not corrected after one (1) notice to the Lot Owner, then the Association, in the discretion of the Board of Directors, may expend the cost to correct the condition and charge it to the Lot Owner and the Lot Owner shall immediately reimburse said amount to the Association, the cost of same shall become a lien on the Lot, and the Association shall have any other remedy at law or in equity.

26. Prefabricated Structures. Any structure which is pre-assembled or already constructed and which a Lot Owner desires to move onto a Lot must receive the prior approval of the Architectural Review Committee, which approval may be withheld on the subjective grounds that the structure does not conform with the character and general atmosphere of the Development even though such structure may meet all minimum square footage and all other requirements.

27. Construction Sites. Once construction has commenced on any Lot, it shall proceed diligently. Owner is responsible for maintaining a neat and orderly construction site. The Lot is to be cleaned up on the outside at least once weekly. A temporary gravel drive must be installed prior to construction. The foregoing provisions shall not change the terms, rights, and obligations contained in Article III hereinabove.

28. Parking. All automobiles owned or used by the Owner or Occupant of any dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein. No more than two (2) vehicles may be parked in any driveway overnight.

29. Parking, Recreational Vehicles and Equipment.

(a) Mobile homes, motor homes, horse trailers, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment

shall: (i) not be parked on the street at any time and (ii) not be permitted stored or allowed to remain on any Lot, unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot, or unless adequately screened from the public view and such outdoor storage is approved by the Architectural Review Committee. Any such enclosed structure must be approved by the Architectural Review Committee. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(b) Each Single Family Site shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot). Vehicles owned by inhabitants of a dwelling shall not be parked on the street. Vehicles shall be parked only in driveways constructed in accordance with those provisions or in garages. Vehicles shall not be parked on any landscaped or natural areas of a Lot or dwelling.

(c) Any vehicle which is inoperable shall be immediately removed from the Development. No Owner or occupant shall repair or restore any vehicle, machinery or equipment of any kind upon any Lot or within a dwelling or within any portion of the common areas. If upon one thirty (30) day notice by the Developer, Architectural Review Committee, or the Homeowners' Association that any inoperable vehicle must be moved or removed from a Lot, and any such vehicle is not so moved or removed, the Developer, Architectural Review Committee, or the Homeowners' Association may enter any Lot and have the vehicle moved or removed, and shall have any other remedy at law or in equity. Any and all costs associated therewith including but not limited to storage shall be assessed to the Lot Owner.

30. Window Units. All supplements to the central air conditioning systems used, erected, placed or maintained on any structure including but not limited to, window or wall type air conditioning units, are prohibited unless the type and location of the unit is, pre-approved by the Architectural Review Committee.

31. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or any other mineral or resource shall be erected, maintained or permitted upon any Lot.

32. HVAC Units. All central air conditioning systems must be used, erected, placed or maintained to the rear or side of the main residential structure and screened from view.

33. Dangerous Hobbies and Activities. The pursuit of any inherently dangerous activity or hobby, including, without limitation, the assembly and disassembly of motor vehicles or other mechanical devices, the shooting of firearms, fireworks, or pyrotechnic devices of any type or size, the use of bows and arrows and other such activities shall not be pursued or undertaken on any part of any Lot or upon the Common Areas without the consent of the Association.

34. **Front Porches.** No front porch on any residence shall be enclosed in any way either screened in or glassed in or otherwise walled in. The materials which may be used for front porch railings shall be approved by the Developer or Architectural Review Committee prior to construction.

35. **Utility Lines.** All utilities shall be underground.

36. **Roofing Material.** The roof of any building (including any garage) shall be constructed or covered with asphalt or composition type shingles. Any other type of roofing material shall be permitted only in the sole discretion of the Architectural Committee upon written request.

37. **Building Materials.** Building Materials shall be seventy-five percent (75%) brick, stone, or other cementitious materials. No vinyl with the exception of dormers, eaves and soffits.

38. **Side or Rear Entry Garages.** Side or rear entry garages shall be required for all residences.

39. **Swimming Pools.** Swimming pools shall be allowed only if approved by the Association and shall be located at the rear of the residence. All swimming pools shall have a perimeter enclosure, the plans for which, including landscaping plans, must be approved by the Architectural Committee. No above ground swimming pools shall be permitted.

40. **Storage Tanks and Refuse Disposal.** No exposed above-ground tanks or receptacles shall be permitted for the storage of fuel, water, or any other substance, except for refuse produced through normal daily living and of a nature which is satisfactory for pick-up by the collector of refuse or solid waste or its equivalent. Incinerators for garbage, trash, or other refuse shall not be used or permitted to be erected or placed on any Lot. All equipment, coolers, and garbage cans shall be concealed from the view of neighboring lots, roads, streets, and open areas.

41. **Clothes Lines.** Outside clothes lines shall not be permitted.

42. **Damage Destruction or Maintenance.** In the event of damage or destruction to any structure located on the Property, the respective Owner thereof agrees as follows:

(a) In the event of total destruction, the Owner shall promptly clear the Lot of debris and leave the same in a neat and orderly condition. Within sixty (60) days of any insurance settlement, the Owner must commence to rebuild and reconstruct the structure. Any such rebuilding and reconstruction shall be accomplished in conformity with the plans and specifications of the original structure so destroyed, subject to any changes or deviations as approved by the Developer or the Association or Architectural Committee, as the case may be, in accordance this Declaration.

(b) In the case of partial damage or destruction, the Owner shall as promptly as an insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a first class condition in

accordance with the plans and specifications of the original structure and in conformity with its original exterior painting and décor. Any change or alteration must be approved by the Developer or the Association, as the case may be. In no event shall any damaged structure be left unrepaired and un-restored for in excess of sixty (60) days from the date of the insurance adjustment.

43. Erosion Control, and Lot Maintenance. During and throughout construction, as well as after completion of a residence, the Builder or Lot Owners shall take such action as may be reasonably required; (a) to control, inhibit, and prevent land erosion and the sedimentation of streams and ponds from erosion, (b) to keep such site in a neat and attractive condition free from trash and debris and, (c) to maintain the lawn and other vegetation on any such Lot. If a Builder or Owner does not maintain a site as herein provided, then the Developer or the Association may, after reasonable notice to the Builder or Owner, have the required work done and the cost thus incurred shall be paid by the Owner upon demand. The Developer and the Association shall have the right of entry upon each Lot as necessary to perform such work or cause such work to be performed.

44. Storage of Building Materials. No lumber, brick, stone, block or other building materials shall be stored on any Lot except for building purposes for that particular Lot, and then only for such time as is reasonably necessary for a diligent completion of the project.

45. Curb Cuts and Damage to Common Areas. Any Builder or Owner who makes a curb cut or damages any Common Areas shall be responsible for repairing same at his sole expense and at the direction and to the satisfaction of the Developer or the Association. Any such Builder or Owner shall reimburse Developer or the Association for the cost of any such repairs if Developer repairs damages.

46. Excavation and Fill. No Owner or Builder shall excavate or extract earth from any Lot for any business or commercial purpose. Proposed elevation changes on a Lot shall be included with the plan submitted to the Architectural Committee prior to commencement of construction. Changes which adversely affect the surface grade of adjacent or surrounding Lots or the storm water drainage plan will not be permitted. Substantial quantities of fill brought to any Lot during construction shall be subject to prior approval by the Developer or Association for stability and effect on adjacent Lots.

47. Solar Panels. Solar panels shall not face the street and shall be compatible with the adjoining surface upon which they are mounted. The type, size and location of any such solar panels shall be shown on plans to be submitted and subject to the approval of the Architectural Committee.

48. Rules and Regulations. The Association shall have the right to pass rules and regulations governing additional aspects of and imposing additional restrictions on the use and maintenance of the Lots and use of and maintenance of Common Areas. Said rules and regulations may include (without limitation) the right to make additional special assessments against specific Lot owners as a result of a Lot Owner's (or any agent or invitee of a Lot Owner) violation of any of the terms of this Declaration or of any rules or

regulations promulgated hereunder. In addition, the rules and regulations may provide that Lot Owners shall be responsible for maintenance of limited portions of Common Areas immediately adjoining their Lot. Any and all assessments made pursuant to the rules and regulations shall be deemed assessments properly made pursuant to the terms of this Declaration and may be collected by the Association in accordance with the provisions as contained herein. In addition, the Ruled and Regulations may include (without limitation) restrictions and rules regarding any and all aspects of the use of the Lots and residences thereon as well as the common areas regarding any matter which the Association believes should be regulated in order to preserve the desirability and attractiveness and/or provide for maintenance of the Development, if the Association reasonably determines that such rules and regulations shall benefit the overall Development. Specifically, and without limiting any additional matters which may be addressed in the Rules and Regulations, the Rules and Regulations may regulate lawn art, lighting, neon signs, Interior window coverings that are visible from the street, and holiday decorations.

49. Garage Sales. Garage sales or any other similar private or public sale of goods, personal property, or services shall not be allowed except for Association sponsored sales to be authorized by the Board and held only on specified days on a community wide basis and in accordance with rules to be established by the Board.

ARTICLE V

CONSERVATION EASEMENT ALONG THE PROPERTY LINE ADJOINING THE EXISTING RIVER DOWNS SUBDIVISION

A 10' (foot) wide tree and landscape conservation easement is hereby established along the property line adjoining the existing River Downs Subdivision and any healthy trees existing in this easement area shall remain in place.

ARTICLE VI

EXISTING ROADWAYS, INFRASTRUCTURE, AND CONSTRUCTION PLANS

1. Existing Roadways and Infrastructures. Existing road ways and infrastructure already in place for Rivers Edge Section I and Rivers Edge Section II, River Oaks West Section I and River Downs Annex Section I have already been installed at the time of this Declaration at considerable cost. The investment in these existing roads and other infrastructure result in no expected change in the layout of these streets. This cost consideration should avoid having through streets which are a direct shot (ie speed way) between the proposed developments and the existing River Downs Subdivision. This should avoid the concerns of the neighbors that streets will connect from Cason Lane though the River Downs Subdivision to Barfield Road. This restriction, however, shall not prevent connecting of these roads, as the intent is to prevent a long straight road from Cason Lane through the existing River Downs Subdivision to Barfield Road.

2. **Existing Construction Plans.** The existing construction plans previously approved by the City of Murfreesboro for Rivers Downs Annex Section II will be used in conjunction with the completion of said sections.

ARTICLE VII

DECLARANT'S RIGHTS AND RESERVATIONS

1. **Period of Declarant's Rights and Reservations.** Declarant shall have, and hereby retains and reserves, certain rights as set forth in this Declaration. The right and reservation of Declarant set forth in this Declaration shall be deemed excepted and reserved in each recorded Supplemental Declaration, in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property, Site or Lot within the Association Area is conveyed, whether or not specifically stated therein. **The rights, reservations and easements of Declarant set forth in this Declaration during the Appointment Period may not, without Declarant's prior written consent, be modified, amended rescinded or affected by any amendment of this Declaration, including any amendment of this Section.** Declarant's consent to any such amendment shall not be construed as consent to any other or subsequent amendment. In the event of any conflict between the rights reserved to Declarant hereunder and any other provisions of this Declaration, then Declarant's rights shall control.

2. **Right to Construct Additional Improvements on Association Properties.** Declarant shall have and hereby reserves the right, at any time and from time to time, but shall not have the obligation to construct, at its expense, additional improvements on Association Properties which are for the improvement and enhancement thereof and for the benefit of the Association and Owners. If the means of ingress and egress from a Site is through such Association Property, then any such construction by Declarant shall be made subject to an easement of ingress or egress for the benefit of the Owners of such Site. Declarant shall convey or transfer such improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Declaration.

3. **Declarant's Rights to Use Association Properties in Promotion and Marketing of Association Area.** Declarant shall have and hereby reserves the right to the reasonable use of Association Properties in connection with the development, construction, promotion, marketing, sale and leasing of properties within the Association Area, by erecting and maintaining on any part of the Association Properties such signs as Declarant may reasonably deem necessary or proper in connection with the development, construction, promotion, marketing, sale and leasing of parcels of real property within the Development, and by permitting prospective purchasers of any of such parcels who are not Owners to enter upon Association Properties; provided, however, that Declarant shall pay all costs occasioned by such use, including without limitation, maintenance and repair expenses.

4. **Declarant's Rights to Complete Development.** No provision of this Declaration shall be construed to limit the right of Declarant to or require Declarant to obtain approval to: (a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or

replace any improvements on any Association Property; or (b) require Declarant to seek or obtain the approval of the Association for any such activity or improvement to property by Declarant on any Association Property. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

5. **Declarant's Rights to Grant and Create Easements.** Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements and rights-of-way for access, utilities, drainage, water and other purposes incident to development, construction or sale within the Development, located in, on, under, over and across; (a) Sites owned by Declarant and (b) Association Properties, provided that such easements and rights-of-way do not unreasonably interfere with the rights of Owners.

6. **Declarant's Rights to Convey Additional Property to the Association.** Declarant shall have and hereby reserves the right, but shall not be obligated to convey additional real property and improvements thereon to the Association at any time and from time to time in accordance with this Declaration.

7. **Declarant's Right to Assign:** The rights and obligations herein shall be freely assignable and transferable to any assignee or transferee, by the Declarant, upon written notice to the Homeowners' Association, however, no consent therefrom shall be required for any assignment or transfer. Said assignment shall be in writing and recorded in the Registers Office of Rutherford County, Tennessee.

8. **Amendment to Declaration by Declarant.** Declarant by written amendment filed at the Rutherford County register's office, the Declarant has the right to amend or modify any of the covenants, conditions, restrictions, easements, equitable servitudes and other provisions contained in this Declaration which may be unilaterally amended or terminated by Declarant, or new covenants, conditions, restrictions, easements, reservations, rights-of-way, equitable servitudes and other provisions may be unilaterally added by Declarant, by the recordation of a written instrument, executed by Declarant, setting forth such amendment, termination or additions. Declarants right to modify or amend shall lapse upon the expiration of the Appointment Period. Any modification or amendment shall be in writing and recorded in the Rutherford County Register's Office.

9. **Association Right to Mortgage Information.** Each Owner hereby authorizes any Mortgagee holding a Mortgage on such Owners Site to furnish information to the Association concerning the status of such Mortgage and the loan which it secures, to the extent such information is appropriate in order to assist the Association in determining if such loan is a valid First Mortgage or secondary purchase money Mortgage.

ARTICLE VIII

ASSESSMENTS AND BUDGETS

1. **Covenant to Pay.** Each Owner, other than the Declarant, by acceptance of a deed to his Site, whether or not it shall be so expressed in

such deed, is thereby deemed to covenant and agree to pay to the Association: (a) Common Assessments, (b) Special Assessments, (c) Reimbursement Assessments, and (d) fines which may be imposed against such Site in accordance with the provisions contained herein. Lots owned by the Declarant shall not be subject to any Assessment.

2. Preparation of Estimated Annual Budget. Each year on or before December 1, the Board will estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof and this shall be a basis for the setting of the Common Assessment. At the office of the Association or its agent, copies of the proposed budget and the Budget shall be made available by the Association to any Person requesting a copy thereof upon payment of the reasonable expense of copying the same.

The Board of Directors for the Association shall provide all Owners with a copy of the annual budget each year along with a current financial report detailing the operating costs, capital costs, revenues, and balances of the operating accounts, reserve accounts.

The Association shall maintain at least two separate banking accounts, one being for the Association's Operating Account and the second shall be identified as the Association's Reserve Account. The Operating Account shall be utilized for the day to day expenses of the Association. The Reserve Account shall only be utilized for capital expenditures of the Association, such as repaving, repairing, monument signs, road signage replacement, gate replacement, sidewalk capital improvements, and lake and detention area capital improvements. The Reserve Account shall not be utilized for routine operating expenses of the Association.

The Association shall prepare an annual budget which provides for assessments sufficient to fund the annual operating costs of the Association and provide for a sufficient contribution to the reserve account to fund future capital expenditures.

3. Reserve for Contingencies and Replacements. The Declarant shall establish an initial reserve for repair and replacement of the Association Properties in the amount of Dollars (\$1,000.00). The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may, at any time, levy a further Assessment which shall be assessed to the Owners via Special Assessment.

4. Levying of Common Assessments. For each assessment Year, the Association shall, pursuant to the provisions of this Declaration and any applicable Supplemental Declaration, levy Common Assessments against all

Owners.

5. Amount of Assessments and Increases in Assessments. The amount of Common Assessments for any Assessment Year which is payable by an Owner for the Lot of such Owner, and the amount of all other Assessments shall be determined by the Board. Notwithstanding anything to the contrary contained herein, by Supplemental Declaration, Declarant may limit the annual dollar amount of Assessments payable by any portion of the Development. The Board shall have the power to increase the amount of any Assessment from amounts provided herein.

6. Commencement of Common Assessments. As to each Lot within the Development, except as otherwise determined by the Board, the Assessments shall commence on the first day of the first month following the date of Recordation of the first deed conveying the Lot from Declarant to the first non-Declarant Owner. The Assessments for the then current Assessment Year for each Lot so deeded shall be prorated on the basis of the number of months in such Assessment Year remaining from the date of commencement of such Assessments to the end of such Assessment Year. Notwithstanding the foregoing, Common Assessments shall not be payable for any Lots owned by a Builder who intends to construct a residence on such site for resale until the later of (i) one year following the substantial completion of such Lot so as to allow construction of a residence on such Lot, provided said Lot has not been transferred to an owner other than the Builder, or (ii) such later date as may be agreed on in writing by Declarant and the Builder who owns such Lot.

7. Payment of Common Assessments. Common Assessments shall be due and payable in advance to the Association by the assessed Owners during the Assessment Year in annual, quarterly, or monthly installments (as the Board shall determine), and, except for the initial Common Assessment payable for a Lot, shall be due and payable on or before the first day of the period to which such Assessment applies, or in such other manner and on such other dates or dates as the Board may designate. Notice of the amount of the Common Assessment for a particular Assessment Year shall be given to the Owners in a reasonable period of time prior to the date in such Assessment Year when the Common Assessment or the first Installment thereof, is due.

8. Supplemental Common Assessments. In any Assessment Year, if the Board determines that the important and essential functions of the Association may not be fully funded by the Common Assessments received or receivable for that Assessment Year, the Board may levy one or more supplemental Common Assessments ("Supplemental Common Assessments"), applicable to that year only, by notifying each Owner by first-class mail of the amount of the deficit, the reason(s) therefore, and the date(s) and amount(s) of payment of such Supplemental Common Assessment payable by such Owner. The due date for payment of any such Supplemental Common Assessment shall be as specified in the resolution authorizing such assessment, but not earlier than thirty days after the sending of notice to the Owners in accordance with the preceding sentence; provided, however, that the Board may make Supplemental Common Assessments payable in installments over a period that may extend beyond the Assessment Year in which adopted.

9. Special Assessments. In addition to Common Assessments, the

Board may, subject to the provisions of this Section, levy one or more additional Assessments for the purpose of raising funds, not provided by Common Assessments, to: (a) construct or reconstruct, repair, remodel, replace or maintain improvements upon Association Properties, including necessary personal property related thereto, and to pay ad valorem taxes and insurance on Association Properties; (b) add to the Association Properties; (c) provide for necessary facilities and equipment to offer the services authorized in this Declaration; (d) repay any loan made to the Association to enable it to perform any duty or function authorized in this Declaration; or (e) pay for any other cost or expense as determined by the Board. Such Assessment shall be known as a "Special Assessment". The Association shall notify Owners in writing of the amount and purpose of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified. Notwithstanding the foregoing, the Association may determine that any Special Assessment should be assessed only against certain areas of the Association Properties and the Owners of the Property within such areas shall be responsible for paying such Special Assessments.

10. **Reimbursement Assessments.** Subject to the provisions hereof, the Board may levy an Assessment, known as a "Reimbursement Assessment: against any Owner(s) to reimburse the Association for any loss sustained by reason of the willful or negligent failure of such Owner(s), to comply with this Declaration, any Supplemental Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations which shall have resulted in the expenditure of funds by the Association to remedy a problem or to cause such compliance. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty days after notice to the Owner(s) of the decision of the Board stating that the Reimbursement Assessment is owed and stating the amount thereof.

11. **Priority of Lien for Assessment.** All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorney's fees, late charges, any other collection costs, and interest as provide herein shall be secured by an equitable charge and continuing lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except only for (a) liens of ad valorem taxes; and (b) a lien for all sums unpaid on a first Mortgage, on any secondary purchase money Mortgage, or on any Mortgage to Declarant, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument; provided, however, that the subordination of the lien for Assessments to the foregoing Mortgages shall apply only to Assessments that shall have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure. Further, notwithstanding the foregoing any Mortgage held by a party related to, affiliated with, or controlled by the Owner of the Lot on which such Mortgage exists shall not be entitled to such priority unless such Mortgage Holder obtains the written agreement of the Association that it will be entitled to such priority before making such Mortgage. Such sale or transfer shall not relieve such Lot from liability for any Assessments accruing after such sale or transfer. All Persons acquiring other liens or encumbrances on any Lot after the recording of this Declaration shall be deemed to consent that such liens or encumbrances shall be inferior to such future equitable charges and liens for Assessments as provided herein, whether or not such prior

consent shall be specifically set forth in the instruments creating such liens or encumbrances.

12. Effect of Nonpayment of Assessment: Remedies of the Association. Any Assessments or any portion thereof not paid when due shall be delinquent. Any Assessment delinquent for a period of more than fifteen (15) days shall incur a late charge in an amount as may be determined by the Board from time to time, shall bear interest from the date due at the lesser of (i) the maximum rate allowed by law or (ii) a rate to be set by the Board, until the date of payment, and the Board shall cause a notice of delinquency to be given to any Owner not paying within thirty days following the due date. If any installment of an Assessment has not been paid within thirty days of the due date thereof, the entire unpaid balance of the Assessment may be accelerated at the option of the Board and, if so accelerated, shall thereon become forthwith due and payable in full. The continuing lien and equitable charge of such Assessment shall include the late charge established by the Board, interest on the principal amount due at the rate provided for herein until paid, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law.

If the Assessment remains unpaid after sixty days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts or foreclose its lien or do both. The equitable charge and lien provided for in this Section shall be in favor to the Association and each Owner, by its acceptance of a deed to a Lot, vests in the Association or its agents the right and power to sue or otherwise proceed against such Owner for the collection of such charges and/or to foreclose the Association's lien. The Association shall have the power to bid on the Lot at any such foreclosure sale and to acquire, hold, lease, mortgage, and convey the Site except that the amount the Association may bid at any such sale may not exceed the total amount owed to the Association by the delinquent Owner.

13. Exempt Property. The following property and Persons subject to this Declaration shall be exempted from all Assessments hereunder (a) the grantee in conveyances made for the purpose of granting utility easements; and (b) the Association and (c) the Declarant.

14. Estoppel Certificate. Upon the payment of such reasonable fee as may be determined from time to time by the Board and upon the written request of any Owner, any Mortgagee or Person with, or intending to acquire, any right, title or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and owing to the Association and then unpaid with respect to such Lot and/or the Owner thereof and setting forth the amount of any assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association to establish that for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments were then levied and unpaid against such Lot.

15. No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason, including, without limitation, any claim of non-use of Association Properties or improvements or any claim that the Association,

the Board, or any committee of the board is not properly exercising its duties and powers under this Declaration.

16. Working Capital Fund. Each Owner of a Lot in the Subdivision shall pay as a "Working Capital Fund Fee" Two Hundred Fifty Dollars (\$250.00) to the Association at the closing of the sale of the completed residence to such Owner. The Working Capital Fund Fee will apply to the first sale of a Lot with a completed residence and to every subsequent sale of such Lot. Said Working Capital Fund Fee may be increased at any time by majority vote of the Board. During the Appointment Period, to the extent that the Association is unable to pay all costs of maintaining the Common Areas and administering the Association, Declarant may loan monies to the Association to fund any such deficits. Any such loans from Declarant to the Association shall be interest free loans for 2 years from the date of such loan and shall thereafter bear interest at prime rate plus 1% and any such loans would be due and payable in full no later than 10 years after same were made. Such loans may be evidenced by promissory notes that shall contain other customary commercial terms including payment of all costs of collection and a default rate of interest by the maker. The Working Capital Fund Fee by each Owner upon the closing of the sale of the completed residence to such Owner shall not be considered as advance payment of regular assessments. The Working Capital shall not be considered as advance payment of regular assessments. The Working Capital Fund Fees shall be held and disbursed for the following purposes in the order of priority:

- (a) To fund costs of maintenance of the Common Areas and administration of the Association that cannot be defrayed by assessments;
- (b) To reimburse the Declarant for all amounts loaned by Declarant to the Association to fund any operating deficits; and
- (c) To assure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors.

17. Lot Transfer Fee. A lot transfer fee (the "Lot Transfer Fee") of \$150 shall be charged to the buyer upon the sale or transfer of any Site, except sales or transfers to a Builder and except transfers by deed in lieu of foreclosure or transfers by foreclosure. Such Lot Transfer Fee shall be assessed automatically, without action by the Board of Directors. The Lot Transfer Fee may be increased by majority vote of the Board of Directors.

18. Enforcement of Lien by Trustee's Sale. For and in consideration of the privileges and protections granted in this Declaration, and the mutual enjoyment and use of the Common Areas, and for the express purpose of securing the payment of the Impositions described above, in order to avoid unnecessary court proceedings or delays for the enforcement of the liens described above, each Owner by accepting a deed to a Lot for their heirs, successors and assigns, does hereby transfer and convey unto **M. B. Murfree, IV**, of Murfree & Murfree, PLLC, or his successor firm, Trustee, his successors and assigns ("Trustee"), each such Lot deeded to such Owner with the appurtenances, estate, title and interest thereto belonging to the Trustee for the following uses in trust:

Each Owner agrees to pay all Impositions provided herein when due and upon demand of said Trustee or the Association, to pay, discharge, or remove any and all liens except a first mortgage or deed of trust lien which may hereafter be placed against said Lot which would adversely affect the lien granted herein, and in case the Trustee or his successors of the Association shall hereafter be required to appear in any court or tribunal to enforce, or defend the title to, or possession of, or costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee, shall be allowed and be payable by said Owner upon demand of the Trustee or the Association, and upon failure to do any of these things then said Trustee or Association may do any or all of said things, and the amounts so paid shall bear interest from the date of payment at the highest rate then permitted by the laws of the State of Tennessee and shall be and become a part of the indebtedness secured hereby.

If any Imposition, together with interest thereon, is not paid promptly when due or within a period of cure allowed above, or if after said Owner fails to pay any other sums due as above provided, or further, fail to reimburse the Trustee or Association within thirty days from the date of the Trustee's or Association's payment of such sums, this trust conveyance shall remain in full force and effect, and the said Trustee or his successor in trust is hereby authorized and empowered, upon giving sixty (60) days' notice by three publications in any daily or weekly newspaper published in Rutherford County, Tennessee, to sell said Lot at the front door of the Courthouse in said County to the highest bidder for cash at public outcry, free from the equity of redemption, statutory rights of redemption, homestead, dower, and all other exemptions of any kind which are hereby expressly waived; and the said Trustee or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser at such foreclosure sale. The Association may bid at any sale under this trust conveyance. The Trustee may at any time after default and the payment of any of the above described indebtedness enter and take possession of said Lot and shall only account for the net rents actually received by said Trustee. It is further agreed that in the event the Trustee fails, before selling said Lot as herein provided, to enter and take possession hereof, the purchaser shall be entitled to immediate possession of said Lot upon delivery to him by the Trustee of a deed for said Lot. In case of sale hereunder, the proceeds shall be applied by the Trustee as follows:

(a) to the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided, together with reasonable attorney's fees for advice or for instituting and defending any litigation which may arise on account of the execution of this conveyance or the enforcement of said lien, together with the expenses and costs of any such litigation,

(b) to the payment of all taxes which may be unpaid upon said Lot,

(c) to the payment of all unpaid Impositions herein secured,

(d) the residue, if any, to be paid to the order of said Owners or their representatives or assigns.

In the event of the death, absence, inability, or refusal to act of

said Trustee at any time when action of the foregoing powers and trusts may be authorized, or for any other reason, the lawful owner and holder of said lien is hereby authorized and empowered to name and appoint a successor in trust to execute this trust by an instrument in writing to be recorded in the Register's Office for Rutherford County, Tennessee, and title therein conveyed to the above named Trustee shall be vested in said Successor Trustee. The Trustee is authorized to appoint an attorney-in-fact to conduct in his stead and on his behalf and with the same power possessed by said Trustee as granted herein any and all foreclosure sales authorized above.

ARTICLE IX

REQUIREMENT OF THIRD PARTY PROPERTY MANAGEMENT COMPANY

Upon the termination of Class B Membership, the Association shall be required to contract with a professional management company for the management of the Association, the common areas, and the responsibilities of the Association. After the termination of Class B Membership, the Association must enter into an executed written contract with the professional management company selected by the Association, and said contract shall provide at a minimum for the management company to be required to do the following:

- (i) Attend one annual meeting and four quarterly meetings each year.
- (ii) Must have good communication skills to communicate with the Developer.
- (iii) Facilitate annual Association Meetings.
- (iv) Provide meeting minutes within 2 business days following each meeting of the full Association.
- (v) Prepare and mail quarterly newsletters to all Owners.
- (vi) Provide the Association with monthly financial statements, and bank statements including delinquency reports. Said information is due by the 15th of the following month for the prior month.
- (vii) Work with the Association to prepare an estimated budget for the Development, including adequate reserves for the maintenance and replacement of streets, sidewalks, and all other common amenities.
- (viii) Prepare a proposed annual budget for the Board to review at least 60 days before to the start of each new fiscal year which shall include an operating account, a separate reserve account, proposed annual income and expenditures, estimate reserve needs, estimate of needs and proposed assessments in an amount sufficient to fully fund the Association's annual operating expenses and the necessary amount to ensure the Reserve Account is adequately funded to cover replacement costs based upon the estimated life of common improvements such as sidewalks, and common area improvements.
- (ix) Must set and implement fine structure for violations of the

Declaration.

(x) Solicit all bids for Association work including, but not limited to pool management, lawn care, and landscaping. Provide copies of same and copies of all signed agreements to the Association.

(xi) Return all phone call from Association officers and Directors no later than 5:00 p.m. on the next business day of receipt of the phone call from the Association officer and Director.

(xii) Return all phone calls from Members no later than 5:00 p.m. on the next business day of receipt of the phone call from the Member.

(xiii) Conduct a community drive-through inspection at least once every two weeks to check for problems within the Development, traffic sign placement, monitor work of contractors for the Association, and check for violations of the restrictions for the Development.

(xiv) Provide an inspection report to the Association's Board of Directors on a monthly basis.

(xv) Help organize various committees within the Association e.g. advisory, social, beautification, etc.

(xvi) Must receive and review all Architectural Review Committee submittals and make sure all applications and/or plans are reviewed and complete prior to forwarding to the Architectural Review Committee.

(xvii) Prepare a Board Member Packet annually to include all contacts and information pertinent to serving on the board.

(xviii) Prepare and distribute a welcome packet to all new owners within 10 days of notice to the Management Company of a new owner.

(xix) Conduct inspections every two weeks to observe work of contractors (i.e. landscape maintenance, to observe and cite violations of restrictions, to monitor Lot maintenance) in order to identify any problems, and to make monthly report of observations to the Board of Directors of the Association.

(xx) Ensure repairs to common elements and Common Areas are made in a timely manner.

(xxi) Any stop signs which are missing must be replaced by the Management Company within twenty-four (24) hours of the Management Company becoming aware of the missing stop sign. Any other traffic signs must be replaced within two (2) weeks of the Management Company becoming aware of the missing signage. Decorative street name signs must be replaced within thirty (30) days of the Management Company becoming aware of the missing signage.

(xxii) Unless the Board of Directors of the Association is unable to locate a Management Company who is willing to the term set forth in this subsection, the term of the contract with the Management Company cannot exceed

three (3) years, and shall provide a provision allowing termination at the end of each fiscal year in the event the Management Company is not fulfilling its obligations under the property management agreement.

(xxiii) Collect any and all unpaid Assessments, and to take appropriate action in a timely manner to collect unpaid Assessments such as legal action and lien enforcement.

(xxiv) Maintain a list of all contracts of the Association for services, including, but not limited to landscaping and lawn care, detailing the expiration dates of each contract, and monitor said list to ensure appropriate action can be taken by the Board of the Association to renew or non-renew contracts in a timely manner.

(xxv) Ensure all insurance policies required by the Association in the Declaration are obtained and premiums paid in a timely manner.

(xxvi) Have all required tax returns completed on behalf of the Association in a timely manner, complete and file an Annual Report on behalf of the Association with the Tennessee Secretary of State, ensure all property taxes of the Association are paid in a timely manner.

ARTICLE X

RELEASE OF PUBLIC IMPROVEMENT BONDS

The Declarant and the Association are hereby granted a right to grant, vacate or terminate easements on the Common Area or the Reserved Easement Areas as may be commonly required by any governmental agency or authority in connection with the release of bonds held by the City in connection with the acceptance of streets for public maintenance with respect to the Community.

ARTICLE XI

STORM WATER MANAGEMENT

The Declarant may construct improvements and facilities for storm water management control. The Upkeep of the storm water management facilities located on a Lot shall be performed by the Owner of such Lot. The Upkeep of the storm water management facilities located on the Common Area shall be performed by the Association, unless otherwise provided under a separate agreement or easement entered into by the Association; provided, however, that the Upkeep obligations identified in this subsection shall cease and terminate at such time, if ever, as the City of Murfreesboro elects to maintain the storm drainage and management facilities contained within the easements as evidenced by a document recorded in the Rutherford County Register of Deeds. The Owner of any Lot on which there is located an easement for storm water drainage management or control shall be also responsible for the following items of maintenance, where applicable: grass mowing with reasonable frequency and the removal of debris and other matter where such debris or matter has impeded or threatens to impede the free flow of storm water through drainage structures.

ARTICLE XII

AMENDEMENT TO DECLARATION BY OWNERS AFTER THE APPOINTMENT PERIOD

1. **Requirements for an Amendment.** Except as otherwise provided herein, after the Appointment Period amendments to this Declaration shall be proposed and adopted in the following manner: Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Owners at which such proposed amendment is to be considered and shall be delivered in accordance with the Bylaws. At such meeting, a resolution for the adoption of a proposed amendment may be proposed either by the Board or by an Owner. Such amendment must be approved by at least a majority (51%) of the total Lot Owners within the Development. Lot Owners may vote at such meeting in person or by proxy. If after the Appointment Period the Declarant should own any land within the Development any amendment must receive of the approval of the Declarant which may be unreasonably withheld. For such amendments as require the approval of any Mortgagee by vote this approval by such mortgagee shall also be required for any amendment. Any required consent to an amendment to this Declaration shall be evidenced by the execution of such amendment or in the alternative (as to all such Persons other than Declarant), the sworn statement of the President or the Secretary of the Association attached to or incorporated into the amendment. This sworn statement shall state unequivocally that the consent of the required Persons was lawfully obtained. Any such amendment to this Declaration shall become effective only when recorded, or at such later date as may be specified in the amendment itself. Notwithstanding anything to the contrary contained herein, during the Appointment Period, Declarant as the sole Class B Owner shall have the right to amend this Declaration unilaterally without the necessity of calling a meeting of the Owners (or any consent of the Owners) by executing a recording such amendment in the Rutherford County, Tennessee Register's Office.

2. **Amendments Requiring Mortgagee Consent.** In addition to the required votes of the Owners necessary to approve a proposed amendment as set forth hereinabove, unless a higher percentage vote is required elsewhere in this Declaration or by law, fifty-one percent (51%) of the votes of Mortgagees who have requested notice (based upon one vote for each Lot upon which a mortgage is owed) shall be required to approve any amendment to this Declaration which would materially effect or change:

- (i) The voting rights of Lot Owners;
- (ii) The method of assessment of common expenses or the priority of the lien of the Association for unpaid Common Assessments;
- (iii) The requirement of a reserve fund for the repair or replacement of the Common Areas;
- (iv) The right of a Lot Owner to lease, sell or transfer a Lot;
- (v) any provision of this Declaration which expressly benefits any mortgagee, insurer or guarantor.

ARTICLE XIII

HOMEOWNERS' ASSOCIATION

Declarant further makes the Property hereinabove described and any property annexed hereto subject to the authority of the River Downs Annex Section II Homeowner's Association, Inc. in order to establish the rules and methods of operating same.

ARTICLE XIV

PROPERTY RIGHTS

1. **Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and for any infraction of its published rules and regulations;

(b) the right of the Board of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless approved by a majority of the Board of the Association.

1. **Delegation of Use.** Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE XV

ASSOCIATION OPERATION MEMBERSHIP AND VOTING RIGHTS

1. **Association.** The Association has been or will be formed as a Tennessee corporation under the Tennessee Non-profit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in the Articles of Incorporation and Bylaws.

2. **Board.** The affairs of the Association shall be managed by the Board, which shall consist of three Directors. Except as to matters set forth herein as requiring a vote of the Owners, the Board shall have full authority to make all decisions and take any and all actions on behalf of the Association. During the Appointment Period, the Declarant shall determine the number of Directors and Declarant shall have the right to appoint all of such Directors, and the initial Board shall consist of three Directors. Subject to the foregoing, the number, term, election and qualifications of the Boards shall be fixed in the Articles of Incorporation or the Bylaws. By resolution, the Board may delegate portions of its authority to an executive committee or to other committees, tribunals, officers of the Association or to agents and employees of the Association, but such delegation of authority shall not

relieve the Board of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized executive committee, officer, agent or employee without a vote of Owners, except as otherwise specifically provided in this Declaration.

3. Membership in Association. Each Owner of a Site within the Association Area (the Development) shall be a member of the Association. There shall be one membership in the Association for each Site within the Association Area (Development). The Person or Persons who constitute the Owner of a Site shall automatically be the holder of the membership in the Association appurtenant to that Site, and such membership shall automatically pass with fee simple title to the Site. Membership in the Association shall not be assignable separate and apart from fee simple title to a Site, except that an Owner may assign some or all of such Owner's right as an Owner to use improvements or otherwise to a Related User or Mortgagee and may arrange for a Related User to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to relieve itself of the responsibility for fulfillment of all of the obligations of an Owner under this Declaration.

4. Classes of Membership. The Association shall have two classes of voting membership, Class A Owners and Class B Owners. Class A Owners shall include all Owners; provided, however, that the Declarant shall be entitled to Class A membership only after the termination or expiration of the Appointment Period.

ARTICLE XVI

THE BOARD

The Board shall have the rights and duties set forth in the Association By-laws and as set out herein. Notwithstanding any provision contained herein or in any Association document to the contrary, Declarant hereby retains and shall have the right to appoint or remove, with or without cause, any Member or members of the Board and any officer or officers of the Association until the end of the Appointment Period.

ARTICLE XVII

INSURANCE AND FIDELITY BONDS

The Association shall maintain in effect casualty and liability insurance and fidelity bond coverage as is necessary to protect the Association and its employees, and such insurance and fidelity bond coverage shall be in an amount and in a form sufficient to meet the guidelines set forth in the Federal National Mortgage Association Lending Guide, Chapter 3, Part 5.

ARTICLE XVIII

RIGHTS OF LENDER

1. **Written Notice.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the name and address of the affected Lot Owner, any mortgage holder, insurer or guarantor will be entitled to timely written notice of:

A. Any condemnation or casualty loss that affects either a material portion of the Properties or the Lot securing its mortgage or deed of trust.

B. Any sixty (60) days delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds a mortgage or deed of trust.

C. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

D. Any proposed action that requires the consent of a specified percentage of mortgage or deed of trust holders.

2. **Financial Statement.** Any holder of a first mortgage or deed of trust is entitled, upon written request, to a financial statement for the immediately preceding fiscal year of the Association.

3. **Copies of Declaration, By-Laws, and other Rules of Property.** The Association is required to make available not only to Lot, but to lenders, and to holders, insurers or guarantors of any first mortgage or deed of trust, current copies of the Declaration, By-Laws, other rules concerning the Properties, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

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

5. **Exempt Property.** The impositions and liens created under this Article shall not apply to the Common Areas. All property within the Development which is dedicated to and accepted by a local public authority, which is granted to or used by a utility company, or is designated as part of the Common Area shall be exempt from such Impositions.

ARTICLE XIX

ANNEXATION TO ASSOCIATION AREA

"First Section Made Subject to Declaration". Declarant hereby declares that River Downs Annex Section II are hereby made subject to this

Declaration.

"Property Which May Be Annexed". From time to time Declarant may unilaterally add to the Association Area (Development) and make subject to this Declaration all or any portion or portions of the Annexable Area. The portion of the Annexable Area covered by a particular Supplemental Declaration need not adjoin the First Section or any other portion of the Annexable Area covered by a Supplemental Declaration recorded prior to the particular Supplemental Declaration. Prior to the commencement of the construction of any improvements on any portion of the Annexable Area after the sale of such portion to a Person who is not a successor or assign, as Declarant as defined hereunder, shall arrange to have such portion added to the Association Area if Declarant shall determine that the use to be made of such portion is compatible with the uses of the Association Area if Declarant shall determine that the use to be made of such portion is compatible with the uses of the Association Area permitted by this Declaration and that such portion is sufficiently physically near to the Association Area to enable such portion to be developed as an integral part of the Development.

"Manner of Annexation". Any parcel of real property (the "Annexed Property") within the Annexable Area may, from time to time, become part of the Association Area and become subject to this Declaration effective upon the Recordation of a Supplemental Declaration meeting the requirements set forth in this Declaration. Each Supplemental declaration shall; (a) be executed by the then Owner or Owners of the Annexed Property described therein; (b) during the Appointment Period also contain the executed written consent of Declarant if the Annexed Property is not then owned by Declarant, unless such written consent is waived by Declarant with respect to all or any portion of the Annexable Area by a writing signed by Declarant and recorded, and after the expiration of the Appointment Period, also contain the written consent of the Association; (c) contain an adequate legal description of the Annexed Property; (d) contain a reference to this Declaration which shall state its date of Recordation and the book and page of the county records where this Declaration is recorded; (e) contain a statement that the Annexed Property is declared to be part of the Association Area under this Declaration and that the Annexed Property shall be subject to this Declaration; (f) if said property is to be subject to a Sub-association, designate the Sub-association in which the Annexed Property is located; (g) if said property is to be subject to a Sub-association, provide that Sites therein shall be subject to the jurisdiction of a Sub-association,; and (h) provide for the method of amendment, which shall require the written consent of Declarant during the Appointment Period, and thereafter shall require the written consent of the Association. A Supplemental Declaration may provide for phased annexation so that separate parcels of real property may be made subject to such Supplemental Declaration and this Declaration at different times. A Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions other than those set forth in this Declaration, taking into account the unique and particular aspects of the proposed development of the Annexed Property covered thereby. A Supplemental Declaration may provide for a Sub-association of Owners within the Annexed Property and for the right of the Sub-Association to assess such Owners and to place liens upon the Sites of such

Owners. Upon recordation of a Supplemental Declaration, the Annexed Property shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, except to the extent, if any, specifically stated in the Supplemental Declaration.

ARTICLE XX

EXPANSION OF ANNEXABLE AREA

The Annexable Area may be expanded to add additional real property which is in reasonable proximity of the Annexable Area as it is then configured and which Declarant determines may be developed in congruity with the other portions of the Annexable Area and may become a part of the Development. Any such expansion shall be effective upon the Recordation of a written instrument executed by Declarant during the Appointment Period and all other owners of fee simple title to such additional real property, describing such additional real property and declaring that such additional real property shall thereafter be added to the Annexable Area.

ARTICLE XXI

DUTIES AND POWERS OF ASSOCIATION

1. "General Duties and Powers of Association". The Association has been formed to further the common interests of the Owners. The Association, acting through the Board or through persons to whom the Board has delegated any authorized powers of the Board, shall have the duties and powers hereinafter set forth and, in general, the powers to perform its duties described in this Declaration and, subject to any limitation set forth in this Declaration, the powers to do anything that may be necessary or desirable to further the common interests of the Owners, to maintain, improve and enhance Association Properties and to improve and enhance the attractiveness and desirability of the Association Area.

2. "Duty to Accept Property and Facilities Transferred by Declarant". The Association shall accept title to any property, including any improvements thereon and personal property, transferred to the Association by Declarant, together with the responsibility to perform any and all Administrative Functions associated therewith, provided that such property and Administrative Functions are not inconsistent with the provisions contained in this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use. Any property or interest in property transferred to the Association by Declarant shall be unencumbered by any Mortgage.

3. "Duty to Manage and Care for Property and to Require All Owners to Manage and Care for all Property located in the Association Area". The Association shall manage, operate, care for, maintain and repair all Association Properties and keep them in a reasonable condition for the use and enjoyment of the Owners. The Association shall have a reasonable right of entry upon any Site to make emergency repairs and to do other work reasonably

necessary under this Declaration or under any applicable Supplemental Declaration for the proper performance of its duties hereunder and the proper maintenance and operation of the Association Properties. In addition, the Association shall have the power to require that all Owners manage, operate, care for, maintain and repair their respective Sites and keep them in an attractive and desirable condition and to otherwise enforce the provisions of this Declaration against all Owners. The Association shall have the authority to enter into cost and maintenance sharing agreements with any third party property owner, or governmental entity regarding the maintenance of any Association Property or concerning any other matter which the Board determines is in keeping with the purpose and goals of the Association.

4. **"Duty to Pay Taxes"**. The Association shall pay all ad valorem taxes and governmental assessments levied upon the Association Properties to which the Association holds fee simple title and all taxes and assessments payable by the Association. Nevertheless, the Association shall have the right to contest in good faith any such taxes or assessments.

5. **"Casualty Insurance"**. To the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire and extended coverage insurance with respect to all insurable improvements and personal property owned by the Association.

6. **"Liability Insurance"**. To the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage.

7. **"General Provisions Respecting Insurance"**. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Association and each Owner as against any officer, director, agent or employee of any of the foregoing. To the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, insurance obtained by the Association shall name Declarant and any professional management company managing the Association (the "Manager") as an additional insured officer, director, agent or employee of Declarant or the Manager. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and/or property of Declarant. Each Owner hereby irrevocably appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including; (a) the collection and appropriate disposition of the proceeds thereof; (b) the negotiation of losses and execution of release of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose.

8. **"Fidelity Coverage"**. To the extent reasonably obtainable, the Association may obtain and keep in full force and effect at all times a fidelity policy or bond providing fidelity coverage against dishonest acts on the part of the Manager, directors, officers, employees and volunteers of the

Association responsible for handling funds collected and held for the benefit of the Owners or otherwise belonging to or administered by the Association.

9. **"Other Insurance and Bonds"**. The Association shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

10. **"Duty to Levy and Collect Assessments"**. The Association shall levy and collect Assessments as elsewhere provided in this Declaration and shall collect all Assessments. This collection of Assessment shall be through the third party property management company.

11. **"Duty to Invest Funds"**. The Association shall invest its funds so as to achieve a reasonable rate of return in light of its needs for certain liquidity and the safety of such funds. Funds shall be invested only with a federally insured institution.

12. **"Power to Acquire Property and Construct Improvements"**. Other than property received from Declarant the Association may acquire property or interests in property for the common benefits of Owners, including improvements and personal property. The Association may construct improvements and personal property. The Association may construct improvements on property and may repair, maintain, remodel and demolish existing property.

13. **"Power to Adopt Rules and Regulations"**. The Association, acting through the Board, or the Architectural Review Committee, may from time to time adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable and respect to the interpretation and implementation of this Declaration or any Supplemental Declaration, the operation of the Association, and the use and enjoyment of Association Properties. Any such Rules and Regulations shall be uniformly applies, but the applicability of a particular rule to a particular situation shall be in the sole discretion of the Association. Each Owner shall comply with such Rules and Regulations. In the event of any conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

14. **"Power to Enforce Declaration, Supplemental Declaration and Rules and Regulations"**. The Association shall have the power to enforce the provisions of this Declaration, any Supplemental Declaration, and the provisions of the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Owners and Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration, any Supplemental Declaration, and of the Rules and Regulations by any on or more of the following means; (a) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, any Supplemental Declaration, or the Rules and Regulations, by mandatory injunction or otherwise; (b) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration, any Supplemental Declaration, or the Rules and

Regulations; (c) by levying and collecting reasonable and uniformly applied fines and penalties established in advance in the Rules and Regulations,, from any Owner or Related User for breach of this Declaration, any Supplemental Declaration, or the Rules and Regulations by such Owner or such Related User; and (d) by exercising any remedy or remedies for nonpayment of Assessments pursuant to the Provisions of this Declaration.

15. **"Power to Provide Special Services for Owners".** The Association shall have the power to provide services to an Owner or a group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to a Supplemental Declaration or pursuant to an agreement in writing between the Association and such Owner or group of Owners. Any arrangement for the rendition of such services shall provide for payment to the Association by such owner or group of Owners of the reasonably estimated expenses of the Association for providing such services, including a fair share of the overhead or any other expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall be secured by a lien on the property of the Owner of group of Owners.

16. **"Power to Grant Easements".** The Association shall have the power to grant permits and licenses, as well as easements for access, utilities, drainage, water facilities and other matters, in, on, over, across or under Association Properties and any Utility Easement Area, as may be reasonably necessary or useful for the proper maintenance of the Association Properties or otherwise benefit the Association Area.

17. **"Power to Convey and Dedicate Property to Government Agencies".** The Association shall have the power to grant, convey, dedicate or transfer any Association Properties or facilities to any public or governmental agency or authority for public use; however, if the means of ingress to and egress from a Site is through any such Association Property, then any such grant, conveyance, dedication or transfer shall be effected so as to provide ingress and egress for the benefit of the Owner of such Site.

18. **"Power to Borrow Money".** The Association shall have the power to borrow money but not the power to encumber Association Properties as security for such borrowing.

19. **"Power to Employ Managers; Management Contracts".** The Association shall retain and pay for the services of a third party management company to undertake any of the management duties and Administrative Functions for which the Association has responsibility, and the Association may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and the Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

20. **"Power to Engage Employees, Agents and Consultants".** The Association shall have the power to hire and discharge employees and agents

and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration or any Supplemental Declaration.

21. **"General Corporate Powers"**. The Association shall have all of the ordinary powers and rights of a Tennessee nonprofit corporation, including without limitation the power and right to enter into partnerships and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration, under any Supplemental Declaration, or under the Articles of Incorporation, Bylaws or Rules and Regulations, and to do and perform any and all acts which may be necessary or desirable for or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration, under any Supplemental Declaration or under this Articles of Incorporation, Bylaws or Rules and Regulations.

ARTICLE XXII

ASSOCIATION PROPERTIES

1. **"Owner's Rights of Use and Enjoyment Generally"**. Except as may be provided in a Supplemental Declaration, every Owner shall have a right and easement or enjoyment in and to the Association Properties, which shall be appurtenant to and shall pass with the title to each Site, subject to applicable law, the provisions contained in this Declaration, in any Supplemental Declaration, the Articles of Incorporation, Bylaws and the Rules and Regulations. All Owners may use the Association Properties, unless otherwise provided by law or in this Declaration or unless provided in the Supplemental Declaration governing the Site of any such Owner or in the Supplemental Declaration governing a particular Association Property, or both. Single Residential Site Association Properties are for the use and enjoyment solely of Single Residential Site Owners.

2. **"Right of Association to Regulate Use"**. The Association shall have the power to regulate the use of Association Properties by Owners or Related Users of Owners to further and enhance the overall rights of use and enjoyment of all Owners, including imposing reasonable limits on the times of use and numbers of Persons permitted to use Association Properties.

3. **"Right of Association to Allow Public Use"**. The Association, acting through the Board, shall have the right to allow members of the general public to use Association Properties.

4. **"No Partition of Association Properties"**. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

5. **"Liability of Owner for Damage by Owner or Related User"**. Each Owner and any Related User shall be liable to the Association for any

damage to the Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or any Related User of such Owner and for any violation by such Owner or any Related User of this Declaration, any Supplemental Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations. The Association shall have the power, as elsewhere provided in this Declaration to levy and collect a Reimbursement Assessment against an Owner to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration, Bylaws or Rules and Regulations, or for any increased insurance premiums directly attributable to any such damage or any such violation.

6. Title to Association Properties on Dissolution of Association". In the event of the dissolution of the Association, the Association Properties shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies, or to a nonprofit corporation, association, trust or other organization, to be used, in any such event, for the common benefit of Owners for purposes similar to those for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties, and the proceeds from the sale or disposition shall be distributed to Owners in proportion to their then prevailing shares for the payment of Common Assessments.

ARTICLE XXIII

GENERAL PROVISIONS

1. Miscellaneous HUD Compliance Requirements. Notwithstanding anything to the contrary contained in this Declaration (i) annexation of additional properties, merger or consolidation, mortgaging or dedication of the common areas, dissolution, and amendment of this Declaration or Articles of Incorporation of the Association requires prior approval of HUD/VA as long as there exists Class B membership in the Corporation and (ii) if the Association is dissolved, the assets of the Association shall be dedicated to a public body, or conveyed to a non-profit organization with purposes similar to the Association; (iii) amendments to the Declaration, pursuant to this subsection, must be approved by two-thirds vote of the Owners; (iv) Class B Membership shall cease no later than December 31, 2046; (v) the Common Area cannot be mortgaged or conveyed without the consent of at least two-thirds ($2/3^{\text{rds}}$) of the Lot Owners (excluding the Developer).

2. Easement for Emergency Access. An easement over and through all or any portion of the Property is hereby granted to the County for police, fire, ambulance and other rescue personnel in the lawful performance of their functions.

3. Severability. Invalidation 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. Captions and Cross-References. The captions are inserted only for reference, and in no way define, limit or otherwise affect the scope, meaning or effect of any provision. All cross-references are to the Declaration unless otherwise indicated.

5. Pronouns. The use of the masculine gender shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

6. Severability. Each provision of the Governing Documents is severable from every other provision, and the invalidity of any one or more provisions shall not change the meaning of or otherwise affect any other provision. To the extent that any provision of the Governing Documents is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent lawful, the provision shall be enforced.

7. Interpretation. In the event of any conflict between the provisions of this Declaration and the provisions of either the Association's Articles of Incorporation or Bylaws, the provisions of this Declaration shall control.

8. Governing Law. This Declaration shall be construed under Tennessee law; excluding its conflicts of law provisions.

9. Disclaimer of Liability. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements or by any Lot Owner, or any other Person, or resulting from electricity, water, snow or ice which may leak or flow from or over any of the Property or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type. No diminution, offset or abatement of any Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority.

10. Duration. The restrictions and covenants herein contained shall run with and bind all of the real estate described on "Exhibit A", and each and all on all parties having any right, title, or interest in any portion of the Property, and all persons claiming under such owners for thirty (30) years. After said thirty (30) year period, the same shall be automatically extended for two (2) successive periods of ten (10) years each unless cancelled by two-thirds (2/3) of the Lot Owners covered by said covenants, conditions, and restrictions. Notwithstanding the foregoing, any easements granted pursuant hereto or in any Supplemental Declaration are and shall be perpetual, except to the extent, if any, otherwise provided in the creation of any such easement, and except that any dedication to an acceptance by an appropriate governmental authority or any conveyance or grant to any appropriate public utility of the facilities that are the subject of any such easements shall terminate those

easements if such dedication, conveyance, or grant so provides.

11. **Enforcement.** Enforcement may be had by the Developer, or Association, by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain or enjoin such violation or to recover damages, or both and any other remedy at law or in equity. In the event any action of enforcement is taken against an offending Lot Owner, the said offending Lot Owner shall pay the cost of enforcing these restrictions including all court costs and attorney's fee.

12. **Enforceable by Owners of Land Outside Association Area.** The restrictions created by this Declaration benefit and burden only the Association Area and no other land whatsoever, whether or not within the Annexable Area. The terms of this Declaration can be enforced by the Declarant and the Association. In addition to the Declarant and the Association, the following persons shall also have the ability to enforce the provisions of this Declaration: Connie Phillips, Wayne Phillips, Jennifer Phillips, Claude Phillips, Stan Vaught, John Phillips, Barfield Investment Partners, Pinnacle National Bank, TMG Vols, LLC, River Downs Mboro, LLC, Jean Lowery and E. Ray Lowery ("Additional Enforcement Parties"). The Declarant, the Association and the Additional Enforcement Parties shall be the only parties with the power to enforce, notwithstanding any possible sharing of present or future facilities by other land, whether developed by Declarant or others, the general plan created by this Declaration are not intended to benefit any Persons, who do not own an interest in any of the development or the Association Area. No Persons owning land or having an interest in land outside of the Association Area (with the exception of the Additional Enforcement Parties) shall have any right whatsoever to enforce this Declaration for the benefit of such land. Therefore, with the exception of the Additional Enforcement Parties, no adjoining land owner with property in a close proximity or neighboring the property shall have any right to enforce the terms of this Declaration and shall have no standing whatsoever of enforcement of the same.

13. **Notice and New Site Owner Required Notice.** Upon any Owners acquisition of a Site, such Owner shall notify the Association of such Owner's address for purposes of the furnishing of notice in connection with this Declaration. Until notice to the contrary is given to all Owners by the Association, the address of the Association for the purposes of the furnishing of notice in connection with this Declaration shall be Declarant's principal office in the State of Tennessee. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telecopier, or telegraph. If served by mail, such notice shall be sent first class, postage prepaid, addressed to the Person entitled to receive such notice at the address given to the Association, and shall be deemed given, if not actually received earlier at 5:00 PM on the second day which is not a Sunday or legal holiday after it is deposited in a regular depository of the United States Postal Service. Such address may be changed by any such Person from time to time by notice in writing to the Association. Notice to one or more Owners of a Lot shall constitute notice to all such Owners. It shall be the obligation of every Owner to notify the Secretary of the Association immediately in writing of any change in address. Any Person who becomes the Owner of a Site after the date on which notice is delivered personally or

mailed shall be deemed to have received such notice if received by such Owners predecessor in title to such Lot.

14. No Waiver. No delay or failure on the part of the Association or any other aggrieved party to invoke any available right, power, or remedy in respect to a breach of this Declaration, the Bylaws, or the Rules and Regulations shall be held to be a waiver by that part of (or stop that party from asserting) any right, power, or remedy available to it upon the recurrence or continuance of such breach or the occurrence or a different breach.

15. Remedies Cumulative. The rights, powers, and remedies provided in this Declaration shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise by a Person of any particular right, power, or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers or remedies available to it.

16. Costs and Attorney's Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

17. General Development Information. Any brochures, maps, models, handouts, schematics, plans and facilities provided or available in connection with Declarant's development, construction, promotion, marketing, sale or leasing of property or improvements are provided for general information purposes only, are subject to change or deletion without notice by Declarant, by public or governmental authorities; and by others and shall not obligate Declarant to develop, construct, promote, market, sell or lease any such property or improvements whatsoever or in any particular manner, or to add to the Association Area any portion of the Annexable Area.

18. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation, the Bylaws or the Rules and Regulations, this Declaration shall control. In case of conflict in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

19. Number, Gender and Grammar. Unless the context requires a contrary construction, the singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

20. Effective Date of Declaration. The effective date of this Declaration shall be the date of its recording in the Rutherford County Register of Deeds Office.

IN WITNESS WHEREOF, the undersigned has placed his/her signature on this the 30 day of October, 2012.

RIVER DOWNS MBORO, LLC

By: [Signature]

STATE OF TENNESSEE
COUNTY OF RUTHERFORD

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, Alfred M. Manno, 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 Co-Manager of River Downs Mboro, LLC, the within named bargainor, and he as such Officer being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of River Downs Mboro, LLC by himself as such Officer.

WITNESS MY HAND and official seal at my office on this the 30 day of October, 2012.

My commission expires: 9/23/13

[Signature]
Notary Public



EXHIBIT A

Record Book
1170 Pgs 2685

Property Description
PNB Holding Co. 2, Inc.
Tax Map 124, Part of Parcel 8.03
Part of Record Book 1102, Page 2280
Part of Proposed River Downs Annex, Section II

Located in the 11th Civil District of Rutherford County, Tennessee. Bound on the north by the proposed Section I, River Downs Annex [PNB Holding Co. 2, Inc (Record Book 1102, page 2280)]; on the east by River Downs Subdivision, Section II, Phase I (Plat Book 21, Page 194), Section II, Phase II (Plat Book 22, Page 95) and Fred Clark Snell (Record Book 49, Page 552); on the south by Southwood Estates (Plat book 5, Page 46), Stan Vaught, et al (Record Book 1054, Page 3744); and on the west by Claude D. Phillips, et al (Record Book 1055, Page 1362).

Commencing at a iron pin found on the south right-of-way of River Downs Boulevard, said pin being the northwest corner of Lot 35, Section I, River Downs Subdivision; thence with the west line of Lot 35, S02°57'01"E, 145.12 feet to an iron pin found; thence with the west lines of Lots 34 and 33 River Downs Subdivision respectively, S02°56'18"E, 196.83 feet to an iron pin found; thence with the north line of River Downs, Section II, Phase I, Lots 37, 38 and 39 respectively, N84°07'28"W, 325.43 feet to a planted stone found in a fence corner for the northwest corner of Lot 39; thence with the west line of Lot 39 S05°09'22"W, 175.55 for a **Point of Beginning**, being the NE corner of this tract (the SE corner of the proposed Lot 11, Section I, River Downs Annex); thence continuing with the west line of Lot 39 and 40, respectively, S05°09'22"W, 102.48 feet to a pipe found; thence continuing with the west line of Lot 40, S05°18'28"W, 263.36 feet to a pipe found; thence with the west line of River Downs, Section II, Phase II, Lots 61 and 65, S05°15'26"W, 326.12 feet to a pipe found; thence continuing with the west line of Lots 65 and 66, S05°00'09"W, 277.90 feet to a iron pin found in a fence corner for the southwest corner of Lot 66; thence with the south line of Lots 66, 67, 68, 69, 70 and 71 respectively, S82°35'55"E, 582.19 feet to a fence corner; thence with the west fence line of Fred Clark Snell, S06°59'38"W, 428.12 feet to a fence corner, being the northwest corner of Fred C. Snell Jr. (Deed book 357, Page 584) and the southeast corner of this tract; thence with the north line of Southwood Estates Lot 14 and the terminus of Greenview Drive, N84°20'30"W, 282.63 feet to a iron pin found in the west right-of-way of Greenview Drive; thence with Lot 15 Southwood Estates, N84°38'17"W, 232.12 feet to a iron pin found at the northwest corner of Lot 15; thence with the north fence line of Stan Vaught, et al, N84°24'33"W, 293.02 feet to a point in the fence line; thence continuing with the north fence line of Stan Vaught, et al, N84°44'22"W, 338.13 feet to a point in the fence line for the southwest corner of this tract; thence with the easterly line of Claude D. Phillips, et al, N00°08'36"E, 215.01 feet to a point; thence continuing with Phillips, N68°18'39"E, 332.25 feet to a point; thence N05°18'37"E, 1,001.70 feet to an iron pin, being the NW corner of this tract (the SW corner of the proposed Lot 12, Section I, River Downs Annex); thence running with the south line of the proposed Section I, River Downs Annex S84°41'23"E, 175.00 feet to an iron pin; thence N05°18'37"E, 49.29 feet to an iron pin; thence S84°41'23"E, 122.91 feet to the iron pin at the beginning; containing 17.22 acres, more or less.

This tract is subject to a 50 foot wide Colonial Pipeline Gas Transmission Line Easement and all other easements and/or restrictions either recorded or by prescription that a complete title search may reveal.

Prepared by: Huddleston-Steele Engineering, Inc., 2115 Northwest Broad Street, Murfreesboro, Tennessee 37129 from a prior survey of the John Oscar Phillips, III, et al property dated February 17, 2005, and has not been resurveyed and is not recertified at this time.

Heather Dawbarn, Register
Rutherford County Tennessee
Rec #: 716281
Rec'd: 265.00 Instrument #: 1810093
State: 0.00
Clerk: 0.00
Other: 2.00 Recorded
Total: 267.00 11/1/2012 at 9:07 AM
in
Record Book 1170 Pgs 2633-2685