

## VICTORIA PARK - ABSTRACT OF RESTRICTIONS AND BY-LAWS

Victoria Park is a carefully planned, modern, family residential living development. It is a unique concept in Rutherford County, Tennessee. When fully completed, Victoria Park will feature a number of "common areas" designed as mini-parks or open "green spaces" for the use and enjoyment of development homeowners, their families and guests.

Every Victoria Park homeowner is automatically a member of the Victoria Park Homeowners Association (comprised of other homeowners). The Association is the legal owner of the mentioned common areas, charged with their control and maintenance. The Association also has authority over a number of other areas such as parking, assessments, building approval, signs, etc.

The Association will have regular meetings to elect officers, appoint a Board of Directors, and address new business as necessary. Every homeowner is entitled to attend these meetings and to vote. The Association will also set the amount of any "maintenance fees" or other assessments necessary for actual or anticipated expenses. The current maintenance fee is \$5.00, per month for every lot/homeowner. These will be billed annually.

The Developer of Victoria Park has caused a comprehensive Declaration of Covenants, Conditions and Restrictions of Victoria Park, with an Exhibit setting forth the By-Laws of Victoria Park Homeowners Association to be recorded in the Register's Office for Rutherford County, Tennessee, as a public record. Set forth below are selected excerpts from said Restrictions. The citations refer to the complete referenced Declaration.

Article II, Section 1. 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.

Article II, Section 3. No parking shall be permitted outside designated parking areas. The association shall promulgate parking regulations. There shall be no "on-street" parking by homeowners nor guests or invites.

Article IV, Section 1. All lot owners shall be subject to an annual maintenance fee of \$60.00, billed annually and proratable. (Para-phrased)

Article V. No building, fence, wall, clothesline or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been

submitted to and absolutely approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

Article VIII, Section 1. Land Use and Building Type. No lot shall be used except for residential purposes.

Article VIII, Section 3. Nuisance. No unlawful, noxious or offensive activity shall be carried on upon any Lot or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others or which may be or become annoyance or nuisance to the neighborhood.

Article VIII, Section 4. Animals. Domestic animals only, such as dogs or cats may be maintained on the premises.

Article VIII, Section 5. Outside Antennas. No outside radio or television antennas (including satellite "dishes") shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Article VIII, Section 7. Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Article VIII, Section 11. Commercial Business. No commercial businesses may be maintained on the Common Area or in the Living Units.

Article VIII, Section 14. Repair of Vehicles. No vehicles of any type shall be permanently or semi-permanently parked on the Properties or in the vicinity of any Living Unit or in the Common Area for purposes of accomplishing repairs thereto, or the reconstruction thereof except as permitted by the Rules and Regulations adopted by the Association. This restriction shall also apply to all vehicles not in operating condition.

Article VIII, Section 15. Recreational Vehicles. There shall be no parking of recreational vehicles, including but not limited to, camping trailers, boats, motor homes and the like except in areas specifically designated for this purpose by the Association.

Article VIII, Section 16. Commercial Vehicles. There shall be no parking of commercial vehicles within the Development.

Article VIII, Section 18. General. Each Lot Owner shall maintain this Lot in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Unit which may increase the cost or cause the cancellation of insurance on other units or on the Common Elements.

Article VIII, Section 21. Swimming Pools. Pools must comply with regulations established by the Board of Directors from time to time.

Article IX. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

VICTORIA PARK JOINT VENTURE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

005014

OF VICTORIA PARK

This DECLARATION of Covenants, Conditions and Restrictions, hereinafter sometimes referred to as the "Declaration", set forth and entered into this 18<sup>TH</sup> day of March, 1988, by Victoria Park, a joint venture, referred to as the "Declarant":

W I T N E S S E T H:

WHEREAS, Declarant is the owner and developer of certain property more particularly described in that certain PLAT of record in Plat Book 12, page 128, Register's Office, Rutherford County, Tennessee.

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to VICTORIA PARK Homeowners Association, a Tennessee not-for-profit corporation, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to that certain real property hereinafter described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association

Section 4. "Common Area" or "Common Elements" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The common area to be owned by the Association at the time of the conveyance of the first lot is as shown on the referenced PLAT.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and dedicated utility easements.

Section 6. "Living Unit" or "Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Declarant" shall mean and refer to VICTORIA PARK, a joint venture, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purposes of development and if the then existing Developer so designates such successor or assign in the deed granting such lots. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

Section 9. "Board" means the Board of Directors of VICTORIA PARK Homeowners Association.

Section 10. "By-Laws" means the By-Laws of the VICTORIA PARK Homeowners Association, attached hereto as "Exhibit A" and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in the body of this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the By-Laws.

Section 11. "Plat" means the plat or survey of the Property of record in Plat Book 12, page 128, Register's Office for Rutherford County, Tennessee, showing the number of each lot, and expressing its area, location and other data necessary for identification.

Section 12. "Majority" or "majority of the Lot Owners" means the owners of more than fifty (50%) percent of the undivided membership in the Association, present and then eligible to vote. Any specific percentage of Lot Owners means that percentage of Lot Owners who in the aggregate own such specified percentage of the entire undivided membership in the Association, present and then eligible to vote.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot; subject to the following provisions:

- (a) the right of the Association (acting by the Board) to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association (acting by the Board) to suspend the voting rights and right to use of the recreational facilities by an Owner for an period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association (acting by the Board) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of the Members, agreeing to such dedication or transfer, has been recorded; providing, however, that such consent shall not be required for the dedication of utility or service easements; and

(d) the right of the Association (acting by the Board) to grant private access and/or private utility or drainage easements to private individuals or entities, to serve neighboring properties.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Membership in the Association may not be conveyed separate from ownership in the Lot.

Section 3. Parking Rights. No parking shall be permitted outside designated parking areas. The Association shall promulgate parking regulations.

Section 4. Association's Right of Entry. The authorized representatives of the Association or the Board shall be entitled to reasonable access to the individual Units and Lots as may be required to correct any then existing violation of the provisions of this Declaration or the By-Laws, and any rules and regulations, or in connection with the preservation of any individual Unit or in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, or any equipment, facilities or fixtures affecting or serving other Lots or Common Elements, or to make any alteration required by any governmental authority.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

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

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to one (1) vote for each Lot owned. The Class B membership shall cease on the happening of either of the following event, whichever occurs earlier:

(a) five years from the date of the sale of the first Lot to a Lot Owner other than Declarant, or

(b) one hundred percent (100%) of the lots or living units have been sold by Declarant.

Class A member voting rights shall not commence until the Class B membership has expired.

#### ARTICLE IV

##### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot or Living Unit owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and
- (3) special assessments as set forth in Article VIII.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together

with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, or for the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Payable Annual Assessment. The Board of Directors shall fix the payable annual assessment at an amount not in excess of the maximum annual assessment, subject to the provisions of Sections 7 and 8 of this Article.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any calendar year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis, without additional fee or cost to such members paying on a monthly basis.

Section 5. Notice and Quorum for any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than 10 days nor more than 20 days in advance of the meeting and shall state the purpose of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty (50%) of all votes of each class of the membership shall constitute a quorum. If the required quorum is not present, a second meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than 60 days following the immediately preceding meeting.

Section 6. Rate of Annual Assessment. Annual assessment must be fixed at a uniform rate for all Lots and may be collected on an annual basis. The books and records for the Association will be kept in such a manner that it is possible to determine and ascertain (i) such sums as are expended by the Association for development, improvement, maintenance and upkeep of all recreational facilities of the Association, and (ii) such sums as are expended for other purposes.

Section 7. Date and Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots or Living Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and paid at the closing of the Lot or Living Unit. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. Written notice of such assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period. The due date shall be January 1 of each year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot or Living Unit is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then maximum applicable formula rate of interest legally chargeable under Title 47, Chapter 14, Sections 101 et seq., Tennessee Code Annotated, as it may be amended from time to time, on a per annum basis until reinstatement or the completion of foreclosure. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer (provided, that such unpaid assessment shall be reallocated among

the other Lots). No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Tennessee shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments in any case.

Section 11. Enforcement of Lien. FOR AND IN CONSIDERATION of the privileges, protections, mutual enjoyment and use of the Common Elements and the premises contained herein, the receipt of which is hereby acknowledged and any assumption of the obligations by transferees as required hereunder, and to secure the payment of said assessments, principal, interest, and attorney's fees, a lien is expressly retained by the Association on each and every Lot Owner's Lot and prorata interest in the Association (referred to in this Section 11 as "property").

And now, for the purpose of better and more effectually securing the payment of said lien indebtedness; rendering unnecessary court proceedings for the enforcement of said lien in the event of the non-payment of said indebtedness and payments thereof, as they become due, and for the consideration of One Dollar paid in cash, receipt of which is acknowledged, the said Lot Owners, their heirs, administrators, and assigns, hereinafter referred to as trustors, hereby transfer and convey unto Larry K. Tolbert, Trustee, his successors and assigns, the real estate hereinbefore described, with the appurtenances, estate, title and interest thereto belonging upon the following uses and trusts:

Trustors agree to pay their prorata share of assessments when due and further agree to pay all taxes and assessments thereon, general or special, and to pay them when due, and, upon demand of said trustee or the lawful owner and holder of said indebtedness, to pay, discharge, or remove, any and all liens (except a Mortgage or Deed of trust) which may be hereafter placed against said property and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof; to keep the improvements on said property in good repair and preservation, and in case the trustee or his successors or the lawful owner and holder of said indebtedness shall hereafter be required to appear in any court or tribunal to enforce, or defend the title to, or possession of, said property, or the lien of this instrument, or appear in any court to prove the above indebtedness, all the costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee, shall be allowed, and be payable by trustors upon demand of the trustee or lawful owner or

holder of said indebtedness, and, upon failure to do any of these things, then said trustee, or the lawful owner and holder of said indebtedness may do any or all of these things and the amount so paid shall bear interest at the then highest maximum effective rate of interest per annum for home loans then legally collectible in Tennessee from the date of payment and shall be and become a part of the indebtedness secured hereby.

Now, if trustors shall pay their prorata share of assessments aforesaid when due, and pay any and all sums when due, as aforesaid, then this trust conveyance shall be of no further force or effect. But if said indebtedness, or any payment thereof, or interest thereon, is not paid promptly when due, or if, failing to pay said other sums when due, as herein provided, trustors fail to reimburse the trustee, or lawful owner and holder of said indebtedness for all sums, with interest, so expended by said trustee, or lawful owner and holder of said indebtedness, within thirty days from date of such payment, 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 twenty days' notice by three publications in any newspaper, daily or weekly, published in Rutherford County, Tennessee, to sell said property at the front door of the Courthouse in said County to the highest bidder for cash, at public outcry, free from the equity or right (statutory or otherwise) of redemption, homestead, dower, spouse's elective share and all other rights and exemptions of every 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. The Association may bid at any sale under this trust conveyance. The trustee may, at any time after default in the payment of any of said indebtedness, enter and take possession of said property, and shall only account for the net rents actually received by him. It is further agreed that, in the event the trustee fails, before selling said property, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the trustee of a deed for said property. In case of sale hereunder, the proceeds will be applied by the trustee as follows:

1st. To the full and complete satisfaction of the interest of any mortgage holder, unless arrangements have been made for the assumption of such mortgage(s) by the subsequent purchaser.

2nd. To the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided; also reasonable attorney's fees for advice in the premises, or for

instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien; also the expenses of any such litigation.

3rd. To the payment of all taxes which may be unpaid on said premises.

4th. To the payment of all unpaid indebtedness herein secured, and any and all sums expended in the protection of said property, as herein authorized.

5th. The residue, if any, will be paid to trustors, their order, representatives or assigns.

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

The word "Trustors" when used herein shall apply to parties both singular and plural.

This transfer and conveyance, and the lien for assessments payable by a Lot Owner which is secured by the transfer and conveyance shall both be subordinate to the lien of any recorded Mortgage or Deed of Trust on the interest of such Lot Owner, regardless of whether such Mortgage or Deed of Trust was recorded before or after this instrument, except for the amount of the proportionate share of assessments which become due and payable from and after the date on which the Mortgagee or Beneficiary accepts a conveyance of any interest therein (other than as security) or forecloses its Mortgage or Deed of Trust. While the lien for assessments may be extinguished, the personal indebtedness therefor shall remain and be the personal obligation of the Lot Owner who owned the Lot when the assessment came due. Any delinquent assessments (after lien extinguishment) may be reallocated and assessed among all Lots as a common expense. This Section 11 shall not be amended, changed, modified or rescinded without the prior written consent of all Mortgages and Beneficiaries of record.

## ARTICLE V

### ARCHITECTURAL CONTROL

No building, fence, wall, clothesline or other structure shall be commenced, erected or maintained upon the Properties, nor shall

any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and absolutely approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Such Architectural Committee, for a term of three (3) years from date hereon, shall be composed of the Developer, of its designees, contrary provisions herein notwithstanding. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

## ARTICLE VI

### INSURANCE

Section 1. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same. The Association may make a Reconstruction Assessment against all Lot Owners to cover the cost of repair or replacement, in addition to any other Common Assessments made against each Lot Owner.

Section 2. Liability Insurance.

- a. General. The Association may maintain comprehensive general liability insurance coverage covering all of the common areas and public ways of the project, whether or not they are leased to some third party.
- b. Amount and Scope of Insurance. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. Such coverage shall be for an amount deemed adequate by the Board of Directors for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy should include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas, and legal liability arising out of lawsuits related to employment contracts of the Association.

- c. Notice of Cancellation or Modification. Such policies must provide that they may not be canceled or substantially modified, by any party without at least 10 days' prior written notice to the Association and, to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.
- d. Supplemental Coverage. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to, host liquor liability, contractual and all-written contract insurance, employer's liability insurance and comprehensive automobile liability insurance.

### Section 3. Fidelity Bonds.

- a. General. By the terms of the appropriate constituent document, blanket fidelity bonds may be required to be maintained by the Association for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association.

## ARTICLE VII

### EXTERIOR MAINTENANCE

In addition to maintenance upon Common Area, the Association may provide exterior maintenance upon each unit which is subject to assessment, hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, privacy fences, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair is caused through the willful or negligent act or omission of the Owner, his family, or guests or invitees, the costs of such maintenance or repairs will be added to and become a part of the assessment to which such Lot is subject. But in no case shall an assessment be made under this section for repair or maintenance occasioned by normal wear and tear. "Normal wear and tear" shall not include such willful or negligent acts or omissions, as the Board may determine in its sole discretion.

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The primary responsibility for the care, repair and maintenance of the items listed in the first paragraph above and of back yards, back patios and rear decks shall be that of the individually affected Lot Owner. Provided that if the Board should determine that such Lot Owner is not discharging such responsibility the Board may cause such areas to be cared for, repaired and maintained, and declare a special assessment therefor against such Lot Owner, with all the remedies set forth in Article IV.

## ARTICLE VIII

### USE RESTRICTIONS

X Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes.

X Section 2. Dwelling Specifications. No dwelling shall be permitted having less than 1,100 square feet of living space.

Section 3. Nuisance. No unlawful, noxious or offensive activity shall be carried on upon any Lot or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others or which may be or become annoyance or nuisance to the neighborhood.

Section 4. Animals. Domestic animals only, such as dogs or cats may be maintained on the premises. No other types of animals or pets may be maintained except with the written permission of the Board of Directors. Such written permissions shall be renewable annually if any one or more co-owners gives notice of his or her objection to such animals or pets. No kennels or other commercial application as to animals are permitted.

Section 5. Outside Antennas. No outside radio or television antennas (including satellite "dishes") shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

X Section 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. Neither shall any detached outbuilding be permitted.

Section 7. Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 8. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or under any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or under any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 9. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

Section 10. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Common Area or Lots and Living Units, nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 11. Commercial Business. No commercial businesses may be maintained on the Common Area or in the Living Units.

Section 12. Alteration. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

Section 13. Rules for the Common Area. The Association is authorized to adopt rules for the use of the Common Area and such rules shall be furnished in writing to the Owners. There will be no violation of these rules.

Section 14. Repair of Vehicles. No vehicles of any type shall be permanently or semi-permanently parked on the Properties or in the vicinity of any Living Unit or in the Common Area for purposes of accomplishing repairs thereto, or the reconstruction thereof except as permitted by the Rules and Regulations adopted by the Association. This restriction shall also apply to all vehicles not in operating condition.

Section 15. Recreational Vehicles. There shall be no parking of recreational vehicles, including, but not limited to, camping trailers, boats, motor homes and the like except in areas specifically designated for this purpose by the Association, provided, the foregoing shall not prevent the parking of same upon the Lot of the owner thereof.

Section 16. Commercial Vehicles. The Association shall have the power to adopt Rules and Regulations concerning the parking of all commercial vehicles on the Properties, Common Area, or individual Lots. Pending adoption of said Rules and Regulations, there shall be no parking of commercial vehicles within the Development.

Section 17. Use by Developer. During the period of sale by the Developer of any Lots, the Developer, and said developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from said Common Area as may be required for purposes of said sale of Lots. While the Developer owns any of the Lots and until each Lot sold by it is occupied by the purchasers, the Developer and its employees may use and show one or more of such unsold or unoccupied Lots and may use one or more of such unsold or unoccupied Lots or any part of any Common Area as a sales office, and may maintain customary signs in connection therewith.

Section 18. General. Each Lot Owner shall maintain his Lot in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Unit which may increase the cost or cause the cancellation of insurance on other Units or on the Common Elements. No Lot Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside his Unit, or which may be visible from the outside of his Unit (other than draperies, curtains, or shades of a customary nature and appearance, subject to the Rules and Regulations of the Board), or paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna or dish, or C.B. radio transmitters, or other equipment, fixtures or items of any kind, without the prior written permission of the Board. No owner of a Unit shall display,, hang, store or use any sign outside his Unit, in a hallway or elsewhere, or which may be visible from the outside of his Unit without the prior written permission of the Board.

Section 19. Contractual Powers. All contracts shall be terminable by the Board upon ninety (90) days' notice, at the election of the Board and without penalty to the Association.

Section 20. Transient or Hotel Use. With the exception of a lender in possession of a Lot following a default in a first deed of trust or mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease his Unit for transient or hotel purposes. No Lot Owner may lease less than the entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject to in all respects to the provisions of this Declaration and the By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing.

Section 21. Swimming Pools. Pools must comply with regulations established by the Board of Directors from time to time and if no regulations have been established, then such pools must comply with Rutherford County Health Department regulations.

Section 22. Parking. The Association shall have the power to adopt Rules and Regulations concerning on-street parking within the Development. Pending adoption of said Rules and Regulations, there shall be no on-street parking of any kind within the Development.

## ARTICLE IX

### EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

## ARTICLE X

### GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be changed, modified or rescinded during the first thirty (30) year period by an instrument in writing, signed by not less than 75% of the Lot Owners, and acknowledged, and thereafter, by an instrument signed by not less than 50% of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements as herein provided, or affect any lien for the payment thereof established herein, and provided that all lien holders of record have been notified by certified mail of such change, modification or rescission, and an affidavit by the secretary to the Association certifying to such mailing is made a part of such instrument. Any amendment must be properly recorded.

Section 4. Alterations, Additions or Improvements. No alteration of any Common Elements, or any additions or improvements thereto, shall be made by any Lot Owner without the prior written approval of the Board. The Board may authorize and charge as common assessments alterations, additions and improvements of the Common Elements as provided in the By-Laws.

Section 5. Non-Liability of the Directors, Board and Officers. Neither the directors, Board, nor the officers of the Association, shall be personally liable to the Lot Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board, officers, or Developer, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The Lot Owners shall indemnify and hold harmless each of the directors, Board or officers, and their respective heirs, executors, administrators, successors and assigns in accordance with the By-Laws.

Section 6. Board's Determination Binding. In the event of any dispute or disagreement between any Lot Owners relating to the Property, or any questions of interpretations or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all such Lot Owners.

Section 7. Notices. Notices provided for in the Declaration or By-Laws shall be in writing, and shall be addressed to the Association or Board, or any Lot Owner, at such address set forth on the Plat, or at such other address as hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Lot Owners. Any Lot Owner may designate a different address for notices to him (other than to his or her Unit) by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Lot shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Lot is subject to such mortgage or trust deed.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage

holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a Lot estate subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification or any insurance policy or fidelity bond maintained by the Owners Association;

(d) Any proposed action which would require the consent of a specified percentage of mortgage holders.

Section 8. Rights and Obligations. Each Grantee of the Developer, by the acceptance of a deed or conveyance accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All future Lot Owners and occupants shall be subject to and shall comply with the provisions of this Declaration. Any restrictions or rules in the By-Laws which are more than administrative in nature such as, but not limited to, reservations and future rights of the Developer are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such Grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Lot Owners, tenants and occupants of a Lot shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and recorded herewith, as they may be amended from time to time. The acceptance of a deed of conveyance devise or of a lease to a Lot, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the said By-Laws and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Lot Owner, tenant or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of the Declaration, By-Laws and Rules and Regulations may be incorporated by reference in, and become

part of, the agreement between any mortgagee and any present or future Lot Owner who enters into such an agreement with a mortgagee. When so incorporated, any default in the terms and conditions of the Declaration, By-Laws and Rules and Regulations may be considered as a default by the mortgagee, whereupon said mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Lot Owner.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed, this 15<sup>th</sup> day of March, 1988.

VICTORIA PARK, a Joint Venture

By: Howard D. Wall  
HOWARD D. WALL, Declarant

STATE OF TENNESSEE        )  
                                  ss.  
RUTHERFORD COUNTY        )

Before me, the undersigned authority, a Notary Public of the State and County aforesaid, personally appeared HOWARD D. WALL, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Declarant of VICTORIA PARK, a joint venture, the within named bargainor, and that he as such Declarant executed the foregoing instrument for the purposes therein contained.

WITNESS MY HAND and official seal at office in Murfreesboro, Tennessee, this 15<sup>th</sup> day of March, 1988.

Sara L. Rogers  
Notary Public

My commission expires: 9/17/89

EXHIBIT "A"  
TO DECLARATION OF COVENANTS

\* \* \* \* \*

\* BY-LAWS \*

\* OF \*

\* VICTORIA PARK HOMEOWNERS ASSOCIATION \*

\* \* \* \* \*

ARTICLE I

NAME AND LOCATION. The name of the corporation is Victoria Park Homeowners Association, hereinafter referred to as the "Association". The principal office of the corporation shall be located at the 1980 Old Fort Parkway, Murfreesboro, Rutherford County, Tennessee, but meetings of members and directors may be held at such places within the State of Tennessee, County of Rutherford, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Reference is made to Article I of the Declaration to which these By-Laws are attached for "Definitions" which are incorporated herein by reference.

ARTICLE III

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within three (3) years from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of

the same month of each year thereafter, at the hour of 7:30 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meeting. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-tenth (1/10) of all the votes of each class of membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice

other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 6. Voting. The aggregate number of votes for all members of the Association shall be equal to the number of Lots which have been subjected to this Association by Plat or amended Plat by the Developer, and each Lot Owner shall be entitled to one vote per Lot owned. Each Lot Owner's respective percentage of ownership interest in the Common Elements shall be the result of a fraction, the numerator being the number of Lots owned by the Lot Owner and the denominator being the number of Lots subjected to this Association. If any Lot Owner consists of more than one person, the voting rights of such Lot Owner shall not be divided but shall be exercised as if the Lot Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Lot Owner. The Developer may exercise the voting rights with respect to Lots owned by it.

No Lot Owner who is in default in the payment of his assessments hereunder shall be entitled to exercise his right to vote hereunder until he has cured such default. A Lot Owner shall be deemed to be in default if he has not paid his assessments to the Board, or their agent, within fifteen (15) days

after receipt of notice of assessment. A Lot Owner may protest the amount of the assessment, but it still must be paid during the pendency of the protest to the Board.

#### ARTICLE IV

##### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be members of the Association. Any holder of first mortgages or deeds of trust on more than fifty percent (50%) of the Lots may designate a fourth board member to serve. Such holder shall not be required to appoint such fourth board member and such fourth board member shall not be required to be a Lot Owner. Such holder shall receive actual notice of all board meetings at least fifteen (15) days prior to such meetings, addressed to such person and address as may be designated in writing from time to time such such holder.

Section 2. Term of Office. At the first annual meeting the members shall elect one (1) director for a term of one year, one (1) director for a term of two years and one (1) director for a term of three years; and at each annual meeting thereafter the members shall elect one (1) director for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Director, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall take as many nominations for election to the Board of Directors as it shall in its discretion determinate, but not less than the number of vacancies that are to be filled. Such nominees may be either members or non-members of the Association.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board

## ARTICLE VI

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof; and, to enforce the Declaration and these By-Laws;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended if they involve other than payment of assessments after notice and hearing before the Board, for a period not to exceed sixty

(60) days for infraction of the Declaration, By-Laws or published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) establish, levy, assess and collect the assessments or charges as may be necessary;

(e) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(f) appoint and remove at pleasure all officers, agents and employees of the Corporation, prescribe their duties, fix their compensation, and require of them such bond as may be deemed necessary. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, officers, or Director of the Corporation in any capacity whatsoever.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement

is requested in writing by one-tenth (1/10) of all classes of members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Lot Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within fifteen (15) days after due date or to bring an action at law against the Lot owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) may procure and maintain adequate liability insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained; and

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time upon written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### Vice-President

The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### Secretary

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal (optional) of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

#### Treasurer

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year (if the Board so requires); and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE VIII

## COMMITTEES

The Board shall appoint an Architectural Review Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

## BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation, and by By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X

## ASSESSMENTS

Section 1. Obligation for Assessments. As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the date of delinquency at the then highest maximum

legal effective rate of interest per annum, and the Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Annual Budget. The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Lot Owner, not later than thirty (30) days prior to the beginning of such year. On or before the first day of January of the year covered by the annual budget, each Lot Owner shall pay his respective annual assessment for the common expenses. The Board may determine different allocations with respect to a part of such charges whenever it appears to the Board that such an allocation would be unfair. The allocations shall be applied uniformly to all Lot Owners of like situations. The allocation of the Board shall be final and binding upon all parties. In the event that the Board shall not approve an estimated budget or shall fail to determine new annual assessments for any year, or shall be delayed in doing so, each Lot Owner shall continue to pay annually the amount of his respective annual assessment as last determined.

Section 3. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the First Board.

If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the annual assessments for each Lot Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of purchase of each Lot, simultaneously, each Lot Owner shall pay his annual assessment for the remaining fraction of the then current year (which assessment shall be in proportion to his respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget), plus the assessment for the following calendar year, and which assessment shall be computed by the Board.

Section 4. Annual Report. Within forty-five (45) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Lot Owner a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 5. Supplemental Budget. In the event that during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Lot Owner, and thereupon a supplemental assessment shall be made to each Lot Owner for his proportionate share of such supplemental budget.

Section 6. Expenditures. Except for expenditures and contracts specifically authorized by the Declaration and By-Laws, the Board shall not approve any expenditure in excess of Two Thousand Five Hundred Dollars (\$2,500.00) unless required for emergency repair, protection or operation of the Common Elements, nor enter into any contract for more than three (3) years without a ninety (90) day cancellation clause without the prior approval of fifty-one percent (51%) of the total membership of the Association, and without securing consents of mortgagees, if necessary.

Section 7. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Common Elements, rather than a lien against only a particular Lot Ownership. When less than all the Lot Owners are responsible for the existence of any such lien, the Lot Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

Section 8. Holding of Funds. All funds collected hereunder shall be held and expenses for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Lot Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Lot Owners in the percentages of the Lot Owners as from time to time existing.

## ARTICLE XI

## INDEMNIFICATION

Section 1. General. The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, and the Board, against all contractual and other liabilities to others arising out of contracts made by or other acts of such directors, Board, officers or committee members, on behalf of the Lot Owners, or arising out of their status as directors, Board, officers or committee members, unless any such contract or act shall have been in clear violation of the Declaration or these By-Laws, or fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board or committee member may be involved by virtue of such persons being or having been such director, officer, Board or committee member; provided, however, that such indemnity shall be inoperative with respect to:

(a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director, officer, Board or committee member, or

(b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for criminal (i.e., a felony) acts, or clearly violating the Declaration or these By-Laws, or for gross negligence or fraud in the performance of his duties as such director, Board or committee member.

Section 2. Success on Merits. To the extent that a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 3. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case, upon receipt of an undertaking satisfactory to the Board by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

Section 4. Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising,

by special assessment or otherwise, any sums required to discharge its obligations under this Article, provided, however, that the liability of any Lot Owner arising out of any contract made by or other acts of the directors, Board, officers or members of such committees, shall be limited to such proportion of the total liability hereunder as said Lot Owner's percentage of interest in the Association bears to the total percentage interest of all the Lot Owners in the Association. Every agreement made by the directors, Board, officers, members of such committees, or by the Managing Agent on behalf of the Lot Owners shall provide that the directors, Board, officers, members of such committees, or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as expressly set forth herein), and that each Lot Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Association bears to the total percentage interest of all Lot Owners in the Association. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be a member of the Board of Directors, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs,

executors, administrators, successors and assigns of such person or entity. In no event shall this indemnity exceed coverage occasioned by officers' and directors' liability insurance coverage, which the Association shall be required to carry and maintain, to the extent that the same is reasonably available in the marketplace.

## ARTICLE XII

### AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Board members, by a majority of Board members present in person or by proxy.

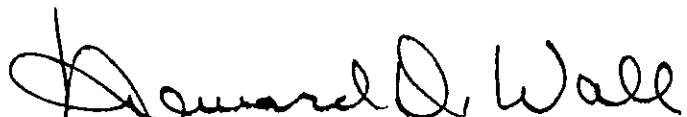
Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

## ARTICLE XIII

### MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, I, being the Incorporator of Victoria Park Homeowners Association, have hereunto set my hand this 15<sup>TH</sup> day of March, 1988.

  
HOWARD D. WALL, INCORPORATOR

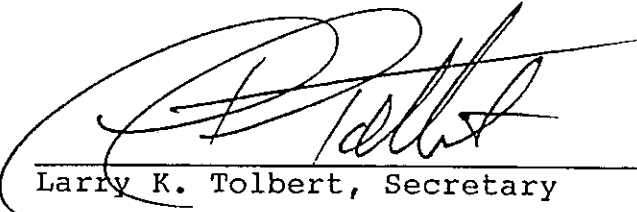
## CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the Victoria Park Homeowners Association, a Tennessee corporation; and

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Incorporator thereof, held on the 15<sup>th</sup> day of March, 1988.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this 15<sup>th</sup> day of March, 1988.



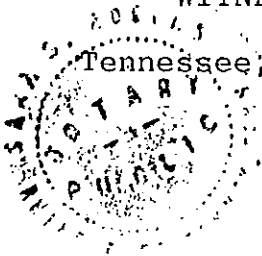
Larry K. Tolbert, Secretary

STATE OF TENNESSEE

RUTHERFORD COUNTY

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, LARRY K. TOLBERT, the within named bargainor, with whom I am personally acquainted and who, upon oath, acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS MY HAND and official seal at office in Murfreesboro, Tennessee, this 15<sup>TH</sup> day of March, 1988.



Larry K. Tolbert  
Notary Public

My commission expires: 9/17/89

I, Homer Jones, Register of Rutherford County, do certify that the foregoing instrument is registered in said office in book 401 page 27 that it was received Mar. 15, 1988 at 12:40 o'clock 1 in and entered in notebook 36 page 71 Homer Jones, Reg. Donna Stern Deputy

RECORDING FEE 156.00  
STATE TAX         
REGISTER'S FEE         
TOTAL PAID 156.00  
RECEIPT NO. 55581

MINUTES OF THE MEETING OF THE INCORPORATOR  
OF  
VICTORIA PARK HOMEOWNERS ASSOCIATION

The first meeting of the incorporator of Victoria Park Homeowners Association, a Tennessee not for profit corporation, was held in Murfreesboro, Tennessee, on the 8<sup>th</sup> day of ~~March~~ <sup>April</sup>, 1988, at which meeting the incorporator, Howard D. Wall, was present, together with Larry K. Tolbert, Attorney.

On motion duly made and carried, Howard D. Wall was named Chairman of the meeting and Larry K. Tolbert as Secretary thereof.

The Chairman reported that the original Charter of Incorporation of the corporation was recorded in the office of the Secretary of State of the State of Tennessee on ~~March~~ <sup>April</sup> 6, 1988, and shall be recorded in the Register's Office of Rutherford County, Tennessee, immediately following the first meeting of the incorporator of Victoria Park Homeowners Association, a Tennessee not for profit corporation. Said Charter was thereupon read and the original was delivered to the Secretary for recording as hereinabove provided.

The meeting thereupon proceeded to the adoption of restrictive covenants and by-laws applying to Victoria Park, a residential real estate subdivision, as depicted on plat of record in Plat Book 12, page 128, Register's Office, Rutherford County, Tennessee, and the following were unanimously adopted: (See attached).

The meeting thereupon proceeded to the appointment of corporate directors and the following individuals were duly nominated and appointed to serve as the first board of directors for Victoria Park Homeowners Association, a Tennessee not for profit corporation:

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CHARTER

OF

007281

VICTORIA PARK HOMEOWNERS ASSOCIATION

FILED

RECEIVED  
STATE OF TENNESSEE  
08 MAR 31 PM 3:46  
GENTRY CROWELL  
SECRETARY OF STATE

The undersigned person, having capacity to contract and acting as the incorporator of a corporation under the Tennessee General Corporation Act, Nonprofit Corporations - Incorporation (T.C.A. §48-52-101, et seq.) hereby adopts the following Charter for such corporation:

1. The name of the corporation shall be VICTORIA PARK HOMEOWNERS ASSOCIATION.
2. The duration of the corporation shall be perpetual.
3. The registered and principal office address of the corporation in the State of Tennessee shall be 1980 Old Fort Parkway, Rutherford County, Murfreesboro, Tennessee 37130. The registered agent at said address is Howard D. Wall.
4. The corporation shall be not for profit.
5. The corporation is a mutual benefit corporation.
6. The corporation will have members.
7. In the event of dissolution, the corporation shall satisfy creditors to the limit of its assets, thereafter remaining assets shall be liquidated or otherwise divided equally among the corporate members. Such dissolution shall be controlled by the provisions of T.C.A. §48-64-101, et seq. (Nonprofit Corporations - Dissolution) as presently enacted or as hereafter amended.
8. The corporation purpose is as follows: To function and act as a homeowners association for the mutual benefit of Victoria Park, a residential real estate subdivision, as depicted on plat of record in Plat Book 12, page 128, in the Register's Office for Rutherford County, Tennessee, with full authority to operate and control the common areas, streets and improvements thereof, together with additional authority for such other, further important or material functions related to said development as may become necessary.

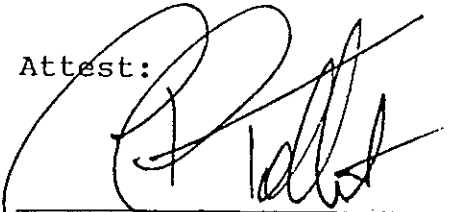
Howard D. Wall  
Sally Jones Wall  
James M. O'Brien, III

Howard D. Wall was designated President of the corporation. James M. O'Brien, III was designated Vice-President of the corporation. Sally Jones Wall was designated Secretary-Treasurer of the corporation.

There being no further business, the meeting was declared adjourned.

  
Howard D. Wall      Chairman

Attest:

  
Larry K. Tolbert      Secretary