

*Nick McBride*  
Register of Deeds  
Knox County

This Instrument Prepared by:  
David Long, Esq.  
Long, Ragsdale & Waters  
1111 N. Northshore Drive, Suite S-700  
Knoxville, Tennessee 37919

**DECLARATION OF COVENANTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**WESTLAND OAKS SUBDIVISION**

(herein the "Subdivision")

THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of the 19<sup>th</sup> day of June, 2019, by MESANA INVESTMENTS, LLC, a Tennessee limited liability company, whose principal business address is 1515 Ashland Springs Way, Knoxville, Tennessee 37922-8084 (the "Declarant").

A. Declarant is the owner of the real property shown on the plat to be placed of record in the Knox County Register of Deeds Office attached hereto in Exhibit A and by this reference incorporated herein, and being the same property conveyed to Declarant by deed dated 6/23/17 of record at Instrument No. 201706280079432 in the aforesaid Register of Deeds office (the "Property" as defined hereinafter), which has been or is intended to be developed into a residential subdivision; and

B. Declarant deems it desirable to establish an association for the purpose of, among other things, owning and/or maintaining certain areas and/or improvements constructed as part of the Subdivision; and

C. Declarant declares that all of the Property shall be held, developed, encumbered, leased, occupied, improved, used, and conveyed subject to the following covenants, easements, conditions and restrictions (the "Restrictive Covenants"), which are for the purpose of protecting the value and desirability of, and which shall run with and be binding upon the Property and all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner of any portion of the Property.

This Declaration is hereby declared to inure to the benefit of all future owners of any Lot (as hereinafter defined) and all others claiming under or through them ("Owners"); the Declarant, its successors and assigns; and all utility companies or agencies or instrumentalities of local government providing utility services.

It is hereby declared that irreparable harm will result to the Declarant and other beneficiaries of this Declaration by reason of violation of the provisions hereof or default in the observance thereof and therefore, each Owner shall be entitled to relief by way of injunction, damages or specific performance to enforce the provisions of this Declaration as well as any other relief available at law or in equity.



Knox County Page: 1 of 26  
REC'D FOR REC 06/19/2019 2:17:58PM  
RECORD FEE: \$132.00  
M. TAX: \$0.00 T. TAX: \$0.00

**201906190075428**

NOW, THEREFORE, in pursuance of a general plan for the protection, benefit and mutual advantage of the Property described above and of all persons who now are or may hereafter become owners of any of the Property or plats thereof, the following restrictions, conditions, easements, covenants, obligations, and charges are hereby created, declared and established:

## GENERAL PROVISIONS

### I. APPLICABILITY

A. This Declaration shall apply to the entire Property as described on the attached Exhibit A. Declarant intends to develop the Property into multiple, different housing types, which may include but is not limited to individual homes on traditional single-family lots, twin singles on zero-lot-line lots, and detached cluster housing, and the covenants, conditions and restrictions contained herein may apply differently to lots and homes within the areas in which differing housing types are constructed. In addition, if Declarant owns, and/or acquires additional parcels adjacent to the Property, Declarant may in its sole discretion annex said additional parcels to, and declare them to be, subsequent phases of the Subdivision. Upon such annexation, Declarant shall have the right, but not the obligation, to subject such annexed parcels to the terms and conditions of this Declaration. Declarant may subject annexed adjacent parcels to this Declaration without modification, or Declarant may supplement and amend this Declaration as it applies to such additional phases of development. As to each development phase of Subdivision, Declarant may re-record this Declaration with an attached exhibit which modifies and/or supplements this Declaration with respect to such phase, or Declarant may incorporate this Declaration by reference into a supplemental declaration which establishes the modifications and/or supplemental provisions desired by Declarant to be applicable to such phase. The modifications and/or supplemental provisions applicable to different phases of development of the Subdivision may be comparable to, more restrictive or less restrictive than the parallel provisions applicable to other development phases, as determined to be appropriate by Declarant in the exercise of its sole discretion. In the event of any inconsistency between the provisions of this Declaration and the provisions of any phase-specific modifications and/or supplements hereto, the terms of the phase-specific document shall control. Declarant shall have the right to freely transfer or assign its rights and obligations hereunder.

B. Declarant shall create an association for the purpose of carrying out and performing certain obligations as described herein. As specifically provided herein after, (i) membership in the Association shall be mandatory for all Lot owners; (ii) the Association shall be required to maintain the common areas in the Subdivision, and the funding of such maintenance shall be the legally enforceable obligation of each Lot owner; and (iii) the obligations of the Association and its individual members shall be enforceable by each Lot owner, by the Declarant and/or the Association.

### II. DEFINITIONS

A. "Annual Assessment" - amount to be paid to the Association by each Owner annually.

B. "Assessments" - collectively referring to all charges made by the Association to an Owner relating to the Association, including but not limited to Annual Assessments, Lot Assessments and Special Assessments as defined herein after.

C. "Association" – the legal entity (and its successors and assigns) formed for the purpose of owning and/or maintaining any portion of the Property on behalf of the owners of two (2) or more Lots in the Subdivision. The Association shall be named Westland Oaks Homeowners Association, Inc. (or a similar name if that one is not available), and shall be formed as a Tennessee non-profit corporation or other appropriate non-profit entity. Declarant reserves the right, in the exercise of its discretion or if required by governmental approval processes, to form a single "Master" Association, with separate "Sub-Associations" for the separate Sub-Areas (as defined below), and if a Master and Sub-Associations are in fact formed, the term "Association" as used herein shall refer collectively and individually, as the context requires, to the Master and/or Sub-Association(s).

D. "Association Documents" – the formative documents of the Association, consisting of the charter, bylaws, this Declaration (as the same may be amended from time to time), and any and all procedures, rules, regulations or policies adopted by the Association, or comparable formative documents if the Association is not a corporate entity.

E. "Board" - the board of directors, trustees or other management body of the Association.

F. "Common Expenses" - expenses incurred in maintaining the Common Property and operating the Association.

G. "Common Property" - all real and personal property now or hereafter acquired, pursuant to this Declaration or otherwise, and owned by the Association for the common use and the enjoyment of the Owners, or if not owned by the Association, real or personal property for the use and/or maintenance of which the Association is responsible under the terms of this Declaration, applicable zoning regulations, or under any other agreement or instrument to the terms of which the Association is bound.

H. "Declarant" – Mesana Investments, LLC, and any manager, general partner, shareholder, successor or assignee thereof to which Declarant specifically assigns any of its rights under this Declaration.

I. "Improvements" - all man-made or man-installed alterations to the Property, following the initial erection of a primary residential structure on a Lot, which are visible from the exterior of any primary structure on a Lot, which cause the Property to deviate from its condition prior to such alteration(s), including but not limited to buildings, outbuildings and garages and the collective and individual component parts thereof including but not limited to roofs, walls, windows, doors, awnings and room additions; permanent or temporary signs or sign structures; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools and recreational courts; slope and drainage

alterations; roads, driveways, covered or uncovered parking areas and other paved areas; recreational devices and equipment whether fixed in place or movable; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches, gazebos, playground equipment, play houses, walkways, paths, trees, hedges, shrubs and other forms of landscaping, and all structures of every type.

J. "Lot" - a discrete parcel of real property identified upon the recorded subdivision plat of the Property, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Declarant, excluding the Common Property and any portion of the Property dedicated for public use. Declarant has and reserves the right to split and/or combine currently platted Lots into new platted Lots without the consent or approval of owners of other Lots in the subdivision, as Declarant may deem such split or combination to be beneficial to the Property from time to time. Any and all references herein to a "Lot" shall include any such re-platted Lots. Once a split/combination is completed by Declarant, the former lots shall cease to be "Lots" for any and all purposes hereunder; Lot combinations obtained by Owners other than Declarant shall NOT cause each of the Lots combined to cease being separate Lots for any and all purposes hereunder.

K. "Lot Assessment" an assessment that the Board may levy against one or more (but fewer than all) Lots to reimburse the Association for costs incurred on behalf of those Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner of those Lots; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; fines and related expenses assessed by the Association in connection with the enforcement of the Association's rights hereunder; and all other charges reasonably determined to be a Lot Assessment by the Board.

L. "Manager" - the person or entity retained by the Board to assist in the management of the Association as set forth in Article VIII, Paragraph F.

M. "Member" - any person or entity entitled to membership in the Association, as provided for in Article VII.

N. "Operating Fund" - the fund established pursuant to Article IX.

O. "Owner" - the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for performance of an obligation and also excluding the Declarant.

P. "Property" - all of the real property described in Exhibit A attached hereto and such additional property as may be annexed by amendment to this Declaration, or that is owned in fee simple by the Association, together with all easements and appurtenances.

Q. "Rules" - the rules and regulations governing use of and activities upon the Property and the Common Property, as may be established by the Board from time to time pursuant to Article VIII.

R. "Special Assessment" - an assessment levied by the Association against all Lots pursuant to Article IX or at a special meeting of the Members of the Association to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Operating Fund.

S. "State" - the State of Tennessee, and, unless the context requires otherwise, any political subdivision thereof exercising governmental jurisdiction over the Property.

T. "Sub-Area" - a portion of the Property on which a distinctly identifiable type of housing is developed and constructed. Within a given Sub-Area, separate standards may exist and unique rules may be adopted and applied according to which the ownership and use of Lots and Improvements within such Sub-Area may be limited and restricted.

U. "Turnover Date" - the date described in Article VII, Paragraph B.

### III. GOALS

The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes:

- A. Compliance with all zoning and similar governmental regulations;
- B. Promotion of the health, safety and welfare of all Owners and residents of the Property;
- C. Preservation, beautification and maintenance of the Property and all Improvements; and
- D. Establishment of requirements for the development and use of the Property.

## DEVELOPMENT & USE RESTRICTIONS

### IV. USE RESTRICTIONS

The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Declarant and every Owner or occupant, their respective heirs, successors and assigns, as well as their family members, guests, and invitees.

A. Use of Lots. Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a residence. No Improvements may be constructed on any Lot (other than the initial construction of a primary residential structure pursuant to plans approved by Declarant) until and unless the plans therefor have been approved by the Design Review Committee (or Declarant if

no Design Review Committee has been established) as provided for hereinafter. All Improvements, excepting only landscaping, shall be constructed no nearer the street or streets on which a Lot fronts than the platted setback line(s) for such Lot, unless a variance to permit construction forward of a setback line has been approved by the appropriate governmental entity exercising jurisdiction over the property, and by the Design Review Committee. No Improvements may be constructed, erected or installed within any area designated as an easement on a recorded plat for the Subdivision unless approved by the easement holder, the relevant governmental authorities and by the Design Review Committee. Front, rear and side yard areas shall consist, primarily, of grassed lawn areas, with a reasonable amount of planting bed, hardscape and other landscape components.

B. Use of Common Property. Any Common Property may be used only in accordance with the purposes for which it is intended and for any reasonable purposes incidental to the residential use of a Lot. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Owners and occupants, and shall comply with the provisions of this Declaration, the laws and regulations of the State and any other relevant governmental authorities, and the Rules.

C. Hazardous Actions or Materials. Nothing shall be done or kept in or on any Lot or in or on any portion of the Common Property that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Property or that might unreasonably disturb the quiet occupancy of any person residing on any other Lot. This paragraph shall not be construed so as to prohibit the Declarant from construction activities consistent with its residential construction practices.

D. Signs. No signs of any character shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by the Declarant (or by one or more builders with Declarant's approval) while marketing the Lots and residences for sale; (ii) street and identification signs installed by the Association or the Declarant; (iii) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is for sale; and (iv) for a reasonable period of time before, and not to exceed three (3) days after a public governmental election in which the Lot Owners are permitted to vote, up to three (3) temporary political signs of not more than six (6) square feet each, expressing support for or opposition against an individual candidate or issue which is the subject of the current election. Political signs containing information or expressing opinions other than simple support for or opposition against a specific candidate or issue may be removed by the Association, and not more than one sign for or against any specific candidate or issue may be posted or displayed on any one Lot. No such signs may be posted in the Common Area without the approval of the Board.

E. Animals. No person may keep, breed, board or raise on any Lot or in or upon any part of the Common Property, any animal, livestock, farm animal (including but not limited to horses, chickens, ducks and pigs regardless of size), reptile, or poultry of any kind, nor any animal for any commercial purpose, unless expressly permitted by the Rules. Common domestic pets, limited to not more than three (3) cats and/or three (3) dogs, and pets that are kept only inside of the residence at all times, are permitted for non-commercial, and non-breeding purposes. All permitted domestic pets shall be properly restrained when outside of the house,

and shall not be permitted to roam free or loose on the Property, other than on the Lot of the owner of such pet(s). No animal, including a domestic pet, shall be kept on the Property if the size, type or characteristics of such animal constitute a nuisance (including unreasonable volume or repetitive barking). Proper Lot maintenance as required elsewhere herein shall include the obligation to regularly remove pet waste from an Owner's Lot. Outdoor dog houses, animal cages, dog runs and other similar objects, whether or not affixed to the ground, are prohibited without the express prior review and approval of the Design Review Committee, which may be withheld in the Board's discretion.

F. Nuisances. No noxious or offensive activity or trade shall be permitted on the Property or within any dwelling located on the Property, nor shall any use be made nor condition allowed to exist on any Lot which unreasonably disturbs or interferes with the quiet occupancy of any person residing on any other Lot; provided, however, that all of the Declarant's normal business operations and construction activities shall not be considered nuisances.

G. Business. No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on the Property, without the prior written approval of the Board. This provision shall not prohibit a "home office" use, in connection with which no non-resident employees are working on the Property, and no customers, employees, subcontractors or other third parties park on the Property.

H. Storage. No open storage of any kind is permitted. No storage buildings of any kind are permitted, including without limitation, sheds or barns, until and unless plans for the same have been submitted to and approved by the Design Review Committee. The Design Review Committee may limit the size and height of storage buildings (10' x 10' x 10' shall be the maximum permitted), and may require the use of and/or prohibit specific building materials (no metal sheds are permitted), building design components, and colors, as conditions to the approval of storage building plans, and permits or other approvals from relevant governmental authorities. Storage buildings may be prohibited by the Design Review Committee entirely, on certain lots, or in certain areas of the Property, in spite of the fact that they may be approved on other lots, or in other areas. No shed or structure of any kind is permitted within any area designated on a recorded plat for the Subdivision as an easement without the approval of the Design Review Committee, the easement holder and any relevant governmental authorities. Any storage building approval granted by the Design Review Committee is subject to revocation if the condition and/or appearance of the storage building constructed pursuant to such approval deteriorates, and the lot owner fails within 30 days of notice from the Board to take remedial action as reasonably directed by the Board to repair, replace and/or properly maintain the structure and appearance thereof.

I. Hotel/Transient Uses; Leases. No Lot may be used for hotel or transient uses, including without limitation, uses in which the occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to this Declaration.

J. Vehicles.

1. The Board has the right and power to adopt and enforce reasonable rules concerning the parking of any vehicle permitted on the Property. In addition to its authority to levy Lot Assessments as penalties for the violation of such rules, the Board shall be authorized to cause the removal of any vehicle violating such rules.
2. No commercial vehicles, boats, trailers, campers, buses or mobile homes shall be parked or stored on the street in the Subdivision, or on any Lot (except in an enclosed structure shielded from view), for any time period longer than forty-eight (48) consecutive hours, or ninety-six cumulative hours in any thirty (30) day period, and the burden of establishing that said time periods have not been exceeded is borne by the Owner of the Lot on or in front of which such parking occurs, and/or by the owner of the vehicle. The foregoing notwithstanding, nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during construction of residences on the Lots. In addition, no automobile or other motorized vehicle of any type or description which is not functionally or legally operable on public highways shall be kept, stored, operated or maintained on or in front of any Lot within the Subdivision for a period longer than seven (7) days (the burden of proving that such time period has not been exceeded in each/any instance is borne by the Owner of the Lot on or in front of which the vehicle is located, and/or the owner of the vehicle), unless the same is entirely contained and shielded from view within a permitted structure. Any vehicle so kept, stored, operated or maintained shall be considered a nuisance, and the Board shall have the right and authority, but not the obligation, to have the same removed at the owner's expense.

As used herein, the word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit occupancy thereof, or the storage or conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "commercial vehicle" shall include and mean every type of vehicle, whether or not motorized, which is designed and used exclusively or primarily for other than personal transportation of ten or fewer persons at one time. Vehicles larger than ten-person passenger vans are conclusively presumed to be commercial vehicles, whereas passenger cars, passenger vans (full-sized or mini-vans), pickup trucks, sports-utility vehicles, and motorcycles are presumed to be designed and used for personal transportation. Vehicles which are not conclusively presumed to be commercial by virtue of their size, and which are used by the operator thereof for both business and personal purposes, shall not be considered "commercial vehicles" merely by virtue of advertising information painted or otherwise affixed thereto, but may be deemed to be Commercial Vehicles by virtue of the combination of such factors as determined by the Board. The Board's determination that a vehicle meets the definition of a "trailer" or "commercial vehicle" (or boat, camper, bus or mobile home) shall be deemed final and conclusive.

K. Trash. Except for the reasonably necessary activities of the Declarant during the original development of the Property, no burning or storage of trash of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers, screened



from view and stored either inside of a permitted structure, or to the side or rear of the home constructed on the lot.

L. Antennae; Miscellaneous Improvements. No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be maintained on the premises, to the extent permissible under applicable statutes and regulations, including those administered by the Federal Communications Commission, except that this restriction shall not apply to satellite dishes with a diameter less than one (1) meter, erected or installed to minimize visibility from the street which the dwelling fronts. No clothesline or other apparatus designed or intended for use of air drying clothes or other items shall be permitted. No metal swing set shall be permitted on any lot.

M. Utility Lines. All utility lines on the Property shall be underground, subject to the requirements of relevant governmental authorities and utility companies.

N. Tanks. No tanks for the storage of propane gas or fuel oil or other flammable liquid or gas, shall be permitted to be located above or beneath the ground of any Lot except that propane gas in residentially sized containers such as are common for the use of residential gas cooking grills, and tanks used in connection with fire places that are buried underground and approved by the Design Review Committee and all relevant governmental authorities are permitted. The provisions of this subparagraph shall not prohibit the Declarant from utilizing propane gas for the heating of homes under construction, or from having one or more model homes that use propane gas as a heating fuel prior to the time that electric or gas furnace hook-ups are available for such model(s).

O. Required Trees. Declarant may designate one (1) or more species or types of trees as deemed necessary by Declarant, and/or as required by governmental authorities having jurisdiction over the Property, to be planted along the street or in the front or side yards of the Lots (the designated locations of such trees may, as determined by Declarant or required by local governmental regulation, be in the "tree lawn" located within the road right-of-way, or on the Owner's Lot along the road right-of-way). If Declarant determines to designate street tree(s) then the Lot Owners agree to such uniform trees. Each Lot Owner on whose Lot a Required Tree is located, shall care for, and, if necessary, replace such tree or trees at the Lot Owner's expense with a like type of tree.

P. Mailboxes. Declarant may designate a curb side mailbox for each Lot with a design giving uniformity to the subdivision, or designate and provide for one or more set of cluster or common mail boxes as may be desired by Declarant or required by the U. S. Post office or other mail carrier. To the extent Lot specific mailboxes are used, each Lot Owner shall be responsible at his/her/their sole expense, for the purchase, installation and maintenance in good appearance and functional condition of the mailbox for such Owner's Lot. If the mailbox is damaged, destroyed or deteriorates, then each Lot Owner, at such Lot Owner's expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailbox. To the extent cluster or kiosk mailboxes (and including any structures or improvements relating to same) are used in the Subdivision, the Association shall be responsible for the upkeep

and maintenance of same unless and until the maintenance obligations are accepted, in whole or in part, by the U. S. Post office or other mail carrier.

Q. Yard Lights and Lamp Posts. All yard lights and lamp posts shall conform to the standards set forth by the Declarant and Design Review Committee, and as required by applicable statute(s) and/or ordinance(s).

R. Fencing. The Design Review Committee shall have the authority to establish standards according to which fencing and walls may be permitted in the Subdivision. Said authority shall include the power to prohibit fencing or walls, or both, entirely, to prohibit or require fencing or walls of certain types, and to prohibit or require fencing or walls of certain types (or entirely) in certain Sub-Areas or portions of Sub-Areas. All fencing and walls shall meet any applicable requirements (if any) in subpart T below, and shall conform to the standards set forth by the Design Review Committee, and must be approved by the Board, in writing, prior to the installation thereof. By way of example, and not limitation, and subject to the provisions of subsection T below, compliance with the following standards shall be considered by the Board in reviewing fence applications:

1. Fences or walls shall be constructed of wood, vinyl, wrought iron (or high quality aluminum or vinyl wrought iron style), stone or brick, as approved by the Design Review Committee, and in no event shall chain link or other metal wire fencing be permitted. Chain link and/or wire fencing material may not be used in the construction of any Improvement that is visible from the exterior of a lot;
2. No fence or wall shall be constructed in excess of seventy-two inches (72") above finished grade, provided however that if a governmental agency exercising jurisdiction over the property on which the fence or wall is to be constructed requires a minimum height in excess of 48" for safety reasons (i.e. swimming pool enclosure), such fence or wall may exceed 48" above finish grade, but only to the extent necessary to meet the governmentally required minimum;
3. Fences or walls shall not be located closer to the street than a line parallel to the street and extending from the midpoint between the front and rear corners of the home, and in no event shall fences be located closer to any street than the building line shown on the recorded plat (front and side yard building lines on corner lots), except that ornamental railings, walls or fences not exceeding three feet (3') in height which are located on or entirely adjacent to entrance platforms or steps are permitted;
4. Treated wood split rail fences are permitted. Dark painted or coated wire mesh or plastic mesh attached to a split rail fence is permitted, but in no event may uncoated "chicken wire" be used for such purpose;
5. Decorative wood and plastic fencing are permitted only by express, case-by-case approval of the Design Review Committee or its assigns; and
6. No fences may be constructed within any area designated on a recorded plat for the Subdivision as an easement, excepting those installed by Declarant and those approved

by the easement holder, Design Review Committee and any relevant governmental authorities.

Nothing contained herein shall be interpreted or construed to permit the use of approved fencing materials to accomplish a purpose or use otherwise prohibited hereunder.

S. Swimming Pools. No above ground swimming pool shall be permitted upon any Lot except that this Article IV, Paragraph S shall not be intended to prohibit the installation of a hot tub or sauna. A swimming pool shall be deemed to be an "above ground" pool if any portion thereof extends twelve inches (12") or more above the surrounding yard elevation that exists prior to the installation/placement of the pool on the Lot, subject to the Design Review Committee's power to allow minor grade adjustments for the installation of an in-ground pool if such installation does not negatively impact the routing and management of storm and surface water. Any pool designed or manufactured for use as an above-ground pool shall be and constitute an "above-ground pool," even if less than 12" of such pool extends above the surrounding yard elevation. One "baby pool" on a Lot which contains less than thirty-six (36) square feet of water surface area and has no filtration system of any kind, and which is conveniently capable of being filled, emptied and moved on a daily basis, is permitted.

T. Compliance with Zoning Requirements. Certain provisions of this Declaration may have been included herein as a result of governmental requirements established through the zoning and development plan approval processes in the State, County, City, Township and/or Village in which the Property is located. Compliance with all such governmental requirements, for so long as such requirements are effective and binding, is required by this Declaration. However, in the event the governmental entity(ies) change or agree to a modification of such underlying obligation(s), or if such obligations lapse or for any reason whatsoever become legally unenforceable, this Declaration shall be deemed modified, ipso facto and without the need for further action on the part of the Declarant or any Member, such that this Declaration requires compliance with the obligation as affected by such change or modification.

## V. ARCHITECTURAL STANDARDS

All Property at any time subject to this Declaration shall be governed and controlled by this Article. The Subdivision is a planned community and Declarant requires strict adherence to the design review standards and processes established herein, for the benefit of itself, the community in which the Subdivision is situated, and for the future owners of the individual lots that collectively comprise the Subdivision.

A. Design Review Committee. The Design Review Committee shall be a committee consisting of at least three (3) persons and up to seven (7) persons, as determined by the Board of Directors. Until the Turnover Date, Declarant shall have the sole and exclusive right to appoint and remove all members of the Design Review Committee at will, and may elect in the exercise of its sole discretion, to act itself as the Board (or to appoint an agent to act in its place) in lieu of appointing individuals. After the Turnover Date, the new Board shall have the right to appoint all members to the Design Review Committee, or to appoint an agent to act in the Board's place, at will. The then current Board of Directors shall handle the administration of the election, pursuant to which the new Board members are to be elected, each for a term of one (1) year.

The Design Review Committee shall have the exclusive authority, at a private or public meeting by action of a majority of the members thereof (if Declarant has not elected to act itself or appoint an agent to act, in which case such authority shall be exercised by Declarant or its agent) to determine the architectural standards which shall govern the construction of Improvements on the Property, except that Declarant shall have and retain in all circumstances and at all times, the right and power to approve or disapprove of the architectural standards for the initial construction of each, any and all primary home structures being erected on each Lot. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause his/her Lot and any occupant thereof to comply with the standards promulgated by the Design Review Committee. No Improvement shall be placed, erected or installed on the Property, no construction (which term shall include in its definition staking, clearing, excavation, grading and other site work) and no plantings or removal of plants, trees or shrubs shall be permitted without, until and unless the Owner first obtains the written approval thereof of the Design Review Committee and otherwise complies with the provisions of this Declaration. The power of the Design Review Committee to adopt and implement design/architectural standards, may be exercised before or after the Design Review Committee's receipt of an application for approval of an Owner's desired modification or installation of Improvements; but architectural/design standards may not be implemented retroactively to cause previously installed Improvements that have been approved by the Design Review Committee, to lose their status as 'approved'.

B. Modifications. Except as otherwise provided in this Declaration, the Design Review Committee shall have jurisdiction over all construction, modifications, additions or alterations of Improvements on or to the Property. No person shall construct any Improvement on any Lot, including without limitation, alter surfaces of existing Improvements, change paint colors or roofing materials, construct or modify fencing, or install any recreational device, without the prior written consent of the Design Review Committee. Owners shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of Improvements and alterations to the Design Review Committee for its approval. The Design Review Committee may charge a nominal fee in connection with processing applications submitted pursuant to this section. Nothing contained herein shall be construed to limit the right of an Owner to remodel or decorate the interior of his/her residence.

C. Variances. To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Design Review Committee shall have the authority on a case-by-case basis to grant reasonable variances from the provisions of Article IV, and from the provisions of this Article and from the architectural standards established pursuant to this Article, provided that the activity or condition is not prohibited by applicable law; and provided further that, in its judgment, the variance is in the best interest of the community and is within the spirit of the standards of the Design Review Committee. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Declaration as applied to any other person or any other part of the Property. Variances are intended to be able to be granted in circumstances in which the physical attributes of a Lot cause such Lot to be unique or meaningfully distinguishable from the physical attributes of other Lots in the Subdivision, such physical difference(s) giving rise to the above-described unnecessary hardship or practical difficulties. Variances are not intended to be available to enable an Owner

to avoid the application of these Restrictions by virtue of such Owner's personal life circumstances or decision-making (i.e., having a dog that can jump more than 48" is NOT a justification for a variance to the 48" maximum fence height limitation; whereas having a Lot that abuts railroad tracks is such a justification).

D. Improvements by Declarant. Notwithstanding any of the foregoing to the contrary, all Improvements constructed and landscaping installed by the Declarant or its affiliates, partners, members or shareholders in connection with the initial construction of a home on a Lot, shall be deemed to comply in all respects with the requirements of the Design Review Committee, and separate approval thereof by the Design Review Committee is not required.

## **VI. EASEMENTS AND LICENSES**

A. Easement of Access and Enjoyment Over Common Property. Every Owner shall have a right and easement (in common with all other Owners) of enjoyment in, over, and upon the Common Property (if any), and a right of access to and from his/her Lot, which rights shall be appurtenant to, and shall pass with the title to, his/her Lot, subject to the terms and limitations set forth in this Declaration, subject to the Rules. An Owner may delegate his/her rights of access and enjoyment to family members, occupants, guests and invitees. All such easements are limited by such restrictions as may apply to the Common Property affected thereby, and no person shall have the right by virtue of such easements to engage in activities on the Common Property which are not permitted according to these Restrictions, pursuant to the provisions of any applicable plat(s) or under agreements with any governmental entities or other third parties.

B. Right of Entry. The duly authorized agents, officers, contractors, and employees of the Association shall have a right of entry and access to the Property, including without limitation the Lots, for the purpose of performing the Association's rights or obligations set forth in this Declaration, including inspecting areas to confirm compliance with this Declaration. The Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Property, but only during reasonable hours and after providing seventy-two (72) hours advance notice to the Owner, except in cases of emergency. Nothing contained in this paragraph shall act to create an obligation on the part of the Association to enter upon Lots to inspect, or to perform maintenance thereon.

C. Easement for Utilities and Other Purposes. The Board or Declarant may convey easements over the Common Property to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, swales, land contours, ducts, cables, and other equipment or conditions necessary to furnish electrical, gas, sanitary or storm sewer, storm water retention or detention, potable water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Property and to any entity for such other purposes as the Board or Declarant deems appropriate; provided that such equipment or condition(s), or the exercise of such easement rights shall not unreasonably interfere with the Owners' use and enjoyment of the Property. The Board or Declarant may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board or Declarant deems appropriate; provided that the grant of such easements imposes no undue, unreasonable,

or material burden or cost upon the Property; and further provided that the Board or Declarant may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably delayed or withheld). Declarant shall have the absolute right within (i) areas designated as drainage courses on the recorded plat of the subdivision, (ii) all areas encumbered by general utility or specific storm drainage easements, and (iii) areas determined by sound engineering practice to be necessary to the proper drainage of all or part of the subdivision, to enter upon Lots and perform grading and other construction activities deemed appropriate in the exercise of Declarant's judgment to install, modify, alter, remove or otherwise work on storm water drainage facilities and conditions (including both surface grading and subsurface structures). If any such entry and/or work performed by Declarant results in damage to other portions of a Lot, or to any improvements thereon, Declarant shall be responsible for the restoration of such portions or improvements at Declarant's sole cost.

D. Easement for Services. A non-exclusive easement is hereby granted to all public safety personnel including police and fire departments, ambulance operators, mailmen, deliverymen, garbage removal personnel, and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Lots and Common Property to perform their duties.

E. Reservation of Special Easements. By the purchase of their Lot and acceptance of their deed, all Owners thereby grant access to their individual Lot or Lots for normally anticipated or necessary activities by the Declarant and its successors and assigns, including but not limited such activities as adjacent lot home construction, warranty work, lot and subdivision development, bond release work and work directed by government agencies and utility providers. Declarant and its successors and assigns are responsible for restoring disturbed areas of any such Lots to the same or similar condition as existed prior to the commencement or any such work. To the extent applicable to this Subdivision, attached hereto as Exhibit B is a site plan of the Subdivision, upon which certain areas have been "shaded" or "cross-hatched." The areas marked by shading or cross-hatching identify and represent portions of the Property over, across, under and through which the Declarant reserves Special Easements for the purpose of constructing Improvements or conveying rights deemed by the Declarant to be beneficial to the Property. Unless indicated otherwise on Exhibit B, the Special Easement areas are also No-Build Zones. The Special Easement areas may be parts of individual Lots instead of on Common Property. In such cases, the owner(s) of the Lot(s) affected by the Special Easement(s) shall be and remain responsible for the ordinary care and maintenance of the Special Easement area. If special fencing, landscaping, storm water detention/retention, or community safety or entry features are constructed in a Special Easement area by the Declarant, the State or the Association, the responsibilities of the Lot owner on whose Lot such Improvement has been constructed shall not exceed ordinary grass cutting, trimming and watering around such Improvements. Nothing contained in this Section shall require that the Declarant reserve or establish Special Easements, and if no areas on Exhibit B have been shaded or cross-hatched, Declarant has not reserved any Special Easements.

F. No-Build Zones/Non-Disturbance. Any areas (if any) designated on the recorded plat(s) or re-plats of the Subdivision, in prior deed restrictions, or on Exhibit B as non-buillable

areas or areas in which no building would otherwise be allowed by law or regulation ("No-Build Zones") shall be areas in which no Owner shall have the right to construct or locate any Improvements, including but not limited to fencing. Landscaping may be located in no-build zones, provided that prior approval for such landscaping has been granted by the Design Review Committee. In vegetated No-Build Zones, Owners may perform maintenance necessary for the safety of persons and property (i.e. removing noxious and poisonous plants, or removing dead trees which may fall and harm persons or other Improvements). Grassed No-Build Zones shall be mowed, trimmed and watered by the person(s) responsible for the maintenance of the specific area in question according to the other terms hereof. Any areas designated as "Non-Disturbance" zones shall be construed to be No-Build Zones, except that within Non-Disturbance zones, owners may not perform any maintenance without the prior approval of the Declarant.

G. Tree Preservation Zones. Any areas (if any) designated on the recorded plat(s) or re-plats of the Subdivision, in prior deed restrictions, or on Exhibit B, as "Tree Preservation Zones" shall be areas in which no Owner shall have the right to remove any trees unless they are dead, diseased or pose a threat to the health, safety and welfare of the Lot Owner, provided that the Declarant and/or Lot Owner may remove unsightly or unwanted under-story plant material as long as such removal does not negatively affect the health of other trees in the Zone. The foregoing notwithstanding, Declarant may do limited grading and tree removal within Tree Preservation Zones for the installation of storm water structures and/or grading and in connection with subdivision infrastructure development.

H. Wetland Buffer. Areas designated as 'wetlands' shall be surrounded by a 'Wetland Buffer' zone, which shall remain undisturbed and left in their natural state, and shall be deemed "Non-Disturbance" zones as described above.

## HOMEOWNERS' ASSOCIATION

### VII. MEMBERSHIP AND VOTING RIGHTS

A. Membership. Every Owner shall be deemed to have a membership in the Association, and by acceptance of a deed to property in the Subdivision such Owner agrees to be and acknowledges being a member of the Association, obligated to pay assessments as described herein after. Membership is a right appurtenant to and inseparable from an Owner's fee simple title in a Lot, and such right of membership shall automatically transfer to any transferee of fee simple title to a Lot at the time such title is conveyed or at such time as a land installment contract is entered for the conveyance of fee simple title. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest or mortgage shall not terminate an Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event an Owner consists of more than one person, such persons collectively shall have one membership in the Association in common.

B. Governance. The Association shall be governed by the Board, which shall consist initially of a board of directors consisting of three (3) persons. Prior to the date that the

Declarant elects to transfer control of the Association to the Lot Owners (the "Turnover Date"), the members of the Board shall be appointed by the Declarant, or the Declarant may elect to act as the Board, or it may appoint a managing agent to act as the Board on its behalf. No members, other than the Declarant, shall have voting rights in Association matters until the Turnover Date, nor shall any meetings of the Members be required prior to the Turnover Date. The transfer of control on the Turnover Date shall take place at a meeting which shall occur within six (6) months of the end of the year in which the Declarant ceases to own at least one Lot in the Subdivision. If Declarant establishes a Master Association and separate Sub-Associations for Sub-Areas, the Turnover of the Master and every Sub-Association shall occur concurrently, after Declarant ceases to own any Lots in any Sub-Area. Voting and all other matters regarding the governance and operation of the Association following the Turnover Date shall be set forth in the Association Documents. Nothing contained herein or in the Association Documents shall be interpreted or construed to limit the right of the Declarant to cause the Turnover Date to occur any time prior to the time Declarant ceases to own lots at the subdivision, in Declarant's sole exercise of its discretion.

## **VIII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

A. Common Property. Declarant may, from time to time, at Declarant's option, obligate the Association to maintain property not owned by the Association, and may convey to the Association for the use and benefit of the Association and the Members, real or personal property, or any interest therein, as part of the Common Property in the nature of an easement appurtenant to the Property. The Association shall accept title to any interest in any real or personal property transferred to it by Declarant. The Association, subject to the rights of the Owners set forth in this Declaration and the Association Documents, shall be responsible for the exclusive management and control of the Common Property, if any, and all improvements thereon, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, in accordance with the terms and conditions of this Declaration. The Declarant and Association shall each have the right to grant easements to third parties over, across, under and/or through the Common Property, including but not limited to easements for the construction, extension and/or expansion of utilities, and conservation easements, all as the Declarant and/or Association may be legally obligated or voluntarily disposed to grant.

B. Personal Property and Real Property for Common Use. The Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Declarant.

C. Cost-Sharing Agreements; Sub-Area Maintenance. The Association may enter into cost-sharing agreements with other homeowners' associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, landscaping, storm water retention facilities, mounding, fencing and any other improvements that benefit the Property. Additionally, the Association may provide site maintenance services, such as but not limited to snow removal, yard mowing, and fertilization, in one or more Sub-Areas, and the assessments (as defined and described below) may differ from Sub-Area to Sub-Area as deemed necessary and appropriate by the Association to equitably





apportion the costs of such services to the Owners in the Sub-Area(s) receiving the benefits of such services.

D. Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the use of the Property, and the operations of the Association, which shall be consistent with but which may clarify and/or expand the terms of this Declaration and the other Association Documents. The Association shall have the power to impose sanctions on Owners for violations of the Restrictions, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Declaration, the Association Documents or the Rules against any Owner, tenant, guest or invitee of any Owner, the amount shall be due and payable by such Owner and shall be a Lot Assessment against such Owner's Lot. The Board may, but shall not be required to give prior notice nor appeal/hearing rights to an Owner relative to the imposition of a Lot Assessment, if the Lot Assessment consists of a monetary fine related to non-compliance with the provisions of this Declaration, and further if at least fifty percent (50%) of any such fine is to be waived upon the Owner's taking remedial action relative to such violation within 30 days of the imposition of the fine.

E. Implied Rights. The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration, and every other right or privilege reasonably implied from the existence of any right or privilege granted in this Declaration, or reasonably necessary to effect any such right or privilege.

F. Managing Agent. The Board may retain and employ on behalf of the Association a Manager, which may be the Declarant, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. As the Association's agent, the Manager (if any) shall have no direct liability for actions taken thereby at the direction of the Board (but shall be liable for its own malfeasance). The compensation of the Manager shall be a Common Expense, and one or more components of the Manager's compensation may consist of variable amounts payable to the manager directly by Owners as a result of transactions and or occurrences (i.e. the late payment of assessments) involving such individual Owners' Lots/accounts. The term of any management agreement shall not exceed two years (exclusive of possible renewals) and shall allow for termination by either party, without cause, and without penalty, upon no more than 90 days' prior written notice. Part of the Manager's compensation may include an initial lot assessment not to exceed Fifty Dollars (\$50.00) per Lot, and miscellaneous fees payable in the event of transfers or other transactions involving the Lots.

G. Insurance.

1. The Association may obtain and maintain property insurance, liability insurance and/or flood insurance covering all or any portion(s) of the Common Property as deemed advisable by the Board, in an amount as is commonly required by prudent institutional mortgage investors. The Association shall carry liability insurance on any and all

Retention or Detention Basins for the maintenance of which the Association is responsible. The cost of any such insurance shall be included as a Common Expense for Association budgeting purposes, provided that if specific insurance costs are incurred by the Association relative to the types of construction or services rendered in some, but not all Sub-Areas, then the increased costs thereof shall be paid through the Assessments charged to Owners in such Sub-Area(s).

2. The Association shall acquire and pay the premiums attributable to the types of insurance as is required by law, in amounts required by law or as otherwise deemed necessary and prudent by the Board, and any other insurance the Association deems necessary.
3. In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Association may levy a Special Assessment pursuant to Section IX to cover the additional costs.

H. Condemnation. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property, or any portion thereof. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Owners.

I. Books, Records. Upon reasonable request of any Member, the Association shall be required to make available for inspection all books, records and financial statements of the Association. Compliance with the foregoing requirement may be achieved, in whole or in part, by making the books and records available electronically. A reasonable fee may be charged to cover the costs of handling, copying and/or delivering any books and records to a Member who requests the same, and the Association shall not be obligated to provide copies of records containing information of a personal or private nature concerning other Owners' names, account numbers, contact information or similar information; nor unredacted records containing the Association's account numbers.

## IX. ASSESSMENTS

A. Operating Fund. The Board shall establish an Operating Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Property. The Operating Fund shall be funded by Member Assessments.

B. Types of Assessments. The Declarant, for each Lot owned, covenants and agrees, and each Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the initial assessment referred to in Article VIII, Section (F) above, and the following assessments: (i) Annual Assessments; (ii) Special Assessments; and (iii) Lot

Assessments. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Property or by abandoning his/her Lot. Annual and Special Assessments shall be fixed at a uniform rate for all Lots.

C. Annual Assessments. The Board shall estimate the Common Expenses and the expenses, if any, it expects the Association to incur for the maintenance, operation and management of the Association, and including appropriate amounts to fund Reserves as provided by law, and shall assess each Owner of a Lot an Annual Assessment an equal amount based on such estimated expenses and reserves as divided by the total number of Lots. As part of the estimation process, the Board shall also determine which, if any, of the Association's costs are to be incurred for the benefit of or in the rendering of services to, one or more but less than all of the Sub-Areas, and the Annual Assessments chargeable to Owners in such Sub-Areas as receive special benefits or services shall be adjusted to cause such costs to be paid by the Owners in such Sub-Areas. Within any given Sub-Area, all Owners shall be assessed an equal amount based on the combination of the estimated Common Expenses attributable to all Sub-Areas, and the Common Expenses attributable to some but not all Sub-Areas. The Annual Assessments shall be paid in accordance with the procedures set forth in the Rules. Notwithstanding the foregoing, prior to the Turnover Date, Declarant may elect to pay the Annual Assessments applicable to Lots owned by Declarant or in lieu thereof, not pay such Annual Assessments and pay any deficit incurred in operating the Association.

D. Special Assessments. The Board may levy against the Lots a Special Assessment to pay for capital expenditures or to fund necessary costs and expenditures not projected to be paid out of the Operating Fund; provided that any such assessment shall have the assent of two-thirds (2/3) of Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. A quorum must be present at any such meeting.

E. Lot Assessments. The Board may levy a Lot Assessment against any Lot(s) and the Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of enforcement (including court costs and the Association's legal fees, if applicable) relative to any deed restriction violation which exists on such Lot(s); costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. Upon its determination to levy a Lot Assessment, the Board shall give the affected Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, 10 days prior to the effective date of the levy of any Lot Assessment. The foregoing notwithstanding, the Board may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Owner who violates the Rules, the Association Documents or any provision of this Declaration, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules, the Association Documents, or provisions of this Declaration, and no such notice and hearing shall be required if at least 50% of the fine can be avoided by the Owner by taking such actions as are necessary, within thirty (30)

days of the date of the imposition of the Lot Assessment, to eliminate or remove the violative condition that gave rise to the Lot Assessment.

F. Remedies.

1. Interest; Late Charge. If any Assessment remains unpaid for ten (10) days after all or any part thereof shall become due and payable, the Board may charge interest at rate up to the lesser of 12% per annum or the highest rate permitted by law, and the Board, or the Manager, if applicable, may collect an administrative collection charge as prescribed by the Board.
2. Liability for Unpaid Assessments. Each Assessment or installment of an Assessment, together with interest thereon and any costs of collection, including interest, late fees and reasonable attorneys' fees (none of which shall be considered "Lot Assessments") shall become the personal obligation of the Owner(s) beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute an action at law on behalf of the Association against the Owner(s) personally obligated to pay any delinquent assessment. An Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable and both such Owner and his/her successor in title shall be jointly and severally liable therefor. Except as otherwise provided herein, the transfer of an interest in a Lot shall neither impair the Association's lien against that Lot for any delinquent Assessment nor prohibit the Association from foreclosing that lien.
3. Liens. All unpaid Assessments, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment remains unpaid for 10 days after it is due, then the Board may (but shall not be required to) authorize any officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and costs, with the appropriate governmental office containing a description of the Lot which the lien encumbers, the name(s) of the Owner(s) of that Lot, the amount of the unpaid portion of the Assessment, and such other information as the laws of the State may require. The certificate may be signed by any officer, authorized agent or Manager of the Association. The Association's continuing right to file its lien shall survive a transfer of title to a Lot unless expressly otherwise provided by applicable law, and said rights and any actually filed lien for Assessments provided for in this Section shall be subordinate to the lien of any bona fide first mortgage on a Lot.
4. Vote on Association Matters; Use of Common Property. If any Assessment remains unpaid for 30 days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Property, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.



## **X. MAINTENANCE**

A. Maintenance by Association. Subject to reasonable fiscal limitations and the exercise of the Board's reasonable business judgment, the Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures (including entry and similar signage as applicable), and improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property. The foregoing notwithstanding, the Association may designate portions of the Common Property to be left in their 'natural' condition, without mowing, treatment or other maintenance of any kind. Each Owner by accepting a deed to a Lot (or any portion thereof) in the Subdivision acknowledges that (i) portions of the Common Property are to be left in their natural state, including wetland areas which may, at times, result in mosquitoes, flora and fauna, which to some owners may be undesirable, and (ii) that the Declarant is hereby granted and has the right to freely assign to the Association (and the Association shall agree to assume), and/or certain governmental authorities may require the Association have, obligations to repair and maintain certain landscaping items, water quality features or other such aspects of the Common Property. The Association may also elect to provide certain maintenance services in certain Sub-Areas, and upon such election the Owners in such Sub-Areas are required to abide by such election and to refrain from interfering in any way with the Association's provision of such services.

B. Maintenance by Owner. Except as otherwise provided herein, each Owner or occupant shall repair, replace, and maintain in good order and safe and sanitary condition, at his/her expense, his/her Lot, and all portions of, Improvements on and to, structures on, and, equipment and components used in connection with, his/her Lot. On any Lot on which a two-family (or more, if applicable) home is constructed, the obligations and duties described in this subparagraph shall be shared jointly and severally by each Owner of any portion of the Lot. This maintenance responsibility includes, without limitation, regularly watering and mowing grass during the grass growing season, regularly weeding planting beds, and a duty to maintain an Owner's Lot and house and all Improvements on the Lot in a reasonably neat, clean and well-maintained condition ("well-maintained" being definable from time-to-time by the Board as the average condition of all other Lots in the Subdivision). Each Owner shall promptly furnish all necessary materials and shall perform or cause to be performed at his/her own expense, all maintenance, repairs and replacements on such Owner's Lot that, if omitted, would adversely affect the safety and usefulness of the Common Property, or unreasonably diminish property values in the Subdivision. Each Owner shall maintain those portions of his/her Lot that are adjacent to any portion of the Common Property in accordance with the Rules and the requirements set forth in this Declaration.

C. Right of Association to Repair Lot. If any Owner fails to maintain his/her Lot in the manner required herein, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Property by Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of this Declaration, then the Board may authorize its employees or agents to enter the Lot at any reasonable time to complete the

necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred in doing so, including administrative costs for the coordination of such work.

D. Damage to Common Property by Owner or Occupant. If the Common Property is damaged by any Owner or occupant, his/her family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

## **XI. MISCELLANEOUS**

A. Term. This Declaration shall bind and run with the land for a term of 25 years from and after the date that this Declaration is filed for recording with the appropriate governmental office, and may not be terminated without Declarant's consent during such time; and thereafter shall automatically renew forever for successive periods of 10 years each, unless earlier terminated by a vote of not less than 75% of the Members.

B. Enforcement; Waiver. This Declaration may be enforced by any proceeding at law or in equity by the Declarant, any Owner, the Association, the Design Review Committee, the City of Knoxville, and their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant or restriction, to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation, in the case of an action brought by the Declarant or Association, the recovery of reasonable attorneys' fees). Failure of Declarant, the Association, the Design Review Committee or any Owner to enforce any provision of this Declaration or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement of this Declaration or the Rules. Any person having the right to enforce these Restrictions may also require that the Association be required to discharge its duties as described herein, but the Association shall not, in any case, be liable for any monetary damages, nor shall an award of attorney's fees be available to a Plaintiff in any such case. If the Association fails to discharge its duties hereunder, the City of Knoxville shall have, in addition to the other rights and remedies described herein, the right to perform any maintenance that is the obligation of the Association, and to assess the Lot owners for all costs (including administrative costs and reasonable overhead) incurred by the city in performing such maintenance work.

C. Amendments. Until the Turnover Date Declarant may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any other Owners. Any such amendment may modify the provisions hereof, and/or impose covenants, conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, Declarant may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with

any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) necessary to conform to the requirements of United States Federal Housing Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. Declarant shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. An amendment to this Declaration shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Declarant, to reflect and address the different character or intended development of any such additional property.

D. Declarant's Rights to Complete Development. Declarant shall have the right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter Improvements on any property owned by Declarant; (c) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Declarant or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Declarant or its assignee shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of Declarant or require Declarant or its assignee to obtain approval to: (i) excavate, cut, fill or grade any property owned by Declarant, or to construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by Declarant as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (iii) require Declarant to seek or obtain the approval of the Association or the Design Review Committee for any such activity or Improvement on any Common Property or any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

E. Declarant's Rights to Replace Declarant's Property. Declarant reserves the right, at any time and from time to time, to amend, alter or replat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Declarant and Owners consenting to such amendment, alteration or replatting shall be the subject of any such amendment, alteration or replatting. Each Owner and Member and the Association whose Lot is not altered by such amendment, alteration or replatting, for themselves and their successors and assigns, hereby consents to and approves any such amendment, alteration or replatting and shall be deemed to have joined in the same.

F. Mortgagee Rights. A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

- (a) any proposed amendment of this Declaration;
- (b) any proposed termination of the Association; and
- (c) any default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in 60 days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

G. Indemnification. The Association shall indemnify every Board member, officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The Board members, officers and trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The Board members, officers and trustees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Board members, officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such Board member, officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any Board member, officer or trustee, or former Board member, officer or trustee, may be entitled. The Board may cause the Association to indemnify a third party manager hired by the Board, for losses and liabilities arising from such manager's performance of services in conformity to the directions of the Board.

H. Severability. If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law of the State, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

I. Captions. The caption of each Article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.



J. Notices. Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.

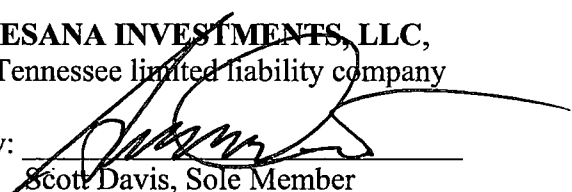
[remainder of page left blank intentionally; signature page follows]

IN WITNESS WHEREOF, the Declarant has caused the execution this Declaration as of the date first above written.



Declarant:

**MESANA INVESTMENTS, LLC,**  
a Tennessee limited liability company

By:   
Scott Davis, Sole Member

STATE OF TENNESSEE )

) ss:

COUNTY OF KNOX )

The foregoing instrument was sworn, subscribed to and acknowledged before me, a Notary Public in and for said County and State, this 19 day of June, 2019, by Scott Davis, the Sole Member of Mesana Investments, LLC, for and on behalf of said company.



Notary Public

Id #: \_\_\_\_\_

Commission Expiration: 2-6-2023