



**COVENANTS AND RESTRICTIONS**  
**FOR**  
**SHERWOOD OAKS SUBDIVISION**

*ALL WAS KIT TO 17. "1", AMENDMENT #1 TO Declaration of Covenants & Restrictions*

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**DECLARATION OF COVENANTS AND RESTRICTIONS**

**SHERWOOD OAKS SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants and Restrictions made and entered into this 11<sup>th</sup> day of September, 1995 by Sherwood Development Company, L.L.C.

**WITNESSETH:**

WHEREAS, Developer is the owner of the Property and desires to place certain covenants, conditions, reservations and restrictions upon the use of all Lots and portions of Lots in the Development for the benefit and protection of owners of dwellings erected thereon, in order to establish and maintain a sound value for such dwellings and the aesthetic quality of the Development.

WHEREAS, Developer has formed a Tennessee nonprofit corporation (hereinafter called the "Association") to be called the Sherwood Oaks Homeowners' Association, Inc. or a name similar thereto. By accepting a deed for any Lot in the Development, such Lot Owner agrees to and shall become a member of and be subject to these covenants and restrictions and the terms of the charter and duly enacted bylaws of the Association.

NOW THEREFORE, the Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants" and/or and "restrictions") hereinafter set forth.

**ARTICLE I**

**DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean and refer to the Developer (or such other individuals as Developer may appoint) until all Lots in the Development shall have been sold by the Developer, at which time such term shall mean and refer to those persons selected annually by the Board in compliance with this Declaration to serve as members of said committee.

Section 2. "Association" shall mean and refer to Sherwood Oaks Homeowners' Association, Inc., its successors and assigns.

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**Section 3.** "Board" shall mean and refer to the Board Directors of the Association.

**Section 4.** "Common Area" shall mean the real property shown and described upon the Plat as "Common Area," if any, and all other real and personal property now or hereafter owned by the Association, if any, for the common use and enjoyment of the Owners. The Developer shall be and continue as the fee simple absolute owner of the Common Areas designated as such on the Plat, subject to the rights of Owners as herein provided, until all Lots have been sold to permanent residents or at such earlier time as the Developer shall elect to convey the same, at which time said Common Areas shall be transferred by the Developer to the Association as provided herein.

**Section 5.** "Common Expenses" shall mean and refer to the actual and estimated expenses of operation of the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration and/or the articles of incorporation or bylaws of the Association.

**Section 6.** "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth, as may from time to time be amended.

**Section 7.** "Developer" shall mean and refer to (i) Sherwood Development Company, L.C.C. or (ii) any successor-in-title or any successor-in-interest to Sherwood Development Company, L.C.C. to all or any portion of the Property, provided in the instrument of conveyance to any such successor-in-title or interest, such successor-in-title or interest is expressly designated as the "Developer" hereunder by the grantor who or which is the Developer hereunder at the time of such conveyance. "Development" shall mean and refer to Sherwood Oaks Subdivision as herein described.

**Section 8.** "Lot" shall mean and refer to any parcel of land shown upon the Plat.

**Section 9.** "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot which is a part of the Property, but excluding those having an interest merely as security for the performance of any obligation.

**Section 10.** "Person" shall mean and refer to a natural person, limited liability company, corporation, partnership, association, trust or other legal entity, or any combination thereof.

**Section 11.** "Plat" shall mean and refer to that certain Final Subdivision Plat for Sherwood Oaks Development prepared by Batson, Himes, Norvell and Poe, dated July 26, 1995, and recorded in Map Cabinet N, Slide 394A, and as supplemented by plat dated August 30, 1995 and recorded in Map Cabinet O, Slide 19D, each in the Register's Office for Knox County, Tennessee, and as may be shown by any amended or supplemental map of the Development subsequently recorded in the Register's Office for Knox County, Tennessee.

**Section 12.** "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and by reference made a part hereof, together with such additional real property as may by subsequent amendment be added to and subjected to this Declaration.

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Section 13. "Structure" shall mean and refer to (i) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration but not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop, or cage, covered or uncovered patio, swimming pool, tennis court, basketball goal(s), fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill, ditch, diversion, dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or which causes a drainage change from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than twelve (12) inches; whether or not subsection (ii) of this Section 13 applies to such change. No reference to any of the foregoing things or objects which will be deemed to be a "Structure" shall indicate or imply that all of such things or objects are permitted Structures under the terms and provision of this Declaration.

Section 14. "Traditional Architecture" shall be defined as residential architecture categorized as Williamsburg, American Colonial, Georgian, French Provincial, English Tudor, and all other traditional single family residential architecture common in the United States and not typically referred to as contemporary architecture.

## ARTICLE II

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Powers and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Control Committee for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards for the development of the Property established from time to time by the Architectural Control Committee; and (ii) as to the location of the Structures with respect to topography, finished ground elevation and surrounding Structures to the extent necessary to carry out such purpose. The Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purposes, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot. However, any decision of the Architectural Control Committee may be appealed to the Board, and may be overruled by the Board by majority vote at any duly called and held meeting at which a quorum is present.

Section 2. Construction Bond or Cash Deposit. With respect to all proposed Structures, the builder or Owner shall submit to the Architectural Control Committee at the time that plans and specifications are submitted, a construction bond or cash deposit of Two Thousand Five Hundred Dollars (\$2,500.00) per Lot to be held in an interest bearing escrow account by the Architectural Control Committee until the improvements are complete and the

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Architectural Control Committee conducts its final inspection. The construction bond or cash deposit shall be used to offset costs incurred by the Association or the Architectural Control Committee as a result of or to:

- (a) Clean-up, maintain, or repair damage to any Lots, Common Areas or other property (including public streets) caused by the builder or Owner or their subcontractors, suppliers and representatives during construction; and
- (b) The expenditure of legal fees and other costs incurred by the Architectural Control Committee or Association in order to correct any construction or alteration not performed in substantial compliance with plans approved by the Architectural Control Committee as herein provided.

At the point that plans and specifications have been approved, a letter of compliance shall be issued by the Architectural Control Committee to the builder or Owner. The deposits and any accrued interest, less any amounts used as provided for in this Section 2, will be returned only upon completion of the work in substantial compliance (as determined by the Architectural Control Committee) with approved plans and specifications.

**Section 3. Submission of Plans and Specifications.** No structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Control Committee, including, without being limited to, two copies of the following:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces;
- (b) floor plans;
- (c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all backfilling and landscaping are completed;
- (d) specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, and also showing front, side and rear elevations;
- (e) plans for grading and landscaping including exterior lighting scheme;
- (f) garage door location and design;
- (g) samples of building and paint materials to be used; and

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(h) plans for mailbox location, design and materials to be used in the construction thereof.

It is anticipated initially that the Architectural Control Committee will incur approximately \$300 in professional fees for the plans review process, which amount will be paid by the Owner or builder prior to and as a condition of the Architectural Control Committee initiating the review process. This fee may be adjusted by the Board from time to time as needed.

**Section 4. Approval of Builders.** Any builder or landscaper, prior to performing any work on any Lot on the Property, must first be approved by the Architectural Control Committee as to financial stability, building or landscaping experience and ability to build or landscape Structures or grounds of the class and type of those which are to be built on the Property. Such approval shall be within the sole discretion of the Architectural Control Committee. No Person shall be approved as a builder or landscaper unless such Person obtains his or her income primarily from construction or landscaping of the type which the builder or landscaper is to perform upon the Property. No Owner will be permitted to act as his or her own builder or contractor except where such Owner obtains his or her income primarily from the construction of the type of Structures to be constructed on the Property and otherwise meets the qualifications hereinabove set forth.

**Section 5. Approval and Disapproval of Plans and Specifications.**

(a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations, which the Architectural Control Committee shall be deem appropriate.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval of any plans and specifications for use in connection with any Lot or Structure shall not be deemed a waiver of the Architectural Control Committee's right, in its sole discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with other Lots or Structures. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been strict adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval. In the event that the Architectural Control Committee rejects plans, specifications, or site plans submitted for approval under this Article, the party submitting the plans, specifications or site plans may make the necessary alterations to said plans or specifications and resubmit them for approval. In lieu



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of resubmission, the applicant may appeal the disapproval by the Architectural Control Committee to the Board as provided for in Section 1 of this Article II.

- (c) Neither Developer, any member of the Architectural Control Committee, nor the Association shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, or for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any Person that the plans and specifications comply with applicable codes and laws, nor the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the Architectural Control Committee nor the Association shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under this Article II, or to any Owner, or to any other person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. By submission of such plans and specifications to the Architectural Control Committee, every Owner of a Lot releases and agrees to hold harmless and to defend Developer and any member of the Architectural Control Committee or the Association from any such alleged liability, claim and/or damage including attorney's fees.

**Section 6. Obligation to Act.** The Architectural Control Committee shall take action on any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof. Approval by the Architectural Control Committee, if granted, together with any conditions imposed by the Architectural Control Committee, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Architectural Control Committee to take action within forty-five (45) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**Section 7. Right of Inspection.** During the construction process of a Structure, the Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, or alteration of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration, and the Architectural Control Committee shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

**Section 8. Violations.**

- (a) If any Structure shall be erected, placed, maintained or altered upon any Lot, other than in accordance with the plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article II, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article II and without the approval required

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herein. If in the opinion of the Architectural Control Committee such violation shall have occurred, the Architectural Control Committee shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the Architectural Control Committee in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner of such a Structure and related Lot are subject.

- (b) The Architectural Control Committee shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. The Owner shall take reasonable steps toward the required remedial action, and shall use due diligence and best efforts to timely and promptly complete the required remedial action. If the Owner shall not have taken reasonable steps toward the required remedial action within twenty (20) days after the mailing of the aforesaid notice of violation, then the Architectural Control Committee shall have the right of abatement as provided in Section 1(b) of Article IX hereof. In addition to the right of abatement, the Board, upon being informed of such violation by the Architectural Control Committee, shall be entitled to seek equitable relief to enjoin such construction and/or to remove any Structure subject to the violation, and shall have all other rights and remedies as shall be provided herein, at law, or in equity.

**Section 9. Conduct.** All builders and Owners shall be held responsible for the acts of their employees, subcontractors, suppliers and other persons or parties involved in construction or alteration of a Structure. In this regard, a builder or Owner shall be responsible for the following:

- (a) Ensuring that the construction site is kept clean and free of debris and waste materials, and that stockpiles of unused materials are kept in a neat and orderly fashion.
- (b) Prohibiting the consumption of alcoholic beverages, illegal drugs or other intoxicants that could hamper the safety or well-being of other personnel on the site or affect the quality of workmanship.
- (c) Assuring that the aforementioned are properly insured, particularly by carrying of workman's compensation insurance and by carrying a policy of general liability insurance of at least \$300,000.00 per person/per incident.
- (d) Assuring that the aforementioned do not commit any violation of the rules and regulations of the Development.
- (e) Ensuring that all driveways on the construction site are sufficiently graveled, a portable toilet is available and used by the construction workers and any mud or debris caused by the construction are removed from the adjoining roadways as soon as reasonably possible. Further, silt fences shall be installed to keep silt, mud, and other debris off of the street and off of adjacent Lots.

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- (f) Each builder and Owner shall be responsible for providing metered water and electric service to the job site prior to starting work. Usage of water and electricity from adjoining properties is not permitted. Each building site shall be kept in good appearance at all times. **THE CONSTRUCTION AREA SHALL BE POLICED AND KEPT FREE OF DEBRIS AT THE END OF EACH DAY.** No burning, dumping or burial of any kind is permitted and each builder shall place a trash receptacle on the Lot at least 30 feet from the street. Obnoxious or loud music and behavior shall not be permitted on the construction site.
- (g) The use, appearance and maintenance of any building or trailer to be used to store construction materials or otherwise in construction, must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

### ARTICLE III

#### GRIEVANCE PROCEDURE

**Section 1.** Any grievance or complaint which an Owner shall have against any other Owner for violation of the provisions of this Declaration, the bylaws of the Association, or rules and regulations of the Association, or for any other reason, shall be submitted to the Board for arbitration.

**Section 2.** All such grievances shall be submitted in writing to the Board outlining the Owner or Owners complaining, the Owner or Owners complained against, the nature of the complaint, the date of all relevant facts, and the specific violations, if any, which are relied upon by the complaining party or parties. A hearing shall be held by the Board following submission of all complaints within forty-five (45) days. Said hearing shall be held only after five (5) days written notice to all parties and shall afford all parties an opportunity to present evidence and question any other party or witness. Owners shall not be represented by attorneys at this hearing. If the Board decides adversely to the complaining party or fails to act within forty-five (45) days of submission of the complaint, then the complaining party or parties shall have the right to resort to any other legal remedies which may be available.

**Section 3.** The grievance procedure set out herein shall be the conclusive remedy for all grievance and complaints, and no Owner shall have the right to resort to other legal remedies until the remedies provided herein have been fully exhausted.

### ARTICLE IV

#### PROPERTY RIGHTS

**Section 1. Owner's Easement of Enjoyment.** Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area including, without limitation, the right of pedestrian (but no vehicular) access, ingress and egress to and from his or her Lot over those portions of the Common Area

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from time to time designated for such purposes, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area.
- (b) the right of the Association to suspend an Owner's voting rights and rights to use the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.
- (c) the right of the Developer and/or the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by three-fourths (3/4) of each class of members, agreeing to such dedication or transfer, has been recorded.
- (d) the easements reserved in Article VII of this Declaration.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the bylaws, his or her right of use and enjoyment in and to the Common Area and the improvements thereon, if any, to the members of his or her family, guests and invitees, subject to such regulations as may be established from time to time by the Association.

**Section 3. Title to Common Area.** Developer may from time to time convey to the Association, at no expense to the Association, real and personal property for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Developer all such conveyances of real and personal property. Notwithstanding any legal presumption to the contrary, the fee simple title or easement to such real and personal property designated as Common Area or for public use, together with all rights therein, shall be reserved to Developer until such time as the real and/or personal property is conveyed to the Association or to any municipality or other governmental body, agency or authority. The Developer may so convey real property and improvements thereon to any municipality or other governmental body agency or authority to the extent required to obtain acceptance of roads, streets and/or rights of way for dedication.

**Section 4. No Partition.** Other than as provided for in Article VIII, Section 8, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Common Areas or any part thereof seek any such judicial partition unless the property has been removed from the provisions of this Declaration.



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ARTICLE V

COVENANT FOR MAINTENANCE AND CAPITAL

IMPROVEMENT ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a 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 which may or shall be levied by the Association, and (2) special assessments. All such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, including reasonable attorney's fees, shall be a charge and continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be to the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his or her successors-in-title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including, without limitation, the maintenance and repair of the Common Area and improvements thereon, if any, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, payment of utilities relative to the Common Area and the establishment and maintenance of a reasonable reserve fund or funds.

**Section 3. Computation of Annual Assessments.** If the Association incurs ongoing Common Expenses, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year. Such budget shall include a capital contribution or reserve account in accordance with the capital needs of the Association as and if established by the Board. The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The annual assessments shall be equally divided among the Lots so that the annual assessments shall be the same to each Lot. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, so long as there is a Class B member; or (ii) a vote of a majority of the Owners voting in person or by proxy at such meeting. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a special meeting of the Association for the approval of a special assessment.

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**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including roads and sidewalks, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the Class A members and the Class B member, if any, voting in person or by proxy at a meeting duly called for such purpose. Special assessments may also be levied by the Association if for any reason the annual assessments prove inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the members as set forth above.

**Sections 3 and 4 of this Article V** notwithstanding, prior to the first scheduled meeting of Owners as herein determined (i) annual and special assessments shall be determined by the initial board; and (ii) the Developer shall not be required to pay on Lots owned by it any annual or special assessment.

**Section 5. Special Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article V above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Rate of Assessment.** Annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual or quarterly basis by the Association Secretary/Treasurer as established by the Board.

**Section 7. Date of Commencement of Annual Assessment Due Dates.** The first annual assessment shall become due and payable on the first day of the month following the date of the sale of the first Lot in the Development. Thereafter as each Person becomes an Owner, such new Owner's assessment for the current year shall be a pro rata part of the annual assessment as of the first day of the month following the date such Person becomes a member of the Association. Upon a Person ceasing to be a member of the Association, such member shall not be entitled to any refund of his or her annual assessment.

**Section 8. Remedies of the Association due to Nonpayment of Assessment.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring any action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees or any such action shall be added to the amount of such assessment. Each such Owner by his or her acceptance of deed to a Lot, hereby expressly vests in the Association, or its agents, the right

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and power to bring all action against such Owner personally for the collection of such charges as a debt to enforce the aforesaid lien by all methods available for the enforcement of the liens against real property. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area, abandonment of his or her Lot or by renunciation of membership in the Association.

**Section 9. Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust, first purchase money security deed, or security deed representing a first lien on said property. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or deed of trust shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but not the personal liability of the Lot Owner(s) for payment of the assessments. No sale or transfer shall relieve the Owners of such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) all Common Area; and
- (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI


### MAINTENANCE

**Section 1. Association's Responsibility.** Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and walls and other improvements, if any, situated within the Common Area and which have not been formally dedicated and adopted; (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area and which have not been formally dedicated and adopted; and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

**Section 2. Owner's Responsibilities.** Each Owner, other than the Developer, of a Lot, whether vacant or occupied, shall keep and maintain his or her Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such

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maintenance shall include, but shall not be limited to, painting, repairing, replacing and care for roofs, gutters, down spouts, building surfaces, trees, shrubs, grass, walks and other exterior improvements. Should any Owner of a Lot fail to maintain his or her Lot or the improvements thereon as set forth hereinabove, the Architectural Control Committee, its agents and representatives, may, after fifteen (15) days written notice to the Owner of such Lot, enter upon his or her Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the Architectural Control Committee, in the exercise of its sole discretion, deems necessary or advisable. Such Owner shall be personally liable to the Architectural Control Committee for the direct and indirect cost of such maintenance, which costs shall be added to and become part of the assessment to which such Owner and his or her Lot are subject. Although notice given as herein provided shall be sufficient to give the Architectural Control Committee, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 a.m. and 5:00 p.m. on any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the Architectural Control Committee to mow, clear, cut or prune any Lot or to provide garbage or trash removal service or to perform such exterior maintenance. Specifically, where an Owner, other than the Developer, has elected not to build on the Lot (subject to the specific limitations on said right as herein provided), said Lot shall be maintained as a finished yard (hand mowed and trimmed) during that time that construction has not commenced.



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## ARTICLE VII

### EASEMENTS

**Section 1. Utility Easements.** There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided for herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially provided and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement to be a separate recordable document, Developer or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

**Section 2. Easements for Developer.** Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on or over, under and through any part of the Property owned by Developer and the Common Area for so long as Developer owns any Lot primarily for the purpose of sale:

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- (a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;
- (b) For the construction of improvements on the Lots;
- (c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;
- (d) For the use of the Common Area and any sales offices and parking spaces in connection with its efforts to market Lots; and
- (e) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots.

**Section 3. Easements for Association.** There shall be general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area to perform their respective duties.

**Section 4. Greenspace Easement.** In addition to the general right and easement granted to the Association pursuant to Section 3 of this Article VII, there shall also be an easement in favor and for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, in, over and across the portion of any Lot designated on the Plat as a "Greenspace Area," according to the following terms and conditions:

- (a) Fee simple title to Greenspace Areas shall be vested in the Owner(s) of Lots affected thereby as shown on the Plat, subject to the easement herein described in favor of the Association. Greenspace Areas shall not be Common Areas and no Owner(s) of any Lot shall have the right to the use and enjoyment of any other Lot by virtue of the part that said Lot (or a portion thereof) shall be designated as a Greenspace Area.
- (b) The Association shall have the sole and exclusive right to determine the style, nature and extent, and to implement, all landscaping and planting in the Greenspace Areas, to the exclusion of all persons, including the Owner of any affected Lot(s).
- (c) Neither the Association nor the Owner(s) of any affected Lot(s) shall erect, maintain or place on any Greenspace Area any building or other permanent structure (which shall include patios, decks, gazebos, picnic tables, swing sets or the like) without the written consent of the other party.
- (d) Subject to the foregoing, the Owner(s) of any Lot designated as a Greenspace Area may use and enjoy the Greenspace Area as a part of said Owner(s)' Lot so long as said use and enjoyment does not materially detract from or damage landscaping or plantings thereon. The Owner(s) of any affected Lot shall be responsible to the Association for any

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damages caused by the Owner(s), their families and other invitees, to the Greenspace Area, for which special assessment may be made, if necessary.

(e) All costs and expenses incurred by the Association relative to the landscaping, planting, and maintenance of the Greenspace Areas shall be a common expense for which assessment may be made by the Association.

#### ARTICLE VIII

#### GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

**Section 1. Residential Use.** All Lots shall be restricted exclusively to single-family residential use. No Lot, or any portion thereof, shall at any time be used for any commercial, business or professional purpose; provided, however, that nothing herein shall be construed to prohibit or prevent Developer or any builder of residences in the Development from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots in the Development.

**Section 2. Common Area.** The Common Area shall be used only by the Owners and their agents, servants, family members, invitees and licensees for access, ingress to and egress from their respective Lots and for such other purposes as may be authorized by the Association.

**Section 3. Nuisances.**

- (a) No unlawful, noxious or offensive activities shall be carried on in any Lot, or upon the Common Area, nor shall anything be done there or thereon which, in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance to others or unreasonably interferes with other Owners' use of their Lots and/or the Common Area.
- (b) No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of a Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no horns, whistles, or bells, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.
- (c) All alarms or security systems with a siren, bell or other auditory warning device shall have an automatic device to stop the siren, bell or other device from sounding after a ten (10) minute period of time.

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**Section 4. Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control Committee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 5.

**Section 5. Landscaping.** No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration.

**Section 6. Temporary Buildings.** No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications or other arrangements approved by the Architectural Control Committee. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Architectural Control Committee.

**Section 7. Signs.** No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Architectural Control Committee's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (a) a sign indicating the builder of the residence on the Lot, maximum size nine square feet;
- (b) not more than one "For Sale" sign; provided, however, that in no event shall any such sign be larger than nine square feet in area; and
- (c) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee.

**Section 8. Lots and Setbacks.** In approving plans and specifications for any proposed Structure, the Architectural Control Committee may establish setback and residence orientation requirements for the location of any Structure which are more restrictive than those established by the Plat. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks. It is hereby established that the front setback minimum will be 35 feet with side and rear yard setback minimums of 15 feet and 25 feet, respectively. Variances to those standards will only be given by the Architectural Control Committee when site conditions dictate the necessity in the Architectural Control Committee's sole discretion. For the purposes of this covenant, eaves, steps, open porches and uncovered decks shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any part of the building to encroach upon another Lot. Carports or roofed porches shall be considered as a part of the building. No Lot, other than



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Lot owned by the Developer, may be further subdivided in size by any devise, voluntary or involuntary transfer, partition, judicial sale or other proceedings or process of any kind, except upon the prior approval of the Architectural Control Committee. In the event two (2) or more adjacent and contiguous Lots are purchased by the same person, those Lots may be combined to form one (1) Lot subject to the approval of the Architectural Control Committee and the approval of governmental authority. The Lot Owner shall bear the cost of surveying or any fees related to the consummation of this transaction.

**Section 9. Walls and Fences.** No wall or fence of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such walls or fences. In general, walls and fences are not encouraged within Sherwood Oaks as they are often contrary to the architectural and landscaping concepts as well as the sense of community that is promoted at Sherwood Oaks. Hedges, berms and other landscape alternatives are preferred. However, in keeping with the desire of some Owners who may want to have swimming pools, walls and fences will be permitted on a restricted basis that will not detract from the overall appearance and to the extent approved by the Architectural Control Committee. Construction of walls and fences will only be of masonry (including stone, stucco and brick), wrought iron, masonry and wrought iron used in concert, or other materials approved by the Architectural Control Committee. No wall or fence shall extend forward of the rear corners of the house or exceed five (5) feet in height as measured from the ground, unless in each case specifically approved by the Architectural Control Committee.

**Section 10. Roads and Driveways.** No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications locating such roads and driveways. Such specifications shall include the proposed substance of concrete, stone or brick to be used in constructing such roads and driveways, which substance of concrete, stone or brick shall be satisfactory to the Architectural Control Committee. Parking spaces, garages, and the driveway to a garage shall be planned and executed in an attractive and functional manner and shall consider the location of existing trees, topography, street scape and compatibility with surrounding improvements. All Lots shall have a driveway of at least twelve (12) feet in width unless prior approval is obtained from the Architectural Control Committee. All driveways on corner lots shall be located away from corner to the extent required and approved by the Architectural Control Committee.

**Section 11. Antennae.** No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnet/wave or radiation shall be erected, used or maintained on the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall free-standing transmission or receiving towers be permitted. Digital satellite system dishes of not more than 18" in diameter are specifically allowed when the location of said dish is unobtrusively located and not seen from adjacent Lots or streets.

**Section 12. Clotheslines.** No outside clothesline shall be placed on any Lot.

**Section 13. Recreational Vehicles and Trailers.** The Architectural Control Committee, in reviewing the plans and specifications for any proposed Structure, may require that special

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parking areas that are buffered with landscaping and/or other methods of screening be made available for recreational vehicles. No trailer, trailer house, boat, or recreational vehicle shall be parked on any Lot, except on such parking areas as specified by the Architectural Control Committee pursuant to this Section 13 or within enclosure or behind screening erected in accordance with plans and specifications submitted to and approved by the Architectural Control Committee. No abandoned cars, trucks, or other vehicles of any type shall be allowed on any Lot. No vehicle in an inoperative condition shall be kept in an area open to the view of the public or other Owners for a period in excess of 15 days. In the event of violation of this item, such vehicle may be removed by any other Owner at the expense of the Owner of the Lot on which the vehicle is located.

**Section 14. Recreational Equipment.** Although swimming pools, recreational and/or playground equipment are permitted, they shall not be erected, installed, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such structures, and in no case shall any such improvements or equipment be placed forward of the rear corners of a dwelling without the prior written consent of the Architectural Control Committee.

**Section 15. Accessory Structures.** The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory Structure to be erected on any Lot, and construction of an accessory Structure may not be commenced until complete final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of this Declaration.

**Section 16. Improvements of Lots.** All construction of dwellings, accessory structures and all other improvements in the Development shall be undertaken and completed in accordance with the following conditions:

- (a) All construction shall be carried out in compliance with the laws, code, rules, regulations and orders of all applicable governmental agencies and authorities.
- (b) All residences shall be single-family and "traditional" in style. The determination of whether or not a residence is "traditional" shall be decided by the Architectural Control Committee in its sole and uncontrolled discretion.
- (c) Concrete or concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.
- (d) Each Lot Owner shall use and locate on said Lot only one (1) mailbox. Said mailbox shall be of masonry construction consistent with the exterior finish of the dwelling on said Lot and subject to the approval of the Architectural Control Committee. Otherwise, all mailboxes shall be constructed according to uniform design, materials and construction standards which shall be made available, upon request, by the Architectural Control Committee to any Lot Owner(s).
- (e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on

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any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.

- (f) No exposed, above ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.
- (g) Adequate off-street parking shall be provided for each Lot.
- (h) All garages must have a minimum capacity of two cars and have doors of raised panel construction, and each garage door must be coordinated with the dwelling to which it is appurtenant. All garage doors must be located at the end or rear of dwelling and emphasis will be given to ensure that garage doors will not face streets. Garage doors shall be kept in working order and shall be kept closed when not in use.
- (i) No window air conditioning unit may be located in any part of any dwelling or accessory structure. All exterior equipment (HVAC, pool, etc.) shall be ground-mounted and screened by fencing or planting of a density and height to hide the unit effectively, which fencing or planting shall first be approved by the Architectural Control Committee.
- (j) Any screen porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver finish screens may be used.
- (k) No plumbing vent or heating vent shall be placed on the front side of any roof of any dwelling or accessory structure.
- (l) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing, sidewalks, or street resulting from construction on such Lot. Any damage to any section(s) of the sidewalk must be repaired by replacing completely all sections affected. Repairs of such damage must be made as soon as reasonably possible but in no event not more than thirty (30) days after completion of such construction.
- (m) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of one-story dwellings shall contain not less than 2,600 square feet. The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all one and one-half story and two-story dwellings shall contain not less than 3,200 square feet. These square footage requirements may be modified in appropriate circumstances by the Architectural Control Committee as part of the plans review process.

- (n) No bird baths, frog ponds, flag poles, lawn sculpture, artificial plants, bird houses, rock gardens, or similar types of accessories and lawn furnishings are permitted on any Lot without prior approval of the Architectural Control Committee.
- (o) No lines, wires or other devices for communications purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy, shall be constructed or placed on any Lot unless the same shall be in or by conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings, or other approved improvement. Above ground electrical transformers and other equipment may be permitted if properly screened and approved by the Architectural Control Committee. In addition, all gas, water, sewer, oil and other pipes for gas or liquid transmission shall also be placed underground or within or under buildings. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved improvements.
- (p) Garbage and refuse shall be placed in containers and shall be capped and contained in such a manner that they are inaccessible to animals. The containers shall be concealed within buildings; be concealed by means of a screening wall of material similar to and compatible with that of the building; or, concealed by sufficient landscaping to provide a permanent screen from view or surrounding property. These elements shall be integrated with the building plan, be designed so as not to attract attention, and shall be located in as reasonably inconspicuous manner as is possible. No garbage or trash incinerator shall be permitted on a Lot.
- (q) All exterior lighting shall be approved by the Architectural Control Committee as to design, location, construction and materials prior to installation on any Lot. Exterior lighting of buildings for security and/or decoration shall be limited to concealed uplighting or downlighting. No color lens or lamps are permitted. Each owner will be required to install as a part of their exterior lighting scheme, one pole mounted light fixture at or near where their driveway intersects the roadway. Said pole and fixture is to be operated by photo cell and of a design specified by the Architectural Control Committee and will be installed at the height and location specified by the Architectural Control Committee. It is each Owner's responsibility to ensure that this required pole fixture is in good operational conditions at all times. No private outside street lights, "Light Watchman," or lighting of similar kind or character shall be erected on any Lot without the prior approval of the Architectural Control Committee.
- (r) No private residence erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, as herein required; nor shall any residence when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth. All construction on a Lot shall be completed within

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twelve (12) months from the date of excavation therefor; provided, that the Architectural Control Committee may extend such time when in its opinion conditions warrant such extension.

- (s) All yard maintenance equipment and other similar items shall be stored out of view of other Lot owners.
- (t) All above-ground exterior foundation walls shall be veneered with brick or stone or decorative stucco on stucco houses. Windows must be wood unless otherwise approved by the Architectural Control Committee. No aluminum sliding doors will be permitted.
- (u) No dryer or stove vents shall be at front of any house.
- (v) No out-buildings such as tool sheds, carports, or detached garages, shall be built unless approved by the Architectural Control Committee; any such out-buildings shall be in substantial conformity with the architectural design used for the main dwelling.

**Section 17. Animals.** No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No structure or enclosure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have first been approved by the Architectural Control Committee. Not more than two dogs, not more than two cats, not more than four birds, and not more than four rabbits may be kept on any building Lot by the occupants or others. All animals shall be kept confined or on a leash.

**Section 18. Building Construction Standards.**

- (a) Finish building materials shall be applied consistently to all sides of the exteriors of buildings. Exterior materials shall be brick, stone, stucco, Dryvit, or other material approved by the Architectural Control Committee. No simulated brick or stone shall be permitted. All fireplaces and chimneys must be of masonry construction, unless otherwise approved by the Architectural Control Committee.
- (b) Finish colors shall be applied consistently to all sides of the buildings. Color selections shall be harmonious with each other and with natural materials, and shall be compatible with colors of the natural surrounding and other adjacent property. All exterior wood, excluding decks, but including hand rails, banisters, etc., must be painted or stained. All exterior colors (including colors of trim and appurtenances) shall be approved by the Architectural Control Committee.
- (c) Exterior window and door trim and similar decorations shall all be of the same color and materials, unless otherwise approved, and shall be either of the same material as exterior walls or directly compatible. Facia, gutters and down spouts

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shall blend in and be directly compatible with the architectural detail of the exterior walls. Reflective glass is prohibited.

- (d) All exterior mechanical equipment including, but not limited to, transformers, vents, air conditioning compressors, pool pumps, meters, etc., shall be concealed from view by walls of the same material and color as the building or by an opaque landscaping screen.
- (e) Roofing materials must be one of the following: 300 pound architectural dimensional shingle with colors of weathered wood, slated blend, or charcoal gray; "supra-slate" or approved equal; or slate. Roof pitch must be 8/12 or steeper unless otherwise approved by the Architectural Control Committee.

Substitutions of comparable appearance and quality may be permitted by the Architectural Control Committee in its discretion.

**Section 19. Landscaping and Open Space Standards.**

- (a) Any Lot which shall have been altered from its natural state shall be landscaped according to plans approved by the Architectural Control Committee. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping as approved by the Architectural Control Committee shall be installed no later than thirty (30) days following completion of any building with weather permitting.
- (b) A comprehensive landscaping plan for each Lot must be designed by a registered Landscape Architect or person of similar competence and must be submitted to and approved by the Architectural Control Committee. The plan must show landscape improvements costing a minimum of two (2) percent of the total cost of the subject Lot and improvements. The required expenditure shall not include the cost of any sprinkler system or exterior lighting.
- (c) Each property shall have at least six (6) shade trees of which no less than two (2) to be located in the front of the main dwelling structure. The type and location of the tree(s) shall be subject to the approval of the Architectural Control Committee and each tree must have a minimum two (2) inches diameter as measured two (2) feet from the ground, ten (10) feet of height and six (6) feet of spread. Trees shall not be planted in locations that would immediately or in the future create a nuisance, or screen the view of an adjoining lot. Appropriate credit toward trees and landscaping minimums will be granted for any existing trees that remain undisturbed and in suitable condition subsequent to construction. To the extent that the Developer shall adopt a Master Landscaping Plan for the Development, each Lot Owner and each Lot shall comply with the same.
- (d) The requirements of paragraph (c) of this Section 19 shall be complied with within thirty (30) days after the completion of construction of a dwelling on any

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Lot. Provided, however, that to the extent that the Developer shall sell any Lot to any Owner or builder and construction (which for purposes hereof shall be defined as the commencement of excavation) shall not have commenced within twelve (12) months from and after the date of closing of said sale, said Owner or builder will comply with the requirements of paragraph (c) of this Article VIII within thirty (30) days from and after expiration of such twelve (12) month period.

## ARTICLE IX

### GENERAL PROVISIONS

#### **Section 1. Enforcement.**

- (a) The Developer, the Association, the Architectural Control Committee, or any Owner, shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any party to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) The Association shall have the right of abatement and/or enforcement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within twenty (20) days after the certified mailing of written notice of such violation or breach. The right of abatement means the right of the Association, through its officers and agents to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. Further, the Association, the Developer or any Owner may prosecute proceeding at law for the recovery of damages against those violating or attempting to violate this Declaration, and/or (2) maintain a proceeding in equity against those so violating or attempting to violate any covenants or restrictions, for the purpose of preventing or enjoining all of any such violations or attempted violations, and/or to have any such violation removed from the lot or cured. All costs and expenses incurred by the Developer, the Association, or any Owner in curing or correcting any breach or in initiating and prosecuting any proceeding(s) (including but not limited to court costs and reasonable attorney fees) shall constitute a lien upon the Lot(s) of any affected Owner(s), which lien shall be subject to being enforced as herein provided or as provided at law or in equity.
- (c) The remedies contained in this section shall be construed as cumulative of all other remedies now or hereafter provided by law. If the Developer, the Association, the Architectural Control Committee, the Board or any other Person or Persons owning a lot shall successfully prosecute in law or equity an

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action pursuant to this or any other enforcement section of these covenants or restrictions, then that party shall be entitled to receive its reasonable attorney's fees and the costs reasonably necessary to prosecute the case against the party violating the covenants and restrictions herein.

- (d) If the parties hereto or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other Person or Persons owning any Lot situated in the Development to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violation.

**Section 2. Severability.** If any provision of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

**Section 3. Headings.** The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

**Section 4. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date of this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for the successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

**Section 5. Rights and Obligations.** Each grantee of the Developer, by the acceptance of a deed of 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 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 the Property or any portion thereof, 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.

**Section 6. Notices.** Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his or her Lot or at such other address as hereinafter provided. Notices to the Developer shall be in writing and shall be addressed to 5901 Casey Drive, Knoxville, Tennessee 37909, or at such different address as disclosed in a written notice of change of address furnished to all Owners. Any Owner may designate a different address for notices to him or her by giving written notice to the Developer. All notices to

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EXHIBIT "A"

SITUATED in District No. Six (6) of Knox County, Tennessee, within the 51st Ward of the City of Knoxville, Tennessee, and being Lots 18, 19, 20, and 21, in Block B, of Westmoreland Heights Addition, as shown on plat of record in Map Book 8, page 29, in the Knox County Register's Office, together with additional acreage adjoining said lots, and being described in one boundary as follows:

BEGINNING at a point marking the intersection of the Northern right-of-way of Westland Drive and the Western right-of-way line of Sherwood Drive; thence with the right-of-way line of Westland Drive with a curve to the right having an arc distance of 110.78 feet, a radius of 3,520.94 feet, and a chord bearing and distance of South 82 deg. 40 min. West, 110.78 feet to a point; thence with a curve to the right having an arc distance of 96.21 feet, a radius of 577.96 feet, and a chord bearing and distance of South 88 deg. 30 min. West, 96.10 feet to a point; thence with a curve to the right having an arc distance of 143.40 feet, a radius of 6,808.67 feet, and a chord bearing and distance of North 86 deg. 17 min. West, 143.39 feet to an iron pin found; thence North 85 deg. 41 min. West, 346.90 feet to an iron pin found; thence North 14 deg. 12 min. West, 20.79 feet to an iron pin found; thence North 85 deg. 37 min. West, 336.62 feet to an iron pin found; thence with a curve to the left having an arc distance of 32.04 feet, a radius of 63.98 feet, and a chord bearing and distance of South 80 deg. 02 min. West, 31.70 feet to a concrete monument; thence leaving the right-of-way of Westland Drive and running with the Eastern line of Unit 4, Westmoreland Estates Subdivision, North 14 deg. 30 min. West, 7.35 feet to an iron pin found; thence North 15 deg. 43 min. West, 622.30 feet to a concrete monument; thence North 15 deg. 43 min. West, 20.05 feet to a point in the centerline of Tributary Number 1 of Fourth Creek, also being a point in the Southern line of Unit 3, Westmoreland Estates; thence with the centerline of the creek, North 55 deg. 21 min. East, 38.34 feet to a point; thence North 17 deg. 28 min. East, 32.85 feet to a point; thence South 88 deg. 48 min. East, 41.50 feet to a point; thence North 72 deg. 42 min. East, 168.23 feet to a point; thence North 84 deg. 48 min. East, 24.74 feet to a point; thence North 68 deg. 12 min. East, 172.08 feet to a point; thence North 47 deg. 10 min. East, 71.29 feet to a point in the Southern line of Unit 5, Westmoreland Estates; thence continuing with the centerline of the creek, North 72 deg. 36 min. East, 29.55 feet to a point; thence North 31 deg. 34 min. East, 11.92 feet to a point; thence North 43 deg. 32 min. East, 41.16 feet to a point; thence North 57 deg. 13 min. East, 78.81 feet to a point; thence North 66 deg. 31 min. East, 81.16 feet to a point; thence North 72 deg. 58 min. East, 70.70 feet to a point; thence North 69 deg. 47 min. East, 65.01 feet to a point; thence North 15 deg. 31 min. East, 21.47 feet to a point; thence North 33 deg. 30 min. East, 28.49 feet to a point; thence North 82 deg. 00 min. East, 18.87 feet to a point; thence North 39 deg. 29 min. East, 76.68 feet to a point; thence North 52 deg. 58 min. East, 55.24 feet to a point; thence North 33 deg. 56 min. West, 31.77 feet to a point; thence North 43 deg. 27 min. East, 32.59 feet to a point; thence North 07 deg. 39 min. East, 12.55 feet to a point; thence North 15 deg. 36 min. West, 75.17 feet to a point; thence North 60 deg. 41 min. East, 16.91 feet to a point; thence North 22 deg. 05 min. East, 30.92 feet to a point; thence North 36 deg. 39 min. East, 32.57 feet to a point; thence leaving the centerline of Tributary Number 1 of Fourth Creek, South 24 deg. 54 min. East, 346.47 feet to an iron pin found; thence North 71 deg. 34 min. East, 90.33 feet to an iron pin found; thence South 18 deg. 30 min. East, 612.02 feet to a railroad spike in the Northern right-of-way line of Sherwood Drive; thence South 63 deg. 44 min. West, 211.36 feet to a point; thence South 26 deg. 15 min. East, 30.00 feet to an iron pin found; thence North 63 deg. 43 min. East, 284.74 feet to an iron pin set in the Western right-of-way line of Sherwood Drive; thence with the right-of-way line, South 05 deg. 21 min. West, 132.00 feet to an iron pin found; thence South 03 deg. 40 min. West, 430.00 feet to the point of BEGINNING, containing 29.65 acres.

The foregoing description was prepared from the survey of Gary Frank Norvell, NLS No. 820, dated January 23, 1995, bearing Drawing No. 23,011-B. The Surveyor's address is 4334 Papermill Drive, Knoxville, Tennessee 37909.

BEING part of the same property conveyed to Sherwood Development Company, L.L.C., a Tennessee limited liability company, by Special Warranty Deed from Patrick M. M. Robby, et. al., dated effective as of February 22, 1995, of record in Deed Book 2168, page 168, in the Knox County Register's Office. See also Quit Claim Deed dated February 22, 1995, of record in Deed Book 2168, page 181, in the Knox County Register's Office.

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