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DECLARATION OF PROTECTIVE COVENANTS

FOR
MAGNOLIA CREEK
Date: 3/15/2012
Time: 9:15:07 AM
Contact: Pam Hurst, Register
Hamilton County, Tennessee

This declaration, made and published as of November 1, 2011, by **Stonehill LLC**, a Tennessee corporation (hereinafter referred to as "Developer").

W I T N E S S E T H :

Whereas, Developer is the owner of the real property known as **Magnolia Creek** Subdivision, a plat of which is recorded in the Register's Office of Hamilton County, Tennessee, in Book 73, Page 117 (hereinafter referred to as "**Subdivision**").

Whereas, it is to the benefit and advantage of Developer and it's successors in ownership of the **Lots** within said Subdivision that these Protective Covenants regulating the use of such Lots be established, set forth and declared to be covenants running with the land.

Now therefore, in consideration of said benefits, Developer does hereby proclaim, publish and declare that the following numbered Protective Covenants shall apply to all **Lots** of said Subdivision. Every Grantee of any interest in a Lot made subject to this Declaration of Protective Covenants by acceptance of a deed or other conveyance of such interests (whether it shall be so expressed in any such deed or other conveyance, whether such deed or other conveyance shall be signed by such person and whether such person shall otherwise consent in writing) shall take subject to this Declaration and to all the terms and conditions herein and shall be deemed to have assented to all of said terms and conditions. These covenants shall become effective immediately, shall run with the land described in any deed or other conveyance and shall be binding upon all persons claiming under Developer, its successors or assigns until terminated by operation of law or as hereinafter provided.

ORGANIZATION

1. **Magnolia Creek Homeowner's Association.** Developer shall cause Magnolia Creek Homeowner's Association (hereinafter "**MCHA**") to be formed for the purpose of preserving and enhancing the general quality of the Subdivision. **MCHA** shall maintain and keep in good repair all common areas as defined in paragraph 32 herein and shall be responsible for the maintenance of all drainage areas originally maintained by the Developer.

2. **DESIGN REVIEW BOARD.** **MCHA** shall appoint a Design Review Board (hereinafter "**DRB**") for the

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purpose of approving building plans, elevations, exterior materials and colors, construction specifications, site plans (showing proposed drainage) and landscape plans so as to protect property values in Magnolia Creek Subdivision. Any change to the exterior color, finish, or texture of any improvement located on a Lot, including without limitation, the dwelling, the roof on any dwelling, or any fence, must be approved by the **DRB**. The **DRB** shall have three (3) members as provided in the **MCHA** By-laws, except that the Developer shall appoint those three (3) members until control of **MCHA** is released to the Lot owners as provided in paragraph 4 herein.

3. **PLAN APPROVAL.** No dwelling, tool shed, storage building, fence, pool or other structure of any type shall be erected, placed, altered or permitted to remain on any Lot until all required plans have been approved in writing by the **DRB**. If the **DRB** fails to approve or disapprove such plans within thirty (30) days after submittal, such plans shall be deemed approved.

Plan approval shall not imply approval of engineering, structural design or quality of materials. By approving such plans neither the Developer, the **DRB**, nor **MCHA** assumes liability or responsibility thereof, nor for any defect in any structure built according to such plans. Neither the Developer, the **DRB**, **MCHA** board of directors, nor the officers, members, employees and agents of any of them shall be liable in damages to anyone submitting plans to any of them for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans. Each Lot owner agrees to not take legal action against the Developer, the **DRB**, **MCHA** board of directors or the officers, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

4. **TRANSFER TO MCHA.** Full control of **MCHA** shall be vested with the Lot owners upon the sale of all of the Lots and Homes unless Developer exercises its right of annexation as provided in paragraph 24 herein. Developer reserves the right to release control of **MCHA** to the Lot owners at an earlier time. Membership in **MCHA** shall be required of each Lot owner who shall be granted one share in **MCHA**. Each share shall have one vote as to official **MCHA** business. So long as Developer owns any Lots, Developer shall have one share in **MCHA** per Lot.

5. **ASSESSMENTS.** Each Lot owner covenants and agrees to pay to **MCHA** all assessments for Common Area maintenance and other official business expenses approved by the **MCHA** board of directors. All such assessments shall be a charge on the Lot and shall be a continuing lien upon the Lot against which assessment is made in favor of **MCHA**, and **MCHA** shall be entitled to file a document evidencing such lien

in the Register's Office of Hamilton County, Tennessee. Such lien shall be superior to all other liens and encumbrances on such Lot, except for liens for ad valorem taxes and any deed of trust held by an institutional or governmental lender. After the recording of this Declaration, all other persons acquiring liens or encumbrances on any Lot shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments whether consent is specifically set forth in the instruments creating such liens or encumbrances.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as may be fixed by the **MCHA** board of directors. Such assessments shall commence as to all Lots then existing and subject to this Declaration on the first day of the month following initial occupancy.

Upon transfer for original occupancy, whether by sale or lease, each lot owner shall pay a \$10.00 initiation fee to **MCHA**. The aggregate fund established by such fees shall be maintained in a segregated account for the purpose of insuring that **MCHA** will have cash available to meet unforeseen expenditures. \$50.00 shall be collected at every home closing for maintenance of common areas.

BUILDING AND USE RESTRICTIONS

6. **LAND USE**. All Lots shall be used for single family residential purposes only. No more than one residence shall be permitted upon any one Lot. Manufactured homes, modular homes, and mobile homes are specifically excluded from the Subdivision. Each residence shall be built on site. There shall be no business, church, school, day care, kennel or livestock of any kind located upon any Lot nor shall any business of any kind be operated out of any residence. At no time shall any Lot be used in whole or in part as a street or right-of-way or for any utility easement connecting from any street within the Subdivision to any land outside the Subdivision except by the Developer who reserves that exclusive right.

7. **BUILDING EXTERIORS**. All buildings shall be constructed of new materials, and unless of some non-fading material such as brick, stone or stucco, the same shall be painted and maintained in good condition at all times. This restriction does not preclude using unstained deck materials. Aluminum, vinyl siding and masonite are specifically excluded from the Subdivision.

8. **CONSTRUCTION STANDARDS**. The following are minimum construction requirements for each Lot owner:

- a). The roof pitch of each structure shall be no less than 7/12;
- b). All front and side foundations shall be covered with brick or stone;
- c). No concrete block, painted or unpainted, shall be exposed;

- d). Front and side yard shall be sodded with fescue grass or Bermuda; the remainder of yards shall be sown;
- e). Each Lot owner shall be responsible for the continuation and connection of all underground utilities to his residence and for sidewalk construction parallel to the adjacent street
- f). Removal of any live tree whose diameter is greater than six (6) inches at a point two (2) feet above the ground must be approved by the DRB, whether such removal is contemplated by the builder or subsequent Lot owner. This provision shall not apply to trees within the house site.

9. **BUILDING LOCATION.** Dwellings shall be set back from all streets and adjoining land as required by Hamilton County. For purposes of these covenants, eaves, steps, stoops and decks shall not be considered part of the dwelling, provided, however, that this provision shall not be construed to permit an encroachment upon another Lot. All other structures shall be located to the rear of the dwelling and not closer than 10 feet to any side property line. Driveways shall not be considered part of the dwelling and therefore will not be subject to setbacks.

10. **DWELLING SIZE.** Each single level residence shall have not less than 1,400 square feet of heated and cooled living area exclusive of porches, decks, breezeways and garages. Each multi-level residence shall have not less than 1,600 square feet of heated and cooled living area exclusive of porches, decks, breezeways and garages. Each dwelling shall include at least an enclosed double garage. Carports are specifically excluded from the Subdivision.

11. **MAILBOXES.** The DRB shall specify uniform standards for the installation and maintenance of all mailboxes.

12. **FENCES.** Fences shall be decorative and restricted to the back yards of the residence. Fences shall allow for enclosing up to half of the side to permit HVAC units to be inside the fences. Plans and specifications for proposed fencing shall be approved by the DRB. Chain-link fences are specifically excluded from the Subdivision.

13. **BUILDING TIME LIMIT.** Within five (5) months after a building permit is issued by Hamilton County, construction of the dwelling shall be completed and ready for occupancy.

14. **NUISANCES.** The following constitute a nuisance per se and are strictly prohibited from the Subdivision:

- a). Noxious or offensive activity;
- b). Anything which may be or become an annoyance to the neighborhood;

- c). Having or allowing abandoned cars, junk or other unsightly debris;
- d). Leaving automobiles, motorcycles, trailers, RV's, boats, vans or trucks on the street whether disabled or otherwise;
- e). After five (5) days of occupancy, failure to remove any building materials that are visible from the street;
- f). Failure within five (5) months to replace or repair any dwelling which has been destroyed or damaged where such destruction or damage is visible from the street;
- g). Using any portion of a Lot for storage of unsightly materials.
- h). No fence, hedge or shrub shall be placed or permitted to remain where it would create a traffic or sight problem.

15. **GARBAGE AND REFUSE DISPOSAL.** No part of any Lot shall be used or maintained as a dumping ground for rubbish. There shall be no dumping or leaving of any junk or other debris on any Lot. Household trash, garbage or other waste shall not be kept except in closed, sanitary containers and only to the rear of each residence. Sanitary containers shall be kept out of street sight or inside garages.

16. **PARKING.** All commercial vehicles and trucks, trailers, campers, boats and RV's shall be parked so as not to be visible from any public street or road or from any other Lot. Some commercial vans, however, may be allowed. No vehicle (including motorcycles, mini bikes, scooters, go-carts and the like) shall be parked on the street. No disabled, wrecked or otherwise unusable truck, automobile, motorcycle or similar equipment may be brought onto any Lot for the purpose of dismantling same. Adequate off-street parking shall be provided by Lot owners for the parking of automobiles owned or invited by such owner, and said owners shall not park their vehicles on adjacent streets as a matter of course. Off street parking is only allowed in the garage or driveway and not on the lawn.

17. **DAMAGES.** During home construction damage rendered to the Subdivision by a builder's subcontractors or suppliers shall become the liability of the Lot owner. Such damage includes, but is not limited to, broken curbing or storm drain facilities, concrete spills on roads, cracked asphalt or erosion and flood damage to adjacent Lots, property or streams.

18. **ANTENNAS.** TV antennas, radio antennas or satellite dishes shall not be allowed in the Subdivision; except, however, a satellite dish less than 24" in diameter shall be allowed provided its location is approved by the DRB.

19. **MISCELLANEOUS.**

- a). Swing sets, trampolines, playground equipment or other recreational items shall be located to the rear

- of all residences;
- b). Above ground swimming pools, clothes lines and window-mounted air conditioners are specifically excluded from the Subdivision
 - c). No fuel or water tanks shall be stored or maintained upon any Lot in such manner as to be visible from any public street or road or from any other Lot.

20. **TEMPORARY STRUCTURES**. No temporary structure, trailer or camper shall be used as a residence.

21. **ANIMALS**. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, except for dogs, cats or other usual and common household pets in reasonable number as determined by the **MCHA**; provided, however, those pets which, in the sole discretion of the **MCHA**, endanger the health of or constitute a nuisance to any Lot owner or adjacent property owner, may be removed by **MCHA**. No pets shall be kept, bred, or maintained for any commercial purpose. All pets shall be restrained by leash or fence. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for such structure have been approved by the **DRB**.

DEVELOPER'S RIGHTS

22. **EASEMENTS**. Easements are reserved by the Developer, its successors or assigns, for access to, installation and maintenance of utilities, drainage facilities, storm sewers and sanitary sewers as depicted on the plat Register's Office Hamilton County, Tennessee (hereinafter the "**Plat**"), and for all slopes along the boundaries of public streets built in the Subdivision. Drainage flow shall not be obstructed nor diverted from drainage swales and/or storm sewers as shown on the Plat.

23. **RIGHT TO AMEND**. From time to time at any time the Developer reserves the right to amend the Plat of unsold Lots to accommodate site plan changes, utility easements, Lot size changes and other development matters. Any divided or created Lot shall for the purpose of these restrictions be considered a separate Lot.

24. **ANNEXATION**. The Developer shall have the unilateral right, privilege and option from time to time at any time until seven (7) years after the recording of this Declaration to subject additional land to this Declaration and the jurisdiction of **MCHA** by recording a Supplementary Declaration describing the land being subjected. Such annexation shall be effective upon the recording of a Supplementary Declaration unless otherwise provided in the Supplementary Declaration. As long as the existing Lot owners' rights are not adversely affected, the Developer may unilaterally amend this Declaration to reflect the different

character of any such annexed land.

25. **AMENDMENT.** This Declaration may be amended unilaterally from time to time at any time by the Developer if such amendment:

- a). Is necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith;
- b). Is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;
- c). Is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or
- d). Is necessary to enable any governmental agency or title insurance company to insure or guarantee mortgage loans on the Lots subject to this Declaration.

PROTECTIVE COVENANT VIOLATIONS

26. **LIABILITY.** If any person bound to observe and comply with these Protective Covenants shall violate or attempt to violate any covenant while the same is in force, it shall be lawful for the Developer (so long as Developer owns property in the Subdivision) or any other owner of an interest in land subject to these covenants to prosecute any proceeding at law or in equity against such violator either to restrain violation, to enforce personal liability or to recover damages. The violating Lot owner shall be liable to the prosecuting party or parties for the payment of all costs and reasonable attorney fees incident to such injunctive proceedings. Said cost and attorney fees shall be prescribed as liquidated damages. The offending Lot owner shall also be liable for any other additional damages as may accrue. The remedies provided in this paragraph shall not be exclusive but shall be in addition to any other remedies allowed by law in such cases at the time or times of violation.

27. **ENFORCEMENT.** **MCHA** shall have the right to enter upon any Lot in the Subdivision to abate or remove any structure, thing or condition which violates this Declaration. Unless an emergency situation exists, **MCHA** shall give the violating Lot owner ten (10) days written notice of its intent to exercise this right. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All enforcement costs, including but not limited to reasonable attorney's fees actually incurred, shall be assessed against the violating Lot owner and shall become a continuing lien against said Lot and collectable by **MCHA** as other assessments described in paragraph 5 herein.

LOT OWNER RESPONSIBILITIES

28. **LOT AND YARD MAINTENANCE.** To maintain the beauty and property values in the Subdivision, each Lot owner shall be responsible for keeping his Lot, whether vacant or occupied, in a neat and attractive condition by mowing, trimming, etc.

29. **NOTICES.** In the event an owner leases a Lot in the Subdivision, the owner, within ten (10) days after the effective date of such lease, shall provide **MCHA**, in writing, with the name of the tenant and such other information as **MCHA** may reasonably require. Upon acquisition of a Lot, each new Lot owner shall provide **MCHA**, in writing, the name and mailing address of the new Lot owner and such other information as **MCHA** may reasonably require.

30. **LEASING.** If an owner leases his Lot, the lease shall have a minimum term of one (1) year unless receipt of HOA approval. The total number of leases shall be limited to twenty (20) percent. All leases shall require that the tenant acknowledge receipt of a copy of this Declaration. The lease shall also obligate the tenant to comply with the foregoing.

GENERAL PROVISIONS

31. **STREETS AND DRIVEWAYS.** Each Lot owner, particularly during construction, shall keep clean and in good repair the streets adjacent to said Lot. During construction each Lot owner shall install and maintain a temporary gravel drive until a permanent concrete driveway is built.

32. **COMMON AREA DEFINED.** The entrance landscaping, any street lighting, and detention pond (collectively referred to as "**Common Area**") are hereby dedicated to the use of the Lot owners. The Common Area shall be owned and maintained by **MCHA**.

33. **STREET DEDICATION.** All streets shown on the Plat are hereby dedicated to Hamilton County for public use.

34. **TERM.** Upon recording this Declaration the covenants and restrictions herein shall be binding upon all parties claiming under them for a term of **twenty (20) years**, at which time said covenants shall be automatically extended for successive periods of ten (10) years each; unless two-thirds of the then Lot owners vote to change such covenants and restrictions in whole or in part. For the purpose of this voting each Lot shall have one vote.

35. **SIGNS.** No sign of any kind shall be displayed to the public view on any Lot without the prior written

consent of the **DRB** except:

- a). When offering a Lot or residence for sale or for lease, not more than one professionally lettered "For Sale" or "For Lease" sign having a maximum area of six (6) square feet;
- b). Professional security signs having a maximum area of six (6) square feet;
- c). Signs required by legal proceedings; and
- d). Signs erected by the Developer or its agents to advertise the property during the construction and sales periods.

Notwithstanding the foregoing, **MCHA** shall have the right to erect reasonable and appropriate signs.

36. **SEVERABILITY**. Whenever possible each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any Lot shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

37. **NON-WAIVER**. The failure of either **MCHA** or the Developer to insist in any one or more cases upon the strict performance of the terms, covenants, conditions, provisions or agreements herein shall not be construed as a waiver in the future enforcement of any such terms, covenants, conditions, provisions or agreements. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed to have been made unless expressed in writing and signed by an authorized representative of either the Developer or **MCHA**.

38. **ZONING**. Zoning regulations applicable to property subject to this Declaration shall be observed. In the event of a conflict between zoning restrictions and the Protective Covenants contained herein, the more restrictive provision shall apply.

39. **CAPTIONS**. Paragraph captions herein are inserted for convenience only and are in no way to be construed as defining, limiting, extending or otherwise modifying the particular sections to which they refer.

40. **GENDER**. Whenever the context herein shall require, the use of any gender shall include all genders, and the singular shall include the plural and vice versa.

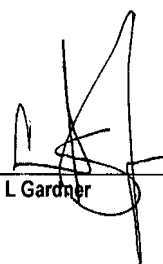
41. **DELINEATIONS**. Unless the context otherwise requires:

- a). "Person" shall include a corporation or other legal entity.
- b). "Lot" shall mean any parcel of land subject to this Declaration of Protective Covenants and shown as a

numbered parcel on the aforementioned Plat or on any plat of survey hereafter recorded if such numbered parcel becomes subject to this Declaration of Protective Covenants.

WITNESS my signature as Developer the MARCH 05 2012

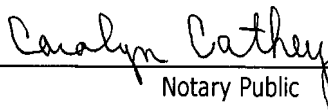
Stonehill LLC

By: 
David L Gardner

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally came **David L Gardner**, with whom I am personally acquainted, and who upon oath, acknowledged himself to be the **President of Stonehill LLC**, the within named bargainer, a corporation, and that he, as such officer, being authorized to do so, executed the within instrument for the purposes therein contained by signing the name of Universal Land Development, Inc. by himself as President.

Witness my hand and Notarial Seal, this 6th day of March 2012


Notary Public

My Commission Expires: 3-4-2014

