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**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
CREEK'S BEND VILLAGE**

THIS DECLARATION made this 17th day of October, 2005, by MACK DEVELOPMENT, LLC, a Tennessee limited liability company (herein "Developer").

**WITNESSETH:**

WHEREAS, Developer, as owner of certain real property located in Hamilton County, Tennessee, has created and desires to construct thereon a community known as CREEK'S BEND VILLAGE (sometimes herein, the "Development") upon the real property as more particularly described in Exhibit" A " attached hereto and shown by plat of record in Plat Book P3, Page 80-146, in the Register's Office of Hamilton County, Tennessee (herein "Property"); and

WHEREAS, Developer desires to further provide for the preservation of the land values and home values when and as the Property is improved and desires to subject the Development to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties (as hereinafter defined) and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Tennessee, THE CREEK'S BEND VILLAGE HOMEOWNERS' ASSOCIATION, INC., a Tennessee nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, the Developer subjects the real property described in Article II, and such additions thereto as may hereafter be made, to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as the "Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the Property and each Lot thereof.

**ARTICLE I**  
**DEFINITIONS**

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01. Architectural Review Committee. "Architectural Review Committee", "ARC", or "Committee" shall mean and refer to that Committee formed and operated in the manner described herein.

1.02. Association. "Association" shall mean the CREEK'S BEND VILLAGE HOMEOWNERS' ASSOCIATION, INC., a Tennessee nonprofit corporation.

1.03. Board of Directors or Board. "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.

1.04. Bylaws. "Bylaws" shall mean the Bylaws of the Association, the initial text of which is set forth in Exhibit "C" attached hereto and made a part hereof.

1.05. Common Expense. "Common Expense" shall mean and include (a) expenses of administration, maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Association; (c) expenses declared Common Expenses by the provisions of this Declaration; and (d) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

1.06. Common Properties. "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded or leased to the Association and designated in said deed or lease as "Common Properties." The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as a "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, persons occupying dwelling places or accommodations of Owners on a guest basis, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association; provided, however, that any lands which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such Lease. The Common Properties shall include but not be limited to street lights, entrance and street signs, landscaping easement areas, lakes, pool, pool clubhouse, recreational areas, and trails.

1.07. Covenants. "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.08. Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for CREEK'S BEND VILLAGE and any Supplemental Declaration filed pursuant to the terms hereof.

1.09. Developer. "Developer" shall mean MACK DEVELOPMENT LLC, a Tennessee limited liability company, and its successors and assigns.

1.10. First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other Mortgages.

1.11. First Mortgagee. "First Mortgagee" shall mean a beneficiary, creditor or holder of a First Mortgage.

1.12. Improved Lot. "Improved Lot" shall mean and refer to any Lot upon which a legally habitable residence exists.

1.13. Lot or Residential Lot. "Lot" or "Residential Lot" shall mean and refer to any parcel of land located within the Property which is used or intended for use as a site for a single-family home as shown upon any recorded final subdivision map of any part of the Property.

1.14. Manager. "Manager" shall mean a person or firm appointed or employed by the Board to manage the daily affairs of the Association in accordance with instructions and directions of the Board.

1.15. Master Plan. "Master Plan" shall mean and refer to the drawing which represents the conceptual land plan for the future development of CREEK'S BEND VILLAGE. Since the concept of the future development of the undeveloped portions of CREEK'S BEND VILLAGE is subject to continuing revision and change at the discretion of the Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof. In addition, no implied reciprocal covenants shall arise with respect to lands which have been retained by the Developer for future development except that all the covenants, restrictions, obligations and conditions set forth in this Declaration shall apply to all portions of the Property retained by the Developer. THIS DECLARATION DOES NOT DESIGNATE ANY PORTION OF THE PROPERTY FOR ANY PARTICULAR USE, SUCH DESIGNATION TO BE MADE BY SEPARATE SUBSEQUENT DECLARATION OR BY RECORDED PLAT WITH SUCH DESIGNATION CLEARLY AND UNEQUIVOCALLY SHOWN THEREON. THE DEVELOPER SHALL NOT BE BOUND BY ANY DEVELOPMENT PLAN, USE OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN.

1.16. Member or Members. "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.

1.17. Mortgage. "Mortgage" shall mean a deed of trust or deed to secure debt, as well as a Mortgage.

1.18. Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of a deed of trust or a deed to secure debt, as well as a holder of a Mortgage.

1.19. Owner. "Owner" shall mean and refer to the record owner of fee simple title to a Lot (including Declarant, and Builders, but specifically excluding any party holding an interest merely as security for the performance of an obligation). The term Owner may also include any other Person who owns any portion of the Property other than the Association.

1.20. Property or Properties. The "Property" or "Properties" shall mean and refer to the Property described in Section 2.01 hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions hereof and may include: (1) Residential Lots; (2) Unsubdivided Land owned by the Developer or other Owners; and (3) Common Properties.

1.21. Record or To Record. "Record" or "To Record" shall mean to record pursuant to the laws of the State of Tennessee relating to the recordation of deeds and other instruments conveying or affecting title to real property.

1.22. Register. "Register" shall mean and refer to the Register of Deeds for Hamilton County, Tennessee and the respective successors to that office.

1.23. Undeveloped Land. "Undeveloped Land" shall be land owned by the Developer which is not improved and which has not been designated as Common Property whether subdivided or unsubdivided.

1.24. Unimproved Lot. "Unimproved Lot" shall mean and refer to any Lot that is not an Improved Lot.

1.25. Unsubdivided Land. "Unsubdivided Land" shall mean and refer to all land in the Property described in Section 2.01, hereof, and additions thereto as are subjected to this Declaration or any supplemental declaration under the provisions hereof, which has not been subdivided into or designated as Residential Lots or through subdivision plats filed for record in the Office of the Register expressly declaring or labeling such portions of the Property for development as such uses. For the purposes of this Declaration, the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof:

(1) All lands committed to the Association through express written notification by the Developer to the Association of intent to convey in the manner provided herein.

(2) All lands intended for use, or by actual use if applicable, for outdoor recreation facilities or woodland, marsh and swamp conservancies.

(3) All lands expressly designated in any way as Common Properties.

## ARTICLE II PROPERTIES, COMMON PROPERTIES AND IMPROVEMENTS THEREON

2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed, leased and occupied, subject to these Covenants, is located in Hamilton County, Tennessee and is more particularly described in Exhibit "A" hereto and additions or amendments thereto. Additionally, any easements on any real property retained by or granted to the Developer or the Association for the purpose of erection and maintenance of entrance signs or street lights, or landscaping and maintenance thereof, shall also be considered Property and subject to these Covenants.

The Developer intends to develop the Property in accordance with its Master Plan, as subsequently modified from time to time, as a residential home community featuring recreational facilities, various amenities and any other lawful activities which the Developer deems appropriate as uses for such Property. The Developer reserves the right to review and modify the Master Plan at its sole option from time to time based upon its continuing research and design program. The Master Plan shall not bind the Developer, its successors and assigns, to adhere to the Master Plan in the development of the land shown thereon except as to the general location and approximate acreage of the Common Properties. The Developer shall not be required to follow any predetermined sequence or order of improvements and development; and it may bring within the plan of these Covenants additional lands, and develop the same before completing the development of the Property. Other than as stated in this paragraph, the Developer shall have full power to add to, subtract from or make changes in the Master Plan.

2.02. Common Properties and Improvements Thereon. The Developer may install initially one or more entrance signs to the Development. The signs shall become part of the Common Properties when the Developer conveys the signs

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to the Association, at which time the Association shall become responsible for the operation, maintenance, repair and replacement of the signs. The Developer may also landscape the entrance areas (whether privately or publicly owned) and other areas where it may or may not have reserved an easement. Developer shall also construct one or more mail facilities. These areas shall become Common Properties when conveyed to the Association and the Association shall then become responsible for maintenance of the landscaped areas. Additionally, the Developer may install street lights and/or street signs which likewise will become Common Properties when conveyed to the Association. In compliance with city of Chattanooga requirements, the developer and the association are responsible for the maintenance and upkeep of all storm water facilities and structures within the development. The Developer and the Association may add additional Common Properties from time to time as they see fit.

### ARTICLE III COVENANTS, USES AND RESTRICTIONS

3.01. Application. The Covenants set forth in this Article III shall apply to all Lots in the Development, whether improved or unimproved.

3.02. Residential Use.

(a) All of the Lots in the Development shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any Lot other than as provided in these Covenants and Restrictions and in supplements hereto, or except as provided for in a deed of conveyance. Moreover, the deed transferring a parcel to be used for residential purposes may, in the sole discretion of the Developer, among other things, expressly determine and limit the number or density of residential lots. It may also impose height restrictions, minimum parking and landscaping requirements applicable to that specific parcel as well as other specific development constraints.

(b) "Residential," refers to a mode of occupancy, as used in contradistinction to "business" or "commercial" or "mercantile" activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Lots as well as to buildings constructed thereon.

(c) No Lot may be used as a means of service to business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a part of the Property, unless specifically consented to by Developer or the Board in writing.

3.03 Architectural Review Committee. An Architectural Review Committee, hereinafter called the "Committee", shall be established to supervise the observance of the covenants and conditions set forth herein and to perform such duties as may be delegated to the Committee. The Committee shall be composed of not less than three (3) members of who three shall be appointed by the Developer. The Committee may select others to serve as members of the committee and shall provide for its own succession. It is the intention of the Developer, that the Committee will be succeeded by the CREEK'S BEND VILLAGE Homeowner's Association, whose Board shall then have the right to appoint the Committee, which shall have all the duties, rights and privileges of the Committee including, but not limited to, those specifically granted in these covenants and conditions.

No building, fence or other structure shall be commenced, erected, placed or altered on said land until the plans and specifications showing the nature, kind, shape, dimensions, materials, exterior color scheme, and location of such

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structure shall have been submitted to and approved in writing by the Committee or its duly authorized representative; provided, however, that if the Committee or its duly authorized representative shall fail to approve or disapprove any proposed plans within thirty (30) days after submission for approval, such plans specifications and locations shall be conclusively deemed to have received the approval of said committee or its duly authorized representative. The Committee shall have the right to reject, not approve, or provide recommendations for improvements of any plans regardless of such plans meeting the specifications set forth herein.

The Committee or its duly authorized representative shall have the right to disapprove any plans, specifications, or locations which, in its opinion, are not suitable or desirable for aesthetic or other reason; and in so passing upon such plan, specification, or location, it shall have the right, but not the obligation, to require with the plans, specifications, or locations as many as four (4) elevation drawings to scale together with topographic recordings of the site related to the road on which the land fronts, and to take into consideration the suitability of the proposed building or other structure, the materials of which it is to be built, the site upon which it is to be erected, the total investment contemplated, the harmony thereof with the surroundings, and the effect of the building or other structure, as planned, on the outlook from adjacent or neighboring properties.

**3.04. No Multi-Family Residences. Business. Trucks.** No residence shall be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and no residence shall be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses. No panel, commercial or tractor trucks shall be habitually parked in driveways or overnight on streets in front of any of the Lots.

**3.05. Set-backs.** The minimum set back line of each dwelling shall be in accordance with the guidelines established by the city of Chattanooga for RT-1 zoning classification.

**3.06. Rearrangement of Lot Lines.** Not more than one attached home shall be erected or maintained on any one Lot. Lots may not be resubdivided so as to create a smaller area than originally deeded to a Lot Owner and as shown on the subdivision plat.

**3.07. Temporary Structures.** No part of any Lot shall be used for residential purposes until a completed home, conforming fully to the provisions of these Restrictive Covenants, shall have been erected thereon. The intent of this section is to prevent the use, thereon of a garage, incomplete structure, trailer, barn, tent, outbuilding or other structure as temporary living quarters before or pending the erection of a permanent building. No structure of temporary character, including trailers and similar structures, shall be erected or permitted to remain on any Lot except during the period of construction. No dwelling may be moved from another location to any Lot in this Development.

Neither the foregoing nor any other section of this Declaration shall prevent the Developer or any builder approved by the Developer pursuant to Section 3.38 hereof from constructing a home for use as a model home that may contain office-type furniture and be used for conducting the business of either selling that home or other properties within the Development, nor shall the foregoing or any other section of this Declaration prevent the Developer from designating a Lot or Lots from time to time for the temporary placement of a trailer or other suitable structure for use as an office and/or sales center by the Developer and/or approved builders at the sole discretion of the Developer.

**3.08. Completion of Construction.** Any residence being erected on a Lot shall be completed within twelve (12) months from the date of the pouring of the footings for said residence. In the construction of a residence upon a Lot, the builder shall keep all debris cleared from the street or streets bounding the Lot; and, before any residence is occupied, all

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debris must be removed from the entire Lot and any damaged curbs shall be repaired or replaced. No construction of any building, out house, or other improvements on the premises shall be commenced prior to construction of the home. No debris, old lumber or unsightly objects shall be moved onto any Lot in the Development at any time, including the period of construction of the residence thereon. The exterior of every dwelling shall be completed before occupancy.

3.09. Utility and Overhang Easements. A perpetual easement is reserved on each Lot, as shown on the recorded plat, for the construction and maintenance of utilities such as electricity, gas, water, sewerage, drainage, etc., and no structure of any kind shall be erected or maintained upon or over said easement. A perpetual easement is also reserved on each Lot for any and all roofs and other structures which overhang onto adjoining Lots.

3.10. Frontal Appearance. All homes shall have conventional and acceptable frontal appearance from the street from which said Lot is designed to have access.

3.11. Building Requirements. All buildings of any kind constructed on any Lot shall have full masonry foundations, and no exposed block, concrete or plastered foundations shall be exposed to the exterior above grade level. All exposed concrete block or poured concrete foundations and retaining walls must be covered with stone, brick, or "sto" to compliment the house. All sheet metal work (roof caps, flashings, vents, chimney caps) must be painted to match the roof. Gutters and downspouts must be painted in approved colors. All roof stacks and plumbing vents must be placed on rear slopes of roofs; provided, however, that for good cause shown, the Developer or the Architectural Review Committee may make exceptions as to the placement of such roof stacks and plumbing vents.

3.12. Fences. No chain link fence will be allowed on any lot. A patio wall or fence may be built, with written consent of the Committee or Association, if connected to the main dwelling and constructed from materials compatible with the main dwelling wall, being no more than five (5) feet high. Such fence must be erected on the side of the property line extending to no less than ten (10) feet from the rear property line (a longer easement is required if utilities involved). A ten (10) foot minimum restriction does not apply to the lots backing onto the Common Areas. The lot owner will permit the neighbor, on each side, to cross the owner's yard on the ten (10) foot minimum easement in the back to get to the back of the neighbor's house for regular maintenance.

3.13. Driveways and Sidewalks. Each residence constructed upon a Lot in said subdivision must be served by a concrete driveway as designated by the Architectural Review Committee. All other hard surface materials must be approved by the Developer or the Architectural Review Committee. It shall be obligatory upon all owners of Lots in this subdivision to construct or place any driveways, culverts, sidewalks or other structures, or gradings, which are within the limits of any dedicated roadways, in strict accordance with the specifications therefore, as set forth on the recorded subdivision plat, in order that the roads or streets, which may be affected by such placement or construction, may not be disqualified for acceptance into the road system of Hamilton County, Tennessee. Cars owned by Owners and their families shall be parked only in the Owner's garage or driveway. Only temporary parking on the street by guests or visitors of an Owner is permitted.

3.14. No permanent cuts may be made in the curbs for any purpose other than driveways. Curb cuts shall be made with a concrete saw at the curb and along the gutter. Irregular cuts using sledge hammers and the like are prohibited. Mountable curbs shall be acceptable. Driveways shall be added so as to form a smooth transitional surface with the remaining curb at locations where the approved driveway locations meet the street. Damaged curbs shall be replaced by the Association and if such damage is caused by any Lot Owner such Lot Owner shall reimburse the Association for all

repair costs. Notwithstanding the foregoing, nothing herein shall permit any curb cuts where such cuts are prohibited by any applicable city, county or state regulation, ordinance or law.

3.15. No signs, including for sale or lease, shall be erected or maintained on any Lot, except in accordance with approved standards for signs as set by the Developer or the Architectural Review Committee.

3.16. Landscaping, Irrigation and Lawn Care. Each Owner shall have sole and exclusive responsibility for maintenance of landscaping (including, but not limited to cutting grass, planting and replacing flowers, trimming hedges and shrubs, and pruning or cutting trees), of his/her/their Lot, whether improved or unimproved. Air conditioning and heating units on building sites shall be architecturally screened/landscaped so as not to be clearly visible from the street.

(a) The Association will make a contract with a landscaping company to maintain the Common Area at regular intervals. The Association will arrange with the same contractor to provide regular maintenance work and other needed services for any owners who wish to join at a reduced cost. The volunteer owner deals directly with contractor.

3.17. Windows. Materials to be used in windows and glass doors must be approved by the Developer or the Architectural Review Committee. Aluminum awnings or jalousie-type windows are not permitted. Window shutters must be sized to match window openings and must be mounted to appear functional.

3.18. Animals. No poultry, livestock or animals shall be allowed or maintained on any Lot at any time except that the keeping of dogs, cats or other household pets is permitted, providing that nothing herein shall permit the keeping of dogs, cats, or other animals for commercial purposes. Pet owners shall not allow pets to roam unattended, and all dogs shall be leashed when outside. The pet owners shall also muzzle any pet which consistently barks. If the barking persists, the pet owner shall have the pet removed from the Development. If the pet owner refuses, it shall be deemed an "offensive activity". Owners must immediately pick up and dispose of all fecal matter and other litter. No breeding of pets shall be allowed.

3.19. Zoning. Whether expressly stated so or not in any deed conveying any one or more of said Lots, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect thereon.

3.20. Unightly Conditions. All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed as well as leaves, broken limbs, construction and other debris being removed when needed). In the event that an Owner of the Unit in the Development fails, of his own volition, to maintain his Lot in a neat and orderly condition, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the cost of such work to the Owner. All Owners in the Development are requested to keep cars, trucks and delivery trucks off the curbs of the streets.

No trailers, mobile homes, junked cars, or other vehicles, tents, shacks, or similar undesirable structures shall be placed or permitted to remain on any lot in the Subdivision, nor shall any incomplete structure be used as a residence, temporary or permanent. A travel home or boat trailer (not more than one of each) may be kept on any lot in the Subdivision provided the same shall be located and kept in a garage. No such camper, travel or boat trailer, nor any other large vehicle with more than two (2) axles (such as a tractor trailer) shall ever be parked or kept on any street in said



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Subdivision or in the front, side, rear yard, driveway, or parking pad of the residence. This does not apply to commercial vehicles such as moving vans, delivery trucks and other service vehicles, while in the performance of their duties.

3.21. Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development.

3.22. No Detached Out Buildings. There shall be no detached garages or outbuildings, without the prior written consent of the Developer or the Architectural Review Committee.

3.23. Sewage Disposal. Before any dwelling on a Lot shall be occupied, a connection with the municipal sewer system meeting applicable municipal codes shall be made.

3.24. Permitted Entrances. In order to implement and effect insect, reptile and woods fire control, and for lawn, landscaping and underground drainage maintenance, repair or replacement purposes, the Developer or the Board, or their respective agents, may enter upon any improved or unimproved Lot, such entry to be made by personnel with tractors or other suitable devices, for such mowing, removing, clearing, cutting, digging or pruning as may be necessary. Such entrance for the purpose of mowing, cutting, clearing, digging or pruning shall not be deemed a trespass. The Developer and its agents or the Board and its agents may likewise enter upon a Lot to remove any trash which has collected on said Lot without such entrance and removal being deemed a trespass.

3.25. Tanks and Garbage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and such tanks or receptacles may be installed only within a dwelling unit, within a screened area or buried underground. All garbage and trash containers must be placed in enclosed areas of the rear or side yard and must not be visible from adjoining Lots, houses, or from any street. All containers must be heavy duty green plastic.

3.26. No Antennas. No television antenna, satellite dish greater than 24 inches in diameter, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any home or other structure on the Property or any Lot within the Development without the prior written consent of the Developer or the Architectural Review Committee; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. Without limiting the applicability of the foregoing, Developer shall permit the installation of unobtrusive television reception devices if such devices are attached to the exterior of a Dwelling Unit and are attached in a location approved by the Developer which location shall not be in the public view and shall not be unsightly regardless of its location. Notwithstanding the foregoing, the provisions of this section shall not prohibit the Developer from installing equipment necessary for a master antenna system, security system, cable television, mobile radio system or other similar systems within the Development.

3.27. Excavation. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the consent of the Developer or the Architectural Review Committee is obtained. No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose.

3.28. Sound Devices. No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon Lots

within the Development. The playing of loud music from any balconies or porches shall be offensive, obnoxious activity, constituting a nuisance.

3.29. Laundry. No Owner, guest, or tenant, shall hang laundry from any area within or outside a dwelling residence if such laundry is within the public view, or hang laundry in full public view to dry, such as on balcony or terrace railings. This provision may, however, be temporarily waived by the Developer or the Board during a period of severe energy shortages or other conditions where enforcement of this section would create a hardship.

3.30. Duty to Rebuild. Replace or Repair Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner and Developer (with respect to improved Property owned by Developer) shall have the affirmative duty to rebuild, replace or repair, within a reasonable period of time, any building, structure, or other improvement which shall be damaged or destroyed by fire or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of these Restrictive Covenants would be best effected by allowing such a variation. Variations to this section are to be strictly construed and the allowance of a variance by the Developer or the Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners.

3.31. Vehicle Parking. Cars owned by Lot Owners shall be parked only in the Owner's garage or driveway. No inoperable vehicle, tractor or other machinery shall be stored outside on the premises at any time, even if not visible from the street. No house trailer or such vehicle shall be stored on the premises. Vacation trailers, campers and boats must be stored and hidden from view within the garage. Such vehicles may not be stored anywhere else on the property.

3.32. Maintenance. Each Lot Owner shall, at all times, maintain in good repair all structures located on such Lot, including driveways.

3.33. Approved Builders. Only builders that have been approved by the Developer shall be permitted to construct homes in the Development.

3.34. Signs. No professional, business, or political signs shall be displayed to the public view on any lot except two back-to-back professional signs of not more than five (5) square feet advertising the property for sale or signs used by the developer to advertise the property during the construction or sales period.

3.35. Violations and Enforcement. In the event of the violation, or attempted violation, of anyone or more of the provisions of these Restrictive Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, including all parties hereinafter becoming Owners of anyone or more of the Lots to which provisions of these Restrictive Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, and the said Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. In the event of a violation of set-back lines, side, rear or front, which may be minor in character, a waiver thereof may be made by the Developer, its successors or assigns or the Board if otherwise in compliance with applicable zoning laws. Further, the Developer or the Board may grant variances of the restrictions set forth in these Restrictive Covenants if such variances do not, in the sole discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby.

By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots (subject to rights of variances reserved by the Developer and the Board), it shall not be incumbent upon the Developer or the Board to enforce the provisions of these Restrictive Covenants or to prosecute any violation thereof. Developer shall not be responsible or liable for any violation of these Restrictive Covenants by any person other than itself.

#### **ARTICLE IV** **THE ASSOCIATION**

**4.01 Creek's Bend Village Owners' Association, Inc.** There has been or will be formed the Association having the name Creek's Bend Village Owners' Association, Inc., a Tennessee nonprofit corporation, which Association shall be the governing body for all of the Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Common Properties. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized. All of the Owners irrevocably constitute and appoint the Association, in their names, as attorney in fact to effectuate the above. This power is coupled with an interest and may not be revoked. The Bylaws for the Association shall be the Bylaws attached to this Declaration and made a part hereof as **Exhibit " "**. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The Board shall have standing to act in a representative capacity on behalf of the Owners, as their interests may appear, in relation to matters involving the Common Properties. The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of the Owners in accordance with the provisions of this Declaration and the Bylaws.

**4.02 Rights of the Association.** The Association shall have all of the rights it may have pursuant to Tennessee law, the By-laws, and this Declaration and shall include, but not be limited to the following:

- (a) **Rules and Regulations.** The Association shall have the right to make and to enforce reasonable rules and regulations governing the use of the Property, including the Common Properties.
- (b) **Right of Enforcement.** The Association shall have the right to enforce use restrictions, provisions of the Declaration and By-Laws, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or rules and regulations of the Association. Any fines imposed in accordance with this Declaration shall be considered an assessment against the Lot and may be collected in the manner provided for collection of other assessments.
- (c) **Permits, Licenses, Easements, etc.** The Association shall have the right to grant permits, licenses, utility easements, and other easements (including drainage and storm water easements) over, through and under the Common Properties without a vote of the Owners.
- (d) **Right of Maintenance.** The Association shall have the right to control, manage, operate, maintain, improve and replace all portions of the Common Properties for which the Association is assigned maintenance responsibility under this Declaration.
- (e) **Property Rights.** The Association shall have the right to acquire, hold, and dispose of tangible and intangible personal property and real property.

- (f) **Casualty Loss.** The Association shall have the right to deal with the Common Properties in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration.
- (g) **Governmental Entities.** The Association shall have the right to represent the Owners in dealing with governmental entities.
- (i) **Common Properties.** The Association shall have the right to temporarily close any portion of the Common Properties for emergency, security, safety purposes or for any such other reasonable purpose as determined in the sole discretion of the Board, with no prior notice of such closing to the Owners, for a period not to exceed one (1) year. Furthermore, the Association shall have the right to permanently close any portion of the Common Properties upon thirty (30) days prior notice to all Owners. Any portion of the Common Properties which has been permanently closed may be reopened by action of the Board or by the vote of Owners holding a majority of the votes cast at a duly called special or annual meeting.

**4.03 Management of Property.** The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a common expense, as defined herein.

**4.04 Non-Liability of the Directors, Board, Officers and Developer.** Neither the, Board, officers of the Association, nor the Developer shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board, officers, or Developer, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless the Board, officers, and Developer, and their respective heirs, personal and legal representatives, successors and assigns in accordance with, and as provided in, the Charter of the Association and Bylaws.

**4.05 Board's Authority to Permit Use by Others.** The Board shall have the authority to permit persons other than Owners to use portions of the Common Properties, including parking lots, club rooms and recreational facilities, upon such terms as the Board shall deem advisable; provided, however, that the Board may not lease any portion of the Common Properties to any such Person. All proceeds and revenues, if any, received from a permitted use of the Common Properties shall be used to defray Common Expenses in such manner as the Board shall determine.

**4.06 Membership in the Association.** All Owners, by virtue of their ownership of an interest in a Lot, excluding persons holding such interest under a Mortgage, are members of the Association and, except as otherwise provided herein or in the By-Laws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to this Declaration and in accordance with the By-Laws.

**4.07 Votes.** Subject to the provisions of this Declaration and the By-laws, each Owner shall be entitled to cast one (1) vote for each Lot in which such Owner holds the interest required for membership, which vote will be appurtenant to such. No votes may be split; each Owner must vote his or her entire vote on each matter to be voted on by the Owners.

**ARTICLE V**  
**ASSESSMENTS**

5.01. Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of these Covenants and pay to the Association annual assessments and special assessments for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more Owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Lot. The annual and special assessments, together with such interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing lien on the Lot and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Lots are combined into a single Lot by an Owner, the assessments will continue to be based upon the number of original Lots purchased.

5.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, for the improvement and maintenance of the Common Properties, and for the improvement and maintenance of landscaping upon the Lots. The special assessments shall be used for the purposes set forth in Section 4.05 of this Article.

5.03. Amount of Annual Assessment.

(a) Until the transfer of governing authority from the Developer to the Board takes place as described in the Bylaws, the amount of the annual assessments shall be set by the Developer in its sole discretion as it deems appropriate. Thereafter, it shall be the duty of the Board of Directors to prepare a budget annually covering the estimated Common Expenses of the Association, which includes maintenance of the Common Areas, for the ensuing fiscal year. The annual assessment levied against each Lot which is subject to the annual assessment shall be computed by dividing the budgeted Common Expenses by the total number of Lots which are subject to assessments plus the total number of Lots reasonably anticipated to become subject to assessments during the fiscal year. To be subject to an annual assessment, a lot must be improved and ready for occupancy and/or reasonably anticipated to become improved and ready for occupancy during the fiscal year. All other unimproved lots are subject to reasonable lesser assessment to be determined by the Developer. The budget and the amount of the annual assessment shall be determined by the Board of Directors in their sole and absolute discretion. The Board of Directors shall cause a copy of the Common Expense budget and notice of the amount of the annual assessment to be levied for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Notwithstanding the foregoing, in the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue, provided, however, that upon the adoption of a new budget, the same shall be deemed retroactive to the beginning of the then current budget year and each Owner shall pay the increase, if any, in the annual assessment for the beginning of such year at the time the next installment is due.

(b) The initial annual assessment for a lot which is improved and ready for occupancy shall be \$600.00.

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5.04. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 4.04 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or the cost of any addition to the Common Properties, provided that any such assessment shall have the assent of a majority of the vote of the Members who are in attendance or represented at a duly called meeting of the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting. At any such meeting, the Developer shall have the number of votes as provided in Section 4.02 of the Bylaws. As with annual assessments, the per-lot amount of any special assessment imposed upon Unimproved Lots shall be the same amount of the special assessment imposed upon Improved Lots unless otherwise specifically approved by the Board. No membership vote shall be required for special assessments due to budget shortfalls in any year

5.05. Property Subject to Assessment. Only land within the Property which has been subdivided into Lots, and the plats thereof filed for public record, shall constitute a Lot for purposes of these assessments.

5.06. Exempt Property. No Owner may exempt himself from liability for any assessment levied against his/her/their Lot by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Lot in any other way.

The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee of a utility easement.
- (b) All properties dedicated and accepted by a local public authority and devoted to public use.
- (c) All Common Properties as defined in Article I hereof.

(d) All Properties exempted from taxation by the law of the State of Tennessee, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the Owners.

5.07. Date of Commencement of Assessments.

(a) The assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer.

(b) The due date of any special assessment under Section 4.05 hereof shall be fixed in the resolution authorizing such assessment.

(c) The Developer or the Board shall be authorized to charge a late fee to any Lot Owner who fails to pay any assessment, annual or special, on or before the due date thereof.

5.08. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefore, the Association is hereby granted a lien upon each Lot and the improvements thereon as security for the payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Lot. The lien shall become effective on a Lot immediately upon the closing of that Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Notwithstanding the Association's right to charge a late fee pursuant to Section 4.08(d) hereof, the failure by an Owner or Owners to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

5.09. Lease, Sale or Mortgage of Lot. Whenever any Lot may be leased, sold or mortgaged by the Owner thereof, which lease, sale or Mortgage shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request of the Owner of such Lot, shall furnish to the proposed lessee, purchaser or Mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Lot; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Lot and the Association under this Declaration. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or Mortgagee may rely upon such statement in concluding the proposed lease, purchase or Mortgage transaction, and the Association shall be bound by such statement.

In the event that a Lot is to be leased, sold or mortgaged at the time when payment of any assessment against said Lot shall be in default, then the rent, proceeds of such purchase or mortgage shall be applied by the lessee, purchaser or Mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before payment of any rent, proceeds of purchase or Mortgage to the Owner of any Lot who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Lot, the grantee(s) shall be jointly and severally liable with the grantor(s) for all unpaid assessments against the grantor(s) and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee(s) to recover from the grantor(s) the amounts paid by the grantee(s) therefore.

5.10. Pool Assessment. The swimming pool is deemed a part of the Common Area.

## ARTICLE VI MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING THERETO

6.01. Register of Owners and Mortgages. The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Lot to a third party the purchaser or transferee shall notify the Association in writing of his interest in such Lot, together with such recording information that shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Lot. Further, the Owner shall at all times notify the Association of any Mortgage and the name of the Mortgagee on any Lot, and the recording information which shall be pertinent to identify the Mortgage and Mortgagee. The Mortgagee may, if it so desires, notify the Association of the existence of any Mortgage held by it, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

6.02. Subordination of Lien to First Mortgages. The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Lot if, and only if, all assessments, whether annual or special, with respect to such Lot having a due date on or prior to the date such Mortgage is recorded have been paid. In the event any such First Mortgagee (i.e., one who records a Mortgage on a Lot for which all assessments have been paid prior to recording) shall acquire title to any Lot by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments whether annual or special, as shall accrue and become due and payable for said Lot subsequent to date of acquisition of such title. In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

6.03. Examination of Books. Each Owner and each Mortgagee of a Lot shall be permitted to examine the books and records of the Board and Association during regular business hours.

## ARTICLE VII OWNER COMPLAINTS

7.01. The procedures set forth in this Article for Owner Complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board of Directors of the Association.

7.02. Grievance Committee. There shall be established by the Board a Grievance Committee (referred to in this Article as "the Committee") to receive and consider all Owner complaints. The Committee shall be composed of the President of the Association and two other Owners appointed by and serving at the pleasure of the Board of Directors.

7.03. Form of Complaint. All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the President of the Association and sent in the manner provided in Section 9.03 for sending notices.

7.04. Consideration by the Committee. Within twenty (20) days of receipt of a complaint, the Committee shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefore. Within ten (10) days after notice of the decision, the complainant may proceed under Section 6.05; but if complainant does not, the decision shall be final and binding upon the complainant.

7.05. Hearing Before the Committee. Within ten (10) days after notice of the decision of the Committee, the complainant may, in a writing addressed to the President of the Association, request a hearing before the Committee. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The complainant, at his expense, and the Committee, at the expense of the Association, shall be entitled to legal representation at such hearing. The hearing shall be conducted before at least two members of the Committee and may be adjourned from time to time as the Committee in its discretion deems necessary or advisable. The Committee shall render its decision and notify the complainant in writing of its decision and the reasons therefore within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Section 6.07, the decision shall be final and binding upon the complainant.



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7.06. Questions of Law. Legal counsel for the Association shall decide all issues of law arising out of the complaint, and such decisions shall be binding on the complainant.

7.07. Questions of Fact: Arbitration. If there shall be any dispute as to any material fact, either the Committee or the complainant may, at their option, within ten (10) days after notice of the decision as provided for in Section 6.05, submit the same to arbitration in accordance with the provisions for arbitration adopted by the American Arbitration Association by filing with the other party a notice of its intention to do so. The decision of the arbitrator shall be final and binding upon the complainant and the Committee. In the event of arbitration, each party shall bear one-half of the expense thereof.

7.08. Exclusive Remedy. The remedy for Owner complaints provided herein shall be exclusive of any other remedy, and no Owner shall bring suit against the Committee, the Association, the Board of Directors or any member of same in his capacity as such member without first complying with the procedures for complaints herein established.

7.09. Expenses. All expenses incurred by complainant, including, without limitation, attorneys' fees and arbitration expenses and the like, shall be the sole responsibility of complainant. All expenses of the Committee incident to such complaint shall be deemed a Common Expense of the Association.

#### ARTICLE VIII REMEDIES ON DEFAULT

8.01. Each Owner shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, servants, guests, occupants, invitees or agents.

8.02. Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Developer or the Association to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together with interest and expenses as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Developer or the Association or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws, by an aggrieved Owner.

8.03. Judgment Interest and Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Developer or the Association, if successful, shall, in addition to the relief provided for in Section 7.02, be entitled (1) to charge and collect pre- and post-judgment interest upon the amount of the judgment (including any awarded expenses) at the highest rate allowed by law, and (2) to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

8.04. Waiver. The failure of the Developer, the Association or an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any partial payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

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8.05. Election of Remedies. All rights, remedies and privileges granted to the Developer, the Association or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of anyone or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional right, remedies or privileges as may be available to any such party at law or in equity.

#### ARTICLE IX EMINENT DOMAIN

9.01. Board's Authority. If all or any part of the Common Properties (excluding personalty) is taken or threatened to be taken by Eminent Domain, the Board or the Developer is authorized and directed to proceed as follows:

(a) To obtain and pay for such assistance from such attorneys, appraisers, architects, engineers, expert witnesses and other persons, as the Board in its discretion deems necessary or advisable, to aid and advise it in all matters relating to such taking and its effect, including, but not limited to (i) determining whether or not to resist such proceedings or convey in lieu thereof, (ii) defending or instituting any necessary proceedings and appeals, (iii) making any settlements with respect to such taking or attempted taking and (iv) deciding if, how and when to restore the Common Properties.

(b) To negotiate with respect to any such taking, to grant permits, licenses and releases and to convey all or any portion of the Common Properties and to defend or institute, and appeal from, all proceedings as it may deem necessary or advisable in connection with the same.

(c) To have and exercise all such powers with respect to such taking or proposed taking and such restoration as those vested in Boards of Directors of corporations with respect to corporate property, including but not limited to, purchasing, improving, demolishing and selling real estate.

9.02. Notice to Owners and Mortgagees. Each Owner and each First Mortgagee on the records of the Association shall be given reasonable written advance notice of all final offers before acceptance, proposed conveyances, settlements and releases, contemplated by the Developer or the Board, legal proceedings and final plans for restoration, and shall be given reasonable opportunity to be heard with respect to each of the same and to participate in and be represented by counsel in any litigation and all hearings, at such Owner's or Mortgage's own expense.

9.03. Reimbursement of Expenses. The Developer and/or Board shall be reimbursed for all attorneys', engineers', architects' and appraisers' fees, and other costs and expenses paid or incurred by it in preparation for, and in connection with, or as a result of, any such taking out of the compensation, if any. To the extent that the expenses exceed the compensation received, such expenses shall be deemed a Common Expense.

#### ARTICLE X GENERAL PROVISIONS

10.01. Duration. The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developer or Owner, their respective legal representatives, heirs, successors and assigns.

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10.02. Amendments. This Declaration may be amended in accordance with the following procedure:

(a) An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if considered at an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting provided for in the Bylaws, and, if considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws. Notice of any meeting to consider an amendment shall also be sent to each Mortgagee listed upon the register of the Association.

(b) At any such meeting of the members of the Association, the amendment must be approved by an affirmative seventy-five percent (75%) vote of those Owners who are in attendance or represented at the meeting. At any such meeting, the Developer shall have the number of votes as provided in the Bylaws. Any amendment which adversely affects the rights of the Mortgagees must be approved by an affirmative seventy-five (75%) vote of the Mortgagees of which the Association has been notified in accordance with Section 8.01 hereof (based upon one vote for each Lot on which a First Mortgage is held) and who vote within the period of time set by the Board to vote, which shall be at least ten (10) days and no longer than sixty (60) days.

(c) An amendment adopted under Paragraph (b) of this Section shall become effective upon its recording with the Register, and the President of the Association and Secretary of the Association shall execute, acknowledge and record the amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided, that in the event of the disability or other incapacity of either, the Vice President of the Association shall be empowered to execute, acknowledge and record the amendment. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company that the amendment was adopted in accordance with the provisions of this Section.

(d) The certificate referred to in Paragraph C of this Section shall be in substantially the following form:

CERTIFICATE

I, \_\_\_\_\_, do hereby certify that I am the Secretary of Creek's Bend Village Homeowners' Association, Inc. and that the within amendment to the Declaration of Covenants and Restrictions of Creek's Bend Village was duly adopted by the Owners of said Association and the Mortgagees, if applicable, in accordance with the provisions of Section 9.02 of said Declaration.

Witness my hand this \_\_\_\_ day of \_\_\_\_\_.

Secretary  
CREEK'S BEND VILLAGE  
HOMEOWNERS' ASSOCIATION, INC.

10.03. Notices. Any notice required to be sent to any Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last

known address of the Owner or Mortgagee on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Lot or Dwelling Unit shall constitute notice to all co-owners. It shall be the obligation of every Owner to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, or the Developer under the provisions of this Declaration shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

MACK DEVELOPMENT, LLC  
5010 Austin Road  
Hixson, TN 37343

The address for the Board the Association, or any officer thereof may be changed by the Secretary or President of the Association by executing, acknowledging and recording an amendment to this Declaration stating the new address or addresses. Likewise, the Developer may change its address by executing, acknowledging, and recording an amendment to this Declaration stating its new address.

**10.04 Easements.** Developer reserves for itself, its successors, and assigns a permanent easement under, along, and over the easements as shown on the plat of and the master plan of the development for carrying utilities, water, or sewage and for the necessary maintenance of such facilities. Nothing shall be done on any lot that interferes with the approved and natural drainage of surface water to the injury of other property.

**10.05. Severability.** Should any covenant or restriction herein contained or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**10.06. Captions.** The captions herein are inserted only as a matter of convenience and for reference and are in no way intended to define, limit or describe the scope of this Declaration nor any provision hereof.

**10.07. Use of Terms.** Any use herein of the masculine shall include the feminine" and the singular the plural, when such meaning is appropriate.

**10.08. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

**10.09. Law Governing.** This Declaration is made in the State of Tennessee, and any question pertaining to its validity, enforceability, construction or administration shall be determined in accordance with the laws of that State.

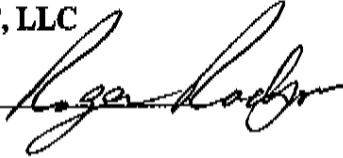
**10.11. Effective Date.** This Declaration shall become effective upon its recording in the Office of the Clerk of the Superior Court of Hamilton County, Tennessee.

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IN WITNESS WHEREOF, the Developer has executed or caused to have executed by its duly authorized officer this Declaration on the date first above written.

**MACK DEVELOPMENT, LLC**

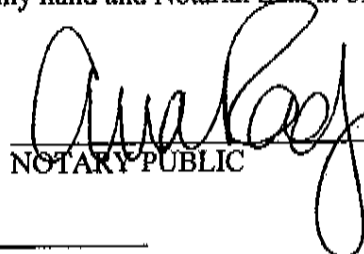
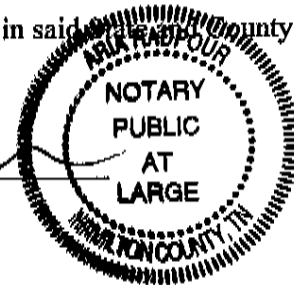
By: Roger Radpour



STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, Aria Radpour, a Notary Public, duly appointed, commissioned and qualified in and for the State of Tennessee, personally appeared Roger Radpour, with whom I am personally acquainted and who upon oath acknowledged himself/herself to be the Chief Manager of **MACK DEVELOPMENT, LLC**, the within named bargainor, and that he/she as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the association by himself/herself as such \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal at office in said \_\_\_\_\_ county on this 17th day of October, 2005.

  
NOTARY PUBLIC

My Commission Expires: 5/27/07

