

Prepared By:  
Hugh W. Entrekin  
TUNE, ENTREKIN & WHITE, P.C.  
315 Deaderick Street Suite 1700  
Nashville, Tennessee 37238  
(615) 244-2770  
Email: [hentrekin@tewlawfirm.com](mailto:hentrekin@tewlawfirm.com)

BK: 7008 PG: 83-127  
**17006344**

45 PGS:AL-RESTRICTIONS	
477900	
<b>02/15/2017 - 03:33 PM</b>	
BATCH	477900
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	225.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	227.00

STATE OF TENNESSEE, WILLIAMSON COUNTY  
**SADIE WADE**  
REGISTER OF DEEDS

Pick Up

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AVERY

THIS DECLARATION of Covenants, Conditions and Restrictions (hereinafter referred to as "Declaration") made and published on or as of the date hereinafter set forth, by and between Murray Lane Development, LLC. (hereinafter referred to as "Developer"), and any and all persons, firms, corporations or other entities, hereafter acquiring any of the within described property.

### WITNESSETH:

**WHEREAS**, the Developer is the owner of certain real property located in Davidson County and Williamson County, Tennessee, and desires to create thereon, a residential development known as Avery, more particularly described on **Exhibit A** attached hereto (the real property described on Exhibit A attached hereto is herein referred to as the "Property" and the residential development to be developed on the Property is herein referred to as the "Development" or "Subdivision") for the mutual benefit of the future residents of the Development; and

**WHEREAS**, it is in the best interest of the Developer, as well as to the benefit, interest and advantage of each and every person or other entity hereafter acquiring any of the property within the Development that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed, set forth and declared to be covenants running with the land; and

**WHEREAS**, the Developer desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the real property in the Development, and for the continued maintenance and operation of any common areas; and

**WHEREAS**, the Developer has deemed it desirable, for the efficient

preservation of the values and amenities in the Development, and to fulfill the foregoing objects, purposes and requirements, to create an entity to which should be delegated and assigned the powers of maintaining any common areas, managing the affairs of the Development, administering and enforcing the covenants and restrictions, and collecting and disbursing any necessary assessments and charges hereinafter created; and

**WHEREAS**, the Developer has caused, or will cause, to be incorporated under the laws of the State of Tennessee a non-profit corporation having as its members owners of Lots within the Development for the purpose of exercising the aforementioned functions.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, and the terms, conditions and restrictions hereinafter set forth, the Developer declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the following restrictions, covenants, conditions, easements, assessments and liens all of which are to be construed as covenants running with the land and which shall be binding on all parties having or acquiring any right, title or interest in the hereafter described property or any part thereof and which shall inure to the benefit of each owner thereof. Every person or other party hereafter acquiring any of the within described property made subject to this Declaration, by acceptance of a deed to any interest in or to said property, shall take such property interest subject to this Declaration and to the terms and conditions hereof, and shall be deemed to have agreed to the same.

## ARTICLE I DEFINITIONS

The following words, when used herein, shall have the following meanings:

Section 1. The "Association" shall mean Avery Homeowners Association, Inc., a Tennessee not-for-profit corporation, its successors and assigns organized by the Developer for the purpose of owning and maintaining the Common Area and which has as its members every Lot Owner subject to assessment as hereinafter provided. The Bylaws of the Association are attached hereto as **Exhibit B** and are incorporated herein by reference. The By-Laws may be amended from time to time as provided for therein.

Section 2. "Builder" shall mean and refer to any member of the Builders Guild who is in the business of constructing single family residences and who acquires any Lot(s) in the Subdivision for the purpose of constructing a single-family residence thereon for sale to a hird-party customer of the Builder.

Section 3. "City" shall refer to the City of Brentwood, Tennessee, the

local governing jurisdictional entity in which a lot is platted.

Section 4. "Common Area or Common Areas or "Open Space" shall mean and refer to any and all real property owned by the Association and all improvements thereon, and such other property to which the Association may hold legal title, whether in fee or for a term of years, for the non-exclusive use, benefit and enjoyment of the members of the Association, subject to the provisions hereof, and such other property as shall become the responsibility of the Association, through easements or otherwise, including any recreational areas, which may be constructed initially by the Developer or thereafter by the Association. Common Areas with respect to the property made subject to this Declaration, whether at the time of filing of this Declaration or subsequently by Supplemental Declarations shall be shown on the plat(s) for the Development and designated thereon as "Common Areas" or "Open Space."

Section 5. "Declaration" shall mean this instrument, as the same may be amended and/or supplemented from time to time as provided for herein.

Section 6. "Developer" shall mean Murray Lane Development, LLC, its successors, representatives and assigns, provided such assigns are designated in writing by the Developer as an assignee of the rights of the Developer as set forth herein.

Section 7. "Design Review Committee" (DRC) shall mean and refer to that Committee formed and operated in the manner described in Article IV hereof.

Section 8. "Design Standards" shall mean the document created by the Design Review Committee that shall describe the standards required for the architectural site and landscape design of all houses and Lots, and shall supplement the standards of this Declaration. The Design Standards need not be recorded, may be amended from time to time by the DRC, and shall be made available to any Lot Owner or Builder on request. If there is a conflict between the CCR's and the Design Standards, the CCR's shall govern.

Section 9. "House" shall mean and refer to a building situated upon any Lot designated and intended for use and occupancy as a residence by a single family.

Section 10. "Lot" shall mean any lot shown on any recorded plats of the Property. A Lot shall not include any dedicated streets and roadways.

Section 11. "Lot Owner" or "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Master Plan" shall mean and refer to the OSRD that has been given approval by the Brentwood Planning Commission for the development of the Subdivision. Developer reserves the right to amend the Master Plan at any time as well as any amendments thereof and such rights shall include without limitation the right to reconfigure Lots, increasing or decreasing the number of different Lot types, and adding or removing property from the Subdivision.

Section 13. "Occupant" shall mean or refer to any Person or Persons in possession of a Lot or House other than a Lot Owner.

Section 14. "Person" shall mean or refer to a natural person, as well as a corporation, partnership, firm, association, trust, or other legal entity.

Section 15. "Plat(s)" shall mean and refer to the plat(s) for the Subdivision to be recorded in the Williamson County Register of Deeds Office subdividing the Property into Lots and reflecting thereon the public streets, Common Areas, and utility easements and other matters normally shown on subdivision plats.

Section 16. "Private Drive" shall mean a common driveway constructed with concrete or asphalt by the Developer, serving as vehicular access for two (2) or more Houses, and being within a Private Access Easement as shown on the Plats and Master Plan.

Section 17. "Private Drive Lot Owner" shall mean the Owner of each Lot that has vehicular access from a Private Drive.

Section 18. "Property" shall mean the real property submitted to this Declaration and described on **Exhibit A** attached hereto and incorporated herein by reference. The Property shall not include any public streets and roadways shown on the Plat. As provided in this Declaration, the Developer shall have the right to subject certain additional real property to the terms of this Declaration and in such event such additional property shall be deemed to be included within the definition of "Property."

Section 19. "Subdivision" shall mean and refer to the Avery Subdivision to be platted on the Property.

Section 20. "Lawn Art" shall mean and refer to improvements made upon Lots in the Subdivision and shall include, rock walls, gardens, trails, pathways, flower beds, plant material containers, ornamental statues, fountains, bird baths, bird houses and other items which may be included in the general definition of this term.

**ARTICLE II**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Lot Owner who is subject to assessment by the Association as hereinafter provided shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment. When any Lot is owned of record in joint tenancy, tenancy in common, tenancy by the entirety, or by some other legal entity, their membership as to such Lot shall be joint and the rights of such membership (including the voting power arising therefrom) shall be exercised as specified herein. A corporate member's vote shall be cast by the president of the member corporation or by any other officer or proxy appointed by the president or designated by the Board of Directors of such corporation. When two or more persons hold an interest in any Lot as owners thereof, all such persons shall be members. The vote for such Lot shall be exercised by one of such persons as proxy or nominee for all persons holding an interest as owners in the Lot and in no event shall more than one vote be cast with respect to any Lot, except as provided above with respect to Developer. If joint owners are unable to specify by their majority vote how their vote shall be cast, then no vote shall be cast with respect to such Lot.

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

Class A. Class A members shall be all Lot Owners, with the exception of the Developer or its assignees as hereinafter provided, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Developer and any assignee of the Developer to whom such rights have been assigned in writing. The Class B member shall be entitled to four (4) votes for each Lot owned. For voting purposes, any and all Lots shown on the Master Plan but not yet platted within a period six (6) years from the sale of the first Lot by Developer shall also be counted as Lots owned by the Developer or its assignee and the Owner of any such unplatted Lots shall be entitled to four (4) votes for each Lot owned prior to the termination of the Class B Membership. After the termination of the Class B Membership, or after six (6) years from the sale of the first Lot by Developer, whichever occurs first, the Developer or its assignees and the Owner of any such unplatted Lots shall be entitled to one vote for each such unplatted Lot.

The Class B Membership shall continue until (i) Developer has closed all Lots or (ii) the Developer has relinquished control to the Owners.

Section 3. Transfer of Control. When more than 50 percent (50%) of the Lots within the Subdivision are sold, a special meeting of the Association shall be called within sixty (60) days to initiate an orderly process for transfer of control to the Owners.

Section 4. First Meeting of Members. The first regular annual meeting of the Members may be held, subject to the terms hereof, on any date, at the option of the Board of Directors; provided, however, that the first meeting may (if necessary to comply with Federal Regulations) be held no later than the earlier of the following events: (a) four months after all of the Lots have been sold by the Developer, or (b) three years following conveyance of the first Lot by the Developer.

Section 5. Acceptance of Development. By acceptance of a deed to a Lot, any purchaser of a Lot shall be deemed to have accepted and approved the entire plans for the Avery Subdivision, and all improvements constructed by that date, including, without limitation, the utilities, drains, roads, sewers, landscaping, Common Area amenities, and all other improvements as designated on the plat and as may be supplemented by additional plats upon completion of development of any portion of the Subdivision. Such purchaser agrees that all improvements constructed after the date of purchase consistent with such plans, and at the same quality of then existing improvements, shall be accepted.

### **ARTICLE III** **COVENANT FOR ASSESSMENTS FOR THE ASSOCIATION**

Section 1. Creation of the Lien and Personal Obligation of Assessments. All Lot Owners by acceptance of a deed for any Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (3) any other amounts properly assessed against a Lot Owner by the Association, including fines, late fees or any other amounts. The annual and special assessments and any other amounts properly charged to a Lot Owner by the Association, together with interest, costs, and reasonable attorney's fees as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made from the date when due until the same is paid in full or otherwise discharged. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Lot Owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title of said person unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety,

and welfare of the Lot Owners, to provide for the maintenance of the Common Area, to pay the fees of any management agent the Association may employ to manage the affairs of the Association, and to pay other reasonable and necessary expenses of the Association including the repayment of any loans or advances from the Developer. An adequate reserve fund for the maintenance, repair, and replacement of items maintained by the Association pursuant to this section shall be established and funded by regular monthly payments.

Section 3. Maximum Annual Assessment.

(a) The annual assessment shall be established by the Board of Directors and is payable in quarterly installments on the first day of each quarter.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot by Developer, the maximum annual assessment may be increased each year by the Board of Directors by an amount not to exceed ten percent (10%) per year of the previous year's maximum, on a cumulative basis calculated from the date of the last increase, without a vote of the Association membership.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the maximum annual assessment may be increased above said percentage only by a vote of a majority of each class of the Association members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to pay in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property, if any, related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of the Association members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Working Capital Fund and Management Set-up Fee. Each Owner of a Lot or completed residence in the Subdivision, other than a Builder, shall pay into the working capital fund the amount of One Thousand Dollars (\$1000.00) to the Association at the closing of the sale of the Lot or completed residence to such Owner. In addition, each Owner shall concurrently pay One Hundred Fifty Dollars (\$150) as a set up fee to the management company for the Association. Pending the transfer of Control, to the extent that the Association is unable to pay all costs of maintaining the Common Areas and administering the Association, Developer agrees that it will loan monies to the Association on an interest free basis to fund any such deficits. The amounts paid to the working

capital fund by each Owner upon the closing of the sale of the completed residence to such Owner shall not be considered as advance payment of regular assessments. The working capital fund shall be held and disbursed for the following purposes in the order of priority:

- (a) To fund costs of maintenance of the Common Areas and administration of the Association that cannot be defrayed by assessments;
- (b) To reimburse the Developer for all amounts loaned by Developer to the Association to fund any operating deficits; and
- (c) To ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors.

Section 6. Lot Transfer Fee. A lot transfer fee of two hundred fifty dollars (\$250), to be adjusted from time to time, shall be charged to the buyer upon the sale or transfer of any Lot, except sales or transfers by or to a Builder or by or to an affiliate of a Builder and except transfers by deed in lieu of foreclosure or transfers by foreclosure, or transfers caused by a Lot repurchase by the Developer. Such Lot Transfer Fee shall be assessed automatically, payable to the Management Company, without action by the Board of Directors. All fees and assessments charged herein, whether for a specific sum of money or otherwise calculated, shall be deemed to be reasonable and necessary under the circumstances, as determined by a simple majority of the Board of Directors and ratified by the requisite votes of the classes of Owners.

Section 7. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article III shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (½) of the required quorum at the preceding meeting. This procedure may be repeated with the required quorum reduced by half at each subsequent meeting until a quorum is achieved although in no event may the required quorum be less than ten percent (10%) of the total votes eligible to be cast. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments Due Dates.

The annual assessments provided for herein shall commence as to Lots not owned by the Developer on the first day of the first month following the closing of the transfer of the first Lot by Developer. As to Lots owned by the Developer, the annual assessments shall commence as to each Lot upon conveyance of such Lot by Developer except for a transfer in which Developer is transferring its rights as Developer. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. The assessment shall be paid quarterly on the first (1<sup>st</sup>) day of each quarter by every Lot Owner or in such installments as shall be determined by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance

Section 10. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid by the tenth (10th) day of the month in which it is due shall be subject to a late charge in an amount established by the Board of Directors of the Association and shall bear interest from the due date at the maximum rate allowed by applicable law. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the lien against the Lot, and there shall be added to the amount of such assessment all collection costs, including reasonable attorney's fees, and the costs of bringing such action or foreclosure. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of Lot.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments on any Lot provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE IV**  
**ARCHITECTURAL, MAINTENANCE, AND USE RESTRICTIONS**

Section 1. Architectural Review Authority. The Developer shall have sole

architectural and design reviewing authority for Lots within the Development until (i) the Developer has sold all Lots in the Development and (ii) all of the structures or residences on all of the Lots within the Development have been completed and approved for final use and occupancy. However, the Developer may, in its discretion, transfer partial or full architectural and design review authority to the Board when the Developer transfers governing authority to the Board in accordance with the Bylaws; provided, however, that without an express written relinquishment of this authority by the Developer, no such transfer of architectural and design review authority shall be assumed or otherwise become effective and the Developer shall continue to exercise the rights thus reserved to it until such time as it shall execute and record in the office of the Register of Deeds a document assigning specific rights to the Board. Upon such occurrence, the Board shall establish a Design Review Committee (DRC) as soon as is practicable. When such committee has been established, the Developer may, at Developer's sole discretion, transfer partial or full reviewing authority to it. If at any time the Developer shall cease to exist or not be empowered to serve it this capacity, the rights hereunder shall be deemed to have been transferred to the DRC.

Section 2. Single Family Residential Construction. No building or other structure shall be erected, altered or permitted to remain on any Lot other than one (1) single family residential dwelling not to exceed two and one-half (2-1/2) stories in height. An additional story is permitted with a walk-out basement, subject to City regulations. Each dwelling shall have a private garage space for a minimum of three (3) vehicles which structures shall not exceed the main dwelling in height. Garage space may be permitted as a detached structure subject to architectural approval. A portion of the space within the garage may be converted for use as living space subject to review by the DRC, so long as a three (3) car garage remains. In the event a homebuyer purchases two (2) adjacent Lots for the purposes of constructing one (1) house and effectively having a larger yard area, the two (2) Lots shall be re-platted to become one (1) Lot, at the cost of the homebuyer so that only one (1) Lot may be resold, however the new combined Lot will be assessed HOA dues as two (2) Lots

Section 3. Approval of Plans.

(a) No construction, reconstruction, remodeling, alteration, or addition of or to any structure, building, fence, wall, drive, or improvement of any nature shall be constructed on any Lot without obtaining prior written approval of the DRC composed of a minimum of three (3) members as to the location, plans, and specifications therefore. Such committee may establish architectural Design Standards to establish minimum design principles and standards that supplement the standards of this Declaration. Prior to the Transfer of Control, the Developer shall appoint the members of the DRC, and subsequent to the Transfer of Control the members of such Committee shall be appointed by the Board of Directors of the Association, subject to the provisions contained in Article IV,

Section, 1 herein. As a prerequisite to consideration for approval, and prior to the commencement of the contemplated work, a Lot Owner shall submit to the Developer, or the Association's managing agent, as the case may be, such plans, specifications, and other information concerning the proposed improvements as the DRC may require from time to time as a condition for its review and approval thereof accompanied with such fee as the Association may require, and the Developer or such managing agent shall submit the same to the DRC for approval. All plans of proposed residences to be constructed in the Subdivision shall conform to the standards set forth in subparagraph (b) below and the restrictions and provisions contained in this Declaration, and the DRC shall be the sole arbiter of such plans and may withhold its approval for any reason, including purely aesthetic reasons. Upon approval being given, construction shall be started within one hundred eighty (180) days and prosecuted to completion promptly and in strict conformity with such plans, otherwise the approval shall be void. A reasonable fee may be charged by the Association to defray its costs incurred in considering and acting upon such proposed plans and specifications.

(b) Residences to be constructed within the Subdivision shall be sufficiently compatible with existing architectural styles that predominate in the Development to ensure a pleasing overall appearance and maintain its image as a high quality, single family residential neighborhood, at the sole discretion of the DRC. Existing structures will be considered but do not, as such, constitute precedent nor ensure approval.

(c) Developer, the DRC, the Association and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. The Developer, DRC, and/or the Association shall use their best efforts to indicate approval or disapproval of any plans submitted within thirty (30) days after the receipt of the required documents, but no approval shall be deemed to have been given until expressly granted in writing. The Developer and DRC in exercising its rights of design and architectural review under this Declaration are concerned primarily with aesthetic considerations, and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the Home or other improvement. Approval by the Developer or DRC of an application shall not constitute a basis for any liability of the Developer, the DRC, the Directors or the Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any builder or architect, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the property. Approval or disapproval by Developer, DRC, or the Association shall not be deemed to constitute any warranty or representation by it including, without limitation, any warranty or representation as to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and

regulations.

(d) Anything contained in this Section 3, or elsewhere in this Declaration to the contrary notwithstanding, Developer and the Association, and the DRC are hereby authorized and empowered, at their sole and absolute discretion, to make and permit reasonable modifications or deviations from any of the requirements of this Declaration and the "Design Standards" relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Lot and of the size and location of any such building or improvement when, in their sole and final judgment, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Property and the improvements as a whole; provided, however, such modifications and deviations must remain within all applicable ordinances and regulations established by the City.

Developer, Association or the DRC, as the case may be, may require the submission to it of such documents and items, including as examples, but without limitation, written requests for and description of the variances requested, plans, specifications, plot plans and samples of material(s), as either of them shall deem appropriate, in connection with its consideration of a request for a variance from the terms of this Declaration. If the Developer, the Association, or the DRC shall approve such request for a variance, it shall evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing its decision to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including as examples, but without limitations, the type of alternative materials to be permitted, and alternate fence height approved), and signed by Developer, DRC, or the Association, as the case may be. Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (i) written notice of disapproval from Developer, DRC, or the Association or (ii) failure by Developer, DRC, or the Association to respond to the request for variance. In the event Developer, DRC, the Association, or any successor to the authority thereof shall not then be functioning, no variances from the covenants herein contained shall be permitted, it being the intention of Developer that no variances be available except at its discretion or that of the Association or DRC. Neither Developer, DRC, nor the Association shall have the authority to approve any variance except as expressly provided in this Declaration.

Section 4. Structural Compliance. All structures shall be built in substantial compliance with the plans and specifications approved by the DRC, the Developer, or the Association as provided in Section 2 above, or if a deviation from the plans is proposed, a written approval for such deviations must be approved by the DRC prior to construction of such alteration to the approved

plans

Section 5. Improvement and Setback Restrictions. No building or structure, or any part thereof shall be located on any Lot nearer to the front line, the rear line, or any side line than the minimum building setback lines required by the City and as may be shown on the recorded plats. No encroachment with a building or structure upon any utility easements reserved on the Plat shall be authorized or permitted.

Section 6. Re-subdivision of Lots. No Lot shall be re-subdivided, nor shall any building be erected or placed on any such re-subdivided Lot, unless such re-subdivision is approved by the Association, as well as any governmental authority having jurisdiction. Developer, however, shall have the right, but not the obligation, to re-subdivide Lots, by recorded plat or in any other lawful manner, within all or any part of the Property, and such Lots, as re-platted, shall be subject to this Declaration as if such Lots were originally included herein. Any such re-plat must comply with pertinent re-platting ordinances, statutes, regulations and requirements.

Section 7. Walls, Fences and Hedges. Rear yard fences shall be five feet (5') in height and shall be black metal fencing with the style "Montage" by Ameristar, or equal. No wall or fence shall be erected or maintained any further forward on the house than five feet (5') from the rear home line, unless a variance is approved based on a unique house plan or site conditions, nor on corner Lots nearer to the side Lot line than the building setback line parallel to the side street. The DRC may permit fence location variations to this Section 7 if in the opinion of the DRC such location would not detract from the streetscape, and additional design elements are incorporated into the fence and landscaping. - Front yard fences may be permitted subject to DRC approval provided fence is consistent with the style of the home. Prior to commencing the addition or modification of any wall or fence, plans for such improvement shall be submitted to the DRC as provided in Article IV, Section 3. Any wall, fence or hedge erected on a Lot shall be maintained by the Owner thereof. All fencing shall be constructed only of such materials and erected only on such Lots and in such a manner as shall be approved by the Association. Side and rear yard fences shall be located so the outermost faces of the fence or posts are outside the Public Utility and Drainage Easement (P.U.D.E.) on each Lot. Exceptions can be considered provided the owner obtains written approval from City for the fence to be within the easement, however, in no case shall any fence be located closer than five (5') to any property line. This written approval shall be submitted to the DRC with the fencing submittal and is subject to DRC approval.

A shrub hedge is required along the street frontage of each Lot. The hedge species, spacing on center and size at planting will be specified on the conceptual landscape plan for each Lot. The maintenance of the hedge and the replacement of dead, dying, or diseased shrubs is the responsibility of the Lot

Owner. Shrub hedges within the front yard shall be maintained to a maximum height of no more than forty-two inches (42"), shall be pruned into a continuous hedge, and be irrigated with a drip or spray irrigation system. Pruning between shrubs within a hedge shall not be permitted except for removal of diseased or damaged branches.

Section 8. Roofing Material and Pitch. The roof of any building (including any garage) shall be constructed or covered with asphalt or composition type shingles. Any other type of roofing material shall be permitted only in the sole discretion of the DRC upon written request. Minimum roof pitch to be determined by DRC or as shown in the Design Standards. The roof pitches on all homes shall be subject to the regulations of the DRC and based on architectural style.

Section 9. Swimming Pools. Swimming pools shall be allowed on all Lots subject to DRC and City approval and shall be located at the rear of the residence. All swimming pools shall be fenced per City codes, the plans for which, including landscaping plans, must be approved by the DRC. The construction of any swimming pool shall conform to all applicable government regulations. No above ground swimming pools shall be permitted. Landscaping shall be provided to reduce the visual impact of the pool from public streets and adjacent neighbors. Pool pumps and equipment shall be substantially screened from view and located so as not to be a noise nuisance to adjacent neighbors. Screened enclosures of pools are not permitted.

Section 10. Storage Tanks and Refuse Disposal. No exposed above-ground tanks or receptacles shall be permitted for the storage of fuel, water, or any other substance, except for refuse produced through normal daily living and of a nature which is satisfactory for pick-up by the Department of Public Works or its equivalent. Incinerators for garbage, trash, or other refuse shall not be used or permitted to be erected or placed on any Lot. All equipment, coolers, and garbage cans shall be concealed from the view of neighboring Lots, roads, streets, and open areas.

Section 11. Clothes Lines. Outside clothes lines shall not be permitted.

Section 12. Signs and Advertisements. No sign, advertisement, billboard or advertising structure of any kind shall be erected upon or displayed or otherwise exposed in view on any Lot or any improvement thereon without the prior written consent of the Association; provided that this requirement shall not preclude the installation by Developer of signs identifying the residential Development and directions to model homes and homes for sale, and provided further that this requirement shall not preclude the placement by Owners or Builders of "For Sale" signs in the front of individual residences of such size, character, and number as shall from time to time be established by the DRC. The Association shall have the right to remove any such unapproved sign, advertisement, billboard or structure that is placed on said Lots, and in doing so

shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal. Developer's rights contained in this Paragraph shall not expire until all homes in the Subdivision have been sold by the Builders. No garage sale signs, other than a temporary community garage sale sign approved by the DRC, shall be permitted.

Section 13. Use of Temporary Structures. No structure of a temporary character, mobile home, camper, trailer, basement, tent, shack, tool shed, storage shed, garage, barn or other outbuilding shall be erected, moved onto any Lot and/or used at any time as a residence, nor shall any residence of a temporary character be permitted. No structure of any kind except a dwelling house may be occupied as a residence, and the outside of any building so occupied must be completed before occupancy, including landscaping. Other structures of a permanent or semi-permanent nature may be approved from time to time in accordance with the provisions of this Article IV provided however these shall not include detached storage sheds whether permanent or not. Temporary structures may be used as building or sales offices and storage sheds and for related purposes during the construction period by the Developer or its assigns and Builders.

Section 14. Parking and Storage of Automobiles, Boats, Trailers and Other Vehicles. No trailers, boats, boat trailers, go carts, golf carts, travel trailers, inoperative automobiles, campers, any other similar vehicle, or other item of personal property shall be temporarily, semi-permanently or permanently parked or stored in the public street right-of-way or forward of the front building line. Storage of such items and vehicles must be screened from public view within the garage (and no storage is allowed in a garage unless the garage door is closed). No for sale signs may be posted on vehicles located on a Lot or on the street in front of or to the side of a Lot. No tractor trailers, buses, or other large commercial vehicles shall be parked on driveways or in streets within the Property for periods of time exceeding twelve (12) hours or for more than twenty-four (24) hours in any calendar week. The foregoing shall not apply to construction vehicles of the Developer or Builders. No on street parking of cars for periods over twenty-four (24) hours in any calendar week.

Section 15. Outside Lighting. Outside flood lights at eaves are not permitted on the front or corner lot side of a house. No exterior flashing or high-intensity lights, floodlights, or spotlights on the exterior of any building shall be permitted, except with the prior written approval of the Association. Tasteful accent lighting is encouraged and security lighting which does not create a nuisance for other Lot Owners are permitted. The Association reserves the right to require any Lot Owner to deactivate or remove any light which the Association deems to be unattractive or a nuisance to other Lot Owners. Tasteful holiday decorative lighting is permitted from Thanksgiving until Jan 7 subject to any rules established by the Association regarding the types and extent of such lighting.

Section 16. Antennae and Satellite Dishes. No electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any Lot, house or building. No Satellite dishes greater than eighteen inches (18") in diameter shall be installed on any home or Lot and all dishes shall be placed at the rear of the home so as to not be visible from the street unless limited satellite reception requires front or side yard placement, in which case landscape screening and DRC approval shall be required.

Section 17. HVAC Units. All central air conditioning system units must be used, erected, placed or maintained to the side or rear of the main residential structure and screened from view. No window or wall type air conditioning units shall be permitted.

Section 18. Recreational Equipment. All playground and recreational equipment shall be located within the rear yard of the house, further defined as a zone between the rear outermost corners of the house as projected back to the rear property line and be placed no nearer the rear property line than the rear setback. All equipment to be approved by the DRC and is to have landscape planting around it to partially screen the view of the equipment from adjacent homes and streets. Play equipment colors shall be green, brown, or yellow, other color that blends with the environment. No tree houses, play houses or other such structures shall be allowed except as may be specifically allowed by the DRC. Trampolines shall be designed to be flush mount with the ground. The DRC may permit above grade trampolines in cases where topography or rock prevents flush mount installation, in which case, substantial landscape screening will be required.

Section 19. Basketball Goals. Basketball goals shall be permanent mount located at the rear or side of the house and shall consist of a black pole and clear Plexiglas backboard and require DRC approval. No portable goals are permitted. Basketball goals shall be set back a minimum of five feet (5') from the side property line. Goals within ten feet (10') of a property line or located on the side yard of a corner lot shall be screened with landscaping.

Section 20. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 21. Maintenance. All Lots, together with the exterior of all improvements located thereon, shall be maintained in a neat and attractive condition by their respective Owners or Occupants. Such maintenance shall include, but not be limited to, painting, repairing, replacing, and caring for roofs, gutters, down spouts, building surfaces, patios, walkways, driveways, and other exterior improvements. The Owner or Occupant of each Lot shall at all times

keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner, keep all trees and shrubbery pruned and cut, replace dead shrubs and trees, and maintain perennial flowers as originally required on the approved landscape plan. Each Lot shall be improved with an irrigation system the form and location of which shall be approved at the time the residence is constructed and which will be designed to facilitate maintenance of the landscaping and lawn on such Lot. Owner or occupant shall maintain irrigation system in working condition and utilize such system to properly maintain all landscaping, notwithstanding any water restrictions enforced by the City. In addition, each Lot Owner shall be responsible for maintaining the right of way and any Common Area between such Lot Owner's Lot and the street. Each Lot Owner agrees to abide by rules which may be established by the Association regarding specifics on maintenance of Lots and residences on the Lots as well as any requirements regarding plantings on Lots. No Lot shall be used for storage of material and equipment, except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind and the burning (except as permitted by law) of any such materials is prohibited. In the event of default on the part of the Owner or Occupant of any Lot in observing the above requirements or any of them, each default continuing after ten (10) days written notice thereof, the Association may, subject to approval of its Board of Directors, enter upon said Lot, repair, maintain and restore the same, cut or prune or cause to be cut or pruned, such weeds, grass, trees and shrubbery and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Lot in a neat, attractive healthful and sanitary condition. In so doing, the Association or its agents shall not be subject to any liability for trespass or otherwise. All costs incurred in any such repair, maintenance, restoration, cutting, pruning or removal shall be charged against the Owner of such Lot as the personal obligation of such Owner and as a lien upon the Lot, enforceable and collectible in the same manner and to the same extent as a maintenance assessment. Any Occupant of such Lot shall be jointly and severally liable with the Owner of the payment of such costs.

The Association shall contract with one (1) or more landscaping services to provide grass cutting, lawn maintenance, proper care for all trees, shrubbery and other landscaping, and other necessary maintenance services for the Common Areas, provision for which shall be made in the monthly or annual assessments. Such maintenance shall be at varying intervals based on the overall Maintenance Plan established by the Developer and the Association.

Section 22. Damage Destruction or Maintenance. In the event of damage or destruction to any structure located on the Property, the respective Owner thereof agrees as follows:

- (a) In the event of total destruction, the Owner shall promptly

clear the Lot of debris and leave the same in a neat and orderly condition. Within sixty (60) days of any insurance settlement, the Owner must commence to rebuild and reconstruct the structure. Any such rebuilding and reconstruction shall be accomplished in conformity with the plans and specifications of the original structure so destroyed, subject to any changes or modifications as approved by the Developer, the Association or DRC, as the case may be, in accordance this Article IV hereof.

(b) In the case of partial damage or destruction, the Owner shall as promptly as an insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a first-class condition in accordance with the plans and specifications of the original structure and in conformity with its original exterior painting and decor. Any change or alteration must be approved by the Developer, DRC, or the Association, as the case may be, in accordance with Article IV hereof. In no event shall any damaged structure be left unrepaired and unrestored for in excess of sixty (60) days from the date of the insurance adjustment.

(c) If the correction of a maintenance or repair problem incurred on one Lot necessitates construction work or access on another Lot, both Owners shall have an easement on the Property of the other for the purpose of this construction. Each party shall contribute to the cost of restoration thereof equally, unless such damage was caused by the fault of an Owner, in which event the Owners shall allocate the cost of restoration in proportion to the relative fault of the parties.

Section 23. Use of Premises. Each Lot shown on the Plat shall be used only for private, single family residential purposes and not otherwise. Notwithstanding the foregoing, Developer or any Builder may maintain, as long as it owns property in or upon such portion of the Property as Developer may determine, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, sales trailers, construction trailers, storage areas, model units and signs, (and houses in the Development) to use, residential structures, garages or accessory buildings for sales offices and display purposes, but all rights of Developer and of any Builder acting with Developer's permission under this sentence, shall be operative and effective only during the construction and sales period within the area, and this provision may not be amended, altered or repaired without the prior consent of the Developer.

Section 24. Occupancy Before Completion. Except with the written consent of the Association based on adequate assurance of prompt completion of a Dwelling Unit, an Owner shall not occupy a Dwelling Unit until the Dwelling Unit and seasonal landscaping conforming fully to the provisions of this instrument shall have been erected and fully completed thereon. Once the footings of any Dwelling Unit structure are poured, construction must progress continuously (with allowance for weather conditions, labor conditions and

availability of materials) until the building is fully completed. The exterior (including landscaping) must be completed within sixteen (16) months after commencement of construction. The Owner of any Lot violating either of these provisions shall be liable to the Association for liquidated damages at the rate of Fifty and No/100 Dollars (\$50.00) per day the violations occur, and for payment of such court costs and attorney's fees as may be incurred in the enforcement of these provisions. In the event construction does not progress continuously, the liquidated damages shall commence ten (10) days after notice from the Developer or the DRC if construction is not resumed within said ten (10) days.

Section 25. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, pastured, or maintained on any Lot, except household pets such as dogs and cats which may be kept thereon in reasonable numbers as pets, with no more than three (3) pets whose primary residence is outside, and a maximum total of five (5) pets for the sole pleasure of the Owner or Occupant, but not for any commercial use or purpose. No animal shall be allowed to roam freely in the Subdivision and all animals must be either kept in a secure enclosure to be located on the rear of the Lot hidden from public view or in the home. All animals shall be maintained on a leash and under control at all times when not otherwise secured in the required enclosure or in the home. No Owner or Occupant shall be allowed to keep on any Lot or the Common Area any animal which causes excessive noise (including without limitation barking), odor or constitutes a danger to other persons or otherwise constitutes a nuisance. No "dog run" fencing is permitted. The Board of Directors of the Association shall be the sole judge using their sole discretion as to whether any animal violates the provisions hereof and any such decision may be based, among other things on the number of animals kept by a Lot Owner. Lot Owners shall be responsible for cleaning up and removing any animal waste deposited by their pets in the Common Areas, on any other Lot in the Subdivision, or on any street in the Subdivision.

Section 26. Nuisances and Unsightly Materials. No house or other structure on any Lot shall be used for any business or commercial purpose other than home office which does not require meeting the public. Each Owner or Occupant shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance, or nuisance to others. No noxious, offensive, or illegal activity shall be carried on upon any Lot. No motorcycle, motorbike, motor scooter, go cart, or any other unlicensed motorized vehicle, except as permitted by the Board of Directors and the City, shall be permitted to be operated on or in the Common Areas. No Lot shall be used, in whole or in part, for the storage of rubbish of any character whatsoever, nor shall any substance, thing, or material be kept upon any Lot which will emit foul or noxious odors or which will cause any noise that will or might disturb the peace and quiet of the Owners or Occupants of surrounding Lots or property. The foregoing shall not be construed to prohibit the temporary deposits of trash and other debris for pick-up by garbage and trash removal service units. The Board

of Directors of the Association shall be the sole judge using its sole discretion in determining any violation of any provision contained in this Declaration.

Section 27. Hobbies and Activities. The pursuit of any inherently dangerous activity or hobby, including, without limitation, the assembly and disassembly of motor vehicles or other mechanical devices, the shooting of firearms, fireworks, or pyrotechnic devices of any type or size, the use of bows and arrows and other such activities shall not be pursued or undertaken on any part of any Lot or upon the Common Areas without the consent of the Association.

Section 28. Visual Obstruction at the Intersection of Public Streets. No objector thing which obstructs sight lines at elevations between two feet (2') and six feet (6') above the surface of the streets shall be placed, planted or permitted to remain on any corner Lot within the triangular area formed by the curb lines of the street involved and a line running from curb line to curb line at points twenty-five feet (25') from the junction of the street curb lines. The same limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway. This section does not apply to fences constructed by the Developer for purposes of sales or marketing.

Section 29. Governmental Restrictions. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions, and other regulations applicable to his Lot. In the event of any conflict between any provision of any such governmental code, regulation, or restriction and any provisions of this Declaration, the more restrictive provision shall apply.

Section 30. Roads. It shall be obligatory upon all owners of the Lots in this Subdivision to consult with the City before any driveways, culverts, other structures or grading are constructed within the limits of any dedicated roadway, and such placement or construction shall be done in accordance with the requirements of the City applying to the roads within the Subdivision in order that the roads or streets within the Subdivision which would be affected by such placement or construction may not be disqualified for acceptance by the City into the public road system.

Section 31. Easement for Roads. The right is expressly reserved to the Developer and Owners, their representatives, heirs, successors and assigns, to construct all streets, roads, alleys, or other public ways as now, or hereafter may be, shown on the Plat(s), at such grades or elevation as they, in their sole discretion, may deem proper; and, for the purpose of constructing such streets, roads, alleys or public ways, they additionally, shall have an easement, not exceeding ten feet (10') in width, upon and along each adjoining Lot, for the construction of properly banked slopes in accordance with the specifications of the government body or agency having jurisdiction over the construction of public roads; and no Owner of any Lot shall have any right of action or claim for

damages against anyone on account of the grade of elevation at which such road, street, alley or public way may hereafter be constructed, or on account of the bank slopes constructed within the limits of the said ten foot (10') easement.

Section 32. Minimum Square Footages. The minimum square footage for residences shall be 3,200 square feet. For purposes of calculating square footage contained in a residence, the square footage calculation shall include only heated, finished living space, and exclude garages, porches, and basements.

Section 33. Maintenance and Use of Common Areas and Amenities. The Common Areas and any and all amenities thereon shall be for the recreational use and enjoyment of the Owners and their permitted guests and invitees. Except as may otherwise be delegated to the Owners by the Association, the Association shall be responsible for the ongoing maintenance of all Common Areas and all improvements thereon in a reasonable order and condition, including without limitation any and all drainage ways, drainage detention areas, or other drainage facilities. The Association may publish regulations from time to time governing the use of all of the Common Areas including all amenities located thereon. Such regulations may be enforced in the same manner as the provisions of this Declaration.

Section 34. Erosion Control and Lot Maintenance. During and throughout construction, as well as after completion of a residence, the Builder or Lot Owner shall take such action as may be reasonably required: (a) to control, inhibit, and prevent land erosion and the sedimentation of streams and ponds from erosion, and (b) to keep such site in a neat and attractive condition free from trash and debris. If a Builder or Owner does not maintain a site as herein provided, then the Developer or the Association may, after reasonable notice to Builder or Owner, have the required work done and the cost thus incurred shall be paid by the Builder or Owner upon demand. The Developer and the Association shall have the right of entry upon each Lot as necessary to perform such work or cause such work to be performed or to require the builder or owner to use a designated erosion control specialist.

Section 35. Storage of Building Materials. No lumber, brick, stone, block or other building materials shall be stored on any Lot except for building purposes for that particular Lot. Construction trailers are permitted with approval of the DRC and the City. Landscaping and screening of stored materials is required as approved by the DRC.

Section 36. Drainage. No Lot Owner shall place fill on any Lot or place fences, trees, or landscaping in such a location or position that will interfere with the existing drainage on or from other Lots or the Common Areas. It is the responsibility of each builder to provide adequate drainage on the Lot.

Section 37. Curb Cuts and Damage. Any Builder or Owner who makes a curb cut or damages any Common Areas shall be responsible for repairing same at his sole expense and at the direction and to the satisfaction of the Developer or the Association. Builder or Owner shall reimburse Developer for the cost of any such repairs if Developer repairs damages.

Section 38. Excavation and Fill. No Owner or Builder shall excavate or extract earth from any Lot for any business or commercial purpose. Proposed elevation changes on a Lot shall be included with the plan submitted to the DRC prior to commencement of construction. Changes which adversely affect the surface grade of adjacent or surrounding Lots or the storm water drainage plan will not be permitted. Substantial quantities of fill brought to any Lot during construction shall be subject to prior approval by the Developer or Association for stability and effect on adjacent Lots.

Section 39. Driveways and Parking. All driveways and parking areas shall be paved with gray aggregate concrete or decorative pavers, stained concrete, or material as approved by the DRC. The driveway apron, from the curb through and to the back of the sidewalk shall be broom finish concrete with a standard joint pattern as determined by the DRC. Broom finish concrete may be permitted in the garage pad area if a decorative border is provided and approved by the DRC.

Section 40. Sidewalks & Trails. It shall be the responsibility of the Builder or Owner of the Lot on which a sidewalk is to be located to construct and properly install the portion of the sidewalk which is to be located on their particular Lot in accordance with the approved construction drawings and the specifications of the City. Such sidewalks shall be broom finish concrete and shall meet all of the specifications contained in the Americans Disabilities Act, and be completed at the time of completion of a residence on such Lot. If no residence has been constructed on a Lot within two (2) years following the date of the sale of such Lot by Developer to a Builder or Owner, then Developer or the Association may require the Builder or Owner to install the sidewalk on such Lot by written notice to the Lot Owner or Builder and such installation shall be completed within ninety (90) days after the date of such notice. If the Lot Owner or Builder fails to so install the sidewalk, Developer or Association may install same and collect the cost for such installation from the Builder or Lot Owner including interest thereon from the date the costs were incurred at the highest rate allowed by law. The Developer may choose to construct sidewalks on certain Lots in which case the subsequent builder or owner shall reimburse Developer for the cost of such sidewalk.

Section 41. Landscaping and Trees. The front elevation of each residence in the Subdivision shall be landscaped with shrubs, bushes, trees or other plantings so as to provide cover at grade across the front of the home. Street Trees shall be of the species specified by and planted in the location

specified by the DRC. Sod shall be utilized in all front yards, corner lot side yards, in full yards of Lots backing to open space and in all side yards from the front yard to the rear corners of the house. All other yard areas not sodded or planted shall be seeded and strawed. All plantings and landscaping and seeding shall be completed prior to occupancy of the residence, weather permitting. The Lot Owner shall be responsible for replacing any Street Trees along the street frontage of the owner's Lot if damaged or diseased, with same species of equal size and quality of original tree. In order to maintain continuity in the Subdivision, the initial planting of Street Trees and the replacement of Street Trees is not optional. In addition, the Association shall have the right to go on any Lot in order to prune or trim any such Street Trees. Each Lot Owner shall be responsible for maintaining shrubbery or other plantings on their Lot and keeping same properly trimmed and shall be responsible for replacing any such shrubbery or plantings if any such plantings die. The Lot Owner (whose Lot abuts the right of way and fronts the street next to which the trees are planted) shall be responsible for watering, fertilizing, and maintaining and caring for the Street Trees installed by the Developer and shall be responsible for replacing any dead, damaged, or diseased Street Trees whether they are in such street's right of way or within a landscape maintenance easement. In the event that such Street Trees are not being properly maintained by the Lot Owner (in the sole opinion of the Association), the Association may assume the maintenance of such tree(s), at the cost and expense of such Lot Owner. If such tree dies and is not replaced by the Lot Owner within ninety (90) days from notification by the Association, or within the nearest planting season, the Association shall have the right to replace such tree at the Lot Owner's expense. All plant material species and arrangements must be installed per DRC approved plans.

Section 42. Front Porches, Solar Panels, and Skylights. No front porch on any residence shall be enclosed in any way either screened in or glassed in or otherwise walled in unless approved by the DRC. The materials which may be used for front porch railings shall be consistent with the architecture of the house and approved by the DRC. Skylights shall be clear and not visible from the street. Solar panels shall be subject to DRC approval and be located to rear of home and have non-reflective surfaces.

Section 43. Mailboxes. Mailboxes and posts shall conform to the standard Subdivision mailbox design established by the DRC. Each Lot Owner is responsible for the maintenance of the mailbox and post on the Owner's Lot. The Association shall have the right to make repairs and/or replacements to mailboxes, posts and supports, if Lot Owner(s) fail to make repairs or replacement in a reasonable time frame, in which case the Lot Owner(s) shall be billed for the cost of repair and replacement.

Section 44. Private Drive Maintenance and Supplemental Dues. Private Drive Lot Owners shall be collectively and equally responsible for the cost of the maintenance of the Private Drive from which they have vehicular access. The

Association shall oversee the maintenance and repair of the Private Drives. The Association shall assess additional dues to the Private Drive Lot Owners ("Supplemental Dues") to pay for the maintenance and repair of the Private Drives, with such maintenance and repair to include the repaving of the Private Drive when needed, snow removal, the placement of road salt for de-icing, mowing of grass along the Private Drive, and the removal of downed limbs and trees, debris, leaves, and other items to allow safe and unimpeded vehicular access. The cost to repair Private Drive damage caused by a Private Drive Lot Owner, a Private Drive Lot Owner's contractor, or a Builder shall be the responsibility of the party causing such damage.

Section 45. Rules and Regulations. The Association shall have the right to pass rules and regulations governing additional aspects of and imposing additional restrictions on the use and maintenance of the Lots and use of and maintenance of Common Areas. Said rules and regulations may include (without limitation) the right to make additional special assessments against specific Lot Owners as a result of a Lot Owner's (or any agent or invitee of a Lot Owner) violation of any of the terms of this Declaration or of any rules or regulations promulgated hereunder. Any and all assessments made pursuant to the rules and regulations shall be deemed assessments properly made pursuant to the terms of this Declaration and may be collected by the Association in accordance with the provisions as contained herein. In addition, the Rules and Regulations may include (without limitation) restrictions and rules regarding any and all aspects of the use of the Lots and residences thereon as well as the Common Areas regarding any matter which the Association believes should be regulated in order to preserve the desirability and attractiveness and/or provide for maintenance of the Development if the Association reasonably determines that such rules and regulations shall benefit the overall Development. Specifically, and without limiting any additional matters which may be addressed in the Rules and Regulations, the Rules and Regulations may regulate lawn art, lighting, neon signs, interior window coverings that are visible from the street, and holiday decorations. In addition, the Board of Directors of the Association shall have the power to set, assess, and collect fines from Lot Owners for violations of this Declaration or any Rules of the Association. Tasteful landscaping is required by the approved plan including attractive ornamentation which does not create a nuisance to other Lot Owners. The Association reserves the right to require any Lot Owner to remove any landscaping and or lawn art which the Association deems to be unattractive or a nuisance to other Lot Owners.

## ARTICLE V INSURANCE

Section 1. Common Area. The Association shall keep in force and maintain such hazard, public liability, or other insurance as it shall deem

necessary relating to the Common Area and any amenities located thereon. The Association may also insure any other property, whether real or personal, owned by it, against such hazards as may be deemed desirable by the Association. Premiums for all insurance carried by the Association shall be part of the expenses covered by the annual assessments of the Association.

Section 2. Lots. Insurance against damage by fire or other casualty to the improvements on any Lot, liability insurance with respect to occurrences on any Lot, and other insurance relating to each Lot, shall be the responsibility of the individual Lot Owners.

Section 3. Fidelity Bonds. At the discretion of the Board of Directors of the Association, blanket fidelity bonds will be maintained by the Association for all officers, directors, trustees, and employees of the Association handling or responsible for, the funds of or administered by the Association. Further, in the event the Association delegates some or all of the responsibility for the handling of funds to a management agent, a blanket fidelity bond will be required for officers, employees, and agents of such management agent handling or responsible for, the funds of or administered on behalf of the Association.

(a) The total amount of fidelity bond coverage shall be based upon the best judgment of the officers of the Association and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bond be less than a sum equal to three (3) month's aggregate assessment on all Lots plus reserve funds.

(b) All such fidelity bonds shall:

(i) Name the Association as an obligee;

(ii) Contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and

(iii) Shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association.

(c) Premiums on all such fidelity bonds (except premiums on fidelity bonds maintained by a management agent for its officers, employees, and agents) shall be paid by the Association as a common expense.

Section 4. Other Insurance. The Association may also obtain such other

insurance as the Board of Directors deems desirable, in such amounts, from such sources and in such forms as it seems desirable, insuring the Common Area owned and maintained by the Association and insuring each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the Bylaws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee. The premiums for such insurance and bonds shall be a common expense of the Association.

Unpaid officers and Directors of the Association shall not be liable to any Lot Owner for any act or omission unless the act or omission constitutes gross negligence or willful misconduct. If an unpaid Director or officer of any of the Associations prevails in any legal action brought against him in his official capacity by a Lot Owner, that Lot Owner shall pay the Director or officer all his reasonable legal fees.

## ARTICLE VI EASEMENTS

Easements. In addition to, and without limitation of, any other easements or rights reserved elsewhere in this Declaration, the following rights and easements are hereby reserved:

1. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on any Plat and as otherwise shown by the public records. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Lot Owner, except for those improvements for which a public authority or utility company is responsible. In the event any Lot Owner or Builder damages or alters any improvements or otherwise alters the flow of drainage as designed for the Subdivision, then such Lot Owner or Builder shall be responsible for repairing any such damage or make any corrections necessary in order to restore normal drainage in accordance with the drainage design for the Subdivision.
2. Easements are reserved as shown on any plat and as otherwise shown by the public records for the purpose of permitting any and all utilities, including without limitation underground wires or cables, water, sewer, and drainage, and for the purpose of permitting public access to sidewalks and trails.

3. Each Lot Owner shall grant such easements upon his Lot as are necessary to serve the Property for water, sewer, drainage, telephone, gas, electricity and other utilities, and the erection and maintenance of the necessary poles and other equipment, wires and conduits, sewer and water lines, drainage facilities on, above or below any Lot; provided, however, no Lot Owner shall be required to grant any easement which would unreasonably interfere with the use and enjoyment of his Lot or House and any easement granted hereby shall impose on the grantee of said easement the obligation to (a) maintain said easement so that the use thereof will not interfere with the use and enjoyment of any Lot or House and (b) repair and restore that portion of any Lot upon which the easement is located to its original condition or as near as possible to its original condition.
4. Until completion of Developer's intended development of the Property, an easement is reserved to the Developer for ingress and egress generally across the Property, including any Lot, at reasonable places, for the purpose of completing Developer's intended development of the Property, provided that said easement shall be reasonable and shall not interfere with the construction of improvements on a Lot nor the use and enjoyment of a Lot by a Lot Owner. Developer and the Association also reserves any and all easements reasonably required to allow completion, repair and maintenance of any and all utility areas, or improvements.
5. Until completion of Developer's intended development of the Property, an easement is reserved to the Developer to enter the Common Area and to maintain thereon such facilities and perform such operations as in the sole opinion of the Developer may be reasonably required, convenient or incidental to the intended development of the Property by the Developer.
6. An easement is granted and reserved to the Association, its officers, agents, employees, including employees of any management company having a contract with the Association, over and upon the Common Area to perform the duties of maintenance and repair of the Common Area, to maintain any utilities for which an easement has been granted, and to prevent damage to the Common Area or any Lot or House situated thereon. In addition, the Association shall have the authority to grant easements over the Common Areas for such purposes as may be determined by the Association which does not unreasonably interfere with the Lot Owners use of the Common Areas.
7. In accordance with the specifications of the governmental body or agency having jurisdiction over the construction of public roads, the right is expressly reserved to the Developer, to construct all streets, roads, alleys (including any and all utility or drainage facilities), or other public ways as now, or hereafter, may be shown on any Plat at such grades or elevations

as Developer, in its sole discretion, may deem proper; and for the purpose of constructing such streets, roads, alleys or public ways, Developer additionally shall have an easement, not exceeding ten feet (10') in width, upon and along each adjoining Lot, for the construction of proper bank slopes and no Lot Owner shall have any right of action or claim for damages against any one on account of the grade or elevation at which such road, street, alley or public way may hereafter be constructed, or on account of the bank slopes constructed within the limits of the said ten foot (10') easement.

8. The Developer reserves the right to build the entrance sign(s) at the entrance(s) for the Subdivision. Once constructed, the entrance sign shall become the property of the Association. The Developer reserves all rights of ingress and egress onto said Common Area as may be necessary to construct said entrance sign.

## **ARTICLE VII** **GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Lot Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Common Areas and any improvements thereon are not being maintained as required herein, any applicable governing authority having jurisdiction over the Property, including without limitation the City, shall have the right to maintain all Common Areas and improvements thereon and the cost of any such maintenance incurred by such governing authority shall be assessed against the Association and/or the Owners jointly and severally.

Section 2. Fines. The Board shall have the power to impose reasonable fines against Owners or occupants, which shall be an assessment on the Lot, shall constitute a lien on the property of the violating Owner, and may be collected in the same manner provided for the collection of assessments as above stated. The Board also shall have the authority to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws, or any Rules & Regulations duly adopted hereunder, provided however; nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, these Bylaws, or any Rules & Regulations and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the

Association. The failure of the Board to enforce any provision of the Declaration, these Bylaws, or any Rules & Regulations shall not be deemed a waiver of the right of the Board to do so thereafter. A fine will automatically be assessed for violation of DRC approval requirements.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of those Owners then owning the Lots has been recorded prior to the expiration of said forty (40) year period or any said ten (10) year period, as the case may be, agreeing to terminate said covenants or to modify said covenants in whole or in part for the next ten (10) year period. Notwithstanding the foregoing, as long as any open space is owned by the Association, covenants that comply the City's Zoning Ordinance must remain in place. Except as provided below, the provisions of this Declaration may be amended by Developer, without joinder of the Owner of any Lot, for a period of five (5) years from the date of recordation of this instrument. Thereafter, this Declaration may be amended by the affirmative vote of at least three-fourths (3/4ths) of the votes of the Owners. No such amendment shall become effective until the instrument evidencing such change has been filed of record signed by the required number of Lot Owners. Notwithstanding the foregoing, the Owners of the Lots shall have no right to amend the provisions under this Declaration concerning the right of Developer to subject certain additional property to these restrictions or reasons contained in Section 9 without the prior written consent of Developer. In addition, notwithstanding anything to the contrary contained herein, Developer reserves the right to file any amendments that may be necessary to correct clerical or typographical errors in this Declaration.

Section 5. Appointment of Successor Developer; Resignation of Developer. Developer reserves the right to assign its rights as Developer to any other person as to all or any portion of the Property by written instrument specifically setting out such assignment and any such assignee shall become the Developer hereunder upon such assignment with respect to the portion of the Property so assigned. Developer shall have the right at any time upon sixty (60) days written notice to the Association to resign as Developer of the Subdivision and shall thereafter be freed from any and all obligations imposed upon Developer upon the effective date of such resignation. Any representatives of Developer on the Association's Board may also resign at any time upon written notice to the Association.

Section 6. Headings and Binding Effect. Headings are inserted only for

convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer. The covenants, agreements and rights set forth herein shall be binding upon and inure to the benefit of the respective heirs, executors, successors and assigns of the Developer and all persons claiming by, through or under Developer.

Section 7. Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Developer or its successors reserves the right, but shall have no obligation, (by and with the mutual written consent of the Owner or Owners of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

Section 8. Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to inspection by any member upon five (5) days written prior notice. The charter, bylaws of the Association and this Declaration shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

Section 9. Conflicts. In the event of any conflict between the provisions of this Declaration and the bylaws of the Association, the provisions of this Declaration shall control.

Section 10. Developer's Right To Add Additional Property To The Subdivision. Developer and its successors and assigns, reserves the right to add additional acres of land to the terms of this Declaration by means of a supplemental declaration to be signed by Developer or its successors and assigns and recorded in the Davidson County or Williamson County Register of Deed's Office. The additional property shall be in addition to the property described above but must be near the Property or the additional property described above. Upon the addition of any such additional property, all Lot Owners within such property shall have the same rights and obligations as all other Lot Owners in the Subdivision effective with the date of recordation of the Supplemental Declaration adding such additional property to the Subdivision.

Section 11. Consent to Rezoning and Annexation. Every Owner shall be deemed to have consented to any rezoning of the Property or any of the additional property which may be added to the Subdivision as described in Section 10 above which may be necessary for the development of additional sections or the addition of such property to the Subdivision.

Section 12. City of Brentwood Requirements. Notwithstanding anything to the contrary contained herein, the following requirements of the laws of the City of Brentwood shall govern the Association and the Subdivision:

1. *Ownership of Open Space.* All Open Spaces shall be deeded by the Developer to the Association as follows:
  - a. For Open Space within a specific section of the Subdivision: dedication shall occur when certificates of occupancy have been issued for more than 75 percent of the Lots approved for Houses within that section of the Subdivision.
  - b. For open space, not within a specific section of the Subdivision or in a section of the Subdivision containing no Houses: dedication shall occur when certificates of occupancy have been issued for more than 75 percent of the Lots approved for Houses within the Subdivision.
  - c. Notwithstanding the foregoing, Developer shall contact the City's Planning Director to request an inspection of Open Space areas prior to Transfer of Control to the Association. The City's engineering department shall then conduct an inspection to verify that amenities and improvements approved or required by the City's Planning Commission, or required under the City's Subdivision Regulations, have been completed in full compliance with the requirements of the Planning Commission and Subdivision Regulations, and that the Open Space, including amenities and improvements, can be safely maintained by the Association in accordance with all applicable codes and regulations. Transfer of ownership of Open Space to the Association shall not occur until the Open Space has passed the inspection required by this subsection, unless otherwise permitted by the Planning Commission.
2. *Requirements for operation and maintenance.* Operation and maintenance of designated Open Space shall be carried out pursuant to the following provisions and conditions:
  1. The Association will be responsible for liability insurance, local taxes, and maintenance for the Open Space, including recreational and other facilities for as long as the Open Space is owned by the Association.
  2. The Association shall not convey any interest in any designated Open Space, by sale, lease or otherwise except as follows:
    - i. A sale or lease, approved by the City planning commission, to an organization conceived and established to own, or lease, and maintain the open space;
    - ii. Conveyances to the City or other governmental entity or public utility for public purposes, provided that any such conveyance (other than right-of-way acquisitions and public utility or drainage easements) must be approved by the board of

commissioners, following review and recommendations by the planning commission;

iii. Minor changes in lot lines that involve transferring excess Open Space to lots; provided further that the conditions of any transfer shall conform to the officially recorded development plan, or a modified development plan shall be submitted for approval.

3. The Association shall not be dissolved, except upon disposal of the designated Open Space as provided for in this section.
4. When certificates of occupancy have been issued for more than 50 percent (50%) of the Lots approved for Houses within the Subdivision, the following provisions shall apply:
  - i. A special meeting of the Association shall be called within sixty (60) days to initiate an orderly process for Transfer of Control to the Owners, however, such transfer shall not affect control of the DRC except as set forth herein.
  - ii. At least fifty percent (50%) of the members of the Board of directors must be Owners of Houses within the Subdivision, elected by their fellow homeowners.
  - iii. Unilateral amendment of the Subdivision covenants or Association by-laws by the Developer will not be allowed.
  - iv. The developer of the Subdivision will be entitled to no more than one vote for each lot owned by the developer.
5. When certificates of occupancy have been issued for more than 75 percent (75%) of the Lots approved for Houses within the Subdivision, the following provisions will apply:
  - i. A meeting of the Association must be called within sixty (60) days, at which meeting a new Board of Directors for the Association must be elected. A majority of the directors must be Owners of Homes in the Subdivision; however, this requirement shall not affect control of the DRC except as set forth herein.
  - ii. Until certificates of occupancy have been issued for 90 percent (90%) of the Lots approved for Houses within the Subdivision, the Developer may appoint one or more representatives to the Board of Directors, provided that the Developer's appointees may not constitute a majority of the board.
6. All Lots within the Subdivision are members of the Association and have joint ownership in all the Open Space within the Subdivision, and are subject to the following provisions:

- i. Members of the Association shall be responsible for paying a pro rata share of the costs of the Association operation;
  - ii. The assessments levied by the Association may become a lien on the property if not paid;
  - iii. The Association may adjust its by-laws and structure to meet changing needs;
  - iv. Each Lot Owner shall have permanent unrestricted right to use lands and facilities owned by the Association; and
  - v. Members of the Association shall be responsible for a proportional share of any cost of maintaining designated Open Space incurred by the City of Brentwood pursuant to the provisions of this Declaration, except where a maintenance agreement establishing other provisions has been negotiated between the City and the Association and any such costs assessed and not paid shall become a lien on the Owner's Lot.
7. If the Association, or any successor organization, shall at any time after the establishment of the Subdivision fail to maintain the Open Space in reasonable order and condition in accordance with the officially recorded Master Plan and Plats, and this Declaration, the City Manager may serve written notice upon the Association advising of such deficiencies and the right to a formal hearing regarding such deficiencies. Upon request received by the City Manager within fourteen (14) days of the date of such notice, the City Manager shall conduct a hearing to allow proposals for the maintenance of such space to be heard. If such deficiencies are not corrected within thirty (30) days from the date the City Manager's notice is served on the Association, or within such time as the City Manager may establish after conducting a hearing on the deficiencies, the City Manager may make arrangements for the Open Space to be maintained by the city or its agents or contractors until such time as the Association demonstrates the ability to resume such maintenance. The cost of maintenance shall be assessed proportionally against the Lots within the Subdivision that have a right of enjoyment of the Open Space, and, if not paid, shall become a lien on such Lots.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, have hereunto set their hands this 15<sup>th</sup> day of February, 2017.

MURRAY LANE DEVELOPMENT, LLC



By: Brandon Jenkins  
Its: Chief Manager

**STATE OF TENNESSEE  
COUNTY OF WILLIAMSON**

Personally appeared before me, the undersigned, a Notary Public in and for the county and state aforesaid, Brandon Jenkins with whom I am personally acquainted, and who acknowledged that and who further acknowledged that he is the Chief Manager of Murray Lane Development, LLC, a limited liability corporation, the within named bargainor, and being authorized to execute this instrument on behalf of Murray Lane Development, LLC, that he executed the foregoing instrument for the purposes therein contained by signing his name as Chief Manager of Murray Lane Development, LLC.

Witness my hand and official seal at office, on this the 15<sup>th</sup> day of February, ~~2016~~ 2017

Carolyn S. Swearingen  
Notary Public

My Commission Expires: \_\_\_\_\_ My Commission Expires May 6, 2019

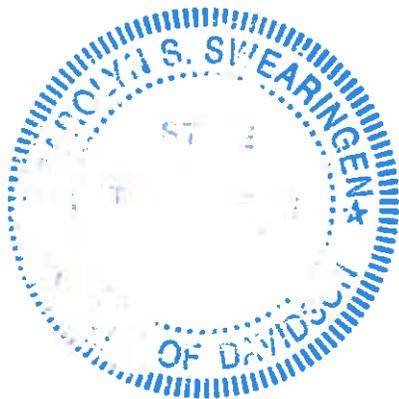


EXHIBIT "A"  
AVERY SUBDIVISION  
PROPERTY DESCRIPTION

Land in Williamson County, Tennessee, described as follows:

BEGINNING at the southwest corner of Parcel No. 3, running along said south line N. 77 degrees 30 minutes east 708.03 feet; thence N. 68 degrees, 51 minutes East 271 feet; thence N. 70 degrees, 89 minutes East, 456.25 feet; thence S. 46 degrees, 36 minutes East 815.5 feet to the southerly line of the original survey and the southerly corner of Parcel No. 3; thence S. 40-3/4 W. 490 feet; thence S. 65 W. 1471.8 feet to the center of the road; thence N. 20 W. 894 feet to the place of beginning, containing 31.5 acres of land, be the same more or less, by survey of R. S. Kriger, dated May 29, 1952.

**EXHIBIT "B"**  
**BY-LAWS**  
**OF**  
**AVERY HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**DEFINITIONS**

The following words, when used herein, shall have the following meanings:

Section 1. "Association" shall mean Avery Homeowners Association, Inc., a Tennessee not-for-profit corporation, its successors and assigns, which has as its members all owners of Lots in the Property. "Charter" shall mean the Articles of Incorporation of the Association as filed with the Office of the Secretary of State for Tennessee.

Section 2. "Board of Directors" shall mean the Board of Directors of the Association as described in Article IV hereof.

Section 3. "Declaration" shall mean the instrument headed "Declaration of Covenants, Conditions and Restrictions" recorded simultaneously herewith in the Register's Office for Williamson County, Tennessee and Davidson County, Tennessee as hereafter amended.

Section 4. "Developer" shall have the meaning given it in the Declaration.

Section 5. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration.

Section 6. "Common Area" shall have the meaning given it in the Declaration.

Section 7. "Lot" shall have the meaning given it in the Declaration.

Section 8. "Lot Owner" shall have the meaning given it in the Declaration.

Section 9. "Plat" shall have the meaning given it in the Declaration.

Section 10. "Property" shall have the meaning given it in the Declaration.

**ARTICLE II**  
**NAME AND LOCATION**

The name of the Association is Avery Homeowner's Association, Inc. The principal office of the Association shall be located at Morris Property Management, 413 Welshwood Drive, Ste 200, Nashville, Davidson County, TN 37211 or at such other place as may be designated by the Board of Directors, meetings of members and directors may be held at such places within the State of Tennessee, County of Davidson or Williamson, as may be designated by the Board of Directors.

**ARTICLE III**  
**MEETING OF MEMBERS**

Section 1. Annual Meetings. The first regular annual meeting of the Members may be held, subject to the terms hereof on any day, at the option of the Board of Directors; provided, however, that the first meeting may (if necessary to comply with Federal Regulations) be held no later than the earlier of the following events:(a) Four (4) months after all the Lots have been sold by the Developer or (b) Three (3) years following conveyance of the first Lot by the Developer. Each subsequent regular annual meeting of the Members shall be held within fifteen (15) days of the anniversary of the first regular annual meeting each year thereafter at such time as set by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote at the meeting, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, thirty-five percent (35%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Charter, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote at the meeting shall have power to adjourn the meeting from time to time,

without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Further, as provided in the Declaration, if a quorum is not present a subsequent meeting may be called and the required quorum shall be reduced by half at such meeting and such procedure may be repeated until a quorum is established although in no event may the required quorum be less than ten percent (10%) of the total number of eligible votes.

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

Section 6. Action Taken Without A Meeting. The members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of the number of members which would otherwise be required to approve such action. For instance, if an action required the approval of members holding three-fourths (3/4ths) of the total votes, then a writing signed by members holding three-fourths (3/4ths) of the total votes of all members would be effective as if such approval was given at a meeting duly called for such purpose. Any action so approved shall have the same effect as though taken at a properly called meeting of the members.

#### **ARTICLE IV** **BOARD OF DIRECTORS**

Section 1. Number. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors of the Association shall consist of three (3) persons, who need not be Members of the Association, who shall be appointed by the Developer and who shall serve until the Transfer of Control (as defined in the Declaration). After the Transfer of Control (as defined in the Declaration), the Board of Directors shall consist of five (5) directors each of whom must individually be a member of the Association or be an owner, officer, trustee or otherwise affiliated with a member of the Association.

Section 2. Term of Office. Directors shall be elected for terms of two (2) years or until their successor is elected. In addition, the Directors shall be grouped into three (3) separate classes so that approximately one-third (1/3) of the existing total number of Directors is up for re-election each year. Thus, as to the initial Directors, certain Directors will serve for one (1) year terms, certain Directors shall serve for two (2) year terms, and certain Directors shall serve for three (3) year terms as may be determined by the initial Directors elected by the Owners. Thereafter, Directors shall be elected for two (2) year staggered terms so that only one third (1/3) of the directors are up for reelection in any one (1) year.

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

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

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

## **ARTICLE V** **NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nomination may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman who shall be a member of the Board of Directors and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VI** **MEETING OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at intervals established by the Board upon at least three (3) days written notice, (or without notice if the time and place has been previously fixed

by the Board), at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

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

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

## **ARTICLE VII** **POWERS AND DUTIES**

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

(a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish, assess and collect penalties and fines for the infraction thereof;

(b) Suspend the voting rights and right to use recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended and reasonable financial assessments made after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Charter or the Declaration;

(d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

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

(a) Cause to be kept a complete record of all its acts and

corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one fourth (1/4) of the Class A Members who are entitled to vote.

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

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

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

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

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Lot Owner personally obligated to pay the same.

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability, hazard, and other insurance on property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as required by the Declaration;

(g) Cause the Common Area to be maintained.

(h) Exercise all discretion as provided in the Declaration regarding enforcement of all terms, restrictions and provisions contained in the Declaration and to take any and all enforcement actions as may be required pursuant thereto. Whenever discretion is granted to the Board to act upon any matter as required under the Declaration of these Bylaws, such discretion may be exercised by the president of the Association although any such action by the president shall be subject to change upon review by the Board.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

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

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

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

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

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

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

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

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

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

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

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

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

#### **ARTICLE IX** **COMMITTEES**

The Board shall appoint a DRC, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

#### **ARTICLE X** **BOOKS AND RECORDS**

The books, records, papers of the Association and the Declaration, Charter and Bylaws shall be available for inspection by any Member or to the holder, guarantor or insurer of any first mortgage at the principal office of the Association, during normal business hours where copies may be purchased at reasonable cost.

#### **ARTICLE XI** **ASSESSMENTS**

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments as well as any other amounts assessed against a Lot Owner by the Association which are secured by a continuing lien upon the property against which the assessment is made. Any

assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall be subject to a late charge in an amount established by the Board of Directors and shall bear interest from the date of delinquency at the maximum rate allowed by applicable law. The Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

## **ARTICLE XII** **AMENDMENTS**

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person, or by proxy.

Section 2. In the case of any conflict between the Charter and these Bylaws, the Charter shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## **ARTICLE XIII** **MISCELLANEOUS**

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

