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DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS & RESTRICTIONS

MIRABELLA

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS & RESTRICTIONS (the "Declaration") is executed this 29th day of November, 1999 by Mirabella Development, L.L.C. ("Developer"),

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real estate in Rutherford County, Tennessee as more particularly described on Exhibit "A" attached hereto and as shown upon the Master Plan for Mirabella, of record in Book 22, page 61, Register's Office for Rutherford County, Tennessee (said real estate being referred to herein as the "Development"); and

WHEREAS, Developer desires to provide for the protection and preservation of the values, amenities, desirability and attractiveness of the Development; and,

WHEREAS, Developer desires to establish and provide a system of administration, operation and maintenance of the common areas of the Development; and,

WHEREAS, Developer further desires to establish for Developer's benefit and for the mutual benefit, interest and advantage of each and every person or other entity hereafter acquiring any portion of the Development, certain rights, easements, privileges, obligations, restrictions, covenants, liens, assessments, and regulations governing the use and occupancy of the Development and the maintenance, protection and administration of the common use facilities thereof, all of which are declared to be in furtherance of a plan to promote and protect the operative aspects of residency or occupancy in the Development and on all portions thereof, and are intended to be covenants running with the land which shall be binding on all parties having or acquiring in the future any right, title or interest in and to all or any portion of the development, and which shall inure to the benefit of each present and future owner thereof.

NOW, THEREFORE, Developer, as legal title holder of the Development, and for the purposes set forth above, declares as follows:

ARTICLE I.

DEFINITIONS

The following words when used in this Declaration or any supplemental declaration hereto (unless the context shall prohibit) shall have the following meanings:

1. "Annual Assessments" shall mean and refer to the assessment described in Article IV, Section 1.
2. "Association" shall mean and refer to Mirabella Homeowners Association, Inc., a not-for-profit corporation to be organized and existing under the laws of the State of Tennessee, its successors and assigns.
3. "Board" shall mean and refer to the Board of Directors of the Association.
4. "By-Laws" shall mean and refer to the By-Laws of the Association attached hereto as Exhibit "B" and made a part hereof as the same may be amended from time to time.
5. "Committee" shall mean the Architectural Control Committee established pursuant to Article V hereof.
6. "Common Areas" shall mean and refer to all facilities within the Development used in common by the Owners, including without limitation, all roads, footpaths, bicycle paths, jogging trails, recreational facilities, gates, boundary walls and fences, median areas, and any areas lying within or adjacent to the roads which are desirable for the Association to maintain and landscape. The Common Areas may be owned by the Association in fee or for a term of years, but for the non-exclusive use, benefit and enjoyment of the owners subject to the provisions of this Declaration, and will be shown as Common Areas on the plats of the Development placed of record now or in the future.
7. "Declaration" shall mean and refer to this Declaration of Protective Covenants, Conditions and Restrictions applicable to the

THIS INSTRUMENT PREPARED BY  
MURFREE, COPE, HUDSON & SCARLETT, ATTORNEYS  
MURFREESBORO, TENNESSEE  
From information furnished by the parties

For Amendment, see Record Book 198, page 2390.  
(Re: Mirabella, Sections II & III)

For Supplementary Declaration of Restrictive Covenants, see Record Book 466, page 120. (Re: Mirabella, Section IV)

Development and which is recorded in the Office of the Register of Deeds for Rutherford County, Tennessee.

8. "Developer" shall mean and refer to Mirabella Development, L.L.C., a Tennessee limited liability company, having its principal place of business in Murfreesboro, Tennessee, its successors and assigns.

9. "Development" shall mean and refer to the property described on Exhibit "A" attached hereto and made a part hereof.

10. "Engineer" shall mean the architect or engineer engaged by the Committee to review Plans pursuant to Article V hereof.

11. "Impositions" shall mean and refer to any Annual Assessments, Special Assessments, Supplemental Landscape Assessments, or any other charges by the Association against one or more Lots owned by an Owner together with costs of enforcement and reasonable attorneys fees in connection therewith, and shall additionally include, to the extent authorized by the provisions herein, interest thereon.

12. "Improvements" shall mean any building, building addition, outbuilding, garage, detached structure, swimming pool, recreational facility, driveway, parking area, walkway, wall, fence, or utility service, or such other improvement or structure constructed or located upon all or any portion of the Development. It is intended that this definition of "Improvements" be broad in scope and is intended to encompass any man-made alteration of the condition of the Lot or Common Areas from and after the date of this Declaration.

13. "Lot" shall mean and refer to any plot of land within the Development to be used for single family residential purposes and so designated on the Plat.

14. "Majority of Owners" shall mean and refer to the holders of more than ~~Seventy-five~~<sup>75</sup> percent of the total Votes of the Members.

15. "Member" shall mean and refer to any person or persons who shall be an Owner, and as such, shall be a Member of the Association. "Class A Members" shall mean and refer to any Owner other than the Developer, and "Class B Member" shall mean the Developer.

16. "Mortgage" shall mean and refer to any holder of a first priority deed of trust encumbering one or more Lots.

17. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee interest in any Lot within the Development, excluding however those parties having such interest merely as a security interest for the performance of an obligation.

18. "Plat" shall mean and refer to the Master Plan of Mirabella, of record in Book 22, page 61, Register's Office for Rutherford County, Tennessee, as the same may be amended or supplemented from time to time.

19. "Person" shall mean and refer to a natural person, as well as a corporation, partnership, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

20. "Plans" shall mean the detailed plans prepared for construction of any Improvement which shall comply with the provisions of Article V, Section 4 hereof.

21. "Special Assessments" shall mean additional assessments of Owners made from time to time by the Board pursuant to Article IV, Section 2.

22. "Vote" or "Votes" shall mean the vote or votes in the affairs of the Association to which each Member is entitled, all as shown on the schedule attached hereto as Exhibit C and incorporated herein.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

1. Definition of Property Subject to this Declaration. The property which is and shall be held, transferred, sold, conveyed and

occupied subject to this Declaration is located in Murfreesboro, Rutherford County, Tennessee, and is more particularly described on Exhibit "A" and shown on the recorded Plat of Phase I consisting of Lot Numbers 1 through 35 and the Common Areas shown thereon, and all subsequent phases encompassing a total of 40 lots. The Lots and Common Area shown on the Plat are made subject to this Declaration. The Developer, as the legal title holder in fee of the Development, hereby submits and subjects the Development to the provisions of this Declaration and By-Laws. The covenants and restrictions contained herein constitute covenants running with the land and binding on all parties now owning or hereafter having or acquiring any right, title or interest in any Lots or any portion of the Development, and shall inure to the benefit of each Owner hereof. Every Person hereafter acquiring a Lot or any portion of the Development, by acceptance of a deed thereof, shall accept such interest subject to the terms and conditions of this Declaration, and by acceptance of the same shall be deemed to have consented to and be bound by the terms, conditions and covenants of this Declaration.

### ARTICLE III

#### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

1. Members. Every person who is an Owner of record of a fee interest in any Lot which is included in the Development shall be a Member of the Association. Membership in the Association is appurtenant to and may not be separated from ownership of any Lot.

2. Classes of Membership. The Association shall have two classes of membership:

a. Class A Members shall be all Owners except for the Developer prior to the termination of the Class B Membership. If, however, Developer owns one or more Lots upon or after the termination of its Class B Membership, then Developer shall become a Class A Member.

b. The Class B Member shall be the Developer, its successors or assigns. The Class B Membership shall terminate and cease upon specific written termination by Developer or its successor or assigns, or the last to occur of (i) Developer owns fewer than two (2) lots in the Mirabella development or any sections added thereto or (ii) ten years from the date hereof.

3. Voting and Voting Rights. The voting rights of the Members shall be appurtenant to their ownership of Lots. The two Classes of Members shall have the following voting rights.

a. Each Class A Member shall be entitled to cast the number of Votes allocated to the Lot(s) owned by such Member on the schedule of Lots attached hereto as Exhibit "C" and incorporated herein by this reference. It is expressly understood that the allocation of Votes on Exhibit "C" need not be proportional to acreage (or be based on any other mathematical formula) and that said allocation shall be conclusive proof in any dispute as to voting rights. When two or more persons hold an interest (other than a leasehold or security interest) in a Lot, all such Persons shall be Members, but the Votes attributable to such Lot shall be exercised by one of such Persons as proxy and nominee for all such Members and in no event shall more than one (1) Member be entitled to cast the Votes attributable to any one Lot. Furthermore, neither the Developer nor any other person or individual dealing with the Development shall have any duty to inquire as to the authorization of the Member casting the Votes for any such Lot, but shall be entitled to rely upon the evidence of voting as conclusive evidence of such member's authority to cast the Votes attributable to such Lot.

b. The Class B Member shall be entitled to cast the greater of (i) five (5) times the number of Votes shown on Exhibit "C" for each of the Lots to which it holds title; or (ii) two (2) times the number of Votes to which all Class A Members are then entitled.

c. Any Member who is delinquent in the payment of any charges or assessments duly levied by the Association against a Lot owned by such Member shall not be entitled to vote until all such charges, together with reasonable penalties and interest thereon as the Board may impose, have been paid to the Association.

4. Manner of Voting. Except as specifically provided elsewhere herein, the Board shall have the authority to regulate the procedural rules governing the voting of Members, the acceptance of proxies from Members, the validity of voice votes, ballot votes, or other manners of voting, and any regulation of the solicitation of votes

or proxies.

ARTICLE IV  
ASSESSMENTS

1. Annual Assessments. The Board shall have the power and authority to levy annual assessments against the Lots within the Development. Annual Assessments shall be used to provide funds for such purposes as the Board shall determine to be for the benefit of the Development, including, without limitation, the improvement, maintenance, operation and security of the Development and Common Areas, payment of taxes and insurance thereon, payment of utility bills thereon (including water for sprinkler systems), payment of reasonable costs to provide attractive seasonable landscaping of the Common Areas, street maintenance costs, the repair, replacement and additions that may be necessary to the Common Areas and the cost of labor, equipment, materials, management and supervision thereof. The Board shall have the right, but not the obligation, to use the Annual Assessments to provide supplemental landscaping, maintenance within Lots, and to provide garbage and trash collection and disposal, if needed, to supplement that provided by public authority. The Board shall fix the amount of Annual Assessment each year by preparing an annual budget for the services to be provided by the Association in the coming year, and allocating said amount among the Lots with each Lot being assessed the percentage of the budgeted amount as is set forth on the schedule attached hereto as Exhibit "C".

2. Special Assessments. In addition to the Annual Assessments authorized herein, the Board may levy a Special Assessment applicable to a particular year, provided that any such Special Assessment shall have the affirmative Votes of not less than Seventy-five (75%) percent of the total Votes within the Association at a meeting of all Members which shall be held after not less than five (5) days' written notice of the date, time and purpose for said meeting, at which a quorum shall be present. Special Assessments shall be due and payable on the date which is fixed by the resolution authorizing such assessment.

3. Exempt Property. The Impositions and liens created under this Article shall not apply to the Common Areas. All property within the Development which is dedicated to and accepted by a local public authority, which is granted to or used by a utility company, or is designated as part of the Common Area shall be exempt from such Impositions.

4. Property Owned by Developer. It is understood that the Developer shall pay all Impositions that may become due upon the Lots it owns.

5. Payment of Annual Assessments. The Board shall have the power and authority to determine the payment method for Annual Assessments. Unless provided otherwise by the Board, each Owner shall pay its Annual Assessment on or before the first of April of the year to which said assessment relates, and the Board shall fix the amount of the Annual Assessment and send a notice thereof to each Owner on or before the first of February of each such year. The Board shall have the power and authority to require quarterly or monthly payments of installments of the Annual Assessments from such Owners as the Board deems suitable, or may require all Annual Assessments to be paid on a quarterly or monthly basis, at its determination.

6. Commencement. The eligibility for Annual Assessments for a Lot shall commence upon purchase of the Lot from Developer, or Developer may hereafter set a date for assessments to commence for all Lots which have been purchased from Developer. Assessments on Lots that first become subject to assessments during a calendar year shall be prorated on a calendar year basis for the remainder of such calendar year.

7. Records of Assessments. The Association shall cause to be maintained in the office of the Association a record of all Lots and Impositions applicable thereto which shall be open to inspection by any Owner. Written notice of any Imposition shall be mailed to every Owner of the Lot subject to assessment. The Association shall, upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether the Impositions against the Owner's Lot have been paid, and if not, the amount then due and owing. Absent manifest error, such certificate shall be deemed conclusive evidence to third parties as to the status of Impositions against any Lot within the Development.

8. Creation of Lien and Personal Obligations for Assessments. Each Owner of any Lot shall, by its acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and conditions of this Declaration and promises to pay to the Association all Impositions which may be due from an Owner from time to time. All Impositions, together with interest thereon and cost of collection thereof shall be a continuing lien upon the Lot against which such Impositions is levied as of the effective date of each such Imposition. Each such Imposition, together with such interest thereon and cost of collection therefor as are hereinafter provided, shall also consist of the personal obligation of the Person who was Owner of such Lot at the time when the same fell due. In the event a Lot is owned by more than one Member, all of such Members shall be jointly and severally liable for the entire Imposition then due.

9. Effect of Non-Payment of Imposition. If any Imposition hereunder is not paid upon the due date, or if any similar charge otherwise agreed to be paid by Owners in this Declaration is not paid when due, then such Imposition shall be delinquent and shall accrue interest thereon at the highest rate then permissible under the laws of the State of Tennessee commencing upon the due date. If such Imposition is not paid within thirty (30) days after the due date, then the Association may bring an action at law against the Owner personally, and/or at its option, foreclose the lien against the Lot by court action or trustee sale as hereinafter provided, and there shall be added to the amount of such Imposition, all reasonable attorney's fees and costs incurred by the Association in any such action, and in the event a judgment is obtained, such judgment shall include interest on the Imposition as indicated above.

10. Enforcement of Lien by Trustee's Sale. For and in consideration of the privileges and protections granted in this Declaration, and the mutual enjoyment and use of the Common Areas, and for the express purpose of securing the payment of the Impositions described above, in order to avoid unnecessary court proceedings or delays for the enforcement of the liens described above, each Owner by accepting a deed to a Lot for their heirs, successors and assigns, does hereby transfer and convey unto Matt Murfree, Atty. Trustee, his successors and assigns ("Trustee"), each such Lot deeded to such Owner with the appurtenances, estate, title and interest thereto belonging to the Trustee for the following uses in trust:

Each Owner agrees to pay all Impositions provided herein when due and upon demand of said Trustee or the Association, to pay, discharge, or remove any and all liens except a first mortgage or deed of trust lien which may hereafter be placed against said Lot which would adversely affect the lien granted herein, and in case the Trustee or his successors of the Association shall hereafter be required to appear in any court or tribunal to enforce, or defend the title to, or possession of, or costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee, shall be allowed and be payable by said Owner upon demand of the Trustee or the Association, and upon failure to do any of these things then said Trustee or Association may do any or all of said things, and the amounts so paid shall bear interest from the date of payment at the highest rate then permitted by the laws of the State of Tennessee and shall be and become a part of the indebtedness secured hereby.

If any Imposition, together with interest thereon, is not paid promptly when due or within a period of cure allowed above, or if after said Owner fails to pay any other sums due as above provided, or further, fail to reimburse the Trustee or Association within thirty days from the date of the Trustee's or Association's payment of such sums, this trust conveyance shall remain in full force and effect, and the said Trustee or his successor in trust is hereby authorized and empowered, upon giving twenty (20) days' notice by three publications in any daily or weekly newspaper published in Rutherford County, Tennessee, to sell said Lot at the front door of the Courthouse in said County to the highest bidder for cash at public outcry, free from the equity of redemption, statutory rights of redemption, homestead, dower, and all other exemptions of any kind which are hereby expressly waived; and the said Trustee or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser at such foreclosure sale. The Association may bid at any sale under this trust conveyance. The Trustee may at any time after default and the payment of any of the above described indebtedness enter and take possession of said Lot and shall only account for the net rents actually received by said Trustee. It is further agreed that in the event the Trustee fails, before selling said Lot as herein provided, to enter and take possession hereof, the purchaser shall be entitled to immediate possession of said Lot upon delivery to him by the Trustee of a deed for said Lot. In case of sale hereunder, the proceeds shall be applied by the Trustee as follows:

(a) to the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided, together with reasonable attorney's fees for advice or for instituting and defending any litigation which may arise on account of the execution of this conveyance or the enforcement of said lien, together with the expenses and costs of any such litigation,

(b) to the payment of all taxes which may be unpaid upon said Lot,

(c) to the payment of all unpaid impositions herein secured,

(d) the residua, if any, to be paid to the order of said Owners or their representatives or assigns.

In the event of the death, absence, inability, or refusal to act of said Trustee at any time when action of the foregoing powers and trusts may be authorized, or for any other reason, the lawful owner and holder of said lien is hereby authorized and empowered to name and appoint a successor in trust to execute this trust by an instrument in writing to be recorded in the Register's Office for Rutherford County, Tennessee, and title therein conveyed to the above named Trustee shall be vested in said Successor Trustee. The Trustee is authorized to appoint an attorney-in-fact to conduct in his stead and on his behalf and with the same power possessed by said Trustee as granted herein and all foreclosure sales authorized above.

11. Priority of Lien. The lien described in this Article shall be subordinate to the lien of any Mortgagee under a recorded first mortgage or deed of trust encumbering any such Lot. In the event any Mortgagee becomes the Owner of such Lot after foreclosure thereof, or conveyance by deed in lieu of foreclosure, trustee's deed, or the like, such Mortgagee shall become subject to the lien reserved herein for the purpose of securing all impositions becoming due from and after the date such Mortgagee accepts a deed to said Lot.

#### ARTICLE V

#### ARCHITECTURAL CONTROL COMMITTEE

1. Designation of Committee. The Association shall have an Architectural Control Committee (the "Committee") which shall consist of not less than three nor more than five members who shall be natural persons. The members of the Committee shall be appointed and be subject to removal at any time by the Developer until the termination of the Class B membership, and thereafter by the Association's Board of Directors. The Committee shall designate an individual as its Secretary, and all communications with the Committee shall be conducted through the Secretary. The Committee shall employ an architect or engineer (the "Engineer") who shall be responsible for technical review of plans for the account of the Committee.

2. Function of Architectural Control Committee. No Improvements shall be erected, constructed, placed, maintained or permitted to remain on any lot until the plans therefor (the "Plans") shall have been submitted to and approved in writing by the Committee, which shall determine in its sole discretion whether or not the proposed Improvements, and all features thereof, are acceptable to the Committee and are compatible with other improvements constructed within the Development. The Committee shall be the sole judge and arbiter of such acceptability and compatibility.

3. Design Criteria. In carrying out the functions of the Committee, and in order to insure uniformity of quality of the Improvements located within the Development, the Committee has prepared, and shall make available to all Lot Owners, a statement of design criteria which shall be observed in the construction of all Improvements within the Development (the "Design Criteria"). The Developer and, after the termination of the Class B membership, the Association, reserves the right to modify and amend the Design Criteria from time to time as it deems appropriate based upon changes and innovations in construction methods and techniques.

4. Improvement Plans. Any Owner desiring to construct Improvements, or to modify existing Improvements, upon any Lot shall first have detailed plans prepared for such Improvement (the "Plans"), which shall be prepared by a licensed architect and shall include, as a minimum, the following:

(a) A plot plan drawn on a scale of one inch equals

feet, reflecting the following information:

- (i) A survey of the Owner's Lot showing the dimensions of the Lot and Lot area, the location of any utilities crossing the lot, and contours of the land drawn at two (2') foot intervals;
- (ii) The relationship of the proposed Improvement to each side Lot line, to the rear property line and to the front property line;
- (iii) If the Improvement involves an addition to an existing building, the addition shall be shown in a shaded area with the existing building left unshaded;
- (iv) Finished floor elevations of the first floor, garage and basement, if any of all Improvements, together with all exterior color schemes and/or building materials.
- (v) Any detached structures, swimming pools, walls and/or fences on the site;
- (vi) A landscaping plan of the entire Lot, including all driveways, sidewalks and terraces; and
- (vii) Such other information as may be necessary to evidence compliance by the Plans with the Design Criteria.

(b) A floor plan indicating existing walls, and, if the plan is for an addition or modification to an existing building, indicating any walls to be removed and any proposed walls to be installed.

(c) Elevation drawings of the front, sides and rear of any new structure included within the Improvement, together with the overall height of any new buildings to be constructed, measured from the average grade at the front elevation.

5. Preliminary Submission. In the course of the preparation of his Plans, the Owner shall first submit a Preliminary Site Plan disclosing the proposed location of all Improvements to be placed upon the Site, which shall be reviewed by the Committee and either approved or disapproved by it. If the Preliminary Site Plan is approved by the Committee, the Owner shall proceed with the completion of his Plans. If, on the other hand, the Preliminary Site Plan is disapproved, the Owner shall cause such modifications to be made to the same as shall be necessary in order to obtain the approval of the Committee. Once the Preliminary Site Plan has been approved by the Committee, it shall be followed in the development of the Owner's Plans for the improvement of the Lot.

6. Submission of Plans. The Owner shall then submit the Plans for the proposed Improvement to the Secretary of the Committee, who will refer the same to the Engineer. The Engineer shall then examine the Plans and determine whether or not they comply with the Design Criteria. The Engineer shall use his best efforts to complete his examination of the Plans within \_\_\_\_\_ days after the date on which the Plans are referred to him. If he shall determine that the Plans do not comply with the design Criteria, the Plans shall be returned to the Owner for revision, without consideration by the Committee. If the Owner shall desire to have the Plans revised to comply with the Design Criteria, he may do so and resubmit the same to the Secretary for review again by the Engineer.

Upon the determination by the Engineer that the proposed Improvement complies with the Design Criteria, the Plans shall be referred to the Committee which shall review the same for their architectural and aesthetic approval and for their compatibility with the overall Development and with the community at large. The Committee shall certify its approval or disapproval of the Plans to the Owner within \_\_\_\_\_ days after the referral of the Plans to it. The Committee may grant or withhold its approval of the Plans in its uncontrolled discretion. The Committee's approval of the Plans for any Improvement shall be effective for a period of three (3) years only and in construction of the proposed Improvement shall not have commenced within that time period, the approval shall no longer be valid.

The Committee may impose a reasonable charge to defray its expenses in the consideration of any submission or resubmission of the Plans for any proposed Improvement.

7. Construction of Improvements. If the Committee approves the Plans, the Owner shall construct the Improvements in conformity with the same. Actual construction shall be the responsibility of the Owner and shall commence before the expiration of the Committee's approval. Upon the completion of construction of the Improvements, however, and prior to occupancy, the Owner shall notify the Committee which shall have the Improvements inspected by the Engineer to insure that construction was completed in accordance with the Plans. If construction has not been carried out in accordance with the Plans, or if changes in the Plans have been made without the approval of the Committee, occupancy of the Improvements shall be delayed until the necessary corrections are made or the Plans, as modified, are approved; provided, nevertheless, that if the Owner shall fail to make the necessary corrections, or to have the Plans, as modified, approved within 30 days after the date on which the Owner is notified that the Improvements have not been constructed in accordance with the approved Plans, the Developer, or the Association, after the termination of the Class B Memberships, may, at its option, make the necessary corrections, or remove the Improvement in question, at the expense of the Owner.

8. Limited Effect of Approval of Plans. The approval of the Committee of an Owner's Plans for the construction of Improvements upon any Lot is not intended to be an approval of the structural stability, integrity or design of a completed improvement of the safety of any component therein but is required solely for the purpose of insuring compliance with the covenants contained herein and further to insure the harmonious and orderly architectural and aesthetic development and improvement of the Lots contained within the Development. Notice is hereby given therefore to any future occupant of any completed improvement and all invitees, visitors and other persons who may from time to time enter or go on or about such completed Improvements, that no permission or approval granted by the Committee, the Developer or the Association with respect to the construction of Improvements pursuant to this Declaration shall constitute or be construed as an approval of the structural stability of any building, structure or other Improvement and no liability shall accrue to the Developer, the Committee or to the Association in the event that any such construction shall subsequently prove to be defective.

#### ARTICLE VI.

##### IMPROVEMENT, SETBACK AND USE RESTRICTIONS

1. Improvement Restrictions. In addition to the requirements of Article V above concerning compliance with the architectural review authority of the Committee, the following restrictions apply to Improvements;

a. Minimum setback requirements on the Plat shall be observed, but are not intended to create uniformity of appearance, but rather to avoid overcrowding and monotony. Therefore, to the extent possible, it is intended that the setbacks of Improvements be staggered and be used to preserve trees and assure vistas of open areas. The Developer reserves the right to approve the location of each residence upon the Lot and to relocate the same, within the setback lines and/or building areas established by the Plat, in such manner as it shall be deemed, in its sole discretion, to be in the best interests of the overall Development and in furtherance of the goals set forth herein.

b. No residence upon any Lot may be occupied prior to (i) the issuance of a final use and occupancy permit for the same by the City of Murfreesboro and Rutherford County and (ii) approval of the Committee.

c. The total floor area of the main residential structure upon any Lot, exclusive of open porches, patios, garages and breezeways, shall not be less than four thousand (4,000) square feet, the first floor area of any full two story house shall be a minimum of two thousand (2,000) square feet exclusive of garages, porches, patios, and breezeways.

d. So long as the Committee approves, boundary walls or fences for individual Lots may be erected. No walls other than retaining walls may be constructed along the street on the front of any Lot unless approved by the Committee, and



no retaining wall shall extend to a height greater than three (3) feet above the earth being retained, and no boundary wall or patio or courtyard wall shall extend to a height greater than eight (8) feet from ground level unless the Committee and the adjoining Lot Owners so consent. All boundary and retaining walls must be of materials approved by the Committee.

e. Developer reserves the right to establish a uniform mailbox and mailbox location system.

f. Incinerators for garbage, trash or other refuse shall not be used or permitted to be erected on any Lot. Any and all equipment, air conditioner condensers, garbage cans, woodpiles, refuse or storage piles on any lot, whether temporary or permanent, shall be walled in to conceal the same from the view of neighboring Lots, roads, or Common Areas, with the plans for any such concealing walls being approved by the Committee.

g. No building materials may be stored on any Lot except for the purpose of construction of such Lot, and then only for such length of time as is reasonably necessary for the construction of the Improvements then in progress.

h. No utility meters, air conditioning compressors, and other equipment shall be visible from neighboring Lots, roads or Common Areas. No outdoor television and dish antennas may be installed upon any Lot.

i. No Owner shall excavate or extract earth from any of the Lots for any business or commercial purpose, and no elevation changes will be permitted which could materially affect the surface grade of a Lot without the consent of the Developer or the Committee.

j. There shall be no outside clotheslines, clothes hanging devices, or the like upon any Lot. Eve lights may not be installed on the fronts of Improvements without the consent of the Committee and eve lights installed on the sides and rears must be adjusted so that the rays of any beam or floodlight shall not interfere with the neighboring Lots and shall be directed to the rear of the residence.

k. No garages or carports may face the street in front of a residence without the prior approval of the Committee. Parking of vehicles in the service drives is prohibited.

l. No tree in excess of eight (8) inches in diameter may be removed from a Lot without the consent of the Committee.

m. If one or more contiguous Lots are owned by the same Owner, they may be combined upon the consent of the Developer for the purpose of placing approved Improvements thereon, but individual Lots may not be resubdivided so as to create a smaller area than originally deeded to an Owner and as shown on the Plat without the consent of the Developer.

## 2. Maintenance

a. All Lots, together with the exterior of all Improvements located thereon, shall be maintained in a neat and attractive condition by their respective Owners.

b. In the event any Owner shall fail to maintain the Improvements situated upon his Lot in a manner satisfactory to the Association, the Association may upon the vote of at least two-thirds of the Board of Directors and after ten (10) days notice in writing to the offending Owner during which time said Owner has continued to fail to commence the correction of the matter in question, may enter upon said Lot and perform the maintenance of the Improvements itself. The cost of such maintenance shall be added to and become a part of the assessment to which such Lot is subject and the Owner of such Lot shall be personally liable for the cost thereof.

c. The Developer, at its option, may install sidewalks in the Mirabella development. In the event Developer installs said sidewalks, an opening will be left in the sidewalk for purposes of constructing a driveway. Any damage to the sidewalk due to the construction of driveway

or the construction of other improvements on a lot shall be repaired at the sole cost of the lot owner.

3. Use Restrictions.

a. No Owner shall use its Lot in such a manner as to create a nuisance. No Owner shall commit waste upon any Lot without the Development.

b. A minimum of two covered off-street parking spaces for each residence must be provided by each Owner unless waived by the Developer or the Committee. Guest parking shall be limited to the areas designated as such upon the Plat or by the Developer. No wrecked vehicle or vehicles in a non-functional condition or vehicles without proper registration shall be parked on any Lot or upon any of the Common Areas. No house trailers or portable buildings shall be permitted within the Development.

c. No animals, livestock, poultry of any kind shall be raised, bred, pastured or maintained on any Lot except household pets which shall be kept in reasonable numbers as pets for the sole pleasure of the occupants, but not for any other purpose or use. No such household pets shall be permitted to the extent they become a nuisance to neighboring Lot Owners. No pets shall be permitted outside the boundaries of the Owner's Lot unless accompanied by their owners and on a leash. The Board, or any individual resident, may take appropriate measures to insure compliance with this provision, including without limitation, having the animal picked up by the appropriate governmental authorities.

d. No Owner shall cause or allow any use of his Lot that results in noise which disturbs the peace and quiet of the Development. This restriction includes, without limitation, dogs whose loud and frequent barking, whining or howling disturbs other Lot Owners, exterior music systems or public address systems, and other noise sources which disturb other Owners' ability to peacefully possess and enjoy their Lots.

e. No Owner shall permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gasses as to interfere with the use and enjoyment by other Owners of their Lots.

f. No house or other structure on any Lot shall be used for any business or purpose. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment or discomfort or annoyance to the neighborhood. No noxious, offensive or illegal activity shall be carried out upon any Lot.

g. Boats must be stored in enclosed areas and must not be visible from neighboring Lots, streets or Common Areas. No motorcycle, motorbike or motorscooter shall be permitted to be operated within the Development.

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

i. Any vehicle moving in excess of 15 miles per hour on any street within the Development shall be considered as speeding and the owner or operator thereof shall be subject to any fine levied by the Association.

j. The pursuit of hobbies or other inherently dangerous activities including without limitation the assembly and disassembly of motor vehicles or other mechanical devices, the shooting of firearms, fireworks, or other pyrotechnic devices of any type or size, and other such activities shall not be allowed upon any Lot.

k. No owner shall use its lot for anything other than a single family residence. Single family is defined as lot owners, their spouses, children, grandchildren, parents, and grandparents. Occupation of a house by extended family members shall be deemed a violation of this provision.

## ARTICLE VII

## EASEMENTS

1. General. Until termination of the Class B Membership, Developer reserves an easement for ingress and egress generally across the Development at reasonable places thereon and across the various Lots for the purpose of completing Developer's intended development. Said ingress and egress easement shall in any event be reasonable and shall not interfere with the construction of Improvements on a Lot nor the use and enjoyment of a Lot by an Owner. Developer acknowledges that the plat recording reflects a twenty (20') foot easement for sidewalks and utilities but Developer specifically reserves the right to go outside said twenty (20') foot easement for the construction of sidewalks if need be. Developer reserves the right to install sidewalks itself or to require lot purchasers to do so should a lot or lots be sold.

2. Emergency. There is hereby reserved without further assent or permit, a general easement to all policemen and security guards employed by Developer or Association, firemen, ambulance personnel, garbage collectors, mailmen, utility personnel, delivery service personnel and all similar persons to enter upon the Development or any portion thereof which is now or hereafter made subject to this Declaration in the performance of their respective duties.

3. Easements Over Common Areas. The Plat designates certain areas for roads, utilities, drainage, common areas, and recreational areas. The easements so designated on the Plat encumber the Lots as shown on the Plat and are hereby established as perpetual and irrevocable easements. Said easements are granted and reserved for the use and benefit in common of all owners in the Development and their agents, servants, family members and invitees. No Owner shall have the right to restrict, impede or take any action in any way to prohibit or limit the use in common by all Owners of said easements. However, use of the easements and common areas shall be subject to and governed by provision of this Declaration and the by-laws, rules and regulations of the Association.

## ARTICLE VIII

## SALE OR LEASE OF LOTS

1. Sales, Resales and Advertising. In order to preserve and protect the decorum of the community of residences within the Development, the Association reserves the right to restrict the advertising and placement of signs on or relating to properties for sale or resale within the Development. No signs indicating that a residence is for sale or for lease will be permitted on any Lot. This does not preclude an Owner from using media advertising. The Association shall have the power and authority to adopt such additional restrictions and provisions concerning advertisement and sale procedures as the Association believes, as evidenced by the approval of the Board, will promote the orderly, harmonious and nondisruptive marketing of Lots.

## ARTICLE IX

## GENERAL PROVISIONS

1. Duration. The covenants, conditions and restrictions contained herein shall be appurtenant to and run with the land and shall be binding upon all Owners and parties hereinafter having an interest in any of the Development, and all parties claiming under them, until Nov. 29, 2019, at which time they shall be automatically extended for successive periods of ten (10) years each, unless a majority of the votes attributable to Lots in the Development are cast in favor of a proposition to change, amend or revoke the restrictions in whole or in part at a duly called meeting of the Association within the final one (1) year of the term of this Declaration, as it may have been extended. Each purchaser or subsequent grantee of any interest in any property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the covenants and restrictions of this Declaration may be extended as provided in this Article IX, Section 1.

2. Amendment. The covenants and restrictions contained in this Declaration may be amended unilaterally by the Developer, without joinder of any Owner, for a period of Ten (10) years from the date hereof. Thereafter, any amendment of this Declaration will require the affirmative vote of at least two-thirds (2/3) of the Votes entitled to be cast by the then Members of the Association, (both Class A and Class B) at a duly called meeting of the Association at which a quorum is present. To the extent then required by applicable laws

and/or regulations, all amendments of this Declaration must be approved by the Planning Commission of the City of Murfreesboro and Rutherford County, or its successor governmental entity. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or subsequent grantee of any interest in any property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance therefor, thereby agrees that the covenants and restrictions of this Declaration may be amended as provided herein.

3. Enforcement. All restrictions herein may be enforced by Developer, its successors and assigns until the termination of the Class B Membership, or by the Association acting by and through its Board, by proceeding at law or in equity against the Person violating or attempting to violate any covenant or covenants, either to restrain the violation thereof or to recover money damages, together with reasonable attorneys' fees and court costs. Furthermore, after the termination of Developer's Class B Membership in the Association, in the event the Association fails to act to enforce any restriction contained herein, any Owner of any Lot may enforce these restrictions as aforesaid against any other Owner. Notwithstanding the foregoing, the covenants contained in Article VIII hereof regarding the Developer's option to purchase Lots shall be enforceable only by Developer and not by its successors or assigns unless said rights are specifically assigned thereby Developer in writing.

4. Partial Invalidity. Any invalidation of any one or more of these restrictions by judgment, court order, or statute, for failure on the part of Developer or its successors or assigns to enforce any of said restrictions, shall in no way affect any of the other provisions hereof or be deemed as a waiver of the right to enforce such restrictions at any time after the violation thereof. Invalidation of any one or more of these restrictions by judgment or court order shall neither affect any of the other provisions not expressly held to be void nor the provisions so void in circumstances or applications other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

5. Abatement. In the event that any Owner violates any of the terms or conditions of this Declaration and fails to cure the same within ten (10) days after written notice thereof, then Developer, in addition to any other rights and remedies provided for herein, shall have the express right, privilege and license to enter upon any Lot to take any reasonable action to cure such violation, and all reasonable costs thereof shall be at the expense of the Owner of such Lot and shall be payable upon demand by Developer.

6. Notice. All notices required or permitted hereunder shall be in writing and effective when deposited in the U.S. mail, postage prepaid, addressed to any Owner at the address of the Lot owned by such Owner, or addressed to the Developer as follows:

ParkTrust Development, L.L.C.  
P. O. Box 5049  
Murfreesboro, TN 37133-5049

or such other address as Developer may, by notice to each of the Owners, designate.

7. Headings and Binding Effect. Headings have been 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.

8. Exoneration of Developer. Each Owner of any Lot in the Development, or any other party having an interest in any portion of the Development, expressly agrees that no duty or obligation is imposed upon Developer to enforce or attempt to enforce any of the covenants or restrictions contained herein, not shall Developer be subject to any liability of any kind or nature whatsoever resulting out of any claim by any third party asserting that Developer failed to enforce the same.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Protective Covenants, Conditions and Restrictions to be duly executed this 29th day of November, 1999.

MIRABELLA DEVELOPMENT, L.L.C.

By: Bob Dan  
Title: Chief Manager

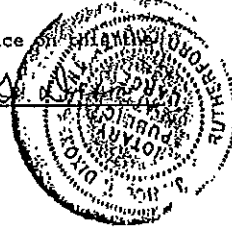
STATE OF TENNESSEE  
COUNTY OF RUTHERFORD

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, Bob Parks, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon his oath, acknowledged himself to be a partner of MIRABELLA DEVELOPMENT, L.L.C., the within named bargainer, a partnership, and he as such partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the partnership by himself as such partner.

WITNESS MY HAND and official seal at my office on this 29th day of November, 1999.

My commission expires: 3/17/2001

Janice J. [Signature]  
Notary Public



THIS INSTRUMENT PREPARED BY  
MURFREY, COPE, HUDSON & SCARLETT, ATTORNEYS  
MURFREESBORO, TENNESSEE  
From information furnished by the parties