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**DECLARATION OF COVENANTS AND RESTRICTIONS
 FOR ASHER VILLAGE**

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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR ASHER VILLAGE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this 18th day of December, 2003, by ASHER VILLAGE, LLC, a Tennessee limited liability company in its capacity as the Developer (herein defined) and owner of the Property (herein defined).

WITNESSETH:

WHEREAS, Developer, as owner of certain real property located in Hamilton County, Tennessee, and being more particularly described in Exhibit "A" hereto attached and herein incorporated, is in the process of creating thereon a residential development known as Asher Village; and

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

WHEREAS, it is the plan of the Developer to devote the Home Sites (herein defined) in the Development solely to restricted single family residential purposes; and

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

WHEREAS, Developer shall cause to be incorporated under the laws of the State of Tennessee, Asher Village Homeowners Association, Inc., a Tennessee corporation not for profit, for the purpose of exercising the above functions and those which are more fully set out hereafter; and

NOW, THEREFORE, Developer subjects the Property, as described in Exhibit "A" hereto attached and herein incorporated, to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens (sometimes referred to as "the Covenants") hereinafter set forth; and these Covenants shall touch and concern and run with the Property and each Home Site thereof.

ARTICLE I
DEFINITIONS

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

1.01 Association. "Association" shall mean Asher Village Homeowners Association, Inc., a Tennessee corporation not for profit.

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

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

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

1.05 Common Properties. "Common Properties" shall mean those items of personal property, fixtures, or areas of land, with any improvements thereon, whether owned in fee simple or by virtue of an easement, license or otherwise, which are conveyed to the Association and/or are intended for the common use and enjoyment of all Owners, which may include without limitation, street lights, sidewalks, entrance signs, a picnic area, gazebos, and green spaces and walking trails.

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

1.07 Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for Asher Village Homeowners Association, Inc. and any supplemental Declaration filed pursuant to the terms hereof.

1.08 Development. "Development" shall mean the whole of Asher Village development as being developed by Developer, including the Property described on Exhibit "A" and all other real property later subjected to this Declaration, if any.

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

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

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

1.12 Home. "Home" shall mean any building situated within the Development designated and intended for use and occupancy by a single family.

1.13 Home Site or Home Sites. "Home Site" or "Home Sites" shall mean any improved or unimproved plat of land shown as a Home Site upon any recorded final subdivision map of any part of the Development, with the exception of Common Properties.

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

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

1.16 Mortgage. "Mortgage" shall mean a deed of trust, as well as a mortgage.

1.17 Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of any Mortgage.

1.18 Owner or Owners. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Home Site situated in the Development but, notwithstanding any applicable theory of a Mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. The Developer may be an Owner.

1.19 Property or Properties. "Property" or "Properties" shall mean all of that real property currently owned by Developer and described in Exhibit "A" hereto attached and herein incorporated.

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

ARTICLE II
PROPERTIES, COMMON PROPERTIES AND IMPROVEMENTS THEREON;
ASSOCIATION AND BOARD

2.01 Property. The real property which is covered by this Declaration (including both Home Sites already subdivided and yet to be subdivided as well as Common Properties) is described on Exhibit "A", which shall be held, transferred, sold, conveyed, leased and occupied, subject to the Covenants contained in this Declaration.

2.02 Additions to Property. Developer may subject additional real property to this Declaration in the following manner or any other lawful manner:

A. Additions by Developer. The Developer, its successors and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration additional properties in future stages of the Development beyond that described in Exhibit "A" so long as they are contiguous with then existing portions of the Development. For purposes of this paragraph, contiguity shall not be defeated or denied where the only impediment to actual "touching" is a separation caused by a body of water, road, right-of-way or easement, and such shall be deemed contiguous. The additions authorized under this section shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants of this Declaration to such additional property after which it shall fall within the definition of Property as herein set forth.

The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants contained in this Declaration as may be necessary or convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

B. Separate Associations. For any property subjected to this Declaration pursuant to the provisions of this section, there may be established by the Developer, at its option, additional associations limited to the Owners and/or residents of such additional property in order to promote their social welfare, including their health, safety, education, culture, comfort and convenience of such additional property, to separately administer the affairs of the additional property, and to make and enforce rules and regulations and the Covenants.

2.03 Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights and obligations may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Declaration.

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2.04 Common Properties and Improvements Thereon.

A. The Developer has obtained a commitment from the City of Collegedale, Tennessee to install initially street lights within areas designated as public right-of-ways and after installation to maintain the street lights. Developer assumes no liability or obligations in regards to the installation or maintenance of street lights.

B. The Developer may install initially one or more entrance signs to the Development as well as one or more entrance walls, plantings, and sidewalks. The sign(s), wall(s), planting(s), and sidewalks are part of the Common Properties. The Association is responsible for the operation, maintenance, repair and replacement of the sign(s), wall(s), planting(s), and sidewalks.

C. The Developer may develop additional Common Properties for the Development (including but not limited to green spaces, gazebos or other such improvements, and walking trails as Developer deems appropriate), which Developer shall convey to the Association at which time as Developer deems appropriate, and thereupon the Association shall become responsible for the operation, maintenance, and repair thereof.

2.05 Association and Board: Access. The enforcement of this Declaration, the management, maintenance and control of the Common Properties and the other business of the Development shall be conducted by the Association and the Board as provided herein and in the Bylaws. The Association shall be created and the Board shall be appointed/elected as provided in the Bylaws. To the extent reasonably necessary to enforce this Declaration or to perform any of the Covenants or the obligations of the Board and/or the Association, the Board and/or the Association shall have the right to access any Home Sites (but not to enter any Homes) and same shall not be deemed trespass.

ARTICLE III
PURPOSES, USES AND RESTRICTIONS

3.01 Common Properties. The Common Properties shall be used to benefit the Owners of Home Sites of the Development and to enhance the appearance and liveability of the Development.

3.02 Home Site Residential Use.

A. All of the Home Sites in the Development shall be, and be known and described as, residential Home Sites, and no structure shall be erected, altered, placed or permitted to remain on any Home Site other than one (1) detached single family dwelling, subject to the terms and conditions as herein specified.

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B. "Residential," refers to a mode of occupancy, as used in contradistinction to "business" or "commerce" or "mercantile" activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Home Sites as well as to buildings constructed thereon.

C. Home Sites, or any portion thereof, shall not be used as a means of service to business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a part of the Property, unless specifically consented to by Developer in writing.

3.03 Multi-Family Residences. Business. Homes shall not be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and Homes shall not be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or commercial activity where patrons or customers come and go, where commercial deliveries of supplies or equipment are made, or which otherwise is inconsistent with ordinary residential uses.

3.04 Minimum Square Footage. No dwelling house shall be erected or permitted to remain in the Development unless it has the number of square feet of enclosed living area, exclusive of open porches or screened porches, carports, garages or basements, set forth in this section. For the purposes of this section, stated square footage shall mean the finished and heated living area contained within the residence, exclusive of open porches, garages, and steps. The minimum number of square feet required is 1,000.

3.05 Detached Buildings. Detached garages, outbuildings or servants quarters shall not be placed on any Home Site without the prior written consent of the Board.

3.06 Fences. All fences constructed on any Home Site, including those to encompass a swimming pool, shall be constructed either of wrought iron or shall be wooden or vinyl picket "privacy fences," not exceeding six (6) feet in height. Chain link fences and wire fences (including but not limited to barbed wire fences) are prohibited.

3.07 Lawn Care. For the benefit of the Development, Owners are required to keep their lawns and landscaping healthy and manicured, including but not limited to keeping shrubs appropriately trimmed and lawns appropriately mowed and free of weeds and debris. The Developer and/or the Association may, in their sole discretion, elect to provide Owners a basic lawn care service (such as mowing grass and raking leaves) on either a voluntary or a mandatory basis; if same is provided on a voluntary basis, then Owners participating in the service may be charged a fee to cover the cost of service, which shall be in addition to the Association's customary assessments, and if same is provided on a mandatory basis, then the cost of such service shall be a Common Expense.

3.08 Signs; Mailboxes; Propane Tanks. No sign of any kind shall be displayed from any Home Site, with the exception of a customary "For Sale" sign to facilitate the sale of an

Owner's personal residence. Developer is supplying uniform mailboxes for all Homes, and alternative mailboxes may not be used except upon prior written approval from the Board. Propane tanks servicing Homes shall not be visible from any public street and must be either buried or appropriately screened with vegetation.

3.09 Animals. No sheep, swine, goats, horses, cattle, burros, fowls (excluding household birds such as parrots and parakeets) or any like animals shall be permitted to be kept or to remain on any of the Home Sites, or to roam at large at the Development. There shall be no kennels permitted on any Home Site for the commercial breeding or boarding of domestic pets. Pet owners shall not allow pets to roam unattended, and pets shall be leashed if off their master's Home Site.

3.10 Antennas. Television antennae, dishes, radio receivers or senders or other similar devices shall not be attached to or installed on the exterior portion of any Home or other structure on any Home Site within the Development, except that twenty inch (20"), or smaller, satellite dishes shall be permitted.

3.11 Vehicle Parking. Vehicles owned by Owners shall be parked only in the Owner's garage or driveway. No inoperable vehicle, tractor or other machinery shall be stored on any Home Site at any time, unless kept within a garage. No house trailer or other such vehicle shall be stored at a Home Site or otherwise in the Development.

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

3.13 Unightly Conditions: Exterior Colors, Styles, and Decor. All of the Homes and Home Sites in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed, and Homes being kept painted and in a neat and clean condition and in a state of good repair). Tree limbs, rocks and other debris must be kept out of the streets. The exterior color schemes, style, and décor of each Home must be consistent with and complimentary to the Development as a whole. The style and material of all garage doors shall be consistent throughout the neighborhood. In the event that an Owner of a Home Site in the Development fails, of his own volition, to maintain his Home Site or Home in a neat and clean condition and a good state of repair, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Home Site without liability and proceed to put said Home Site into a state or condition compliant with this Section, billing the cost of such work to the Owner.

3.14 Offensive Activity. No noxious or offensive activity shall be carried on upon any Home Site, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development or which may disrupt the peaceful and quiet enjoyment of any other Owner, including but not limited to the emanation of foul odors or disruptive noise.

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3.15 Duty to Rebuild or Clear Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Home Sites within the Development, each Owner and Developer (with respect to improved Property owned by Developer) shall have the affirmative duty to rebuild, replace, repair, or clear, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of these Covenants would be best effected by allowing such a variation. Variations to this section are to be strictly construed and the allowance of a variance by the Developer or the Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners. In the event of damage or destruction by fire or other casualty, this provision shall control over other provisions contained herein regarding maintenance to and the condition of Homes and Home Sites.

3.16 Leasing and Subleasing. Developer shall be permitted to lease Homes and/or Home Sites in the Development. All other leasing and subleasing of Homes and Home Sites, or any portion thereof, by any other party is strictly prohibited.

ARTICLE IV VIOLATIONS AND ENFORCEMENT

4.01 Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of these Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, including the Board acting on behalf of the Association, and any and all parties hereinafter becoming Owners, acting individually (but subject to Articles VII and VIII), of any one or more of the Home Sites to which provisions of these Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, for specific performance, and the said Owner if found to be in violation or attempted violation shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys' fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. The Developer or the Board may grant variances to the Covenants (but not including the reduction of the minimum square footage requirements as set forth herein), if such variances do not, in the sole discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby.

ARTICLE V ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed conveying a Home Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of the Covenants contained in this Declaration and to pay to the Association annual assessments and special assessments for the purposes set forth herein, such assessments to be fixed, established and collected from time to time as hereinafter provided. The initial annual assessment shall be \$200.00 per year, provided however that the Board may change the amount

of the annual assessment in accordance with the provisions of this Declaration and the Bylaws without needing to amend this Declaration. The Owner of each Home Site shall be personally liable, such liability to be joint and several if there are two or more Owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Home Site. The annual and special assessments, together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Home Site and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Home Sites are combined into a single Home Site by an Owner, the assessments will continue to be based upon the number of original Home Sites purchased.

5.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties or the Development generally. The special assessments shall be used for the purposes set forth in Section 5.04 of this Article.

5.03 Amount of Annual Assessment. Until the election of a Board to succeed Developer consisting entirely of persons other than Developer (or its appointees) as described in the Bylaws, the amount of the annual assessments shall be set and may be adjusted by the Developer as it deems appropriate relative to the budgetary needs of the Association. Annual assessments may be adjusted more frequently than annually if necessary (whether by the Developer or by the Board). After election of a Board consisting entirely of persons other than Developer, the annual budget for the Association and the amount of the annual assessments shall be set by the Board; provided however, that the Board may not increase the Association's annual budget by more than ten percent (10%) of the prior year's budget without first acquiring the approval of two-thirds (2/3rds) of those Members of the Association who are present or represented by proxy at the annual meeting held to approve such budget.

5.04 Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Properties, including the necessary fixtures and personal property related thereto and capital improvements or additions to the Common Properties. Notwithstanding the foregoing the Board shall not authorize structural alterations or capital additions to the Common Properties which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) without approval of a majority vote of those Members who are present or represented by proxy at any annual or special meeting of the Association; or in excess of Ten Thousand Dollars (\$10,000.00) without approval of two-thirds of the vote of those Members who are present or represented by proxy at any annual or special meeting of the Association; provided, however, that the Board shall have the power to make any repairs to and to undertake maintenance of an urgent nature on the Common Properties as may be necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval.

5.05 Property Subject to Assessment. Only Home Sites subject to this Declaration shall be subject to these assessments. Common Properties and projected locations for future platted Home Sites will not be subject to assessment, unless and until such locations are subdivided into Home Sites, filed of record, and subjected to this Declaration.

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

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

- (a) All Home Sites owned by the Developer.
- (b) The grantee of a utility easement.
- (c) All properties dedicated and accepted by a local public authority and devoted to public use.
- (d) All Common Properties.
- (e) All Properties exempted from taxation by the laws of the State of Tennessee, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the Owners.

5.07 Date of Commencement of Annual Assessments.

A. Imposition of the annual assessments provided for herein shall commence with the first sale of the first Home Site.

B. The amount of the first annual assessment on a Home Site shall be based pro rata upon the balance of the calendar year and shall become due and payable on the closing of the Home Site. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

C. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

5.08 Lien. Recognizing that the necessity for providing proper operation and management of the Development entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Home Site and the improvements thereon as security for the payment of all assessments against said Home Site, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be

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incurred by the Association in enforcing the lien upon said Home Site. The lien shall become effective on a Home Site immediately upon the closing of that Home Site. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Failure by the Owner or Owners to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

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

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

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

ARTICLE VI
MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING
THERE TO

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

Association of the existence of any Mortgage held by it, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

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

ARTICLE VII OWNER COMPLAINTS

7.01 Scope. The procedures set forth in this Article for Owner complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board. No Owner shall bring suit against the Board, the Association or another Owner without first complying with the procedures for complaints herein established.

7.02 Form of Complaint. All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the Board and sent in the manner provided in Section 10.03 for sending notices.

7.03 Consideration by the Board. Within twenty (20) days of receipt of a complaint, the Board shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefor. Within ten (10) days after notice of the decision, the complainant may proceed under Section 7.05; but if complainant does not, the decision shall be final and binding upon the complainant.

7.04 Hearing Before the Board. Within ten (10) days after notice of the decision of the Board, the complainant may, in a writing, request a hearing before the Board. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The hearing may be adjourned from time to time as the Board in its discretion deems necessary or

advisable. The Board shall render its decision and notify the complainant in writing of its decision and the reasons therefor within ten (10) days of the final adjournment of the hearing.

7.05 Further Relief. After complying with the provisions of this Article, an Owner may pursue such additional relief at law or in equity as he/she deems himself/herself to be entitled.

ARTICLE VIII REMEDIES ON DEFAULT

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

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

8.03 Recovery of Association Expenses. In any proceeding arising because of an alleged breach by an Owner, the party seeking enforcement, if successful, shall, in addition to the relief provided for herein, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the allegedly defaulting Owner be entitled to such attorneys' fees if the party seeking enforcement is unsuccessful.

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

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

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ARTICLE IX
EMINENT DOMAIN

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

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

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

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

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

ARTICLE X
GENERAL PROVISIONS

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

10.02 **Amendments.** This Declaration may be amended, modified or revoked in any respect from time to time by the Developer prior to the date that a Board consisting entirely

of persons other than the Developer (or its appointees) is elected in accordance herewith and with the Bylaws. Thereafter, this Declaration may be amended in accordance with the following procedure:

A. An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if considered at an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting provided for in the Bylaws, and, if considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws.

B. At any such meeting, the amendment must be approved by an affirmative three-fourths (3/4ths) vote of those Owners represented at the meeting.

C. An amendment adopted under Paragraph B of this section shall become effective upon its recording in the Register's Office of Hamilton County, Tennessee, and either the President of the Association or Secretary of the Association shall execute, acknowledge and record the amendment and shall certify on its face that it has been adopted in accordance with the provisions of this section. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company that the amendment was adopted in accordance with the provisions of this section.

D. The certificate referred to in Paragraph C of this section shall be in substantially the following form:

CERTIFICATE

I, _____, do hereby certify that I am the _____ of Asher Village Homeowners Association, Inc. and that the within amendment to the Declaration of Covenants and Restrictions of Asher Village was duly adopted by the Owners of said Association, in accordance with the provisions of Section 10.02 of said Declaration.

Witness my hand this ___ day of _____, _____.

Title: _____
Asher Village Homeowners
Association, Inc.

10.03 Notices. Any notice required to be sent to any Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Owner or Mortgagee on the records of the Association at the time of such mailing. Notice to one of two or more co-owners

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of a Home Site shall constitute notice to all co-owners. It shall be the obligation of every Owner to immediately notify the Board in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, or the Developer under the provisions of this Declaration shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

42 Jen Rue Lane
Collegedale, Tennessee 37363

The address for the Board, the Association, or any officer thereof may be changed by the Secretary or President of the Association by executing, acknowledging and recording an amendment to this Declaration stating the new address or addresses. Likewise, the Developer may change its address by executing, acknowledging, and recording an amendment to this Declaration stating its new address. Amendments changing the Developer's or the Association's/Board's notice address shall not be subject to the voting requirements in Section 10.02.

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

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

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

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

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

10.09 Effective Date. This Declaration shall become effective upon its recording.

[SIGNATURES ON FOLLOWING PAGE]

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

ASHER VILLAGE, LLC, a Tennessee limited liability company

By: Bettie Griffin
Bettie Griffin, Managing Recorder

and

By: Donald Chastain
Donald Chastain, Chief Manager

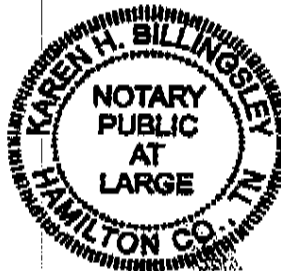
STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Personally appeared before me, Karen H. Billingsley, a Notary Public in and for said State and County duly commissioned and qualified, Bettie Griffin, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that she executed the within instrument for the purposes therein contained, and who further acknowledged that she is the Managing Recorder of Asher Village, LLC and is authorized by the Company to execute this instrument on behalf of the Company as Managing Recorder.

WITNESS my hand, at office, this 18 day of Decr, 2003.

Karen H. Billingsley
Notary Public

My Commission Expires: My Commission Expires February 10, 2007



AUG-04-2004 16:17

423 396 2904

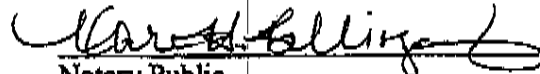
P.23

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STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

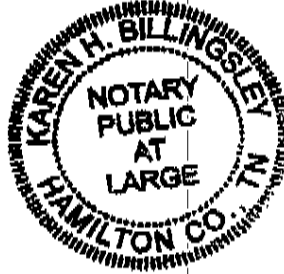
Personally appeared before me, Karen H. Billingsley, a Notary Public in and for said State and County duly commissioned and qualified, Donald Chastain, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Chief Manager of Asher Village, LLC and is authorized by the Company to execute this instrument on behalf of the Company as Chief Manager.

WITNESS my hand, at office, this 18th day of Dec., 2003.



Notary Public

My Commission Expires: My Commission Expires February 10, 2007



AUG-04-2004 16:17

427 16 2904

P.24

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EXHIBIT "A"

Lots 1-33, as shown on Plat of record in Plat Book 71, Page 150 in the Register's Office of Hamilton County, Tennessee.

AUG-04-2004 16:17

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EXHIBIT "B" Book and Page: GI 6973 24

[Bylaws of the Association; Attached]

148985 1.DOC
CMR 15648/0001

TOTAL P.25

M.K.

300

This instrument prepared by and after recording return to: Thomas L. Hayslett, III Miller & Martin PLLC Suite 1000, Volunteer Building 832 Georgia Avenue Chattanooga, Tennessee 37402-2289

Instrument: 2006031600301 Book and Page: 6973 247 Data Processing Fee: \$200.00 Disc Recording Fee: \$100.00 Total Fees: \$300.00 User: BASKETON Date: 16-MAR-2006 Time: 03:48:50 P Contact: Pam Hurst, Register Hamilton County Tennessee

FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR ASHER VILLAGE

(Cross-Reference: Book 6973, Page 1)

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR ASHER VILLAGE (the "Amendment") is executed to be effective as of the 25th day of July, 2005, by ASHER VILLAGE, LLC ("Developer"), a Tennessee limited liability company.

Background:

808-78

- A. Developer is developing a residential neighborhood development commonly known as Asher Village (the "Development"), located in Hamilton County, Tennessee. B. Developer has subjected the Development to that certain Declaration of Covenants and Restrictions for Asher Village (the "Declaration"), as recorded at Book 6973, Page 1, Register's Office of Hamilton County, Tennessee. C. Pursuant to Section 10.2 of the Declaration and related sections of the By-laws for Asher Village Homeowners Association, Inc. (the "By-laws"), Developer presently has the right to unilaterally amend the Declaration (it being the case that Developer has not yet sold ninety percent (90%) of the Home Sites in the Development). D. Developer desires to amend the Declaration as herein specified.

Amendment:

NOW, THEREFORE, for and in consideration of the benefits provided to the Development by the Declaration, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Developer acknowledges that the above recitals are true and correct and are herein incorporated and further agrees and amends the Declaration as follows:

- 1. Defined Terms. All capitalized terms, the definitions for which are not herein provided, shall have the meanings ascribed to them in the Declaration. 2. Fences as Common Properties. Section 2.04 of the Declaration, entitled "Common Properties and Improvements Thereon," is hereby amended by inserting the following Subsection D as an additional subsection to this Section:

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D. The Developer has and/or may install wood privacy fences along the rear inside lot lines of certain Home Sites so as to divide such Home Sites where the backyards of same are contiguous to each other. Developer has constructed or expects to construct such privacy fences between Home Sites 8-10, 11-14, 16-21, and 22-26, and may construct such privacy fences between Home Sites 3 and 5-6. Any such privacy fences now or hereafter constructed by Developer are Common Properties, and it shall be the responsibility of the Association to administer maintenance and repair to same; provided however, the cost of such maintenance and repair shall be equitably allocated by the Association only against those Home Sites which have use of such privacy fences, such allocation to be made through the imposition of special assessments. In the event any Owner causes damage or the need for disproportionate maintenance to any privacy fences, the Association may assess those additional costs against such Owner.

3. Leasing and Subleasing: Section 3.16 of the Declaration, entitled "Leasing and Subleasing", is hereby deleted in its entirety and replaced with the following:

3.16. Leasing and Subleasing. Developer shall be permitted to lease Homes and/or Home Sites in the Development. Otherwise, leasing and subleasing of Homes may be allowed or disallowed, from time to time, at the discretion of the Board. In the event the Board elects to allow leasing and subleasing of the Homes, the following rules shall apply, in addition to any other rules and regulations as the Board may from time to time adopt on this matter: (i) no more than ten percent (10%) of the Homes in the Development may be leased at any one time (the Board may elect to maintain a waiting list in the event this cap is full and additional Owners desire to lease their Homes); (ii) no Home may be leased without the Owner first making written application to the Board for approval; (iii) the Board shall have a right to approve the form of lease to be used and to approve the identity of the proposed tenant; (iv) the Board may establish time limits which set a maximum amount of time that a home may be leased or otherwise non-Owner occupied; (v) notwithstanding any such leasing, the Owner shall remain fully responsible and jointly and severally liable with any tenant for compliance of the Home with the terms and provisions of this Declaration and the Bylaws and any other rules and regulations; (vi) each Owner hereby appoints the Board as his/her attorney-in-fact for purposes of exercising rights and remedies under any lease or otherwise acting with regard to a leased Home, in the case of emergency or in the event that the actions of any tenant are impairing other Owners quiet enjoyment of the Development. The Board, may, from time to time change its position on the allowance or disallowance of leasing; provided

however, that if the Board changes from allowing leasing to disallowing leasing, then any leases then in existence shall be allowed to continue for the remainder of their then current term.

4. Easements for Zero-Lot Line Home Sites. Any Home Site in the Development whereupon a Home is constructed on a zero-lot-line basis (i.e., the Home is situated on the Home Site such that one side of said Home is on or nearly on a side yard lot line) shall have, and is hereby granted, a perpetual, non-exclusive easement (each being a "Side Yard Easement") over and across the immediately adjacent Home Site (i.e., over and across the Home Site that is immediately contiguous to the side of the Home which has no side-yard). Each Side Yard Easement shall be ten (10) feet wide and shall be for the purposes of (i) accessing, repairing, and maintaining that side of the Home which otherwise has no side-yard and (ii) allowing for roof-eave overhangs. The use and enjoyment of such Side Yard Easements may be further limited and/or regulated by rules and regulations adopted by the Board. Side Yard Easements shall not otherwise limit or impair the use and enjoyment of the burdened Home Site by the Owner thereof.

5. No Further Amendment. Except as expressly modified hereby, the Declaration remains in full force and effect without further amendment or modification thereto.

IN WITNESS WHEREOF, Developer has executed this Amendment to be effective as of the date first above written.

ASHER VILLAGE, LLC, a Tennessee limited liability company

By: Bettie Griffin
Bettie Griffin, Managing Recorder

By: Donald Chastain
Donald Chastain, Chief Manager

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Before me, Candice Grant, of the state and county aforementioned, personally appeared the within named BETTIE GRIFFIN, to me known (or proved to me on the basis of satisfactory evidence), and who acknowledged to me that she is the Managing Recorder of ASHER VILLAGE, LLC, the within named bargainer, a Tennessee limited liability company, and that for and on behalf of said bargainer, being first duly authorized so to do by bargainer, she executed and delivered the within instrument on the date and in the year therein mentioned, for the purpose therein contained, by personally signing the name of the company as Managing Recorder.

WITNESS my hand and official seal, at office, this 14th day of ~~July~~ ^{March, 2006}, 2005. *CG DC*



Candice Grant
NOTARY PUBLIC

My Commission Expires: My Commission Expires Jan. 6, 2010

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Before me, Candice Grant, of the state and county aforementioned, personally appeared the within named DONALD CHASTAIN, to me known (or proved to me on the basis of satisfactory evidence), and who acknowledged to me that he is the Chief Manager of ASHER VILLAGE, LLC, the within named bargainer, a Tennessee limited liability company, and that for and on behalf of said bargainer, being first duly authorized so to do by bargainer, he executed and delivered the within instrument on the date and in the year therein mentioned, for the purpose therein contained, by personally signing the name of the company as Chief Manager.

WITNESS my hand and official seal, at office, this 14th day of ~~July~~ ^{March, 2006}, 2005. *CG DC*



Candice Grant
NOTARY PUBLIC

My Commission Expires: My Commission Expires Jan. 6, 2010